

## Law & Accounting

# Single counsel, double trouble: When one client needs two professionals

Miami attorney **Alan Kluger** was on the board of a startup health care company when the CEO had marital trouble. As counsel to the company and its top executive, Kluger tendered his resignation from the board.

His rationale: Details Kluger may have learned of the marriage could have potentially harmed the company – especially if they were found beyond the attorney-client privilege and he was compelled to divulge them in court.

“I cannot serve two masters, especially if they have [regulatory] reporting requirements,” said Kluger, founding chairman of Miami litigation firm Kluger, Kaplan, Silverman, Katzen & Levine, P.L. “All of a sudden, the advice you may give to the individual might not be the same you’d give the business.”

Should an entrepreneur use the same attorney and accountants for business and personal legal/business issues? Prominent local businessman **Claudio Osorio** faced problems keeping his communication on personal legal issues private and separate from those involving his business. In such cases, the court could rule they are one and the same, and demand they be handed over.

For some businesses, having different professional service providers is no stretch. Companies are already accustomed to having separate counsel for various areas of business or corporate needs, said **Alan P. Fiske**, president of [Fiske & Co.](#), a Plantation-based accounting firm. The company might tax accountants for federal or state tax preparation. It may employ forensic accountants or valuation experts to explore financial statements related to an acquisition, or to investigate wrongdoing, said Fiske, himself a forensic accountant.

Companies may have transactional attorneys for contracts, corporate matters and even succession planning. They have litigators to pursue or defend claims or actions for or against the company.

“If you run a very small business, you could have the same accountant doing the corporate and the personal tax work. They’re so intertwined that you need the person informed about your plans,” Fiske said. “A bigger business might want one accountant for normal daily operations, but bring in a forensic accountant if there’s a problem or litigation.”

## **Potential for criminal activity**

Determining whether a company might need separate counsel often requires thinking about the potential for criminal activities, investigations or other deleterious actions. If criminal activity is discovered or alleged in the future, and one counselor handled both personal and business dealings, the veil of privilege covering interrelated personal and business conversations between counsel and client could be pierced.

Ask how the business and its ownership might interact in the future, said **Grant Rawdin**, a lawyer and former CPA who today is CEO of Wescott Financial, a Boca Raton wealth management group for individual, business and institutional investors. If a business has several owners, and a legal or accounting firm represents the business and one of the owners, a conflict could be argued, he said.

“If an attorney represents a business and business owner, and there are partners in the business, the attorney has to be particularly thoughtful as to whether he’s preferencing the business owner,” Rawdin said. “In those cases, it’s easier to pierce the attorney-client privilege because conversations are intermingled.”

Whether to use one accountant or attorney for personal and business needs depends on the size of the company, the nature of its operations, and how closely the company is held by its ownership. Soloists, sole proprietorships or other single-owner businesses would find it practical to have one attorney or accountant, those contacted agreed.

Still, the assertion of privilege could arise later, should legal, civil or divorce issues arise later, Rawdin said.

“It can be as simple as between spouses,” he said. “As the issues become more complex or the dollars become larger, you’re fraught with these types of conflicts that come up.”

Wise is the attorney, accountant or client who foresees the potential for conflict and prepares a Disclosure and Waiver of Conflict of Interest, Kluger said. The document outlines in detail any potential for conflict and serves as an agreement about how such conflict may be handled. Short of a waiver, it’s up to counsel to educate the client on what conflicts could arise down the road, he said.

“It’s a discussion people should have,” Kluger said. “The crossover occurs when lawyers forget they are trusted advisers and lose sight that that’s their primary role in the relationship. The professional has the obligation to educate the client about these conflicts, to the extent that the client has never seen a conflict in action. They don’t even know what questions to ask. It’s part of counseling, right up front.”

