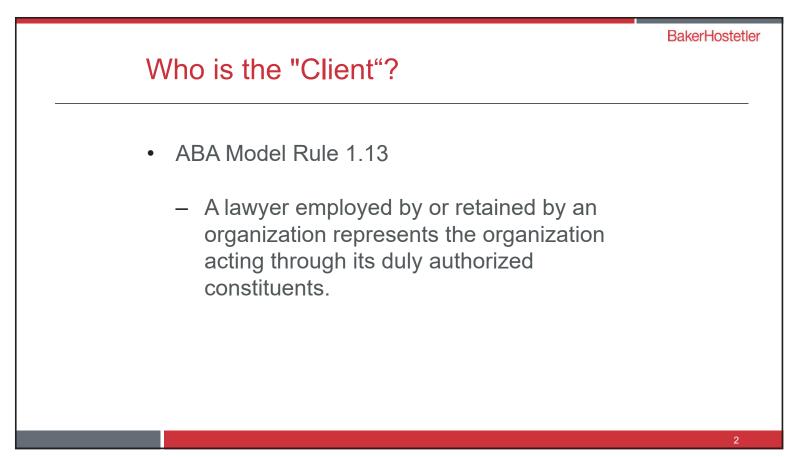
PRIVILEGE AND ETHICS ISSUES

UT LABOR AND EMPLOYMENT LAW CONFERENCE 2019



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BakerHostetler

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Who is the Organizational "Client"?

Interviews with Individual Corporate Employees/Officers:

- Explain that the client is the organization (unless a joint representation situation)
- Give warnings regarding confidentiality and privilege
- Dispel any misunderstanding about separate attorney-client relationship

Good Examples:

In re Grand Jury Subpoena (4th Cir. 2005)

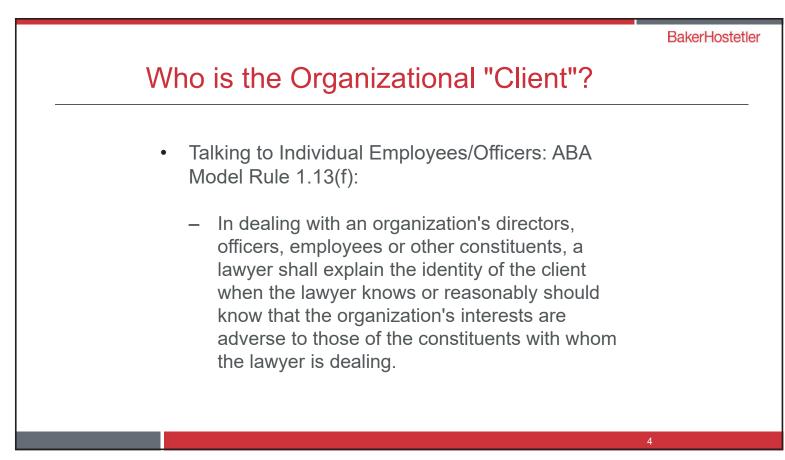
United States v. Ruehle (9th Cir. 2010)

Nester v. Textron, Inc., 2015 WL 1020673 (W.D. Tex. 2015) (representation of subsidiary by parent's in-house attorney)

Not So Good Examples:

Commonwealth v. Spanier (Pa. 2016) (failure to clarify who in-house counsel represents)

Estate of Paterno (Pa. 2017) (engagement with subgroup of entity)

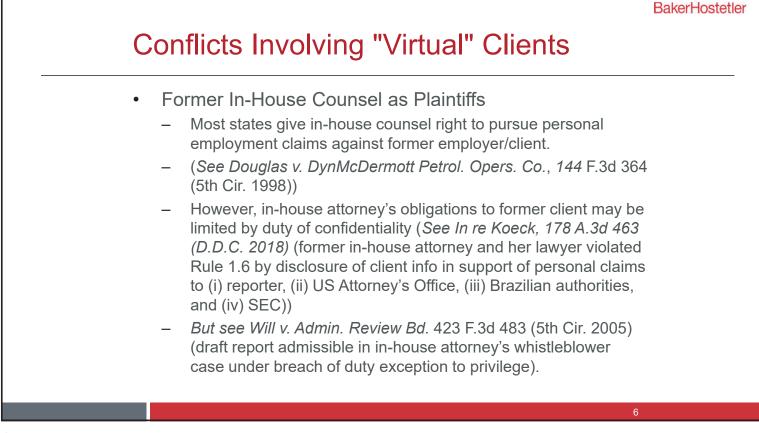


Conflicts Involving "Virtual" Clients

٠	Former HR Managers/Employer Representatives as
	Plaintiffs

- Unless law firm individually represented corporate constituent, there is no express attorney-client relationship/disqualification (See Cole v. Ruidoso Municipal Schools, 43 F.3d 1373 (10th Cir. 1994))
- However, attorney-client relationship can be implied by conduct, especially where lawyer is not sufficiently clear with constituent as to whom firm represents (*See Home Care Industries v. Murray*, 154 F. Supp. 2d 869 (D. N.J. 2001))
- Note: Former corporate constituents may carry with them "property" of the employer (attorney-client privilege information, trade secrets, etc.)

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Title search: Privilege and Ethics Issues

Also available as part of the eCourse <u>Answer Bar: Handling Employee Investigations in Today's Workplace</u>

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