DUAL REPRESENTATION IN IMMIGRATION PRACTICE

by Bruce A. Hake[*]

INTRODUCTION

Dual representation is the most important area of legal ethics for immigration practice. The paradigm of legal representation is a relationship between one lawyer and one client. Sometimes a lawyer represents more than one client in the same matter. Such representations are called "dual" or "multiple" or "joint" representations, and the clients are called "co-clients." Multiple representations in immigration practice typically involve two clients, and hence the standard label is "dual" representation.

In most areas of American law, dual representations are discouraged. In some contexts they are even specifically prohibited. In some states, for example, a lawyer is specifically prohibited, whether by statute or by legal ethics rule, from representing both a husband and a wife in a divorce matter, because of the overwhelming risk of irreconcilable conflict. In contrast, immigration practice is a unique area of American law in that the great majority of cases are dual representations, because the majority of cases involve a petitioner (typically a U.S. citizen, in family immigration cases, or a U.S. employer, in employment-based immigration cases) who petitions the government on behalf of a foreign beneficiary.

Based on study and debate for over 10 years, this author believes that in all immigration cases involving a petitioner and a beneficiary, the lawyer has a lawyer-client relationship with both the petitioner and the beneficiary, with only one exception. The only exception are situations where the petitioner and the beneficiary are each represented by a different lawyer. The law may evolve to carve out exceptions and nuances. At the moment, however, this principle stands, no matter who started the relationship with the lawyer, no matter who pays the fee, no matter how attenuated the lawyer's contact may be with petitioner or beneficiary, and even no matter if the lawyer has attempted to exact a disclaimer of representation from either petitioner or beneficiary.

This rule is uncomfortable and some lawyers reject it, adopting the "Simple Solution" of believing they represent solely the petitioner or the beneficiary. There are many variations, and the principle applies in both family-based and employment-based cases. The paradigmatic situation, however, involves a lawyer preparing immigration papers on behalf of a corporate client for one of the corporation's employees.

It can be expensive to ignore the dual representation rules. Recently, in a case in which this author served as an expert witness, this lesson was learned the hard way by a prominent immigration lawyer who advised a corporate client about the mechanics and immigration implications of laying off an adjustment of status applicant co-client: the lawyer agreed to pay $250,000 in damages after initially denying that the corporate client's employee was his client as well.

Even those new to the practice of immigration law know that conflicts of interest often arise between petitioners and beneficiaries in both employment and family-based cases. Lawyers may represent two parties simultaneously, if so authorized, unless their interests conflict irreconcilably. In all cases, it is crucial to make clear to all concerned that the case involves dual representation and what that means.

All parties should be advised in writing regarding the nature of the representation, what will happen in the event of conflicts, and what is expected regarding confidential information. In particular, it should be explained in writing that representing two parties simultaneously in one matter requires the lawyer to disclose information and to be equally loyal to both parties.

[*] **Bruce A. Hake**, *www.hake.com/pc*, is a lawyer in Damascus, Maryland. From 1988 to 1993, he was editor of *Immigration Briefings* and consulting editor to *Interpreter Releases*. He has served as chairman of the Ethics Committee of the AILA Washington, D.C., chapter, and he has frequently lectured on legal ethics. This is a revised version of Hake's article, "Dual Representation in Immigration Practice," 2 *Bender's Immigr. Bull.* 568 (July 15, 1997). (Reprint permission granted by *Bender's Immigration Bulletin*.) That, in turn, was a condensed version of his landmark article, "Dual Representation in Immigration Practice: The Simple Solution Is the Wrong Solution," 5 Geo. Immigr. L.J. 581–639 (Fall 1991). Michael Maggio and Randy Auerbach provided helpful edits to this version.

The "portability" provisions of the American Competitiveness in the 21st Century Act (AC21)[1] have created analytical headaches for any lawyer trying responsibly to acknowledge and follow the dual representation rules, to the point where the law seems to scream for change. Nonetheless, AC21's difficulties do not destroy the principles that determine the formation of lawyer-client relationships. An employer's plans to lay off a co-client, a co-client's expressed desire to "port" under AC21 or otherwise leave the employer, or a spouse's expressed dissatisfactions with his or her marriage are as common in the practice of immigration law as they are in the rest of life.

When a conflict of interest develops, the lawyer cannot take sides or pretend the conflict does not exist. Instead, the lawyer must try to resolve the conflict, and if that is impossible, must withdraw from representing both parties in that particular matter.

Lawyers who let both parties know what dual representation entails will minimize the risk that their clients will disclose information that creates a potential conflict. This, however, is not necessarily easy. It can be surprising for a corporate client to learn that its lawyer also represents its would-be employee. Likewise, it can be difficult to explain to a foreign worker who has just hired his or her first lawyer that the lawyer also represents the boss, that the lawyer must be loyal to the boss, too, and that despite the attorney-client privilege, there are some things the lawyer does not want to hear. In family-based cases the problem can be even more pronounced. Occasionally immigration lawyers develop a closer relationship with the spouse of a foreigner who hired them, and that spouse tells of abuses by the other client—abuses that can give rise to rights under immigration law, such as a battered spouse petition—that conflict with the interest of the other client who could face criminal prosecution.

It is understandable and correct that immigration lawyers are eager to avoid conflicts of interest. Too many immigration lawyers incorrectly embrace the so-called "Simple Solution" to avoid conflicts. In essence, the Simple Solution says that the party who pays is the only client. Advocates of the Simple Solution argue that it is simple and clean, that it minimizes dual representation risks, and that it accurately reflects the lawyers' loyalties. Some lawyers say they have adopted the Simple Solution in reliance on advice heard at legal conferences. Such advice probably was founded, under the rubric of "identifying the client," on an understandable but mistaken interpretation of the corporate and other representation rules.

The Simple Solution, however, is clearly unethical and may create malpractice risks. This conclusion is supported by an apparent majority of the immigration bar and by bar ethics authorities that have addressed the issue.[2]

This article emphasizes the basic issue of how lawyer-client relationships are formed. Most issues discussed are generally applicable across all areas of immigration practice, although the focus is on the Simple Solution in the context of corporate representation involving pursuit of employment-related immigration status, where the practice is most common and most sharply defined. However, the concept can have a much broader scope, *e.g.*, in most family immigration cases. It applies as well as to employment-based cases where the lawyer is hired by a foreigner to file an employment-based application and the employer and employee both incorrectly believe that the lawyer is only the foreigner's lawyer.

Lawyers who adopt the Simple Solution regard themselves as counsel solely to a corporate client or to an individual foreign client in situations where they actually are conducting a dual representation of the corporation and an alien. These lawyers believe a duty of loyalty is owed only to the "real client," and that the key issue in employer-employee representations is identifying the real client—usually the first to engage the lawyer, the one who pays the fees, the one who directs the representation, and the one more likely to continue to employ the lawyer. This Simple Solution is an attempt to avoid lawyer-client relationships with aliens who appear to be, and are, clients. This is not the right way to represent immigration clients because it conflicts with ethics rules governing dual representation.

An alien is either a client—in which case the lawyer is subject to the obligations of that relationship—or the alien is not a client, in which case the lawyer may not give the alien legal advice. Whether the alien is a client depends more on what the lawyer does, and what the alien believes, than on what the lawyer says. Rather than minimizing risks, the Sim-

[1] Pub. L. No. 106-313, 114 Stat. 1251 (2000).

[2] *See, e.g.*, Los Angeles County Bar Ass'n Ethics Comm. Formal Op. No. 465 (Apr. 15, 1991).

ple Solution *increases* the risk of ethical sanctions and malpractice liability. It also increases the risk of not providing professional service to all actual clients.

BASIC PRINCIPLES

Dual (or multiple) representation occurs when a lawyer represents two (or more) co-clients in a single matter. In most areas of law practice, dual representation is relatively uncommon. In immigration practice, however, it is very common, because many immigration benefits, such as family-based or work-related immigration status, involve joint action by an alien beneficiary and an employer-petitioner or a U.S. citizen (or permanent resident). Although most immigration practice areas usually involve dual representations, some, such as deportation defense, usually do not.[3]

Dual representation is ethical and standard practice, when conducted in accord with the legal ethics rules. When a lawyer represents two parties, the lawyer is usually understood to have a lawyer-client relationship with both. If a conflict of interest arises, the lawyer must consult further with the clients and may have to withdraw from representation of both clients in that matter if either client will not or cannot consent to waive the conflict.

A lawyer can be engaged in a dual representation unknowingly. There is a clear trend in the law toward the recognition of implied lawyer-client relationships. A lawyer-client relationship does not require an express contract if there are good reasons to find that a lawyer was acting as a person's lawyer. Further, an obvious client may be a client for reasons that might not be obvious. For example, whether an individual or institution is a client does not depend on who pays the lawyer's fee. The critical question is whether the lawyer gives the person or institution legal advice or accepts confidential information. This means that lawyers may overlook client-lawyer relationships that have arisen in their practice, especially in dual representations.

CONFLICTS AND LOYALTIES

Although any number of problems can arise in dual representations, these problems generally fall into two classes: conflicts issues, and what can be called "other loyalty issues." Most dual representation problems involve conflicts. There are other problems as well, such as the extra demands placed on a lawyer who has to deal with more than one client: duties to communicate with each co-client, to involve each co-client in decisions, to continually consider the interests of each, and so forth. These problems are based on the duty to accord each co-client the same level of professional loyalty that any client should be accorded. The Simple Solution is an attempt to avoid both kinds of problems and the responsibilities they entail.

In considering dual representation issues, lawyers tend to think exclusively in terms of conflicts of interest. That is natural, because the essence of the dual representation rules is resolving conflicts. However, criticism of the Simple Solution is ultimately not based on a concern about conflicts; it is based on the more basic issue of loyalty to clients.

For example, when asked whether an overseas alien beneficiary of a citizen client's preference petition is ever regarded as a dually represented co-client, several experienced practitioners' first instinct was to note that the issue seldom arises, because conflicts of interest are rare in such cases. That is generally true. Conflicts are relatively rare in practice, and they are usually resolvable, especially in family cases, where essential interests are usually closely aligned. However, these practitioners' instinct amounts, in a way, to putting the cart before the horse; whether an alien is a client does not depend on whether a conflict is likely if the alien is a client. Analogously, whether a couple is married does not depend on whether they are likely to divorce. To the contrary, whether an alien is a client is a separate and more basic issue than the issue of potential conflicts.

This is a significant distinction, because a lawyer-client relationship affects many aspects of a lawyer's conduct beyond conflicts concerns. If conflicts concerns were the critical factor in deciding whether an alien is a client, then that would be an unimportant issue in situations where conflicts are rare. But whether an alien is a client is always an important issue, because, beyond conflict-related obligations, lawyers owe many duties to clients that are not owed to nonclients.

Lawyers' duties to clients are not platitudes. They are specific legal duties, violations of which are punishable by ethics sanctions, malpractice liability, and oversight by the Justice Department and

[3] *But see Lopez v. INS*, 775 F.2d 1015 (9th Cir. 1985) (lawyer's representation of multiple respondents in deportation proceeding was appropriate).

the Department of Homeland Security. Outside the sphere of conflicts, the Simple Solution can lead to other ethical violations, such as breaches of the duties of confidentiality and communication. Therefore, it is prudent for a practitioner to err on the side of regarding as clients the foreigners who benefit from his or her legal advice and services, as well as the institutions and individuals who petition for them.

FORMATION OF A LAWYER-CLIENT RELATIONSHIP

There is a very clear trend toward recognition of implied lawyer-client relationships based on the lawyer's conduct and the putative client's expectation. A lawyer-client relationship does not require an express contract if there are good reasons to find that a lawyer was acting as a person's lawyer. Therefore, the Simple Solution's disclaimer of a client relationship with the alien is ineffective.

The legal ethics rules somewhat duck the issue of who is a client. The definition has been left to common law, which draws a black-and-white distinction between clients and nonclients. Those deemed clients are owed the full range of the lawyer's professional duties, while nonclients are owed almost no professional duties. Current law draws no distinction between categories of clients, nor does it recognize the fact that in the real world lawyers must and do make distinctions about how they treat different categories of nonclients.

The Simple Solution reflects the practical reality that lawyers feel closer ties to a long-term, paying client than to the co-client with whom they have fleeting contacts. The courts and bar authorities, however, apply an amalgam of contract, agency, and tort law, tending toward great expansion of the circumstances that signal the formation of a lawyer-client relationship.[4]

A lawyer-client relationship exists under a tort theory, even absent an express contract, whenever a person seeks and receives legal advice under circumstances in which a reasonable person would rely on the advice. An implied lawyer-client relationship exists whenever the lay party submits confidential information to an attorney whom he reasonably believes is acting to further his interests. This certainly says that the lawyer is the lawyer for all concerned in employment- and family-based cases.

A "client" is a person on whose behalf a lawyer acts. Performing legal services for another, which may include simply providing advice and information under circumstances indicating an lawyer-client relationship, is evidence of a lawyer-client relationship. A lawyer-client relationship can be inferred from conduct; it is sufficiently established if it is shown the putative client seeks and receives advice on legal consequences of past or contemplated actions. This, too, confirms that it is foolish for an immigration lawyer to claim that either the petitioner or the beneficiary is not the "real" client because attorney's fees were paid by the other client.

One court found a lawyer-client relationship, implied from the lawyer's conduct, between a lawyer and Canadian nationals the lawyer had assisted in seeking permanent resident status.[5] The lawyer asserted he was not the aliens' lawyer but a "co-venturer" in an investment scheme designed to gain them permanent residence. In addition to the aliens' subjective understanding of their relationship with the lawyer, the court relied on the facts that the lawyer had contacted the INS and the Social Security Administration on their behalf; had mentioned green cards in letters to them; had written to them on his lawyer letterhead; and had made himself available to answer INS questions when the aliens crossed the border. The court imposed a four-month suspension.

The fiduciary relationship between lawyer and client is not dependent on the lawyer's acceptance of employment, orally or in writing. The existence of a lawyer-client relationship may be established by the client's "reasonable perception."

Although a third party may pay a client's legal fees, a lawyer's relationship of trust and confidence and the obligation to protect confidential information will, however, be with the client—the person or entity whose legal interests the lawyer is retained to protect." [6]

A law firm's belief was held to be irrelevant to the issue of whether a lawyer-client relationship ex-

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[4] *See, e.g., Togstad v. Vesely, Otto, Miller & Keefe,* 291 N.W.2d 686 (Minn. 1980) (imposing an estoppel against a lawyer denying an attorney-client relationship where there was only a brief consultation and the lawyer claimed he had declined to accept the case).

[5] *In re O'Byrne,* 694 P.2d 955 (Or. 1985).

[6] Wolfram, *Modern Legal Ethics,* 502 (1986)

isted; the policy of avoiding the appearance of impropriety is a key concern in deciding the issue.[7]

Summary of Factors

The following factors, alone or in combination, have been held to create an implied lawyer-client relationship, or to be irrelevant to the issue of its creation:

Lawyer's conduct

- gives legal advice, including information about the law as well as advice regarding a course of conduct
- accepts confidential information and acts to further person's interests
- represents a person's interests, regardless of who pays the fee
- acts on a person's behalf
- performs legal services
- signs an acknowledgment of service on behalf of an alleged client
- represents a person in judicial or semi-judicial proceedings
- enters an appearance on behalf of a person
- files labor certification application in which lawyer appears as employer's counsel
- contacts government agencies, *e.g.*, USCIS or Social Security Administration, on a person's behalf
- mentions green cards in letter to alleged clients
- writes to putative clients on law firm letterhead
- makes him- or herself available to answer DHS questions when aliens cross the border
- fiduciary relationship between lawyer and client is not dependent on the lawyer's acceptance of employment, orally or in writing
- irrelevant whether law firm believes it has embarked on lawyer-client relationship

Putative client's conduct and expectation

- seeks, receives, and reasonably relies upon legal advice
- submits confidential information to lawyer, who is reasonably believed to be acting to further person's interests
- reasonably believes the lawyer is acting as his or her lawyer
- irrelevant whether putative client pays the fees.

THE APPEARANCE OF IMPROPRIETY

Although tarnished because of ambiguity and difficulty of application, the rule that lawyers should bend over backwards to avoid even the appearance of impropriety, because of the discredit it brings to the profession, has long been a cardinal principle of legal ethics. The Third Circuit inquires whether an "average layman" in the position of an objecting party would perceive an impropriety.[8] It can scarcely be doubted that an average layman would think it improper for a lawyer to give legal advice to a person, file forms and otherwise represent the person in administrative forums in proceedings leading to changes in the person's legal rights and duties, and mediate the person's relationship with an employer (or others) as well, while disclaiming the role of a lawyer.

CORPORATE REPRESENTATION RULES

Legal ethics reference materials nearly always devote more space to conflicts of interest than to any other topic. Much of this space is devoted to the corporate representation rules. Those rules involve the tricky issue of "identifying the client" when a lawyer retained by a corporation is asked to consider issues in which the legal rights of the corporation are entangled with the legal rights of persons connected with the corporation, such as directors, shareholders, or employees. Some legal justifications for the Simple Solution reflect an understandable misunderstanding of the corporate representation rules. Indeed, misunderstanding of these rules may be the primary source of the Simple Solution.

Rule 1.13 of the District of Columbia Rules of Professional Responsibility[9] ("D.C. Rules") provides:

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[7] *Jack Eckerd Corp. v. Dart Group Corp.*, 621 F. Supp. 725, 731 (D. Del. 1985).

[8] *Pantry Pride, Inc. v. Finley, Kumble, Wagner, Heine, Underberg & Casey,* 697 F.2d 524, 530 (3d Cir. 1982).

[9] While this article specifically cites to the D.C. Rules, the principles addressed in those citations are generally applicable across the United States.

> (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
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> (b) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests may be adverse to those of the constituents with whom the lawyer is dealing.
>
> (c) A lawyer representing an organization may also represent any of its ... employees ..., subject to the provisions of Rule 1.7 [Conflicts]....

This rule is the source of a common statement in legal ethics materials: a corporate lawyer represents the corporation, not the employees. The rule, however, has little to do with the Simple Solution (except that subsection (c) indicates that employer-employee dual representations are permissible and subject to the usual conflicts rules). The general philosophy of the rule is that a corporate lawyer ordinarily represents the organization as an entity, not the individuals comprising the entity.

That general rule, however, is subject to many exceptions. "[I]t is not appropriate to regard the entity as the client in every situation involving an entity, for individual constituents of the organization may be entitled to legal representation in their own right." [10] One situation where the corporation is not the only client is where the corporation "provide[s] legal representation ... for employees." "It is important to recognize ... that when an entity lawyer also represents individuals within the entity, he is taking on new clients." "[W]hen a corporation retains a lawyer specifically to represent certain employees, the corporation is not considered to be the client." The Simple Solution, a complete inversion of that principle, is plainly not justifiable under the corporate representation rules.

PROHIBITION AGAINST ADVISING NONCLIENTS

Whatever the force of the previous arguments, the Simple Solution is destroyed by the prohibition against giving legal advice to nonclients. D.C. Rule 4.3 provides:

> In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not:
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> (a) give advice to the unrepresented person other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client;
>
> (b) state or imply to unrepresented persons whose interests are not in conflict with the interests of the lawyer's client that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The comment to Rule 4.3 provides:

> The Rule distinguishes between situations involving unrepresented third parties whose interests may be adverse to those of the lawyer's client and those in which the third party's interests are not in conflict with the client's. *In the former situation, the possibility of the lawyer's compromising the unrepresented person's interest is so great that the rule prohibits the giving of any advice, apart from the advice that the unrepresented person obtain counsel* (emphasis added).

If an employee is not a client, the employer's lawyer may not give the employee any kind of personal legal advice other than the recommendation to seek independent counsel.[11]

These prohibitions against giving legal advice to a nonclient probably constitute a dispositive refutation of the Simple Solution. An advocate of the Simple Solution might object to this analysis on the ground that soliciting information from an alien employee to fill out forms, on behalf of the employer, does not constitute "giving legal advice." This objection is unsound for many reasons. Immigration lawyers are not data entry clerks. Moreover, the bar's position on the unauthorized practice of law is inconsistent with the objection. It is hard to imagine that a lawyer could diligently and competently undertake the complexities of something like a labor certification application without, in substance if not in form, advising the beneficiary about legal requirements and legal consequences. What is more, a competent lawyer must obtain at the outset from the foreigner information, such as whether any of the grounds of inadmissibility may apply, that the for-

[10] Hazard & Hodes, *The Law of Lawyering,* 57 (1985).

[11] *See W.T. Grant Co. v. Haines,* 531 F.2d 671, 675–76 (2d Cir. 1976).

eigner would expect to held in confidence Indeed, asserting that a person's complex legal interests could be responsibly handled in such a way could also present an appearance of impropriety.

POTENTIAL MALPRACTICE LIABILITY

To establish legal malpractice, a plaintiff must show: (1) the existence of a lawyer-client relationship; (2) that the lawyer neglected a reasonable duty; and (3) that the lawyer's negligence was the proximate cause of a loss to the plaintiff. The Simple Solution is a functional attempt to limit malpractice liability, because it denies a lawyer-client relationship. This attempt is likely to fail in a malpractice action, because the definition of "client" is expanding, especially in tort cases. Further, the attempt to limit malpractice liability may itself be professional misconduct. D.C. Rule 1.8(g)(1) provides flatly: "A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice."

LIMITING THE SCOPE OF REPRESENTATION

"An agreement concerning the scope of the representation must accord with the legal ethics rules and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1 [competence], or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue." [12] Disclosure and consent are not mere formalities—they must be tailored to a client's actual circumstances.

Due to the strength of the authorities regarding the establishment of a lawyer-client relationship by conduct and expectation, and in light of other principles, including the rule against giving legal advice to nonclients, it seems unnecessary to analyze systematically whether the Simple Solution can be sustained—and a lawyer-client relationship thus denied—in the face of the lawyer's disclaimer of a lawyer-client relationship or the alien's signature on an engagement letter or other document purporting to consent to such an arrangement. In some states the traditional agency law and express contract law analysis that once defined the scope of lawyer-client relationships is still more common in opinions than the tort and implied contract principles discussed in this article. Nonetheless, on the facts of the Simple Solution, no court or bar authority is likely to hold that an alien could make a meaningful and valid consent to such an arrangement.

A lawyer's ethical duties must be tailored to a client's actual circumstances. A disclaimer, such as an advance waiver of conflicts, that might escape impropriety if exacted from a large company represented by independent legal counsel, might be unconscionable if imposed on certain individuals. It is clear from the cases that powerful parties, such as some corporations, must bear tender regard for the rights of vulnerable parties, such as some alien employees. However, this article's conclusions do not depend on an assumption that corporations are strong and aliens are weak. There are all kinds of corporations and all kinds of aliens. In immigration cases employers and alien employees sometimes but infrequently are commensurate in resources and sophistication, such as when a small consulting company seeks to hire a foreign professional. These criticisms of the Simple Solution apply in such cases, but even more so when the parties are notably unequal in bargaining power.

UNAUTHORIZED PRACTICE OF LAW

The Simple Solution also gets whipsawed by the bar's position on unauthorized practice. The Simple Solution asserts in effect that a lawyer's filling out forms and performing other actions in pursuit of an immigration benefit for an alien on behalf of an employer is not practicing law. Meanwhile, the bar argues that filling out forms and other actions in pursuit of immigration benefits for aliens constitute the unauthorized practice of law when performed by nonlawyers. If those actions constitute practicing law when performed by nonlawyers, how can they be regarded as not practicing law when performed by lawyers?

THE DUTY OF LOYALTY AND THE LAW OF AGENCY

After giving respect to a lawyer's duties to the administration of justice, the legal ethics rules boil down to the duty of loyalty to the client.[13] The lawyer's many duties of loyalty derive from the com-

[12] D.C. Rules, Comment to Rule 1.2, ¶ 5.

[13] *See* "Ethical Issues in Immigration Practice," 90-8 *Immigration Briefings* (Aug. 1990).

mon and statutory law of agency, which generally prohibits agents from taking actions disloyal to the interests of a principal, or from exploiting a principal's confidences for self-gain or the gain of third parties. Even if legal ethics rules did not exist, lawyers would still be subject to civil actions for breaches of the duty of loyalty. A lawyer's duties of loyalty include the duties of zealous representation, communication, shared decisionmaking, confidentiality, and avoidance of conflicts, to name some of the more important duties.

THE CO-CLIENT RULE

If a lawyer jointly represents two or more clients with respect to the same matter, the clients ordinarily have no expectation that their communications with the lawyer, with respect to the joint matter, will be kept from each other.[14] This so-called "co-client rule" is very important. A lawyer has a duty to warn clients about limits on confidentiality, and the lawyer needs to be aware of the possible ramifications of the co-client rule. Again, advising all concerned about this in writing at the start of the case, and especially in employment-based cases, makes for fewer conflicts, happier clients, and less anxiety.[15]

CONCLUSION

Loyalty to clients is the foundation of legal ethics. The Simple Solution, a strategy for evading that principle, is clearly unethical. In the employer and employee context, the prudent and proper course is to regard the alien and the employer as co-clients and follow the established rules regarding conflicts of interest. The same applies to family-based immigration cases. If a serious conflict arises, it may be possible to resolve the conflict and obtain consent to continued dual representation, or it may be necessary to withdraw. Educating clients about these issues is an important responsibility for all immigration lawyers.

[14] Wolfram, *supra* n. 6, §6.4.8 at 274. *But see* D.C. Bar Legal Ethics Committee Op. No. 296 (Feb. 15, 2000) (mere fact of joint representation, without more, does not provide a basis for implied authorization to disclose one client's confidences to another). This decision is consistent with this article's conclusions, except that it adopts the view that co-clients in an employer/employee immigration context are ordinarily not entitled to confidential information of the other unless they have specifically consented in advance. This makes it especially important for Washington, D.C. practitioners to anticipate in writing in advance how confidential information will be treated in all dual representations.

[15] "Where express consent to share client confidences has not been obtained and one client shares in confidence relevant information that the lawyer should report to the non-disclosing client in order to keep that client reasonably informed, to satisfy his duty to the non-disclosing client the lawyer should seek consent of the disclosing client to share the information or ask the client to disclose the information directly to the other client. If the lawyer cannot achieve disclosure, a conflict of interest is created that requires withdrawal." *Id.*