
Perspectives from In-House IP Counsel

Panelists:

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Moderator:

Leah Buratti, Partner, Botkin Chiarello Calaf

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Recent IP Challenges

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IP Ethical Challenges

- Who is your client?
- To whom does a board member owe a duty of loyalty?
- Advising employees regarding IP activities outside of their employment?

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Who is the client?

Tex. R. Disc. Prof'l. Cond. 1.12

(a) A lawyer employed or retained by an organization represents *the entity*. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.

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What are a lawyer's obligations to the entity she represents?

Tex. R. Disc. Prof'l. Cond. 1.12

(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that: (1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation or a violation of the law *which reasonably might be imputed to the organization*; and (2) the violation is likely to result in substantial injury to the organization; and (3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

(c) Except where prior disclosure to persons outside the organization is required by law or other Rules, *a lawyer shall first attempt to resolve a violation by taking measures within the organization.*

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What about governmental organizations?

Comment 9 to Tex. R. Disc. Prof'l. Cond. 1.12

[W]hen the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, *for public business is involved*. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. Therefore, *defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context*. Although in some circumstances the client may be a specific agency, it is generally the government as a whole.

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