

## Chapter 2

# Ethics Issues for In-house (and Out-house) Counsel

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**§ 2.01. Introduction.**

Professional responsibility issues associated with organizational clients arise not only for outside counsel in private practice, but also for in-house counsel within a corporation or other organization. In both settings, the same ethics rules apply, but the respective attorneys may consider them from different perspectives, or they may arise in different contexts. This chapter examines the rules of professional responsibility as they apply at the outset of representing organizations, including identifying the client, defining the

scope of the relationship, and ensuring adherence to the duties of loyalty and independence.

Another issue of particular interest to both corporate and outside attorneys is the use of temporary employees. Law firms and their organizational clients have increasingly moved toward the use of so-called “temporary” or “contract” employees to assist with large-scale or limited-term projects. For example, energy practitioners routinely retain temporary employees, including both lawyers and non-lawyers, on significant title projects. The use of temporary employees raises a host of professional responsibility issues, including disclosure and billing obligations, supervisory responsibilities, and unauthorized practice limitations. This chapter also examines those issues, as well as the related areas of liability and malpractice exposure.

### § 2.02. Model Rules of Professional Conduct.

The American Bar Association’s (ABA) House of Delegates adopted the Model Rules of Professional Conduct (MRPC, Model Rules or ABA Model Rules) in 1983. Since that time, the Model Rules have undergone a series of revisions, and currently are the subject of a comprehensive review and assessment by the ABA “Commission on Ethics 20/20.”<sup>3</sup> The District of Columbia and 49 states have adopted some form of the Model Rules, although at any given time, one or more states may be considering updates or changes to its version of the rules.<sup>4</sup>

The Model Rules define the obligations that arise in connection with the attorney-client relationship, including those specific to representation of organizational — as opposed to individual — clients. The Official

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<sup>3</sup> See generally <http://www.abanet.org/ethics2020/> (last visited Jun. 22, 2010).

<sup>4</sup> See “Status of State Review of Model Rules” (chart prepared by ABA Center for Professional Responsibility Policy Implementation Committee, showing status of state review and adoption of revised rules of professional conduct, as of June 1, 2010), at <http://www.abanet.org/cpr/pic/home.html>, and “Charts Comparing State Variations in Individual Rules With Model Rules” (comparing ABA Model Rules with rules in states that have adopted or proposed revisions to ABA Model Rules), at [http://www.abanet.org/cpr/pic/rule\\_charts.html](http://www.abanet.org/cpr/pic/rule_charts.html) [hereinafter cited as “State Rules Comparison Chart, Rule \_\_\_”]. California is the only state that structures its rules differently from the MRPC. See generally *Cal. Rules of Prof’l Conduct*.