KILPATRICK TOWNSEND

3 KEY TAKEAWAYS

In-house Ethical Conundrums

Kilpatrick Townsend Partner Rich Christiansen recently presented on ethical issues facing in-house practitioners.

Key takeaways from the presentation include:

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Ethical rules govern the in-house attorney in his/her interactions with his/her employer. Under certain circumstances, an in-house attorney may be in a client/attorney relationship with his/her employer. This relationship can become particularly consequential when the in-house attorney is negotiating for partial ownership of his/her employer such as through stock or stock options. In such negotiations, in-house counsel should be conscious of the requirements of rules 1.7 and 1.8 of the Model Rules of Professional Conduct or of any similar requirements.

Although pro-bono obligations may be difficult to fulfill in the in-house environment, in-house attorneys still have ethical obligations to provide pro-bono services. Sources of difficulty in providing pro-bono services in-house include: conflicts of interest, and complying with the duties of competence and diligence. Risk of a conflict of interest can be mitigated through use of an engagement letter limiting the scope of the representation. Further, partnering with a public interest law organization to provide pro-bono services can help a practitioner meet the duty of competence as many such public interest law organizations provide training and supervision to their partners for pro-bono activities.

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Hypotheticals were evaluated to identify potential ethical pitfalls. These hypotheticals reemphasized that not only is an attorney not allowed to break ethical rules, the attorney is not allowed to assist or induce another to break ethical rules.

For more information, please contact
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