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## Representing a Business Organization in Crisis: Reporting Up and Out

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Of Counsel:



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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  
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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

### 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)

First appeared as part of the conference materials for the  
2022 First Friday Ethics (September 2022) session

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