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Representing a Business Organization in Crisis: Reporting Up and Out

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Of Counsel:



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7/1/2022

Page 1 of 64

1

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

7/1/2022

Representing a Business Organization in Crisis: Reporting Up and Out

Page 2 of 64

2

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

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).

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.

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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Title search: How to Ethically and Legally Represent a Business Organization in Crisis: Client Confidences, Reporting Up the Ladder or Out to Third Parties (REPLAY)

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"How to Ethically and Legally Represent a Business Organization in Crisis: Client
Confidences, Reporting Up the Ladder or Out to Third Parties (REPLAY)"