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"Issuing a Proper Upjohn Warning Will Not Cure Multiple Representation Conflicts" by James Walker and Shari Brandt

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A recent federal court decision, *United States v. Nicholas*, No. SACR 08-00139-CJC, -- F. Supp. 2d --, 2009 WL 890633 (C.D. Ca. Apr. 1, 2009), casts further doubt on whether a traditional Upjohn warning to an employee can be relied upon to protect a corporate client's ownership of the attorney-client privilege, particularly if the corporate client's lawyer had a prior attorney-client relationship with the employee or represents the employee concurrently. Our litigation partners James Walker and Shari Brandt have written a short memorandum examining this decision in the context of other decisions that have addressed similar privilege issues, and offering guidance on steps to take to increase the likelihood that the attorney-client privilege will be preserved when interviewing company employees.

[Download memorandum](#)

In addition to this memorandum, the Corporate Counsel Section of the New York State Bar Association's newsletter, "NYSBA Inside", recently published an article written by these same partners, titled *Can an Upjohn Warning Avoid Representational Ambiguity?*.