

## Ethics and Risk Allocation Between In-House and Outside Counsel

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## INTRODUCTION

- Numbers of in-house counsel growing greatly of late. Based on a quick computer search:
- First reported case involving ethics and in-house counsel was in 1989.
- This was a case involving unethical conduct by outside counsel toward in-house counsel.

## INTRODUCTION

- First reported case involving ethical conduct of in-house counsel was in 1991; case arose after in-house counsel had left in-house job and regarded scope of his conflict.
- First reported case involving contemporaneous ethical issue for in-house counsel was in 1995.
- First reported malpractice case against in-house counsel was in 1998.

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## INTRODUCTION

- Formerly, only large companies had in-house departments.
- Now even small companies have in-house departments.
- Some companies have large in-house departments with highly-specialized lawyers.

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## BASIC RESOURCES

- Rule 1.01—lawyer will be competent.
- Rule 1.02—client sets objectives, lawyer decides means.
- Rule 1.10—imputed disqualification of “firm” includes in-house legal department.

## BASIC RESOURCES

- Rule 1.12—the organization is the client.
  - If constituent misunderstands this, lawyer shall ‘splain it to constituent.
- Rule 5.04—lawyer shall exercise independent judgment.

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