UT LAW CLE | THE UNIVERSITY OF TEXAS SCHOOL OF LAW

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Representing a Business Organization in Crisis: Reporting Up and Out

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Introduction: Ethics of Representing Business Organization in Crisis

Continuation of Prior Representation

2019: Ethics of Multi-Party Representation

2020: Multi-Party Representation for Business Lawyer

2021: Multi-Party Representation of an Organization in Formation

2022: Representing Business in Crisis: Reporting up and Out

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Challenges when in a Crisis

- Ethical issues are difficult enough in normal times. Especially when the organization is in crisis.
- The situations are innumerable
  - Internal investigations
  - Power struggles
  - Allegations of corruption, fraud, criminal activity
  - Rogue officers, directors, shareholders, employees

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Challenges When in a Crisis

For interesting examples, consider:

- State v. Martinez, 116 S.W.3d 385 (Tex. App.-El Paso, 2003); State v. DeAngelis, 116 S.W.3d 396 (Tex. App. El Paso, 2003)(allegation of corruption within the El Paso police department)
- Then, there is always Enron.
  - In re Enron Corp., 370 B.R. 583 (Bankr. S.D.N.Y. 2007)
  - Marianne M. Jennings, A Primer on Enron: Lessons from a Perfect Storm of Financial Reporting, Corporate Governance and Ethical Culture Failures, 39 Cal. W. L. Rev. 163, 231 (2013)
- In re Office Products of Am., Inc, 136 B.R. 983, 987 (Bankr. W.D. Tex. 1992)(legal conflicts in bankruptcy).

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Introduction: Ethics of Representing Business Organization in Crisis

Core Duties

- Duty of Care (Texas Rule 1.01)
- Duty of Loyalty – Conflicts of interest (Texas Rule 1.06)
- Duty of Confidentiality (Texas Rule 1.05) - "Shall not reveal information" unless client gives informed consent
  - Not absolute rule. Exceptions exist when disclosure of client confidence is permitted or even required.

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Introduction: Ethics of Representing Business Organization in Crisis

Core Duties

- Duty of Confidentiality (Texas Rule 1.05) - continued
  - Maintain confidences no matter what is the nature of the corporate crisis
  - Rule of confidentiality is not limited to revelation of a protected communication, but extends to communications by lawyer that could lead third party to discover protected information

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