



Professional Discipline of In-House Counsel: Who Complains, What are the Areas of Ethical Exposure and What Happens?

Guest and Dorsey Panelists

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Program Materials

PowerPoint Presentation

Session materials are available for download on <u>www.dorsey.com</u>. Search: "Corporate Counsel Symposium 2022"





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Abigail Cerra, Wells Fargo & Company Sydney Crowder, Ameriprise Financial, Inc. Kenneth Jorgensen, Dorsey & Whitney LLP

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corporate counsel symposium

Housekeeping

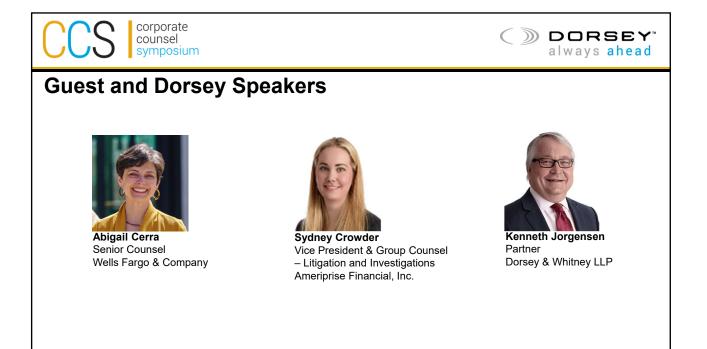
Materials. Session materials and speaker biographies are available on Dorsey.com for download. Search "Corporate Counsel Symposium 2022." Webinar attendees may also download materials from the Zoom Events Lobby.

Attendance Sheets are set on tables in this room. Webinar attendees must download same from the Event Reminder email sent from <u>Events@Dorsey.com</u> or visit the Zoom Events Lobby.

Q&A. The speakers will not have time to answer audience questions, please contact the speakers or your trusted Dorsey contact.

CLE. A CLE code will be announced for attendees in states that require a Code. CLE Expected: AZ, CA, CO, IA, IL, MN, ND, NY, OR, TX, UT, WA, WI.

Webinar Attendees. Please check CHAT for announcements.





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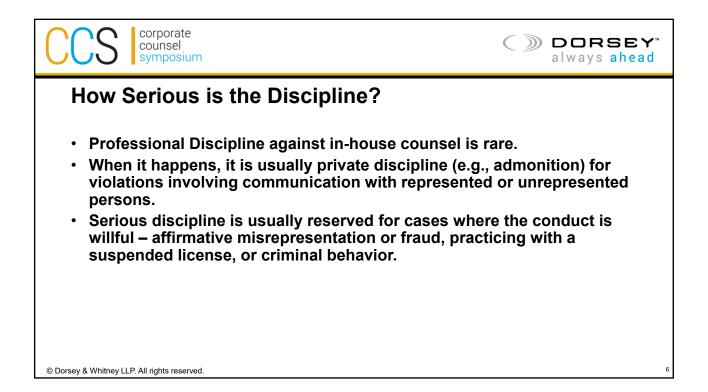
Ethics Complaints Against In-House Counsel

Who files ethics complaints? What are they about? How serious is the discipline?



Who files ethics complaints against In-House Counsel and what are they about?

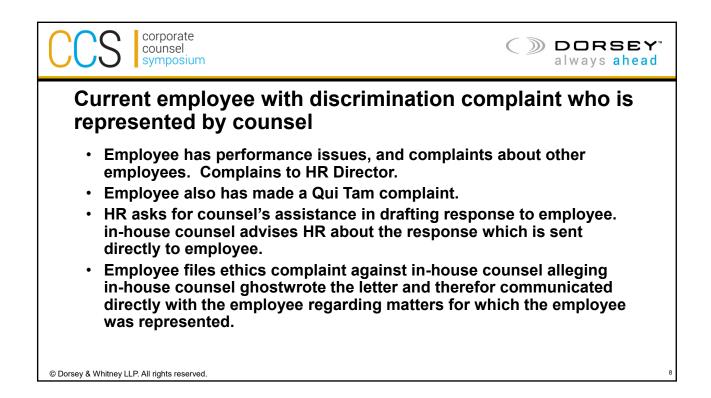
- Employees most often arising out of employment disputes or internal investigations. Content of Corporate Miranda Warnings.
- Opposing parties (usually those unrepresented) unhappy with the outcome of a transaction or litigation. In smaller companies they may involve conflict of interest alleged by minority members/shareholders.
- Opposing Counsel these typically involve communications with a represented party or allegations of Unauthorized Practice of Law by in-house counsel.

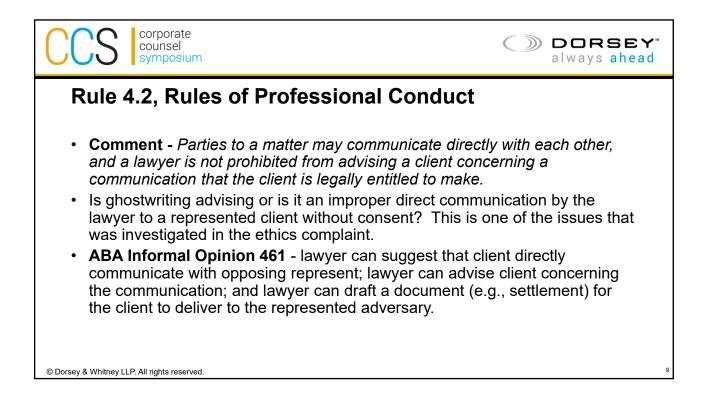


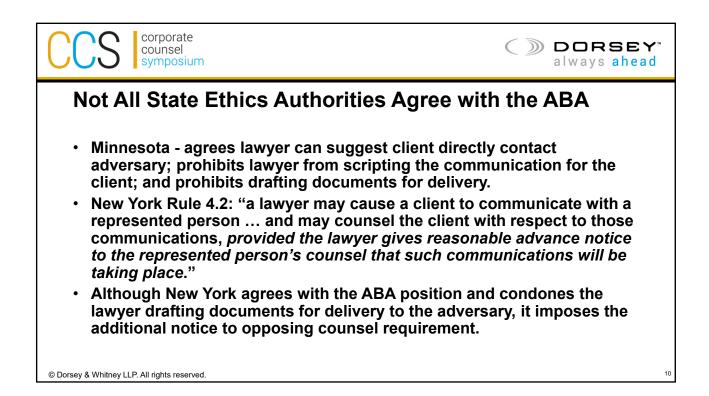


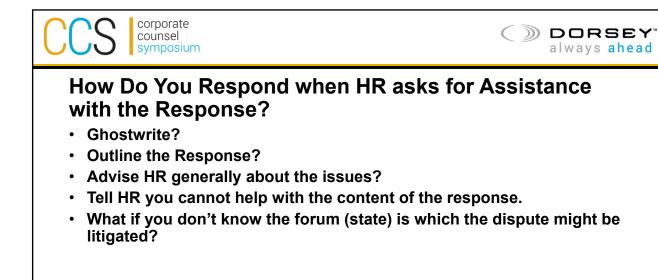


Some Hypothetical Cases.







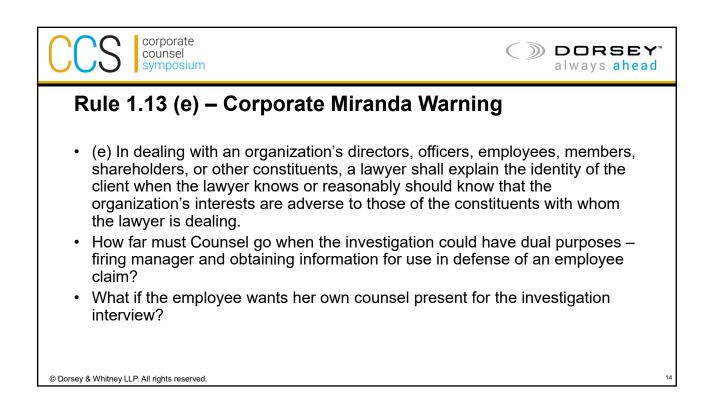






In-House Counsel asked to conduct internal investigation – with likely result to fire management employee for harassment

- In-house counsel meets with unrepresented employee who is alleged victim of harassment. In-house counsel tells employee he has been asked by the company to conduct "an independent investigation."
- Manager is fired. Employee later hires lawyer to bring harassment claim against company. In-house counsel is involved in responding to the claim.
- Employee files ethics complaint alleging in-house counsel "misrepresented himself" as an independent investigator.

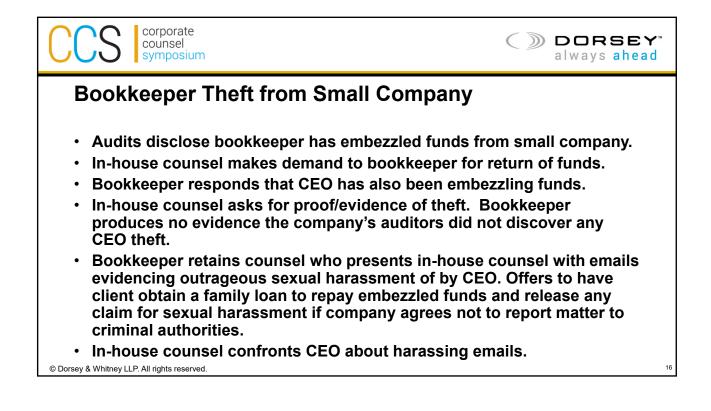


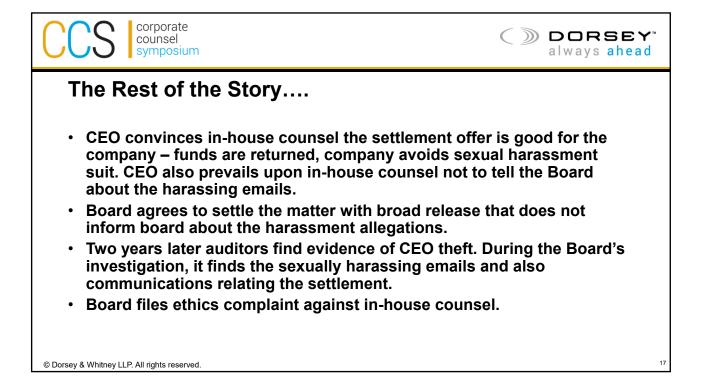


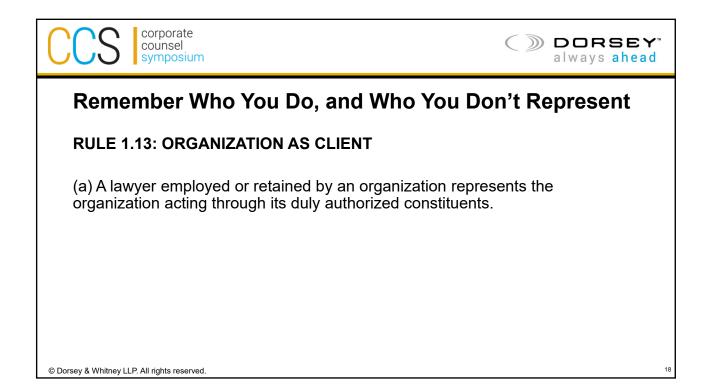


The Small Company Dilemma

Don't lose sight of who is the client.



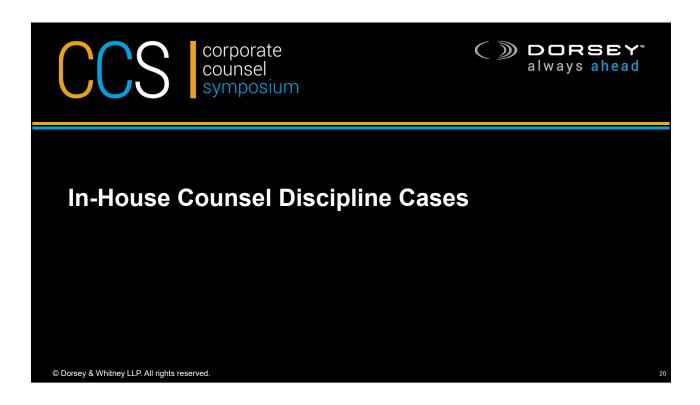






And Your Obligations When Corporate Constituents **Engage in Organization Damaging Behavior**

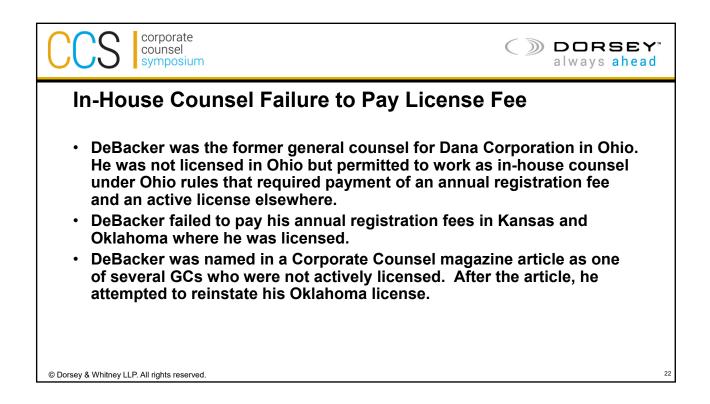
- (b) If a lawyer for an organization knows that an officer...is engaged in action ٠ ... that is a violation of a legal obligation to the organization ... and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization.
- Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.







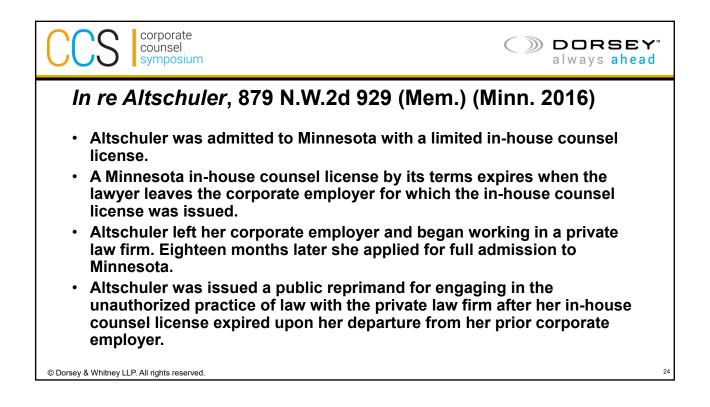
In-House Counsel: Letting Your License Lapse and Practicing Beyond the License Limitations





DeBacker was denied reinstatement and suspended from the practice of law in Oklahoma for one year.

- DeBacker also had to pay all past due registration fees and the costs of the Oklahoma reinstatement proceeding denying his reinstatement.
- Rule 8.5 (a), Rules of Professional Conduct states "A lawyer admitted in [Oklahoma] is subject to the disciplinary authority of [Oklahoma], regardless of where the lawyer's conduct occurred.
- Even though DeBacker's unauthorized practice was in Ohio, he was still subject to the discipline authority of Oklahoma.
- In re DeBacker, 184 P.3d 506 (Okla. 2008)



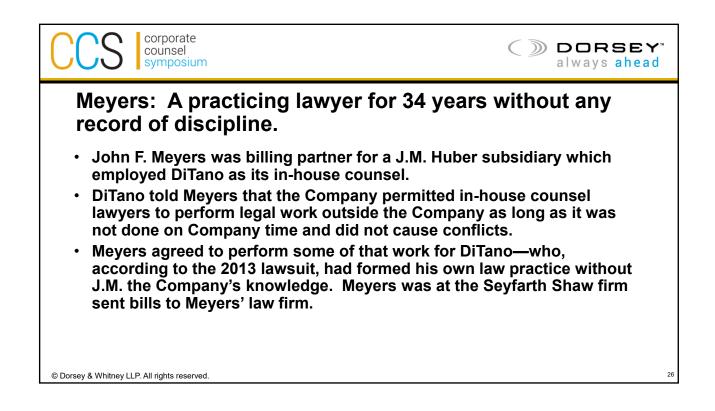




In re Meyers,

(Georgia 12/11/17)

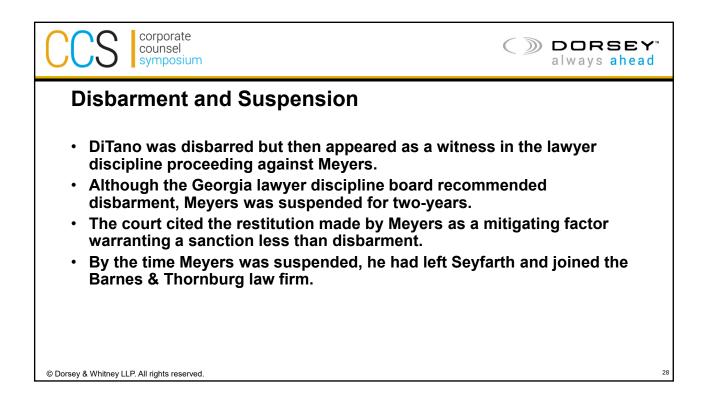
Assisting or Facilitating the Company Client's Representative (who was a lawyer in Defrauding the Company

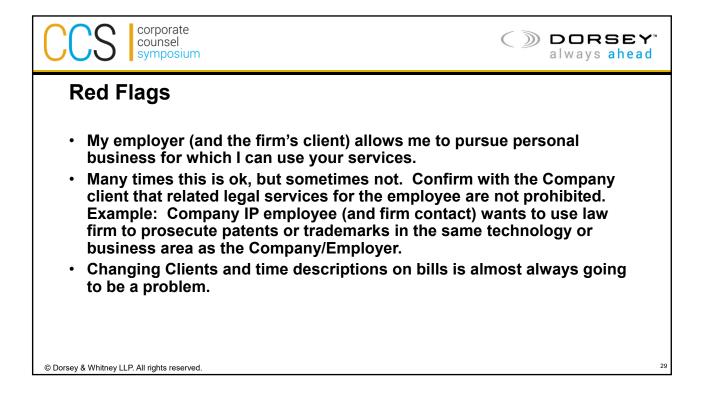




The Seyfarth invoices to DiTano's law firm do not get paid.

- When the Seyfarth invoices did not get paid, DiTano instructed Meyers • to invoice the Company and change the time entry descriptions to make it difficult for the Company to discern the work was not performed for the Company.
- Meyers denied conspiring with DiTano to defraud the Company and claimed that DiTano told him the Seyfarth billed work would ultimately benefit the Company.
- After the Company discovered the fraud, Seyfarth reimbursed the Company for all services not provided to the Company. Meyers reimbursed Seyfarth for the amount refunded and written off.









Not Discipline but instead Disqualification

Dynamic 3D Geosolutions v. Schlumberger, 2015 U.S. Dist. Lexis 67353 (W. D. Tex).

