

Ethical Issues in Representing or Litigating Against Organizations

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Ex Parte Communications

- Communication with Class/Collective Action Members
- Contact with class members in EEOC action
- Former Employees
- Current Employees

Conflicts of Interest/Joint Representation Issues

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- Simultaneous Representation of Potentially Adverse Clients
- Advance conflict waivers
- Joint Defense Agreements
- Virtual Client Issues

Privilege Issues

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Choice of Law

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Always be sure to check the rules that apply to your specific jurisdiction!

- Don't assume that the local law of the jurisdiction provides the substantive privilege rule in litigation.
- Majority of U.S. states will look to the law of the state with the most significant relationship to the communication. *Ford Motor Co. v. Leggat*, 904 S.W.2d 643 (Tex. 1995).
- Federal courts sitting in diversity look to the choice-of-law analysis of the forum state.

Communications between non-lawyer employees *may* be privileged if made for purpose of facilitating attorney's advice to the corporate client.

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- *In re JDN Real Estate-McKinney, L.P.* (Tex. App.--Dallas 2006)
Single email from CEO & president of corporation protected by privilege, as part of string of privileged emails; although email itself did not reveal confidential information, it was part of the context and subject of the privileged string of communications.
- *Clover Staffing Inc. v. Johnson Controls World Services, Inc.* (S.D. Tex. 2006)
Emails from corporate official to other corporate officials were protected by the attorney-client privilege; although none of the officials were attorneys, emails were sent at the suggestion of the corporate legal department to gather information that could be used by attorneys in negotiating with subcontractor to resolve contract issues.

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