

Ethical Hazards That Confront Corporate Counsel



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Basic Concepts

How Conflicts Arise And How To Resolve Them

The Attorney Client Privilege And In-House Counsel

A Few Other Things (Related Issues)

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Basic Concepts

- The Texas (in this case) Disciplinary Rules of Professional Conduct apply to in-house counsel
- Problems arise (conflicts and privilege) because of uncertainty as to the identities of your clients
- What you are doing (not who you are or what your title is) determines your role and obligations
- Your clients probably do not understand your role with any degree of sophistication
- It is your duty explain your role

Fundamental Obligations

Rule 1.01. Competent and Diligent Representation

(a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:

(1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or

(2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not:

(1) neglect a legal matter entrusted to the lawyer; or

(2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

(c) As used in this Rule, "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Fundamental Obligations

It's the end of the day on Friday when a demand letter arrives on your desk. You are late to get to a school event and have been working hard to clear your desk before the week-long trip that starts tomorrow. The letter threatens a large claim against the company and individual executives. Because you don't have to respond for a few weeks you leave it to deal with when you return. While you are gone, executives and others delete and destroy key documents.

Do you have a problem?

Does it matter if the documents were deleted as part of a standard document retention program?

Fundamental Obligations

Rule 1.01. Competent and Diligent Representation

Competent and Diligent Representation

6. Having accepted employment, a lawyer should act with competence, commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. A lawyer should feel a moral or professional obligation to pursue a matter on behalf of a client with reasonable diligence and promptness despite opposition, obstruction or personal inconvenience to the lawyer. A lawyer's workload should be controlled so that each matter can be handled with diligence and competence. As provided in paragraph (a), an incompetent lawyer is subject to discipline.

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[eSupplement to the 17th Annual Mergers and Acquisitions Institute](#)

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