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### Business Lawyer Leadership: Valuing Relationships

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# BUSINESS LAWYER LEADERSHIP: VALUING RELATIONSHIPS

Joan MacLeod Heminway<sup>1</sup>

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*People skills include the ability to pay attention to the individual one is with (not being preoccupied about other matters), to connect people to each other, and to maintain and expand relationships.<sup>2</sup>*

*[I]n the business context, forming a durable relationship that will result in trust and communication throughout the life of the commercial relationship is usually very important.<sup>3</sup>*

*Regardless of the exact role the business lawyer will play, establishing a relationship where the client trusts the lawyer's advice—and trusts that the lawyer is giving the client advice that focuses on solving the client's issues and advancing its goals—is crucially important. This relationship will evolve and strengthen over time as the lawyer and the client come to understand their respective risk tolerances, communication styles, and levels of expertise.<sup>4</sup>*

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So much of legal education seems to focus on cases and controversies. We too easily may see the litigants and their legal counsel as enemy combatants in a judicial tournament. Transactional lawyers may be depicted as cut-throat competitors for whom winning is the sole or dominant objective. Although we understand that these portrayals may be hyperbolic (and that the many lawyers engaged in compliance and general advisory work are left out of these narratives altogether), they unambiguously emphasize division, disconnection, and difference.

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<sup>2</sup> Rep. of the Task Force on Defining Key Competencies for Bus. Laws., Bus. L. Educ. Comm., ABA Bus. L. Section, *Defining Key Competencies for Business Lawyers*, 72 BUS. LAW. 101, 149 (2017) [hereinafter Rep. of the Task Force].

<sup>3</sup> *Id.* at 144.

<sup>4</sup> *Id.* at 131.

Yet, business lawyering is most clearly an area of legal practice that is founded on building and sustaining relationships and engages relationship-oriented skills and activities.<sup>5</sup>

A business lawyer's clients—businesses themselves and the stakeholders in those businesses—typically are part of relational systems. A formal legal business structure is not an essential component to the representation. Even sole proprietors interact with employees and other agents to conduct their affairs.<sup>6</sup> At least some of those interactions occur in the context of relationships—both relationships internal to the business and relationships with outsiders.<sup>7</sup>

The law of business associations<sup>8</sup> recognizes the existence of business relationships and offers collections of legal rules that formalize, characterize,

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<sup>5</sup> See, e.g., Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 17 (2015) (“The focus . . . of business lawyering is private ordering of relationships between parties.”); Susanna M. Kim, *Dual Identities and Dueling Obligations: Preserving Independence in Corporate Representation*, 68 TENN. L. REV. 179, 252 (2001) (“The close, day-to-day working relationships that inside lawyers develop with corporate constituents and the personal feelings associated with being a valued member of a corporate team produce a deeper and ongoing identification of the lawyer with the client.”); Donald C. Langevoort, *The Epistemology of Corporate-Securities Lawyering: Beliefs, Biases and Organizational Behavior*, 63 BROOK. L. REV. 629, 635 (1997) (“[S]ome lawyers will seek to blend both professionally and socially into the culture of the significant organizational insiders, valuing proximity as a way of truly understanding the client and its environment and (not coincidentally) bonding with the client's management personnel in a way that will generate continued or additional business.”); Scott L. Olson, *The Potential Liabilities Faced by in-House Counsel*, 7 U. MIAMI BUS. L. REV. 1, 47–48 (1998) (“The success of corporate lawyers depends on the relationship that they develop with the corporation's executives and on their ability ‘to make professional contributions to the management's achievement of its business goals.’” (footnote omitted)).

<sup>6</sup> See Kit Johnson, *Lawful Work While Undocumented: Business Entity Solutions*, 64 ARIZ. L. REV. 89, 113 (2022) (“[S]ole proprietors often hire employees . . . .”); Douglas Litowitz, *Are Corporations Evil?*, 58 U. MIAMI L. REV. 811, 839 (2004) (“A sole proprietor operates through agents . . . .”).

<sup>7</sup> E.g., Gregory S. Johnson, *What You Must Know to Prevent A Disaster*, MONT. L., Nov. 1998, at 1, 34 (“Most businesses work with customers and other businesses -- suppliers, vendors, financial service providers, insurance carriers, electric utilities, telecommunications networks, Internet service providers and so forth.”).

<sup>8</sup> The law of business associations—or business associations law—may mean different things to different people. This article uses those terms to reference the law providing the authority to organize legally recognized business entities (e.g., corporations, partnerships, limited partnerships, and limited liability companies), while recognizing that other bodies of

and label them. From this body of law, we can identify the basic structure, management, control, finance, third-party liability, and other attributes of different forms of business entity. The legal rules in these areas both reflect and guide the relationships that exist in business settings.

A business lawyer incorporates their knowledge of business and business law—including their understanding of the relational aspects of each—in their work. Moreover, while law is a professional practice, it also is a business. As such, although it may be obvious, law firms, law offices, and other legal teams are relational; the lawyers and staff are engaged in relationships with each other necessary to serving clients and are engaged in relationships with the clients to provide legal services. Lawyering—including business lawyering—is a relational activity.<sup>9</sup>

Lawyer leadership in the practice of business law must take account of the foregoing realities. Understanding the importance of relationships to businesses and business associations law allows a lawyer to optimize the use of leadership traits, skills, and processes to compellingly advise their clients and zealously represent their clients' interests in their dealings and disputes with third parties. A failure to grapple with the relational nature of business enterprises, and the law and practice that engages them, compromises the business lawyer's ability to lead through lawyering.

An appreciation of the significant role that relationships play in businesses, business associations law, and business lawyering is foundational. However, it is insufficient, alone, to create effective business lawyer leadership. That awareness must be accompanied by applied activity built around relationship-oriented traits, skills, and processes.

This article recognizes these important connections between business law practice and relationships. It approaches each of them in turn.

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law—including principally securities regulation—also impact the operation, structuring, governance, and financing of business firms.

<sup>9</sup> See Pamela S. Karlan, *The Path of the Law Firm: A Comment on Ribstein's "Ethical Rules, Agency Costs, and Law Firm Structure"*, 84 VA. L. REV. 1761, 1769 (1998) (describing law firms as "relational cultures within which lawyers practice"); Eli Wald & Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601, 616 (2016) ("A relational approach applies to all facets of law practice and to all actors with whom a lawyer interacts.").

The substantial take-away is that a business lawyer can best lead by understanding the inherent value of relationships to business lawyering and leveraging that understanding through focused effort that includes the employment of, among other things, relationship management skills.

## I. BUSINESSES AND BUSINESS CLIENTS ARE RELATIONAL

Businesses—an important factor in the analysis and resolution of many legal issues—are built on and through relationships that involve mutuality and can have legal consequences.<sup>10</sup> Relationships are different from mere interactions. “The difference between an interaction and a relationship is a matter of frequency. It’s a product of the quality, depth, and time you spend interacting with another person.”<sup>11</sup> Constituents in a business enjoy this kind of sustained, valued, intense connection to each other—one that is built on more than casual dealings. Businesses and their external partners also may be repeat players, engaging with each other on a regular basis.

The relationships that comprise and engage business firms have become increasingly complex as globalization, specialization, and technological innovation have expanded and intensified.

Today, information is being exchanged much more extensively, for example, through social networks like LinkedIn?, so people are not nearly as isolated as they were back then. Business networks of relationships are much more extensive and enmeshed now, the number of parties involved in a process such as making hats is much greater, and the degree of specialization that each party plays is also much greater. Thus today, people are coming together more intimately, they are communicating with each other more extensively, and they are reliant on each other in unprecedented ways. All this means that we are all engaged in networks of multi-organizational business relationships . . . .<sup>12</sup>

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<sup>10</sup> See Ann M. Lipton, *Capital Discrimination*, 59 HOUS. L. REV. 843, 907 (2022) (“People who form businesses voluntarily choose to enter relationships that the state has imbued with certain responsibilities.”).

<sup>11</sup> TRAVIS BRADBERRY & JEAN GREAVES, *EMOTIONAL INTELLIGENCE 2.0* 44–45 (2009).

<sup>12</sup> Charles Cresson Wood, *Solving the Information Security & Privacy Crisis by Expanding the Scope of Top Management Personal Liability*, 43 J. LEGIS. 65, 83 (2016).

These multifaceted business relationships may be regulated under laws dedicated to governing specific areas of commercial or industrial endeavor (for instance, communications or banking law), or specialized laws governing operational contexts (including securities or antitrust law), or they may be regulated under general contract, agency, or other common law.

From a substantive legal perspective foundational to business operations, in the absence of other applicable supervening law, the common law of agency governs the “relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.”<sup>13</sup> That agency relationship is classified as a “fiduciary relationship.”<sup>14</sup> The fiduciary nature of agency arises from its relational context. “Agency is a fiduciary relationship involving trust and reciprocal obligations.”<sup>15</sup> It has been a historical and fundamental building block of businesses and business associations law.<sup>16</sup>

## II. BUSINESS ASSOCIATIONS LAW IS RELATIONAL

Given the fact that businesses are relationship-based, it is unsurprising that the law of business associations is built around relationships. Relationships are the very essence of that body of law. For example, business associations law governs internal relationships among stakeholders, including agency relationships impacting transactions between

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<sup>13</sup> RESTATEMENT (THIRD) OF AGENCY § 1.01 (AM. L. INST. 2006).

<sup>14</sup> *Id.*

<sup>15</sup> Orly Lobel, *Citizenship, Organizational Citizenship, and the Laws of Overlapping Obligations*, 97 CAL. L. REV. 433, 438 (2009).

<sup>16</sup> See Joan MacLeod Heminway, *The Fiduciary-ness of Business Associations*, 24 TRANSACTIONS: TENN. J. BUS. L. 255, 260–62 (2023) (footnote omitted); Elizabeth Penn & Manning Gilbert Warren III, *The Common Law Fiduciary Duties of Business Owners*, 58 U. LOUISVILLE L. REV. 147, 152 (2019) (“[E]very day people enter into relationships in which they mutually agree to work for each other’s benefit, willingly exposing their vulnerabilities to each other on the premise that they will protect each other’s assets to maximize profits . . . . Fortunately, the common law remains flexible enough to impose fiduciary duties based on the context of their relationships in specific factual situations.”).

the firm and third parties).<sup>17</sup> Business associations law also governs the relationship between the firm and third parties.<sup>18</sup>

These relationships are embedded within business entity structures that are established through, in principal part, state business associations statutes (authorizing, e.g., the organization of various kinds of corporations, partnerships, and limited liability companies). The relationships arise in various contexts regulated by state statutory and related decisional law: internal firm governance, business finance, and third-party liability. Firm governance rules address the relationships between and among the internal constituents of the firm, including interactions relating to management and control and fiduciary duties.<sup>19</sup> Moreover, business associations law provides for the authorization and issuance of equity interests as well as the financial rights of equity holders (including entitlements to profit-sharing and liquidation payments) in relation to the contract rights of debt holders.<sup>20</sup> Business associations law also authorizes business combinations and other financial and structural transformations, including mergers, conversions, and domestications.<sup>21</sup> A final set of core rules embodied in business associations

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<sup>17</sup> See Margaret M. Blair & Elizabeth Pollman, *The Derivative Nature of Corporate Constitutional Rights*, 56 WM. & MARY L. REV. 1673, 1741–42 (2015) (“State corporate law provides rules for the internal governance of the corporation, and thus gives insight into who the corporate participants are and what their roles are within the corporation.”); James A. Fanto, *The Role of Corporate Law in the Adaptation of French Enterprises*, 1998 COLUM. BUS. L. REV. 97, 98 (1998) (“[T]he law of business associations, . . . establishes the legal relationships between principals and agents in enterprises . . .”).

<sup>18</sup> Thomas W. Joo, *Contract, Property, and the Role of Metaphor in Corporations Law*, 35 U.C. DAVIS L. REV. 779, 810 (2002) (“Like property, and unlike contract, business associations law governs more than the relationships among parties who enter into a business association. It also has binding effects on third parties.”); see also *infra* note 22 and accompanying text.

<sup>19</sup> Robert C. Bird & Stephen Kim Park, *The Domains of Corporate Counsel in an Era of Compliance*, 53 AM. BUS. L.J. 203, 218 (2016) (“Central to the concept of corporate governance is the notion of embedded relationships—that is, personal and individual connections between various constituents within the organization.” (footnote omitted)).

<sup>20</sup> See Edward S. Adams, *Toward A New Conceptualization of the Absolute Priority Rule and Its New Value Exception*, 1993 DET. C.L. REV. 1445, 1447 (1993) (referring to “the fundamental relationship between equity and creditors that underlies the law of business associations”).

<sup>21</sup> See Matthew Gerard Doré, *Reflections on Four Decades as a Business Associations Student*, BUS. L. TODAY, Apr. 2023, at 1, 5–6. (“[I]n the 1980s, a partnership that reorganized as a corporation might need to first dissolve or take other steps to transfer assets and liabilities to a newly formed corporate entity. Today that partnership could conduct a cross-entity merger or a single-step “conversion” to the corporate form. In the 1980s, if a corporation

law involves limited liability and other allocations (as between and among the business and its constituents) of the legal and financial responsibility for the liabilities and other obligations of the business owed to third parties.<sup>22</sup>

Overall, these and other aspects of business associations law exist to facilitate people forming business relationships with each other. “[C]orporations law, and business associations law, generally, provides a set of fixed forms of business association. While parties could arrange their relationships through contract, the state provides a set number of business association forms . . . .”<sup>23</sup> The legal structures and rules of business associations law offer participants ready-made forms of legal entity through which they can conduct business. These legal business forms (including, e.g., corporations, partnerships, limited partnerships, and limited liability companies) contemplate the predictable conflicts that may arise between coventurers and seek to resolve them—whether *ex ante* or *ex post*—thus preserving the relationships needed to operate and sustain the business.<sup>24</sup>

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wanted to change its governing law, the company organized a new corporation in the foreign state and then merged into it. Today a corporation or unincorporated entity can typically conduct a “domestication” transaction that changes its governing jurisdiction in a single step”) (footnote omitted).

<sup>22</sup> See Joo, *supra* note 18, at 810 (“[C]orporations law creates in rem rights . . . through limited liability. If an enterprise is organized as a corporation or other limited liability entity, its creditors cannot reach the assets of the owners to satisfy the debts of the owners.”); *id.* at 816–17

The term “limited liability” typically describes a situation in which one placing capital at the disposal of an enterprise risks loss of that capital, but no more. In the context of the laws of business associations, the concept of limited liability distinguishes the posture of the corporate shareholder from that of the general partner or sole proprietor. Discussions of this distinction frequently reflect a perception that unlimited liability is the natural consequence of carrying on a business, and limited liability is a special benefit conferred in exchange for the expense and constraints of the corporate format.

Theresa A. Gabaldon, *The Lemonade Stand: Feminist and Other Reflections on the Limited Liability of Corporate Shareholders*, 45 VAND. L. REV. 1387, 1395–96 (1992) (footnotes omitted).

<sup>23</sup> Joo, *supra* note 18, at 809.

<sup>24</sup> See Doré, *supra* note 21, at 1, 6 (describing the mediation of “conflicts that inevitably arise in the life of a business entity between owners and managers, between majority owners and minority owners, and between the entity and third parties” as fundamental to the purpose of business associations law).



### III. BUSINESS LAWYERING IS RELATIONAL

Although business lawyers are often conceptualized as transactional practitioners, they may have a wide variety of roles.<sup>25</sup> This article's definition of a business lawyer embraces that functional breadth, classifying a lawyer as a business lawyer based on the nature of the lawyer's client or the matter on which services are provided. Specifically, if the lawyer represents a business or represents a business constituent or other person in a matter involving the affairs of a business, this article labels that lawyer as a business lawyer. Business lawyering—the representation of business entities, business entity participants, or others interacting with a business—invokes all of the significant business and business associations law environments in which relationships play strong roles.

Business lawyers must understand the inner workings of the businesses that are involved in the client matters they undertake, the client's objectives, and the client's capacity for risk.

It seems self-evident that a business lawyer should understand business; however, it is far from the norm. In fact, that is why it is a differentiating characteristic of great business lawyers. . . . Businesses prefer it when their lawyers not only understand their business and strategy but also are interested in their long-term success. It seems self-evident that in order to do that well, a lawyer must know certain things: What does the client do? How does it make money? Who are its main competitors? What economic factors is it most sensitive to? Understanding what one's client does, how it does it, and how it makes money are fundamental to problem solving. Without knowing a client's goals (both short- and long-term) and strategy, it is virtually impossible to give relevant or meaningful advice. A great business lawyer is unafraid to ask his client questions about its business and industry. Understanding the drivers of the business will help the lawyer better assess the parameters of available solutions.<sup>26</sup>

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<sup>25</sup> See Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 *YALE L.J.* 239, 242 (1984) (noting that the business lawyer is portrayed variously in the academic literature “as a counselor, planner, drafter, negotiator, investigator, lobbyist, scapegoat, champion, and, most strikingly, even as a friend.”).

<sup>26</sup> Praveen Kosuri, *Beyond Gilson: The Art of Business Lawyering*, 19 *LEWIS & CLARK L. REV.* 463, 475–76 (2015) (footnotes omitted).

Understanding the business also means understanding its people (key business constituents) and the people with whom it transacts and engages (including its advisors and any business transactional counterparties).<sup>27</sup>

Further, business lawyers must understand business associations law, including its relational aspects. In their work, they may address the legal aspects of internal firm governance, business finance, third-party liability, and more in a very direct way by, for instance, providing choice-of-entity advice. However, these same aspects of business associations law play roles in most—if not all—of the tasks business lawyers perform for clients, since the legal status and structure of a business is a factor in virtually all transactional, advocacy, compliance, and general advisory work involving a business. Business lawyering in each of these general practice areas, whether undertaken in matters involving large public companies, small, closely held businesses, or anything in between, often takes place in small group settings. These practice environments involve internal exchanges between and among legal, accounting, and other advisors as well as external communications with the client—where relationships are vital.

Of course, law firms and other legal service providers are businesses. Business lawyers are, then, themselves part of a relational business structure distinct from any business of or related to their clients.

Whether the lawyer is the most junior or senior person on the deal or a specialist in a particular area, he should understand his role. In a large transaction with many players, lawyers must initiate and maintain strong work and team relationships, but also work independently. Each lawyer should realize he does not necessarily have to be the smartest person in the room; the person perceived to be the most approachable may play an equally important role.<sup>28</sup>

To engage in effective business lawyering, a lawyer must appreciate the value of these internal relationships to their work and harness that value in both client work and work with professionals and others in their workplace.

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<sup>27</sup> *Id.* at 477–78.

<sup>28</sup> Rep. of the Task Force, *supra* note 2, at 147.

#### IV. BUSINESS LAWYERS LEAD RELATIONALLY

The resulting professional practice environment for business lawyers can be complex and difficult to navigate. The multiple levels of relationships that must be identified, understood, considered, cultivated, and employed underscore the importance of a range of interpersonal leadership traits, skills, and practices to business lawyering. Business lawyers may not have been trained to identify their relational leadership traits (including, e.g., character strengths and personality types) or had the opportunity to hone relevant leadership skills or practices.<sup>29</sup> Business, business associations law, and business law practice have changed markedly and are likely to continue to evolve, requiring business lawyers to manage change effectively.<sup>30</sup> These factors present challenges to a lawyer leader in providing business law services to their clients, especially at a time when other knowledge and skills may be expected of them in their practice settings.<sup>31</sup>

Moreover, because lawyers practice in relational settings—for many business lawyers, in teams of lawyers—their leadership gets exercised as part of a collective, rather than individually. This is a recognized feature of modern leadership. “[R]ather than battling alone, leaders are often embedded in teams, their success resting heavily upon how well they and all other parties collaborate with each other. ‘Creative collaboration’ has become the new model . . . .”<sup>32</sup> Consequently, an individual lawyer’s possession of personal

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<sup>29</sup> Paula Davis-Laack, *Army Lessons: Creating A Culture of Resilience*, WIS. LAW. 18, 19 (2019) (“[L]awyers arrive at firms and organizations with a large leadership gap, often because traditional leadership principles aren’t taught in law school. It becomes harder for lawyers to catch up in this regard . . . .”); Leanne Fuith, *Creating the Lawyer As Business Leader*, 43 MITCHELL HAMLINE L. REV. 1095, 1095–96 (2017) (“Many, if not most, of the skills necessary to be a successful business lawyer or business leader are not always found in the education provided by law schools around the country . . . . Instead, these skills, characteristics, and experiences are developed by business lawyers on the job and through other aspects of their professional development.”).

<sup>30</sup> See Davis-Laack, *supra* note 29, at 23. (“The pace of change in law will accelerate in the future, and there will be an even greater demand to innovate and collaborate to meet these challenges. Resilience skills will help lawyers, teams, and leaders adapt to these changes and protect the legal profession’s only (and best) asset—its people.”).

<sup>31</sup> See *id.* at 19 (“Law practices are much more complex and specialized, and good legal advice is just the start. It now is reasonable to expect lawyers to develop competencies in areas such as business acumen, project management, technology and coding, and innovation processes like human-centered design.”).

<sup>32</sup> DAVID GERGEN, *HEARTS TOUCHED WITH FIRE* (2022).

relational leadership traits, skills, and practices, while necessary, may be insufficient to the task of business law leadership.<sup>33</sup> Incorporating these tools into the group dynamic also will be important to effective business lawyer leadership.

Notwithstanding the challenges inherent in acquiring and mastering their use in context, relationship-oriented traits, skills, and practices associated with leadership development (including, e.g., responsibility, trustworthiness, dependability, cooperation, collaboration, cultural competence, cultural humility, optimism, resilience, and emotional intelligence) are expected competencies in the practice of business law.<sup>34</sup> It is therefore important for business lawyers to be aware of these aspects of lawyer leadership and to invest in understanding, practicing, and mastering them. Their effective use may be considered an element of, or a foundation for, business lawyer competence and, thus, an aspect of professional responsibility.

#### A. *Professionally Responsible Relational Business Lawyer Leadership*

Under the American Bar Association's *Model Rules of Professional Conduct* (the "*Model Rules*"), "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."<sup>35</sup> Business lawyers are assumed to have competence in the relational skills necessary to the context in which they are providing services. Strong, constructive business lawyering relationships are founded in the trust borne of competence: "[c]lients will not trust a lawyer who cannot perform as expected."<sup>36</sup> As a result, well-practiced relationship management, one of

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<sup>33</sup> See Davis-Laack, *supra* note 29, at 19 (noting that leadership "challenges affect not only lawyers at the individual level but also the groups and teams in which they operate.>").

<sup>34</sup> See, e.g., DONALD J. POLDEN & BARRY Z. POSNER, *LEADING IN LAW* 29 (2022); see also Donald J. Polden, *Lawyer Leadership in the Practice of Law*, 14 TENN. J.L. & POL'Y 441, 455–64 (2020) (summarizing "lawyer-leader abilities" important in the contemporary law practice environment).

<sup>35</sup> MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 2023).

<sup>36</sup> LEAH TEAGUE ET AL., *FUNDAMENTALS OF LAWYER LEADERSHIP* 254 (2021).

four core cited components of emotional intelligence,<sup>37</sup> is an especially prized competency.

The capacity of a business lawyer to engage in effective relationship management—and to employ greater emotional intelligence—in their work may be especially critical to their ability to exercise contextual leadership and provide effective counsel. Relationship management is a central and unifying concept in emotional intelligence in that it pulls from other skills necessary to emotional intelligence.<sup>38</sup> More specifically,

[r]elationship management is your ability to use your awareness of your own emotions and those of others to manage interactions successfully. Relationship management is also the bond you build with others over time. People who manage relationships well are able to see the benefit of connecting with many different people, even those they are not fond of.<sup>39</sup>

Relationship management also has been described as “the skill or adeptness at influencing others to accomplish a desirable response.”<sup>40</sup>

Wisdom gleaned from a large and growing body of academic and practical literature on leadership enables us to realize that relationship management may make an important difference in a business lawyer’s ability to successfully engage with others in advocacy, transactional, compliance, or advisory practice environments. “The weaker the connection you have with someone, the harder it is to get your point across. If you want people to listen, you have to practice relationship management and seek benefits from every relationship, especially the challenging ones.”<sup>41</sup> Given the layered relationships involved in the practice of business law, it is easy to see that emotional intelligence and, within it, relationship management are integral to

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<sup>37</sup> See DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MEAN MORE THAN IQ* 253–56 (2005); see also BRADBERRY & GREAVES, *supra* note 11, at 23–24; TEAGUE ET AL., *supra* note 36, at 240–43.

<sup>38</sup> See BRADBERRY & GREAVES, *supra* note 11, at 44 (“[R]elationship management . . . often taps into . . . self-awareness, self-management, and social awareness”).

<sup>39</sup> *Id.*

<sup>40</sup> TEAGUE ET AL., *supra* note 36, at 243.

<sup>41</sup> BRADBERRY & GREAVES, *supra* note 11, at 44.

business lawyering, even if the need for proficiency in these areas may be non-obvious.

More pointedly, emotional intelligence, relationship management, and other relationship-focused traits, skills, and practices are central to the professionally responsible practice of business law and lawyering more generally. The *Model Rules* “define the nature of relationships between the lawyer and others.”<sup>42</sup> A specific set of professional conduct rules relate to interactions with non-clients.<sup>43</sup> However, a key relationship addressed in the *Model Rules* is the lawyer-client relationship.<sup>44</sup> The representation of different types of clients—individual, organizational, governmental—in and outside the business law context can invoke different professional obligations.

Most of the *Model Rules* apply to all forms of attorney-client relationship, although many rules operate (or may appear to operate more naturally) in individual representations. Rule 1.14, for example, addresses a lawyer’s obligations to an individual client “[w]hen a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason.”<sup>45</sup> The *Model Rules* do, however, offer specific guidance to legal counsel engaged in representing organizations in Rule 1.13, providing generally that “[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”<sup>46</sup> In addition, the preamble to the *Model Rules* calls out for attention the attorney-client relationship in governmental representations, observing that “the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment.”<sup>47</sup> Business lawyers practice in each of these attorney-client contexts and must be aware of and be able to fulfill their

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<sup>42</sup> MODEL RULES OF PRO. CONDUCT Preamble ¶ 14 (AM. BAR ASS’N 2023).

<sup>43</sup> See *id.* at r. 4.1 - 4.4.

<sup>44</sup> See, e.g., *id.* at Preamble ¶ 17.

<sup>45</sup> *Id.* at r. 1.14(a).

<sup>46</sup> *Id.* at r. 1.13(a) (Entire books have been written on this topic); see, e.g., MARC I. STEINBERG, *LAWYERING AND ETHICS FOR THE BUSINESS ATTORNEY* (5th ed. 2020).

<sup>47</sup> MODEL RULES OF PRO. CONDUCT Preamble ¶ 18 (AM. BAR ASS’N 2023).

specific relational responsibilities in each. Successful, responsible business lawyering demands no less.

### B. *Surviving and Thriving as a Business Lawyer Leader*

Lawyer well-being also is foundational to business lawyer leadership and professional responsibility.<sup>48</sup> “One must be a healthy lawyer in order to be a good lawyer.”<sup>49</sup> For example, a lawyer’s impaired physical, mental, or emotional health may compromise their ability to employ “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation” and, thus, engage in the competent practice of law.<sup>50</sup> Along the same lines, Rule 1.16(a)(2) requires that a lawyer refrain or withdraw from representation if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.”<sup>51</sup> A 2017 report, *The Path to Lawyer Well-Being*, “recommended ‘modif[ying] the rules of professional conduct to endorse well-being as part of a lawyer’s duty of competence,’ and staked out an expansive role for the [National] Task Force [on Lawyer Well-Being] and LAPs [lawyer assistance programs] in educating members of the legal community about lawyer well-being.”<sup>52</sup>

“For a profession dedicated to client service and responsible for the public interest, well-being is of paramount importance.”<sup>53</sup> Business lawyer health and wellness is connected to collegiality and civility—aspects of mutually respectful relationships, a core element of lawyer leadership and

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<sup>48</sup> See TEAGUE ET AL., *supra* note 36, at 186–87 (“[L]awyer wellness impacts not only individual attorneys but their clients, the judicial system, and the broader integrity of the system—all reasons for lawyers to protect their health and wellness.”); Kenneth Townsend, *Preconditions of Leadership in Law*, 56 WAKE FOREST L. REV. 859, 906 (2021) (“[L]egal institutions must be attentive to leadership development and lawyer well-being, while recognizing the many ways in which the study and practice of law can frustrate the realization of key preconditions of leadership, including purpose, agency, and community.”).

<sup>49</sup> Jason M. Pannu, *Acknowledging Lawyer Well-Being: Let’s Talk*, TENN. B.J. 3, 3 (2018).

<sup>50</sup> MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2023).

<sup>51</sup> *Id.* at r. 1.16(a)(2).

<sup>52</sup> Nicholas D. Lawson, “*To Be A Good Lawyer, One Has to Be A Healthy Lawyer*”: *Lawyer Well-Being, Discrimination, and Discretionary Systems of Discipline*, 34 GEO. J. LEGAL ETHICS 65, 69 (2021) (footnotes omitted). The National Task Force on Lawyer Well-Being became the Institute for Well-Being in Law in 2020. *How It All Began: The Evolution from the National Task Force to the Institute for Well-Being in Law*, Institute for Well-Being in Law, <https://perma.cc/24WZ-X825> (last visited Jan. 29, 2024).

<sup>53</sup> Pannu, *supra* note 49.

professional responsibility. In this regard, the Preamble to the *Model Rules* provides that “[a] lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.”<sup>54</sup> There is evidence that incivility negatively impacts lawyer health and wellness. “Chronic incivility depletes the legal profession’s one true resource – its people.”<sup>55</sup> The reverse also may be true. A business lawyer’s ability to engage in professional relationships and activities in a courteous manner may be negatively impacted by poor mental, emotional, or physical health. The cause-and-effect relationship can even be circular.<sup>56</sup>

By understanding these damaging interconnections between their health and wellness and their professional and personal relationships, business lawyers effectively have the knowledge to flip the script. Lawyer health and wellness promote positive relationships. “[A] healthy lawyer will also promote a healthy work environment for others...”<sup>57</sup> and have the capacity to provide better client service.<sup>58</sup>

Moreover, business lawyers with strong, constructive relationships enjoy better health and wellness. The Centers for Disease Control and Prevention report that “[w]hen people are socially connected and have stable and supportive relationships, they are more likely to make healthy choices and to have better mental and physical health outcomes. They are also better

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<sup>54</sup> MODEL RULES OF PRO. CONDUCT Preamble ¶ 5 (AM. BAR ASS’N 2023) (The same paragraph also provides, along similar lines, that “[a] lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others.”).

<sup>55</sup> Paula Davis, *Lawyer Well-Being: Creating A Movement To Improve The Legal Profession*, FORBES, Aug. 15, 2017, <https://perma.cc/TCT7-3Q8Y>; see also Michael L. Seigel & Kathi Miner-Rubino, *Measuring the Value of Collegiality Among Law Professors*, 1 FAULKNER L. REV. 257, 267 (2010) (“Research . . . shows that workplace incivility is linked to declines in well-being for those who experience it.”).

<sup>56</sup> Cheryl Ann Krause & Jane Chong, *Lawyer Wellbeing as a Crisis of the Profession*, 71 S. CAROLINA L. REV. 203, 232 (2019) (“An uncivil work environment can be expected to harm lawyers’ wellbeing, and conversely, unwellness may negatively affect lawyers’ conduct in a way that contributes to an uncivil environment.” (footnotes omitted); William G. Schma, *At the Heart of the Matter*, 84 JUDICATURE 330 (2001) (describing how the adversarial nature of lawyering can impair well-being and, in turn, trigger incivility and further erosion of well-being).

<sup>57</sup> Lori Ann Buza, *Are You Fit for Law?*, N.J. LAW. 8, 8 (2022).

<sup>58</sup> *Id.*



able to cope with hard times, stress, anxiety, and depression.”<sup>59</sup> Business lawyers are well advised to establish meaningful social connections and relationships to capitalize on these benefits. “Relationships are crucial to lawyers’ mental health, as they are to most human beings.”<sup>60</sup>

Successful relationship building and relationship management in business law practice show promise in improving and sustaining the health and well-being of business lawyers.<sup>61</sup> Although establishing healthy, productive relationships is undoubtedly challenging (especially in time-pressured, mission-critical professional situations<sup>62</sup>), the maintenance of relationships in a business lawyer’s life may reduce their stress and have other positive physical, mental, and emotional benefits.<sup>63</sup> “Solid relationships are something that should be sought and cherished. They are the result of how you understand people, how you treat them, and the history you share.”<sup>64</sup> That high level of human engagement can be powerful in grounding a business lawyer’s professional and personal lives.<sup>65</sup>

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<sup>59</sup> How Does Social Connectedness Affect Health?, Centers for Disease Control and Prevention, <https://perma.cc/4WHL-26QZ> (last visited Jan. 29, 2024).

<sup>60</sup> Krause & Chong, *supra* note 56, at 231.

<sup>61</sup> Davis, *supra* note 55 (“Collegiality . . . fosters psychological safety – the feeling that the work environment is trusting, respectful and a safe place to take risks.”).

<sup>62</sup> See BRADBERRY & GREAVES, *supra* note 11, at 45 (“Relationship management poses the greatest challenge for most people during times of stress. When you consider that more than 70 percent of the people we’ve tested have difficulty handling stress, it’s easy to see why building quality relationships poses a challenge.”). That stress may arise from the very work of being a business lawyer.

Some of the most challenging and stressful situations people face are at work. Conflicts at work tend to fester when people passively avoid problems, because people lack the skills needed to initiate a direct, yet constructive conversation. Conflicts at work tend to explode when people don’t manage their anger or frustration . . . and choose to take it out on other people. Relationship management gives you the skills you need to avoid both scenarios . . . and make the most out of every interaction you have with another person.

*Id.*

<sup>63</sup> TEAGUE ET AL., *supra* note 36, at 255 (“Research done at Northwestern Medicine has linked maintaining relationships to less stress, healthier behaviors, a greater sense of purpose, and even a longer life.”).

<sup>64</sup> BRADBERRY & GREAVES, *supra* note 11, at 44.

<sup>65</sup> TEAGUE ET AL., *supra* note 36, at 255 (“Relationships help provide support and value to overall well-being and happiness both personally and professionally.”).

## V. CONCLUSION

Business lawyers are surrounded by relationships because of the nature of their work. Businesses are relational; business associations law is relational; business lawyering is relational. Business lawyering, in all its manifestations, is a practice steeped in the lawyer's awareness and management of, as well as their participation in, the layered sets of relationships found in businesses and business associations law.

The knowledge and aptitude required to practice business law therefore includes the capacity to understand and employ relationship-centric traits, skills, and practices deeply rooted in leadership development literature—a literature with which all lawyers should become more familiar. This article aspires to encourage that familiarity by describing the cross-cutting foundational relationships involved in business lawyering and offering observations about how leadership literature may provide insights important to the task. Relationship management stands out as especially important to effective business lawyering.

A business lawyer's attentiveness to relationship management appropriately values and recognizes the relationship-driven nature of a business law practice. In addition, relationship management facilitates competence as a matter of professional responsibility and has the capacity to improve lawyer well-being, which implicates professional conduct considerations and fosters professional and personal flourishing.

Healthy relationships—those that are mutually caring and giving—are necessary for personal success. Everyone needs someone to learn from and share ideas with. Good relationships offer understanding when you fail, confidence when you're in doubt, and celebration as you go through life. They also allow you opportunities to give, to mentor, and to share.<sup>66</sup>

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<sup>66</sup> Lee Colan, *12 Quotes to Help You Build More Powerful Relationships*, INC., Mar. 30, 2018, <https://www.inc.com/lee-colan/12-quotes-to-help-you-build-more-powerful-relationships.html>.

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The cultivation of healthy relationships enables a business lawyer to lead more confidently and joyfully in their workplace, in their client interactions, and in their lives outside the business lawyering context. Relationship management—together with the other components of emotional intelligence and other relational traits, skills, and practices—affords business lawyers important tools for building and sustaining those healthy relationships.