

Index

ACC (ASSOCIATION OF CORPORATE COUNSEL)

List of states authorizing non-locally licensed in-house counsel, chart, **App 3-1**

ACCOUNTANTS

Privileged communications with, **§ 1:6**

Sarbanes-Oxley Act liabilities, **§ 7:4**

ADVERSE COUNSEL

Represented Party Contacts, this index

ADVICE, DUTY TO OFFER

Generally, **§ 3:13**

ADVICE OF COUNSEL DEFENSE

Attorney-client privilege and, **§ 1:25, 6:18**

AFFILIATED CORPORATIONS

See also Parent and Subsidiary Corporations, this index

Partners and coventurers, duties to, **§ 3:15**

AGENTS

Aiding and abetting liability, **§ 5:6**

Confidentiality duties, **§ 3:11**

Corporate

Authority to communicate with counsel, **§ 1:2**

Bright-line tests of authority, **§ 1:3**

Control group test of authority, **§ 1:2**

Criminal liability, **§ 5:2, 5:5**

Individual liability for corporate crimes, **§ 5:6**

Privileged communications with, **§ 1:6**

Scope of employment test of authority, **§ 1:3**

Subject matter test of authority, **§ 1:3**

AGENTS—Cont'd

Corporate—Cont'd

Subsidiaries, employees of, **§ 1:3**

Upjohn test of authority, **§ 1:3**

Counsel's

Corporation's agents distinguished, **§ 1:6, 1:7**

Represented party contacts through, **§ 3:25**

Retainer letter privilege provision, **App 1-3**

Vicarious liabilities, **§ 3:30**

Criminal liability of corporations for conduct of agents, **§ 5:2, 5:5**

Due care duties, **§ 3:7**

Non-employment agents, communications with, **§ 1:3**

Opinions of, work product doctrine protection, **§ 2:2**

Patent, privileged communications with, **§ 1:6, 1:19**

Represented party contacts through, **§ 3:25**

Scope of employment, agent's criminal acts in, **§ 5:5**

Work product doctrine, **§ 2:2**

ARBITRATION

Work product doctrine, **§ 2:8**

ASSOCIATION OF CORPORATE COUNSEL (ACC)

List of states authorizing non-locally

licensed in-house counsel, chart, **App 3-1**

AT-ISSUE DOCTRINE

Attorney-client privilege, **§ 1:25**

Work product, **§ 2:14**

ATTORNEY-CLIENT PRIVILEGE

Generally, **§ 1:1 et seq.**

Accountants, communications with, **§ 1:6**

ATTORNEY-CLIENT PRIVILEGE**—Cont'd**

- Admonitions to employees in confidential communications, **§ 1:12, App 1-1**
- Advice of counsel defense, **§ 6:18**
- Agents of counsel, communications with, **§ 1:6, 1:7**
- At-issue doctrine, **§ 1:25**
- Attorney status determinations, **§ 1:5 et seq.**
- Authority to waive, **§ 1:22**
- Background information, scope of, **§ 1:8**
- Bankruptcy trustee, assertion or waiver by, **§ 1:22**
- Bar membership, maintenance of, **§ 1:5**
- Burden of establishing confidentiality of communications, **§ 1:12**
- Business advice, **§ 1:1**
- Business information required to provide legal advice, **§ 1:16**
- Business vs legal advice, **§ 1:16**
- Cc copies to counsel, **§ 1:16**
- Choice of law, **§ 1:1**
- Clients protected, **§ 1:2**
- Common interest disclosures and confidentiality, **§ 1:14**
- Common interest doctrine, **§ 1:4**
- Communication with counsel
 - Generally, **§ 1:8**
 - Cc copies, **§ 1:16**
 - Confidential communications, below
 - Dominant purpose of, **§ 1:10**
 - Purpose of communication, below
- Concealment as intent of communicator, **§ 1:1, 1:5**
- Confidential communications
 - Generally, **§ 1:8 et seq.**
 - Admonitions to employees, **§ 1:12, App 1-1**
 - Background information, scope of, **§ 1:8**
 - Burden of establishing, **§ 1:12**
 - Common interest disclosures, **§ 1:14**

ATTORNEY-CLIENT PRIVILEGE**—Cont'd**

- Confidential communications
 - Cont'd
 - Corporate communications and, **§ 1:12**
 - Dominant purpose of communication, **§ 1:10**
 - Electronic communications, **§ 1:13**
 - Expectation of, **§ 1:10**
 - Filing of confidential documents, **§ 1:13**
 - Implied requests for legal advice, **§ 1:8**
 - Intent and, **§ 1:8, 1:10**
 - Intercorporate disclosures, **§ 1:12**
 - Intermediaries, communications via, **§ 1:7**
 - Labeling of privileged materials, **§ 1:12, 1:13**
 - Meetings, admonitions at, **§ 1:12**
 - Multiple-purpose statements, **§ 1:11**
 - Need to know standard, **§ 1:12**
 - Parent-subsidiary corporate communications and, **§ 1:12**
 - Presumptions, **§ 1:9**
 - Public filings, communications intended for use in, **§ 1:11**
 - Scope of communication, **§ 1:8**
 - Segregation of privileged materials, **§ 1:13**
 - Storage of privileged materials, **§ 1:12**
 - Third-party auditors, **§ 1:12**
 - Consultants, communications with, **§ 1:3**
 - Control group test of corporate agent's authority, **§ 1:2**
 - Corporate clients
 - Generally, **§ 1:2 et seq.**
 - Duty of counsel to assert privilege, **§ 1:22**
 - Purpose of privilege, applicability, **§ 1:1**
 - Who may waive or assert privilege, **§ 1:22**
 - Corporate communications and confidential communications, **§ 1:12**

INDEX

ATTORNEY-CLIENT PRIVILEGE
—Cont’d
Corporations, extension of privilege to, **§ 1:1**
Counsel’s authority to waive, **§ 1:22**
Crime-fraud exception, **§ 1:26**
Criminal defense by outside counsel, **§ 5:9**
Criminal defense conflicts, **§ 6:21**
Decision-makers, communications with, **§ 1:3, 1:7**
Deliberate disclosure, waiver by, **§ 1:24**
Derivative actions, **§ 1:1, 1:27, 3:10**
Disclosure and waiver, **§ 1:21**
Documents, **§ 1:8**
Dominant purpose of communication, **§ 1:10**
Draft documents, review of, **§ 1:16**
Duty of counsel to assert privilege, **§ 1:22**
Electronic communications, confidentiality of, **§ 1:13**
Elements of privilege, **§ 1:1**
Employee interviews during investigations, **§ 1:3**
Employee-attorneys
Generally, **§ 1:5**
Accountants, communications with, **§ 1:6**
Agents of counsel, communications with, **§ 1:6, 1:7**
Concealment as intent of communicator, **§ 1:5**
Decision-makers, communications with, **§ 1:7**
Employees, communications with, **§ 1:7**
Experts, communications with, **§ 1:6**
Intent of communicator, **§ 1:5**
Intermediaries, communications via, **§ 1:7**
Investigations, **§ 1:18**
Investigators, communications with, **§ 1:6**
Investigatory functions of in-house counsel, **§ 1:8**
Necessary communications, **§ 1:8**

ATTORNEY-CLIENT PRIVILEGE
—Cont’d
Employee-attorneys—Cont’d
Purpose of communication, **§ 1:15 et seq.**
Purpose of privilege, applicability, **§ 1:1**
Employees, communications with, **§ 1:7**
Employees with special knowledge, **§ 1:3**
Expectation of confidentiality, **§ 1:10**
Experts, communications with, **§ 1:6**
Fact/communication distinction, **§ 1:8**
Federal courts, **§ 1:1**
Filing of confidential documents, **§ 1:13**
Former employees, communications with, **§ 1:3**
Former officers’ right to assert, **§ 1:22**
Future conduct and crime-fraud exception, **§ 1:26**
Garner doctrine, **§ 1:27**
Good cause challenges, **§ 1:1**
Implied requests for legal advice, **§ 1:8**
Implied waiver, **§ 1:21, 1:23**
In-issue doctrine, **§ 1:25**
Intent and confidentiality of communications, **§ 1:8, 1:10**
Intent of communicator with in-house counsel, **§ 1:5**
Intercorporate disclosures and confidential communications, **§ 1:12**
Intermediaries, communications via, **§ 1:7**
Investigations
Generally, **§ 1:18**
Functions of in-house counsel, **§ 1:8**
Interviews
Generally, **§ 1:3**
Admonition memorandum, **App 5-5**
Privilege admonitions, **§ 1:4**

ATTORNEY-CLIENT PRIVILEGE

—Cont’d

- Investigators, communications with, § 1:6
- Joint defense arrangements, § 1:4
- Joint representation of corporation and employees, § 1:4
- Labeling of privileged materials, § 1:12, 1:13
- Legal vs business advice, § 1:16
- Legal vs personal advice, § 1:17
- Litigation supervision, § 4:3
- Loss of privilege
 - Generally, § 1:21 *et seq.*
 - See also Loss of Privileges, this index
 - Crime-fraud exception, § 1:26
 - Deliberate disclosure, § 1:24
 - Derivative actions, § 1:27, 3:10
 - Discovery procedures and inadvertent disclosures, § 1:23
 - Garner doctrine, § 1:27
 - Inadvertent waiver, § 1:23, App 1-4
 - Negotiations, disclosures made during, § 1:24
 - Regulatory agencies, disclosures to, § 1:24
 - Selective disclosure, § 1:21
 - Low level employees with special knowledge, § 1:3
 - Manipulation challenges, § 1:1
 - Multi-jurisdictional practice, ethical issues, § 3:2
 - Multiple-purpose statements and confidentiality requirements, § 1:11
 - Necessary communications, § 1:8
 - Negotiation vs review of contract terms, § 1:16
 - Notice to corporate employees of status, App 1-1
 - Outside attorneys, employee communications with, § 1:3
 - Outside counsel
 - Generally, § 1:3
 - Criminal defense, § 5:9

ATTORNEY-CLIENT PRIVILEGE

—Cont’d

- Parent-subsidiary corporate communications and confidentiality, § 1:12
- Patent agents, communications with, § 1:6, 1:19
- Personal nature of privilege, § 1:1
- Personal vs legal advice, § 1:17
- Predictability of treatment of corporate clients, § 1:1
- Predominate purpose of communication, § 1:16
- Presumptions of confidentiality, § 1:9
- Primary purpose of communication, § 1:16
- Private attorneys, employee communications with, § 1:3
- Property rights in privileged documents, § 6:16
- Prosecutors’ attacks on, § 6:18
- Public filings, communications intended for use in, § 1:11
- Public policy challenges, § 1:1
- Public relations advice, § 1:6
- Purpose of communication
 - Generally, § 1:15 *et seq.*
 - Business information required to provide legal advice, § 1:16
 - Business vs legal advice, § 1:16
 - Cc copies to counsel, § 1:16
 - Dual roles of in-house counsel, § 1:15
 - Investigations, § 1:18
 - Legal vs business advice, § 1:16
 - Legal vs personal advice, § 1:17
 - Negotiation vs review of contract terms, § 1:16
 - Patent work, § 1:19
 - Personal vs legal advice, § 1:17
 - Predominate purpose test, § 1:16
 - Primary purpose test, § 1:16
 - Review by counsel of draft documents, § 1:16
 - Tax matters, § 1:16, 1:20
- Purposes of privilege, § 1:1
- Represented Party Contacts, this index

INDEX

ATTORNEY-CLIENT PRIVILEGE

—Cont’d

- Review by counsel of draft documents, § 1:16
- Sarbanes-Oxley Act conflicts, § 8:9, 8:11
- Scope of confidential communication, § 1:8
- Scope of employment test of corporate agent’s authority, § 1:3
- Scope of privilege. Purpose of communication, above
- Segregation of privileged materials, § 1:13
- Storage of privileged materials, § 1:12
- Subject matter test of corporate agent’s authority, § 1:3
- Subpoenas of corporate counsel, § 6:18
- Subsidiaries, communications with employees of, § 1:3
- Sword and shield doctrine, § 1:25
- Tax matters, § 1:16, 1:20
- Third-party attorneys, employee communications with, § 1:3
- Third-party auditors and confidential communications, § 1:12
- Trustee in bankruptcy, assertion of waiver by, § 1:22
- Unsolicited advice from counsel, § 1:8
- Unsolicited information from corporate employees, § 1:3
- Upjohn test of corporate agent’s authority, § 1:3
- Up-the-ladder reporting conflicts, § 8:9, 8:11
- Waiver
 - Generally, § 1:21 *et seq.*
 - See also Waiver of Privilege, this index
 - Advice of counsel claims, § 1:25
 - Advice of counsel defense, § 6:18
 - At-issue doctrine, § 1:25
 - Authority to waive, § 1:22
 - Bankruptcy trustee, waiver by, § 1:22

ATTORNEY-CLIENT PRIVILEGE

—Cont’d

- Waiver—Cont’d
 - Counsel’s authority to waive, § 1:22
 - Crime-fraud exception, § 1:26
 - Delayed assertion of waiver, § 1:21
 - Deliberate disclosure, § 1:24
 - Derivative actions, § 1:27, 3:10
 - Disclosure and, § 1:21
 - Discovery procedures and inadvertent disclosures, § 1:23
 - Garner doctrine, § 1:27
 - Implied waiver, § 1:21, 1:23
 - Inadvertent waiver, § 1:23, App 1-4
 - In-issue doctrine, § 1:25
 - Negotiations, disclosures made during, § 1:24
 - Parent and subsidiary, § 1:22
 - Proof of, § 1:21
 - Regulatory agencies, disclosures to, § 1:24, 2:12
 - Scope of waiver, § 1:21
 - Selective disclosure, § 1:21
 - Sword and shield doctrine, § 1:25
 - Trustee in bankruptcy, waiver by, § 1:22
 - Who may assert, § 1:22
 - Who may waive, § 1:22
- Waiver and loss of privilege, Placing the attorney-client relationship at issue, § 1:25
- Warnings to employee targets of investigations, § 1:4
- Whistleblower claims by discharged counsel, § 6:11
- Who may waive, § 1:22
- Work product doctrine distinguished, § 2:1

ATTORNEY-CLIENT RELATIONSHIPS

- Corporations as Clients, this index
- Employers as Clients, this index
- Outside Counsel, this index

AUDIT RECORDS

- See Sarbanes-Oxley Act, this index

AUTHORITY

See also Agents, this index
Bright-line tests, **§ 1:3**
Control group test of corporate agent's authority, **§ 1:2**
Directors, privilege waiver authority of, **§ 1:4**
Officers, privilege waiver authority of, **§ 1:4**
Scope of employment test of corporate agent's authority, **§ 1:3**
Subject matter test of corporate agent's authority, **§ 1:3**
Upjohn test of corporate agent's authority, **§ 1:3**

BANK SECRECY ACT

Reporting obligations, **§ 5:20**

BAR MEMBERSHIP

See License Requirements, this index

BOARDS OF DIRECTORS

See Directors, this index

BUSINESS ENTITIES

Generally, **§ 3:15**
Close corporations, **§ 3:16**
Corporations as Clients, this index
Management-Ownership Conflicts, this index

BUYOUTS

See Control Contests, this index

CARE DUTIES

Attorney-directors, **§ 6:23**
Up-the-ladder reporting of violations, **§ 8:3**

CEASE AND DESIST ORDERS

Generally, **§ 6:12**
Sarbanes-Oxley Act, **§ 8:7**

CERTIFICATION OF RECORDS

See Sarbanes-Oxley Act, this index

CHIEF LEGAL OFFICERS (CLO)

Affirmative duties under Sarbanes-Oxley, **§ 8:3**
Qualified legal compliance committees (QLCC), reports to, **§ 8:6**

CHIEF LEGAL OFFICERS (CLO)

—Cont'd

Sarbanes-Oxley responsibilities, **§ 8:6**
Supervisor status under securities laws, **§ 6:12**
Up-the-ladder reporting
Generally, **§ 8:1 et seq.**
Reports to, **§ 8:4**

CHOICE OF LAW

See also Conflicts of Law, this index
Attorney-client privilege, **§ 1:1**
Crime-fraud exception, **§ 1:26**
Disciplinary authority, **§ 3:2**
Inadvertent disclosure and loss of privilege, **§ 1:23**
Tribunal trumps principle, **§ 3:2**
Work product doctrine, **§ 2:1**

CLIENT RELATIONSHIPS

Corporations as Clients, this index
Employers as Clients, this index
Outside Counsel, this index

CLOSE CORPORATIONS

Generally, **§ 3:16**

COMMON INTEREST DOCTRINE

Privileges, **§ 1:4**

COMPETITORS

Ethical concerns, **§ 3:34**

COMPLIANCE PROGRAMS

Generally, **§ 5:30**
See also Criminal Proceedings, this index
Sentencing guideline incentives, **§ 5:1**

COMPUTER FILES

See Electronic Records, this index

CONFIDENTIALITY

Generally, **§ 3:11**
See also Disclosures, this index
Agency law, **§ 3:11**
Agreements, employee, **§ 1:3**
Bodily harm exception, **§ 3:11**
Common interest disclosures, **§ 1:14**

INDEX

CONFIDENTIALITY—Cont'd

Counsel sued by corporation, obligations of, **§ 6:3**
Crime prevention duties of counsel
Generally, **§ 6:17**
Sarbanes Oxley Act, **§ 8:9**
Criminal defense conflicts, **§ 6:21**
Criminal matter investigations
Generally, **§ 5:11**
Notice to employees of pending investigation, **App 5-2**
Deliberate disclosure, waiver or loss of privilege by, **§ 1:24, 2:12**
Discrimination law conflicts, **§ 6:9**
Documents, corporate, taking on termination of employment, **§ 6:16**
Electronic communications, **§ 1:13**
Employed counsel duties and at-will status, **§ 6:6**
Employee confidentiality agreements, **§ 1:3**
Employees, disclosures to, **§ 3:11**
Ethical implications of duty of, **§ 3:11**
Filing of confidential documents, **§ 1:13**
Fraud prevention duties of counsel
Generally, **§ 6:17**
Sarbanes Oxley Act, **§ 8:9**
Inadvertent disclosure and waiver of privilege, **§ 1:23, 2:11, App 1-4**
Intercorporate disclosures and confidential communications with counsel, **§ 1:12**
Investigations
Confidentiality admonitions, **§ 1:4**
Criminal matters, **§ 5:11**
Litigants, post employment representation of, **§ 6:15**
Management-ownership conflicts, **§ 3:7**
Meetings, admonitions at, **§ 1:12**
Model Rules, **§ 6:21**
Need to know standard, **§ 1:12**
Noisy withdrawal, **§ 3:19, 3:20, 8:4, 8:10**
Post employment representation of litigants, **§ 6:15**

CONFIDENTIALITY—Cont'd

Post-termination, **§ 3:20**
Privileged communication requisites
Generally, **§ 1:8 et seq.**
See also Attorney-Client Privilege, this index
Property rights in privileged documents, **§ 6:16**
Qui tam suits by inside counsel, **§ 6:17**
Reporting of criminal conduct
Generally, **§ 5:20**
Sarbanes-Oxley Act, **§ 8:9**
Represented Party Contacts, this index
Resignation and, **§ 3:20**
Serious injury exception, **§ 3:11**
Trial practice, access of inside counsel to information, **§ 4:24**
Up-the-ladder reporting rules
Generally, **§ 8:1 et seq., 8:9**
See also Sarbanes-Oxley Act, this index

CONFLICTS OF INTEREST

Control Contests, this index
Criminal prosecutions, use of outside counsel, **§ 5:8**
Derivative Actions, this index
Employees, corporate counsel's joint representation of, **§ 1:4**
Errant officers, duties to, **§ 3:14**
Formal conflicts, **§ 1:4**
Former-client disqualification issues, **§ 3:4**
Imputed disqualification, **§ 3:4**
Joint defense arrangements, **§ 1:4**
Joint representation of corporation and employees, **§ 1:4**
Labor union counsel, **§ 6:4**
Liabilities, **§ 6:2**
Litigants, post employment representation of, **§ 6:15**
Litigation supervision, **§ 4:19**
Management-Ownership Conflicts, this index
Outside counsel
Individual employees, representation of, **§ 4:18**

CONFLICTS OF INTEREST

—Cont'd

- Outside counsel—Cont'd
 - Retention to avoid, § 3:4
- Post employment representation of litigants, § 6:15
- Potential and real, § 1:4
- Prima facie conflicts, § 3:8
- Screening procedures, § 3:4
- Substantial relationship test, § 3:8
- Union counsel, § 6:4
- Waivers of litigation conflicts, § 4:19
- Work product protection waivers, § 2:10

CONFLICTS OF LAW

- See also Choice of Law, this index
- License requirements, § 3:2
- Sarbanes-Oxley conflicts with state rules, § 8:11

CONSPIRACIES

- Generally, § 5:6
- See also Criminal Proceedings, this index

CONSULTANTS

- Attorney-client relationship and communications with, § 1:3
- Ethical concerns, ethical limits of consultation, § 3:35
- Jury consultants, selection of, § 4:17
- Retainer letter privilege provision, **App 1-3**
- Work product doctrine, § 2:4

CONTROL CONTESTS

- Generally, § 3:9
- Conflicts of interest, § 3:9
- Criminal liabilities of successor corporations, § 5:36
- Ethical issues arising in, § 3:1
- Former-client disqualification issues, § 3:4
- Identifying the client, § 3:9
- Independent professional judgment, duty to provide, § 3:6
- Successor corporations
 - Criminal liabilities of, § 5:36
 - Liabilities of counsel to, § 6:2

CONTROL GROUP TEST

- Attorney-client privilege, § 1:2

CORPORATE GOVERNANCE

- Advice, affirmative duty of inside counsel to offer, § 3:13
- Sarbanes-Oxley Act standards, § 7:1

CORPORATIONS AS CLIENTS

- Generally, § 1:2
- As to attorney relationships with employers see Employers as Clients, this index
- Advice, affirmative duty of inside counsel to offer, § 3:13
- Authority of agents, § 1:2
- Boards of directors as clients, § 1:4
- Business advice, ethical issues, § 3:17
- Close corporations, § 3:16
- Confidentiality duties
 - Generally, § 1:8 et seq., 3:11
 - See also Attorney-Client Privilege, this index
- Malpractice claims against counsel, § 6:3

- Conflicts of Interest, this index
- Control group test of authority, § 1:2

- Coventurers, duties to, § 3:15
- Criminal investigations, § 5:9 et seq.
- Criminal liability of corporate counsel, § 6:18 et seq.

- Derivative actions
 - Attorney-client privilege, § 1:1
 - Liabilities of counsel, § 6:5

Directors

- Generally, § 3:14
- Attorneys serving as
 - Ethical issues, § 3:32
 - Liabilities, § 6:23
- Co-clients, directors as, § 1:4
- Discovery, corporate privileges frustrating, § 1:1
- Disqualification Motions, this index
- Employees, conflicts of interest in representation of, § 6:2
- Errant officers, duties to
 - advisie on potential legal risks and deal with errant officer, § 3:14

INDEX

CORPORATIONS AS CLIENTS

—Cont'd

- Ethical issues
 - Generally, § 3:1 *et seq.*
 - See also Ethical Concerns, this index
- Ethics requirements as defense to criminal charges, § 6:22
- Federal agency practice restrictions, § 6:12
- Firm, treatment of counsel's office as
 - Imputed disqualification, § 3:4
 - Supervisorial liability, § 3:30
 - Vicarious liability, § 3:5, 3:30
- Former employees
 - Communications with, § 1:3
 - Representation of, § 1:4
- Former-client disqualification issues, § 3:4
- Gatekeeper role of inside counsel under Sarbanes Oxley, § 6:12
- Identifying the client
 - Control contests, § 3:9
 - Derivative actions, § 3:10
 - Parent and subsidiaries, § 3:8
- Identity statements in memoranda, § 1:14
- Indemnification rights, § 6:14
- Independent professional judgment, duty to provide, § 3:6
- Investigations of criminal charges, § 5:9 *et seq.*
- Investigatory employee interviews, § 1:3
- Joint defense arrangements, § 1:4
- Joint representation of corporation and employees, § 1:4
- Liabilities
 - Generally, § 6:1 *et seq.*
 - See also Liabilities, this index
 - Administrative practice restrictions, § 6:12
 - Attorney-directors, § 6:23
 - Confidentiality obligations, § 6:3
 - Criminal liability of corporate counsel, § 6:18 *et seq.*
 - Ethics requirements as defense, § 6:22
 - Indemnification, § 6:14

CORPORATIONS AS CLIENTS

—Cont'd

- Liabilities—Cont'd
 - Malpractice insurance, § 6:13, App 6-1
 - Privilege duty conflicts with counsel's criminal defense, § 6:21
- License Requirements, this index
- Litigation Supervision, this index
- Litigators, staff, § 4:4
- Main office location and multi-jurisdictional practice, § 3:2
- Malpractice insurance, § 6:13, App 6-1
 - Management as clients, § 1:4
 - Management-Ownership Conflicts, this index
 - Memoranda identity statements, § 1:14
 - Negotiators, attorneys acting as, § 3:17
 - Non-employment agents, communications with, § 1:3
- Officers
 - Generally, § 3:14
 - Co-clients, officers as, § 1:4
- Partners, duties to, § 3:15
- Personal counsel, use of term, § 6:4
- Predictability of privilege rule applications, § 1:1
- Privilege duty conflicts with counsel's criminal defense, § 6:21
- Privileged communications
 - Generally, § 1:2 *et seq.*
 - See also Attorney-Client Privilege, this index
 - Duty of counsel to assert privilege, § 1:22
 - Former officers' right to assert, § 1:22
 - Who may waive or assert privilege, § 1:22
- Represented Party Contacts, this index
- Sarbanes-Oxley Act requirements
 - Generally, § 7:1 *et seq.*

CORPORATIONS AS CLIENTS**—Cont'd**

- Sarbanes-Oxley Act requirements
 - Cont'd
 - See also Sarbanes-Oxley Act, this index
 - Scope of employment test of authority, **§ 1:3**
 - Sentry role of inside counsel under Sarbanes Oxley, **§ 6:12**
 - Shareholders, counsel liabilities to, **§ 6:5**
 - Subject matter test of authority, **§ 1:3**
 - Subordinate attorneys, Sarbanes-Oxley Act liabilities, **§ 8:8**
 - Subpoenas of corporate counsel, **§ 6:18**
 - Subsidiaries, communications with employees of, **§ 1:3**
 - Target status in criminal investigations, **§ 6:20**
 - Unsolicited information from corporate employees, **§ 1:3**
 - Upjohn test of authority, **§ 1:3**
 - Up-the-ladder reporting rules
 - Generally, **§ 8:1 et seq.**
 - See also Sarbanes-Oxley Act, this index
 - Vicarious liability in counsel's office, **§ 3:5**
 - Warnings to employee targets of investigations, **§ 1:4**
 - Who may waive or assert privilege
 - Attorney-client privilege, **§ 1:22**
 - Authority of agent, **§ 1:2**
 - Work product doctrine, **§ 2:10**
 - Work product doctrine
 - Generally, **§ 2:1 et seq.**
 - Advantages to corporate defendants, objections based on, **§ 2:1**
 - Agent-prepared documents, **§ 2:4**
 - Purpose for which document prepared, **§ 2:4**
 - Veil of secrecy objection, **§ 2:1**
 - Who may waive or assert privilege, **§ 2:10**

CRIME-FRAUD EXCEPTION

- Attorney-client privilege, **§ 1:26**

CRIME-FRAUD EXCEPTION**—Cont'd**

- Intentional torts, **§ 2:16**
- Work-product doctrine, **§ 2:16**

CRIMINAL PROCEEDINGS

- Generally, **§ 5:1 et seq.**
- Administrative actions following criminal prosecutions, **§ 5:35**
- Administrative alternatives to prosecution, **§ 5:3**
- Advancements of individual defense costs
 - Generally, **§ 5:8**
 - Agreement for indemnification and advancement, **App 5-1**
- Advice of counsel defense and attorney-client privilege, **§ 6:18**
- Agents
 - Corporate liability for acts of, **§ 5:2, 5:5**
 - Individual liability of, **§ 5:6**
 - Aggregate knowledge and corporate criminal liability, **§ 5:5**
 - Aiding and abetting liability
 - Corporate agents, **§ 5:6**
 - Counsel
 - Financial institution matters, **§ 6:19**
 - SEC matters, **§ 6:5**
 - Antitrust violations, **§ 5:20**
 - Assessments, **§ 5:29**
 - Caremark liability, **§ 5:1**
 - Collateral consequences, **§ 5:31 et seq.**
 - Collective knowledge doctrine and corporate criminal liability, **§ 5:5**
 - Communicating with prosecutors, **§ 5:18**
 - Compliance programs
 - Generally, **§ 5:30**
 - Culpability score, **§ 5:30**
 - Hotlines, **§ 5:30**
 - Prosecutorial discretion decisions, **§ 5:3**
 - Sentence mitigation, **§ 5:30**
 - Sentencing guideline incentives, **§ 5:1**

INDEX

CRIMINAL PROCEEDINGS

—Cont’d

- Compliance programs—Cont’d
 - Vicarious liability, defenses to, § 5:5
 - Computer files, § 5:17
 - Confidentiality and crime prevention duties of counsel, § 6:17
 - Conflicts of interest and separate counsel, § 4:18
 - Conspiracies, § 5:6
 - Cooperation with law enforcement
 - Employee discipline strategies, § 5:38
 - Value of, § 5:2
 - Corporate criminal liability, § 5:2, 5:5
 - Corporate Fraud Task Force, § 5:16
 - Corporate Leniency Policy, § 5:3
 - Costs awards, § 5:29
 - Counsel, individual criminal liability of, § 6:18 *et seq.*
 - Criminal purposes findings, § 5:27
 - Culpability score
 - Generally, § 5:27
 - Compliance programs, § 5:30
 - Custodians. Records custodians, below
 - D & O policies, § 5:8
 - Debarments of Government Contractors, this index
 - Defense Industry Initiative on Business Ethics and Conduct, § 5:4
 - Derivative actions following, § 5:1
 - Destruction of documents
 - Generally, § 5:12, 5:17
 - Notice to employees of pending investigation, App 5-2
 - Directors, outside counsel representation of, § 5:8
 - Disbarment of government contractors, Federal Regulations, App 5-8
 - Discretion. Prosecutorial discretion, below
 - Dissolved corporations, § 5:36
 - Document production, § 5:17
 - Document reviews by outside counsel, § 5:17

CRIMINAL PROCEEDINGS

—Cont’d

- DOJ Manual
 - Grand jury investigations, § 5:15
 - Prosecutorial discretion, § 5:3
- Eligibility of government contractors, Federal Regulations, App 5-8
- Employees
 - Discipline during investigations, § 5:38
 - Outside counsel representation of, § 5:8
 - Separate counsel for, § 4:18
- Ethics requirements as defense, § 6:22
- Exclusions of health care providers
 - Generally, § 5:33
 - Federal Regulations, App 5-9
- False Claims Act
 - Generally, § 5:20, 5:34
 - Parallel civil and criminal proceedings, § 5:4, 5:34
- Federal vs state law violations, § 5:23
- Financial Crimes Enforcement Network (FINCEN), § 5:20
- Fines
 - Ability to pay, § 5:27
 - Base fines, § 5:27
 - Culpability score, § 5:27, 5:30
 - Negotiated plea agreements, § 5:30
 - Sentencing guidelines, § 5:25, 5:27
- Forfeiture orders, § 5:29
- Grand jury investigations
 - Generally, § 5:15 *et seq.*
 - Communicating with prosecutors, § 5:18
 - Computer files, § 5:17
 - Counsel as target, § 6:20
 - Destruction of documents, § 5:17
 - Document production, § 5:17
 - DOJ Manual, § 5:15
 - Federal procedures, § 5:16
 - Immunity grants, § 5:16
 - Indictments, § 5:16
 - Jencks Act discovery, § 5:16
 - Monitoring the investigation, § 5:18

CRIMINAL PROCEEDINGS**—Cont’d**

- Grand jury investigations—Cont’d
 - Notice to employees of pending investigation, **App 5-2**
 - Outside counsel, **§ 5:15**
 - Privileges, **§ 5:16**
 - Records custodians, below
 - Right to counsel, **§ 5:16**
 - Search warrants, **§ 5:19**
 - Subpoenas duces tecum, **§ 5:17**
 - Targets of grand jury investigations, below
- Guidelines, DOJ Manual, above
- Health care provider exclusion orders
 - Generally, **§ 5:33**
 - Federal Regulations, **App 5-9**
- Immunity grants, **§ 5:16**
- Indemnification of individual defense costs
 - Generally, **§ 5:8**
 - Agreement for indemnification and advancement, **App 5-1**
- Individual liability for corporate crimes
 - Generally, **§ 5:6**
 - Counsel liabilities, **§ 6:18 et seq.**
 - Outside counsel representation, **§ 5:8**
- Insider trading, **§ 5:22**
- Interviews of employees
 - Generally, **§ 5:13**
 - Notice of pending investigation, **App 5-2**
 - Rights admonition memorandum, **App 5-5**
- Investigations
 - Generally, **§ 5:1 et seq.**
 - By inside counsel, **§ 5:9 et seq.**
 - Confidentiality preservation, **§ 5:11**
 - Destruction of documents, **§ 5:12, 5:17**
 - Document collection
 - Generally, **§ 5:12**
 - Notice to employees of pending investigation, **App 5-2**
 - Grand jury investigations, above

CRIMINAL PROCEEDINGS**—Cont’d**

- Investigations—Cont’d
 - Interviews of employees
 - Generally, **§ 5:13**
 - Admonition memorandum, **App 5-5**
 - Notice to employees of pending investigation, **App 5-2**
 - Notifying employees
 - Generally, **§ 5:12**
 - Form of notice, **App 5-2**
 - Obstruction of justice concerns, **§ 5:14**
 - Prosecutor interviews
 - Generally, **§ 5:13**
 - Notice to employees of pending investigation, **App 5-2**
 - Reports, **§ 5:11**
 - Jencks Act, **§ 5:16**
 - Joint defense arrangements, **§ 5:8**
 - Medicare fraud
 - Generally, **§ 5:33**
 - Federal Regulations, **App 5-9**
 - Mitigating factors, **§ 5:30**
 - Multi-jurisdictional practice hazards, **§ 3:2**
 - New York Central test of corporate criminal liability, **§ 5:5**
 - Notifying employees
 - Generally, **§ 5:12**
 - Form of notice, **App 5-2**
 - Obstruction of justice concerns
 - Generally, **§ 5:14**
 - Notice to employees of pending investigation, **App 5-2**
 - Officers
 - Outside counsel representation of, **§ 5:8**
 - Separate counsel for, **§ 4:18**
 - Outside counsel
 - Generally, **§ 5:7**
 - Accommodation clients, **§ 5:8**
 - Criminal liability, **§ 6:19**
 - Document reviews by, **§ 5:17**
 - Fee arrangements, **§ 5:7**
 - Grand jury investigations, **§ 5:15**

INDEX

CRIMINAL PROCEEDINGS

—Cont’d

- Outside counsel—Cont’d
 - Individual liability for corporate crimes, opinions re, § 5:6
 - Individuals, representation of, § 4:18, 5:8
 - Personal experience, § 5:7
 - Plea agreements, § 5:30
 - Privileges, preservation of, § 5:9
 - Search warrant executions, § 5:19
- Parent-subsidiary liabilities, § 5:37
- Party conflicts, § 4:18
- Pinkerton liability, § 5:6
- Plea agreements
 - Generally, § 5:30
 - Form, App 5-7
- Privilege duty conflicts with counsel’s criminal defense, § 6:21
- Privileges, preservation of, § 5:9
- Probation, § 5:28
- Prosecutorial discretion
 - Generally, § 5:2
 - Administrative alternatives, § 5:3
 - Compliance programs, effect of, § 5:3
 - Corporate Leniency Policy, § 5:3
 - DOJ Manual, § 5:3
 - Strategic considerations, § 5:3
- Prosecutorial misconduct, § 6:18
- Purposes, criminal purposes findings, § 5:27
- Records custodians
 - Generally, § 5:17
 - Instructions to custodian, App 5-3
 - Instructions to employees, App 5-4
- Reductions of sentences, § 5:30
- Regulatory violations, § 5:20
- Reporting of criminal conduct
 - Generally, § 5:20
 - Sarbanes-Oxley Act, § 8:9
- Represented party contacts
 - Generally, § 3:26
 - No-contact admonitions, § 3:29
- Responsibility, acceptance of, § 5:30
- Responsible corporate officer doctrine, § 5:6

CRIMINAL PROCEEDINGS

—Cont’d

- Restitution orders, § 5:26
- Reverse Jencks doctrine, § 5:13
- Risks of investigations, § 5:10
- Sarbanes-Oxley Act
 - Generally, § 7:3
 - Effect of enactment, § 5:2
- Scope of employment, agent’s criminal acts in, § 5:5
- Search warrants, § 5:19
- Securities law disclosures, § 5:22
- Self reporting adjustments to sentencing guidelines, § 5:30
- Self-incrimination privilege
 - Applicability to business entities, § 5:4
- Grand jury investigations, § 5:16
- Targets of grand jury investigations, § 5:16
- Sentencing guidelines
 - Generally, § 5:23 et seq., App 5-6
 - Adjustments, § 5:30
 - Assessments, § 5:29
- Collateral consequences of conviction, consideration of, § 5:31
- Compliance programs, effect of, § 5:1, 5:30
- Constitutionality, § 5:23
- Costs awards, § 5:29
- Culpability factors, § 5:25
- Culpability score, § 5:27, 5:30
- Departures, § 5:27
- Fines, § 5:25, 5:27
- Forfeiture orders, § 5:29
- Mitigating factors, § 5:30
- Organizations, application to, § 5:24
- Plea agreements, effect of, § 5:30
- Probation, § 5:28
- Reductions of sentences, § 5:30
- Responsibility, acceptance of, § 5:30
- Restitution orders, § 5:26
- Self reporting adjustments, § 5:30
- Special assessments, § 5:29

CRIMINAL PROCEEDINGS

—**Cont'd**

- Settlements
 - Employee discipline during negotiations, **§ 5:38**
 - Global settlements of civil and criminal charges, **§ 5:34**
 - Special assessments, **§ 5:29**
 - State health programs, Federal Regulations, **App 5-9**
 - State prosecutions
 - Corporate criminal liability, **§ 5:5**
 - Federal vs state law violations, **§ 5:23**
 - Grand juries, **§ 5:15**
 - Strategic considerations
 - Employee discipline, **§ 5:38**
 - Fight or cooperate, **§ 5:4**
 - Prosecutorial discretion, **§ 5:3**
 - Subpoenas duces tecum, **§ 5:17**
 - Subpoenas of corporate counsel, **§ 6:18**
 - Successor corporations, liabilities of, **§ 5:36**
 - Suspension of government contractors
 - Generally, **§ 5:32**
 - Federal Regulations, **App 5-8**
 - Targets of grand jury investigations
 - Generally, **§ 5:16**
 - Counsel as target, **§ 6:20**
 - Self-incrimination privilege, **§ 5:16**
 - Unauthorized practice of law, **§ 3:2**
 - Voluntary disclosure programs, **§ 5:20, 5:21**
 - Voluntary disclosures and other forms of self-reporting of criminal conduct
 - Pitfalls to avoid, **§ 5:21**
 - Wells submissions, **§ 5:22**

CROSS-BORDER PRACTICE

- Ethical issues, **§ 3:2**

CURRENCY TRANSACTION REPORTS (CTR)

- Generally, **§ 5:20**

D & O POLICIES

- Criminal defense assistance, **§ 5:8**

DEBARMENTS OF GOVERNMENT CONTRACTORS

- Generally, **§ 5:30, 5:32**
- Plea agreements, **§ 5:30**

DEFENSE CONTRACTORS

- See also Public Contracts, this index
- Criminal prosecutions, collateral consequences, **§ 5:20**
- Debarments of Government Contractors, this index

DEFENSE INDUSTRY INITIATIVE ON BUSINESS ETHICS AND CONDUCT

- Generally, **§ 5:4**

DERIVATIVE ACTIONS

- See also Management-Ownership Conflicts, this index
- Attorney-client privilege, **§ 1:27, 3:10**
- Conflicts of interest, **§ 3:10, 6:4**
- Counsel, suits against, **§ 6:5**
- Criminal investigations and, **§ 5:1**
- Demands on board, legal advice re, **§ 3:10**
- Garner doctrine, **§ 1:27, 2:13**
- Identifying the client, **§ 3:10**
- Work product privilege, **§ 2:13**

DESTRUCTION OF DOCUMENTS

- Generally, **§ 5:12, 5:17**
- Accountants' records, **§ 7:4**
- Notice to employees of pending investigation, **App 5-2**
- Sarbanes-Oxley Act proscriptions, **§ 7:1**

DIRECTORS

- Advancements of criminal defense costs
 - Generally, **§ 5:8**
 - Agreement for indemnification and advancement, **App 5-1**
- Advice of counsel claims and privilege waivers, **§ 1:25**

INDEX

DIRECTORS—Cont'd

- Attorney-client privilege assertions, **§ 1:4**
- Attorney-client relationships with, **§ 3:14**
- Attorneys serving as
 - Ethical issues, **§ 3:32**
 - Liabilities, **§ 6:23**
- Caremark liability, **§ 5:1**
- Client and co-clients status, **§ 1:4**
- Conflicts of interest in individual representation of, **§ 3:14**
- Criminal defense representation of, **§ 5:8**
- Criminal liability of corporations for conduct of agents, **§ 5:2, 5:5**
- Demands on board prior to derivative actions, legal advice re, **§ 3:10**
- Financial institution directors, special obligations, **§ 3:32**
- Indemnification of criminal defense costs
 - Generally, **§ 5:8**
 - Agreement for indemnification and advancement, **App 5-1**
- Joint defense arrangements, **§ 1:4**
- Legal compliance committees (QLCC)
 - Generally, **§ 8:4**
 - CLO reports to, **§ 8:6**
- Management-ownership conflicts, inside counsel's duties, **§ 3:7**
- Outside counsel representation of in criminal proceedings, **§ 5:8**
- Outside counsel serving as, **§ 3:32**
- Represented Party Contacts, this index
- Target-of-investigation status and representation by independent counsel, **§ 1:4**
- Waiver of privileges by, **§ 1:22**

DISBARMENTS OF GOVERNMENT CONTRACTORS

- Federal Regulations, **App 5-8**

DISCLOSURES

- See also Confidentiality, this index

DISCLOSURES—Cont'd

- Certifications of reports
 - Generally, **§ 7:1 et seq.**
 - See also Sarbanes-Oxley Act, this index
- Common interest disclosures and confidentiality, **§ 1:14**
- Common interest disclosures and waiver of privilege assertions, **§ 1:24, 2:12**
- Completeness of, **§ 5:22**
- Consensual, **§ 3:11**
- Contractor Business Ethics Compliance Program and Disclosure Requirements, **App 5-12**
- Criminal proceeding disclosures, **§ 5:20**
- Defense Industry Initiative on Business Ethics and Conduct, **§ 5:4**
- Deliberate disclosure, waiver or loss of privilege by, **§ 1:24, 2:12**
- Employees, disclosures to, **§ 3:11**
- FD Regulation disclosures, **§ 5:22**
- Inadvertent disclosure and waiver of privilege, **§ 1:23, 2:11, App 1-4**
- Insider trading, **§ 5:22**
- Intercorporate disclosures and confidential communications with counsel, **§ 1:12**
- Liabilities of counsel, **§ 6:5**
- Management-ownership conflicts, **§ 3:7**
- Materiality
 - Generally, **§ 5:22**
 - SEC standard, **§ 5:22**
- Privileged material, **§ 1:21**
- Regulated industries, required disclosures, **§ 5:2**
- Regulatory agencies, disclosures to
 - Attorney-client privilege, **§ 1:24**
 - Work product doctrine, **§ 2:12**
- Reporting of criminal conduct
 - Generally, **§ 5:20**
 - Sarbanes-Oxley Act, **§ 8:9**
- Securities law disclosures and criminal proceedings, **§ 5:22**
- Selective disclosure and attorney-client privilege, **§ 1:21**
- S-K disclosures, **§ 5:22**

DISCLOSURES—Cont'd

Voluntary disclosures in criminal proceedings, **§ 5:20**
Wells submissions, **§ 5:22**

DISCOVERY

Attorney-Client Privilege, this index
Computer files, **§ 5:17**
Corporate privileges frustrating, **§ 1:1**
Criminal proceedings, **§ 5:17**
Destruction of documents, **§ 5:12, 5:17**
Document management systems, **§ 2:3**
Documents, privileged, **§ 1:8**
Inadvertent disclosure and waiver of privilege, **§ 1:23**
Investigations, this index
Jencks Act, **§ 5:16**
Management approvals, **§ 4:16**
Multi-jurisdictional practice, ethical issues, **§ 3:2**
Planning, **§ 4:14**
Records custodians
Generally, **§ 5:17**
Instructions to custodian, **App 5-3**
Instructions to employees, **App 5-4**
Represented Party Contacts, this index
Self-incrimination privilege, applicability to business entities, **§ 5:4**
Work Product Doctrine, this index

DISQUALIFICATION MOTIONS

Corporate family disputes, **§ 3:8**
Ethics rules and, **§ 3:1**
Former-client disqualification issues, **§ 3:4**
Imputed disqualification, **§ 3:4**
Represented party contacts, **§ 3:21**

DISSOLVED CORPORATIONS

Liabilities, **§ 5:36**

DOCUMENT MANAGEMENT SYSTEMS

Work product doctrine, **§ 2:3**

DOCUMENTS

Property rights in privileged documents, **§ 6:16**
Records Custodians, this index
Retention requirements, Sarbanes-Oxley, **§ 8:9**
Taking on termination of employment, **§ 6:16**

DUE CARE DUTIES

Generally, **§ 3:7**

ELECTRONIC COMMUNICATIONS

Confidentiality of, **§ 1:13**

ELECTRONIC RECORDS

Criminal proceedings, **§ 5:17**
Inadvertent disclosure and waiver of privilege, **§ 1:23**
Sarbanes-Oxley retention requirements, **§ 7:4**

ELIGIBILITY OF GOVERNMENT CONTRACTORS

Generally, **§ 5:32**
Federal Regulations, **App 5-8**

EMPLOYEES

Advancements of criminal defense costs
Generally, **§ 5:8**
Agreement for indemnification and advancement, **App 5-1**
Attorneys, practice status, **§ 8:2**
Attorneys subject to Sarbanes-Oxley Act, **§ 8:2**
Confidentiality duties and disclosures to, **§ 3:11**
Conflicts of interest in representation of, **§ 6:2**
Counsel's rights as employees
Generally, **§ 6:6 et seq.**
At-will employment, **§ 6:6**
Contractual employment rights, **§ 6:10**
Discrimination law claims, **§ 6:9**
Documents, corporate, taking on termination of employment, **§ 6:16**

INDEX

EMPLOYEES—Cont'd

- Counsels' rights as employees
 - Cont'd
 - Public policy wrongful discharge claims, § 6:8
 - Qui tam suits, § 6:17
 - Resignation duties and wrongful discharge claims, § 6:7
 - Retaliatory discharge
 - Generally, § 6:8
 - Sarbanes-Oxley protections, § 8:10
 - Whistleblower protections, § 6:11
- Wrongful termination
 - Generally, § 6:7, 6:8
 - Sarbanes-Oxley protections, § 8:10
- Criminal proceedings and outside counsel representation, § 5:8
- Discipline during investigations, § 5:38
- Discrimination law claims by inside counsel, § 6:9
- Documents, corporate, taking on termination of employment, § 6:16
- Indemnification of criminal defense costs
 - Generally, § 5:8
 - Agreement for indemnification and advancement, **App 5-1**
- Instructions to deliver documents to custodian of records, **App 5-4**
- Investigations, discipline actions during, § 5:38
- Malpractice claims of, § 6:4
- Nonpracticing attorney-employees, § 8:2
- Outside counsel representation of in criminal proceedings, § 5:8
- Outside counsel to represent individuals, § 4:18
- Represented Party Contacts, this index
- Scope of employment, agent's criminal acts in, § 5:5

EMPLOYERS AS CLIENTS

- As to attorney relationships with business entities see **Corpora-**

EMPLOYERS AS CLIENTS

—Cont'd

- tions as Clients, this index
- Advice, affirmative duty of inside counsel to offer, § 3:13
- Anticipation of litigation requirement, § 2:5
- Attorney-client privilege
 - Generally, § 1:5
 - Intent of communicator, § 1:5
 - Investigations, § 1:18
 - Necessary communications, § 1:8
 - Purpose of communication, § 1:15 *et seq.*
- Attorneys subject to Sarbanes-Oxley Act, § 8:2
- At-will employment, § 6:6
- Bar membership, maintenance of, § 1:5
- Business vs legal functions
 - Attorney-client privilege, § 1:16
 - Ethical issues, § 3:3, 3:17
- Confidentiality duties
 - Generally, § 3:11
 - At-will status, § 6:6
 - Post-termination, § 3:20
- Conflicts of interest liabilities, § 6:2
- Contractual employment rights, § 6:10
- Criminal investigations, § 5:9 *et seq.*
- Criminal liability, § 6:18 *et seq.*
- Discrimination law claims, § 6:9
- Disqualification Motions, this index
- Documents, corporate, taking on termination of employment, § 6:16
- Dual role problems, § 1:5
- Ethical issues
 - Generally, § 3:1 *et seq.*
 - See also Ethical Concerns, this index
 - Defense to criminal charges, § 6:22
- Federal agency practice restrictions, § 6:12
- Firm, treatment of counsel's office as
 - Imputed disqualification, § 3:4
 - Supervisorial liability, § 3:30

EMPLOYERS AS CLIENTS**—Cont’d**

- Firm, treatment of counsel’s office as
 - Cont’d
 - Vicarious liability, **§ 3:5, 3:30**
- Gatekeeper role of inside counsel
 - under Sarbanes Oxley, **§ 6:12**
- Implied requests for legal advice as
 - privileged, **§ 1:8**
- Indemnification rights, **§ 6:14**
- Independent professional judgment, duty to provide, **§ 3:6**
- Investigatory functions of in-house counsel
 - Attorney-client privilege, **§ 1:8**
 - Criminal matters, **§ 5:9 et seq.**
- Legal vs personal advice
 - Attorney-client privilege, **§ 1:16, 1:17**
 - Sarbanes-Oxley Act, **§ 8:3**
- Liabilities
 - Generally, **§ 6:1 et seq.**
 - See also Liabilities, this index
 - Administrative practice restrictions, **§ 6:12**
 - Criminal liability of corporate counsel, **§ 6:18 et seq.**
 - Ethics requirements as defense, **§ 6:22**
 - Indemnification, **§ 6:14**
 - Malpractice action by client employer, **§ 6:3**
 - Malpractice insurance, **§ 6:13, App 6-1**
 - Privilege duty conflicts with counsel’s criminal defense, **§ 6:21**
 - License Requirements, this index
 - Litigants, post employment representation of, **§ 6:15**
 - Loyalty duties and at-will status, **§ 6:6**
 - Malpractice actions, **§ 6:3**
 - Malpractice insurance, **§ 6:13, App 6-1**
 - Negotiators, attorneys acting as, **§ 3:17**
 - Nonpracticing attorney-employees, **§ 8:2**

EMPLOYERS AS CLIENTS**—Cont’d**

- Personal vs legal advice
 - Attorney-client privilege, **§ 1:16, 1:17**
 - Sarbanes-Oxley Act, **§ 8:3**
- Post employment representation of litigants, **§ 6:15**
- Privilege duty conflicts with counsel’s criminal defense, **§ 6:21**
- Public policy wrongful discharge claims, **§ 6:8**
- Qui tam suits by, **§ 6:17**
- Regulated industries, business vs legal advice distinction, **§ 1:16**
- Represented Party Contacts, this index
- Resignation, implications for inside counsel, **§ 3:1**
- Resignation duties and wrongful discharge claims, **§ 6:7**
- Retaliatory discharge
 - Generally, **§ 6:8**
 - Sarbanes-Oxley protections, **§ 8:10**
- Rights as employees
 - Generally, **§ 6:6 et seq.**
 - At-will employment, **§ 6:6**
 - Confidentiality duties and at-will status, **§ 6:6**
 - Contractual employment rights, **§ 6:10**
 - Discrimination law claims, **§ 6:9**
 - Documents, corporate, taking on termination of employment, **§ 6:16**
 - Loyalty duties and at-will status, **§ 6:6**
 - Public policy wrongful discharge claims, **§ 6:8**
 - Qui tam suits, **§ 6:17**
 - Resignation duties and wrongful discharge claims, **§ 6:7**
 - Retaliatory discharge
 - Generally, **§ 6:8**
 - Sarbanes-Oxley protections, **§ 8:10**
 - Whistleblower protections, **§ 6:11**

INDEX

EMPLOYERS AS CLIENTS

—Cont'd

- Rights as employees—Cont'd
 - Wrongful termination
 - Generally, § 6:7, 6:8
 - Sarbanes-Oxley protections, § 8:10
- Sarbanes-Oxley duties
 - Generally, § 7:1 *et seq.*
 - See also Sarbanes-Oxley Act, this index
- Sentry role of inside counsel under Sarbanes Oxley, § 6:12
- Special status proposals for in-house counsel, § 1:5
- Subordinate attorneys, Sarbanes-Oxley Act liabilities, § 8:8
- Subsidiaries of corporate employer, communications with employees of, § 1:3
- Target status in criminal investigations, § 6:20
- Unsolicited advice from counsel as privileged, § 1:8
- Up-the-ladder reporting rules
 - Generally, § 8:1 *et seq.*
 - See also Sarbanes-Oxley Act, this index
- Vicarious liability within counsel's office, § 3:5
- Whistleblower protections, § 6:11
- Wrongful termination
 - Generally, § 6:7, 6:8
 - Sarbanes-Oxley protections, § 8:10

ETHICAL CONCERNS

- Generally, § 3:1 *et seq.*
- Administrative practice sanctions, § 6:12
- Advice, affirmative duty to offer, § 3:13
- At will status and ethical dilemmas, § 6:6
- Business advice, § 3:17
- Business vs legal functions
 - Generally, § 3:3
- Director, attorney serving as
 - Generally, § 3:32
 - Liabilities, § 6:23

ETHICAL CONCERNs—Cont'd

- Choice of law
 - Disciplinary authority, § 3:2
- Close corporations, legal advisors to, § 3:16
- Competitors, limitations on working with, § 3:34
- Compliance programs, § 3:30
- Confidentiality duties, § 3:11
- Conflicts of Interest, this index
- Consultation, ethical limits, § 3:35
- Contractor Business Ethics Compliance Program and Disclosure Requirements, App 5-12
- Control contests
 - Identifying the client, § 3:9
 - Independent professional judgment, duty to provide, § 3:6
 - Reviews of, § 3:1
- Coventurers, duties to, § 3:15
- Criminal liability of corporate counsel, § 6:18 *et seq.*
- Defenses to criminal liability charges, § 6:22
- Derivative actions, identifying the client, § 3:10
- Directors
 - Attorneys serving as
 - Generally, § 3:32
 - Liabilities, § 6:23
 - Disciplinary authority and choice of law, § 3:2
- Disqualification motions and, § 3:1
- Documents, corporate, taking on termination of employment, § 6:16
- Due care duties, § 3:7
- False statements, § 3:19
- Federal agency practice restrictions, § 6:12
- Federal attorneys, § 3:26
- Firm, treatment of counsel's office as
 - Imputed disqualification, § 3:4
 - Supervisorial liability, § 3:30
 - Vicarious liability, § 3:5, 3:30
- Former clients, limitations on working with competitors, § 3:34
- Government attorneys, § 3:26

ETHICAL CONCERNS—Cont'd

Identifying the client
 Control contests, **§ 3:9**
 Corporate affiliates, **§ 3:8**
 Derivative actions, **§ 3:10**
 Imputed disqualification, **§ 3:4**
 Inadvertent disclosure of privileged materials, opponents' duties, **§ 2:11**
 Independent professional judgment, duty to provide, **§ 3:6**
 Informed, duty to be, **§ 3:12**
 Internet business and license requirements, **§ 3:2**
 Law violations by officers, **§ 3:7**
 Legal advice, **§ 3:6 et seq.**
 Liabilities
 Generally, **§ 3:1, 6:1 et seq.**
 See also Liabilities, this index
 Administrative practice restrictions, **§ 6:12**
 Attorney-directors, **§ 6:23**
 Criminal liability of corporate counsel, **§ 6:18 et seq.**
 Indemnification, **§ 6:14**
 Malpractice insurance, **§ 6:13, App 6-1**
 Privilege duty conflicts with counsel's criminal defense, **§ 6:21**
 License requirements for inside counsel, **§ 3:2**
 Litigation activities, **§ 3:19**
 Main office location and multi-jurisdictional practice, **§ 3:2**
 Management-ownership conflicts, **§ 3:7**
 Misrepresentation by silence, **§ 3:17**
 Moral turpitude and non-legal functions, **§ 3:3**
 Multi-jurisdictional practice, **§ 3:2**
 Multi-state practice, **§ 3:2**
 Negotiators, attorneys acting as, **§ 3:17**
 No-contact rule, **§ 3:22**
 Noisy withdrawal, **§ 3:19, 3:20, 8:4, 8:10**

ETHICAL CONCERNS—Cont'd

Officers, errant, duties to
 Advise on potential legal risks and dealing, **§ 3:14**
 Opinions of ABA Committee on Ethics and Professional Responsibility, **App 3-14**
 Partners, duties to, **§ 3:15**
 Partners, firm, **§ 3:30**
 Perjury, **§ 3:19**
 Permissive withdrawal, **§ 3:20**
 Practice sanctions in regulated industries, **§ 6:12**
 Press contact, **§ 3:33**
 Privilege duty conflicts with counsel's criminal defense, **§ 6:21**
 Pro hac vice admissions in foreign jurisdictions, **§ 3:2**
 Professional conduct rule conflicts with up-the-ladder reporting, **§ 8:9, 8:11**
 Public policy wrongful discharge claims, **§ 6:8**
 Regulators, dealing with, **§ 3:31**
 Represented Party Contacts, this index
 Resignation as duty
 Generally, **§ 3:20**
 Implications for inside counsel, **§ 3:1**
 Wrongful termination claims, **§ 6:7**
 Restatement of Law Governing Lawyers, **App 5-11**
 Sarbanes-Oxley Act requirements
 Generally, **§ 7:1 et seq.**
 See also Sarbanes-Oxley Act, this index
 Conflicts created by, **§ 8:11**
 SEC practice sanctions, **§ 6:12**
 Settlement negotiations, **§ 3:18**
 Silence, misrepresentation by, **§ 3:17**
 State professional conduct rule conflicts with up-the-ladder reporting, **§ 8:9, 8:11**
 Substantially related matter, limitations on working with competitors, **§ 3:34**
 Transnational practice, **§ 3:2**

INDEX

ETHICAL CONCERNS—Cont'd

- Trial publicity, § 3:33
- Truth telling and business advice, § 3:17
- Unmeritorious claims, § 3:18
- Up-the-ladder reporting
 - Generally, § 8:1 *et seq.*
 - See also Sarbanes-Oxley Act, this index
- Vicarious liability, § 3:5
- Withdrawal, permissive, § 3:20
- Work product protection, loss of by unethical conduct, § 2:9

EXPERTS

- Agents of corporation or of counsel, § 1:7
- Privileged communications with, § 1:6
- Retainer letter privilege provision, **App 1-3**
- Selection of, § 4:17
- Work product doctrine, § 2:4

FALSE CLAIMS ACT

- Generally, § 5:20, **App 5-10**
- Confidentiality duty conflicts, § 6:17
- Criminal conviction, effect of, § 5:34
- Inside counsel, *qui tam* suits by, § 6:17
- Parallel civil and criminal proceedings, § 5:4, 5:34
- Qui tam* relators, inside counsel as, § 6:17
- Treble damages, § 5:34

FEDERAL COURTS

- Privilege rules, § 1:1

FIDUCIARY DUTIES

- Affiliated corporation conflicts, § 3:8
- Up-the-ladder reporting of violations, § 8:3

FINANCIAL INSTITUTIONS

- See also Regulated Industries, this index
- Advancements of defense costs to officers and directors
 - Generally, § 5:8

FINANCIAL INSTITUTIONS

—Cont'd

- Advancements of defense costs to officers and directors—Cont'd
- Agreement for indemnification and advancement, **App 5-1**
- Affiliates subject to special rules, § 3:8
- Aiding and abetting liability of counsel, § 6:19
- Bank Secrecy Act, § 5:20
- Currency transaction reports, § 5:5, 5:20
- Directors' obligations, § 3:32
- Ethical reporting obligations, § 3:31
- Financial Crimes Enforcement Network (FINCEN), § 5:20
- Indemnification of officers and directors
 - Generally, § 5:8
 - Agreement for indemnification and advancement, **App 5-1**
- Reporting of criminal activity, § 3:31, 5:4, 5:20
- Suspicious activity reports (SAR), § 5:20

FINANCIAL RECORDS

- See Sarbanes-Oxley Act, this index

FOREIGN COUNTRY PRACTICE

- Ethical issues, § 3:2

FORMER CLIENTS

- Ethical concerns, limitations on working with competitors, § 3:34

FRAUD

- Advice, affirmative duty of inside counsel to offer, § 3:13
- Business vs legal functions and ethics rules, § 3:3
- Caremark liability, § 5:1
- Confidentiality and fraud prevention duties of counsel, § 6:17
- Corporate Fraud Task Force, § 5:16
- Crime-fraud exceptions, § 1:26
- Criminal
 - See also Criminal Proceedings, this index

FRAUD—Cont'd

- Criminal—Cont'd
 - Collateral consequences, § 5:31 et seq.
 - Health care companies, § 5:20
 - Investigations, this index
 - Materiality, § 5:22
 - Medicare, § 5:20
 - Securities fraud liabilities of counsel, § 6:5
 - Silence, misrepresentation by, § 3:17

GARNER DOCTRINE

- Attorney-client privilege, § 1:27
- Work product privilege, § 2:13

GOVERNMENT CONTRACTS

- See Public Contracts, this index

GRAND JURY INVESTIGATIONS

- Generally, § 5:15 et seq.
- See also Criminal Proceedings, this index

HEALTH CARE PROVIDERS

- Administrative actions following criminal prosecutions, § 5:35
- Civil Monetary Penalty Act, § 5:35
- Criminal convictions, § 5:33
- Exclusion orders
 - Generally, § 5:33
 - Federal Regulations, App 5-9
 - Medicare fraud, § 5:33, App 5-9

IDENTIFYING THE CLIENT

- Control contests, § 3:9
- Derivative actions, § 3:10
- Parent and subsidiaries, § 3:8

INDEMNIFICATION

- Generally, § 5:8
- Agreement for indemnification and advancement, App 5-1
- Counsel, indemnification rights of, § 6:14

INDEPENDENT PROFESSIONAL JUDGMENT

- Duty to provide, § 3:6

INFORMED, DUTY TO BE

- Generally, § 3:12

IN-ISSUE DOCTRINE

- Generally, § 1:25

INSURANCE

- D & O policies, § 5:8
- Malpractice policies for inside counsel, § 6:13, App 6-1

INTERNATIONAL PRACTICE

- Ethical issues, § 3:2
- Sarbanes-Oxley Act, § 8:11

INTERNET ACTIVITIES

- License requirement implications, § 3:2

INVESTIGATIONS

- Affirmative duties under Sarbanes-Oxley, § 8:3
- Attorney-client privilege, § 1:18
 - Admonition memorandum, App 5-5
 - Employee interviews, § 1:3
 - Investigatory functions of in-house counsel, § 1:8
 - Computer files, § 5:17
 - Confidentiality admonitions, § 1:4
 - Crime-fraud exception to attorney-client privilege, § 1:26
 - Criminal proceedings
 - Generally, § 5:1 et seq.
 - Confidentiality preservation, § 5:11
 - Destruction of documents, § 5:12, 5:17
 - Document collection
 - Generally, § 5:12
 - Notice to employees of pending investigation, App 5-2
 - Inside counsel investigations, § 5:9 et seq.
 - Interviews of employees, § 5:13, App 5-5
 - Notifying employees, § 5:12
 - Obstruction of justice concerns, § 5:14
 - Prosecutor interviews
 - Generally, § 5:13
 - Notice to employees of pending investigation, App 5-2
 - Reports, § 5:11

INDEX

INVESTIGATIONS—Cont'd

Defense Industry Initiative on Business Ethics and Conduct, **§ 5:4**
Document collection
 Generally, **§ 5:12**
 Destruction of documents, **§ 5:12, 5:17**
 Notice to employees of pending investigation, **App 5-2**
Employee discipline during, **§ 5:38**
Ethical issues in dealing with regulators, **§ 3:31**
Grand jury investigations
 Generally, **§ 5:15 et seq.**
 See also Criminal Proceedings, this index
 Counsel as target, **§ 6:20**
 Subpoenas of corporate counsel, **§ 6:18**
Immunity grants, **§ 5:16**
Interviews of employees
 Generally, **§ 5:13**
 Admonition memorandum, **App 5-5**
 Criminal proceedings, **§ 5:13**
 Notice to employees of pending investigation, **App 5-2**
Investigators' communications, **§ 1:6**
Obstruction of justice concerns
 Generally, **§ 5:14**
 Notice to employees of pending investigation, **App 5-2**
Operational, **§ 5:9**
Outside counsel, use in, **§ 1:18**
Privilege admonitions, **§ 1:4**
Privileged communications with investigators, **§ 1:6**
Prosecutor interviews
 Generally, **§ 5:13**
 Notice to employees of pending investigation, **App 5-2**
Purpose of, **§ 1:18**
Records custodians
 Generally, **§ 5:17**
 Instructions to custodian, **App 5-3**
 Instructions to employees, **App 5-4**
Represented party contacts
 Generally, **§ 3:26**

INVESTIGATIONS—Cont'd

Represented party contacts—Cont'd
 See also Represented Party Contacts, this index
 No-contact admonitions, **§ 3:29**
Risks of criminal investigations, **§ 5:10**
Sarbanes-Oxley Act investigative attorneys, **§ 8:2, 8:5**
SEC requirements, **§ 1:24**
Self-incrimination privilege, applicability to business entities, **§ 5:4**
Subpoenas of corporate counsel, **§ 6:18**
Target status and representation by independent counsel, **§ 1:4**
Targets of grand jury investigations
 Generally, **§ 5:16**
 Counsel as target, **§ 6:20**
 Self-incrimination privilege, **§ 5:16**
Up-the-ladder reporting rules
 Generally, **§ 8:1 et seq.**
 See also Sarbanes-Oxley Act, this index
Warnings to employee targets, **§ 1:4**
Wells submissions, **§ 5:22**
Work product protection for materials developed in
 Generally, **§ 2:2**
 Anticipation of litigation requirement, **§ 2:7**
 Undue hardship, **§ 2:13**

JOINT DEFENSE ARRANGEMENTS

Generally, **§ 1:4**
Criminal proceedings, **§ 5:8**
Non-waiver provision, **App 1-2**

JOINT REPRESENTATION

Corporation and employees, conflicts, **§ 1:4**

LEGAL ADVICE

Attorney-Client Privilege, this index
Regulated industries and business vs legal advice distinction, **§ 1:16**
Work Product Doctrine, this index

LEGAL COMPLIANCE COMMITTEES (QLCC)

See Qualified Legal Compliance Committees, this index

LIABILITIES

- Advice, affirmative duty of inside counsel to offer, **§ 3:13**
- Agents of counsel, **§ 3:30**
- Aiding and abetting liability of counsel, **§ 6:5, 6:19**
- Certification requirements, Sarbanes-Oxley, **§ 7:2**
- Collateral consequences of criminal convictions, **§ 5:31 et seq.**
- Conflicts of interest, **§ 6:2**
- Corporate
 - Collateral consequences of criminal convictions, **§ 5:31 et seq.**
 - Criminal liability, **§ 5:2, 5:5**
 - Dissolved corporation, **§ 5:36**
 - Employee discipline during investigations, **§ 5:38**
 - False Claims Act, this index
 - Parent-subsidiary, **§ 5:37**
 - Responsible corporate officer doctrine, **§ 5:6**
 - Successor corporation, **§ 5:36**
 - Vicarious liability of counsel, **§ 6:2**
- Counsel
 - Generally, **§ 6:1**
 - ABA Rules violations, **§ 3:1**
 - Advice, affirmative duty of inside counsel to offer, **§ 3:13**
 - Agents of, **§ 3:30**
 - Aiding and abetting liability, **§ 6:5, 6:19**
 - Confidentiality obligations, **§ 6:3**
 - Conflicts of interest, **§ 6:2**
 - Derivative action liabilities, **§ 6:5**
 - Disclosure obligations, **§ 6:5**
 - Employees, liabilities to, **§ 6:4**
 - Employer, liabilities to, **§ 6:3**
 - Ethics rules and, **§ 3:1**
 - In-house counsel, liabilities of, **§ 6:5**
 - Malpractice action by client employer, **§ 6:3**
 - Officers, liabilities to, **§ 6:4**

LIABILITIES—Cont'd

- Counsel—Cont'd
 - Reporting obligations, **§ 6:5**
 - SEC sanctions, **§ 6:12**
 - Securities fraud, **§ 6:5**
 - Shareholders, liabilities to, **§ 6:5**
 - Successor owners, suits by, **§ 6:2**
 - Supervisor lawyers, **§ 3:30**
 - Supervisorial liability, **§ 3:30**
 - Third parties, liabilities to, **§ 6:5**
 - Vicarious liability, **§ 3:5, 3:30, 6:2**
- Criminal
 - See also Criminal Proceedings, this index
 - Collateral consequences, **§ 5:31 et seq.**
 - Derivative action liabilities of counsel, **§ 6:5**
 - Disclosure obligations of counsel, **§ 6:5**
 - Dissolved corporations, **§ 5:36**
 - Employee discipline during investigations, **§ 5:38**
 - Employees, counsel liabilities to, **§ 6:4**
 - False Claims Act, this index
 - Firm, treatment of counsel's office as
 - Supervisorial liability, **§ 3:30**
 - Vicarious liability, **§ 3:5, 3:30**
 - In-house counsel, liabilities of, **§ 6:5**
 - Malpractice insurance, **§ 6:13, App 6-1**
 - Officers
 - Counsel liabilities to, **§ 6:4**
 - Responsible corporate officer doctrine, **§ 5:6**
 - Outside counsel, **§ 6:3**
 - Parent-subsidiary, **§ 5:37**
 - Privity defenses, erosion of, **§ 6:3**
 - Qui tam actions. See False Claims Act, this index
 - Reporting obligations of counsel, **§ 6:5**
 - Responsible corporate officer doctrine, **§ 5:6**
 - Sarbanes-Oxley Act
 - Certification requirements, **§ 7:2**
 - Subordinate attorneys, **§ 8:8**

INDEX

LIABILITIES—Cont'd

- Sarbanes-Oxley Act—Cont'd
 - Up-the-ladder reporting, § 8:7
- SEC sanctions, § 6:12
- Securities fraud liabilities of counsel, § 6:5
- Shareholders, counsel liabilities to, § 6:5
- Subordinate attorneys, Sarbanes-Oxley Act, § 8:8
- Successor liability, § 5:36
- Successor owners, suits by, § 6:2
- Supervisor lawyers, § 3:30
- Third parties, liabilities to, § 6:5
- Up-the-ladder reporting rule sanctions, § 8:1
- Vicarious
 - Agents of counsel, § 3:30
 - Counsel for corporations' torts, § 6:2
 - Criminal liability of corporations, § 5:2, 5:5
 - Firm, treatment of counsel's office as, § 3:5, 3:30
 - Responsible corporate officer doctrine, § 5:6

LICENSE REQUIREMENTS

- Generally, § 3:2
- Association of Corporate Counsel (ACC), list of states authorizing non-locally licensed in-house counsel, chart, **App 3-1**
- Attorney-client privilege claims and, § 1:5
- Conflicts of law, § 3:2
- Employed vs retained counsel, ABA rule, § 3:2
- Internet activities, § 3:2
- Multi-state practice, § 3:2
- Pro hac vice admissions, § 3:2

LITIGATION SUPERVISION

- Generally, § 4:1 et seq.
- Approvals, management, § 4:16
- Attorney-client privilege protection, § 4:3
- Billing considerations, § 4:5 et seq.
- Budgeting and billing, § 4:6
- Complaints, § 4:19

LITIGATION SUPERVISION

—Cont'd

- Confidential information, access of inside counsel to, § 4:24
- Conflicts of interest, § 4:19
- Conflicts of interest and separate counsel, § 4:18
- Database development, § 4:17
- Demonstrative evidence, § 4:17
- Discovery plan, § 4:14
- Document imaging, § 4:17
- Employees, separate counsel for, § 4:18
- Experts, selection of, § 4:17
- Fees, § 4:5 et seq.
- Incentivized billing, § 4:7
- Initial assessment, § 4:3
- Inside litigators, use of, § 4:4
- Jury consultants, selection of, § 4:17
- Management approvals, § 4:16
- Management model, § 4:2
- News coverage, § 4:21
- Officers, separate counsel for, § 4:18
- Party conflicts, § 4:18
- Periodic evaluations, § 4:19
- Plaintiff, corporation as, § 4:22
- Planning, § 4:2
- Public relations, § 4:21
- Reactive vs proactive defense, § 4:3
- Report cards, § 4:19
- Reporting mechanisms, § 4:8 et seq.
- Risk analyses, § 4:2, 4:3
- Scheduling problems, § 4:19
- Selection of outside counsel, § 4:4
- Settlement decisions, § 4:20
- Staff litigators, use of, § 4:4
- Staffing changes, § 4:19
- Staffing decisions, § 4:4
- Strategic decisionmaking, § 4:15
- Strategic evaluation, § 4:3
- Strategic plan and monitoring, § 4:13 et seq.
- Task-based billing
 - Generally, § 4:5
 - PriceWaterhouseCoopers Report, **App 4-1**
- Trial books, § 4:12
- Trial practice, § 4:23

LITIGATION SUPERVISION**—Cont’d**

Work product protection, § 4:3

LOSS OF PRIVILEGES

Generally, § 1:21 et seq.

Attorney-client

Generally, § 1:21 et seq.

Crime-fraud exception, § 1:26

Deliberate disclosure, § 1:24

Derivative actions, § 1:27, 3:10

Discovery procedures and inadvertent disclosures, § 1:23

Garner doctrine, § 1:27

Negotiations, disclosures made during, § 1:24

Regulatory agencies, disclosures to, § 1:24

Common interest doctrine, § 1:4

Concealment challenges, § 1:1

Confidentiality of communications

Generally, § 1:8 et seq.

See also Attorney-Client Privilege, this index

Crime-fraud exception

Attorney-client, § 1:26

Work product, § 2:16

Deliberate disclosure

Attorney-client, § 1:24

Work product doctrine, § 2:12

Derivative actions

Generally, § 1:1

Garner doctrine, below

Discovery procedures and inadvertent disclosures, § 1:23

Garner doctrine

Attorney-client, § 1:27

Work product, § 2:13

Good cause showings, § 1:1

Inadvertent waiver

Attorney-client privilege, § 1:23, App 1-4

Work product doctrine, § 2:11

Manipulation challenges, § 1:1

Negotiations, disclosures made during

Attorney-client, § 1:24

Predictability of treatment of corporate clients, § 1:1

LOSS OF PRIVILEGES—Cont’d

Public policy challenges, § 1:1

Regulatory agencies, disclosures to Attorney-client privilege, § 1:24

Work product doctrine, § 2:12

Selective disclosure, § 1:21

Stranger, communications in presence of, § 1:3

Work product

Generally, § 2:9

Crime-fraud exception, § 2:16

Deliberate disclosures, § 2:12

Derivative actions, § 2:13

Ethics breaches, loss of protection through, § 2:9

Garner doctrine, § 2:13

Inadvertent waiver, § 2:11

Reasonable steps to protect, § 2:11

Regulatory agencies, disclosures to, § 2:12

Regulatory disclosures, § 2:12

Substantial need and undue hardship, § 2:13

LOYALTY DUTIES

Employed counsel duties and at-will status, § 6:6

MALPRACTICE

See Liabilities, this index

MALPRACTICE INSURANCE

Generally, § 6:13

Sample policy, App 6-1

MANAGEMENT-OWNERSHIP**CONFLICTS**

Generally, § 3:7

See also Derivative Actions, this index

Confidentiality duties and at-will status of inside counsel, § 6:6

Independent professional judgment, duty to provide, § 3:6

Loyalty duties and at-will status of inside counsel, § 6:6

Outside counsel representation of officers, § 3:14

MATERIALITY

Sarbanes-Oxley Act standards, § 8:3

INDEX

MATERIALITY—Cont'd
SEC disclosure requirements, **§ 5:22**

MEDIA
Ethical concerns, **§ 3:33**

MEDICARE AND MEDICAID
See Health Care Providers, this index

MERGERS AND ACQUISITIONS
See Control Contests, this index

MULTI-JURISDICTIONAL PRACTICE
Licensing requirements, **§ 3:2**

NEGOTIATIONS
Ethical issues, **§ 3:18**

NO-CONTACT RULE
See Represented Party Contacts, this index

NOISY WITHDRAWAL
Generally, **§ 3:19, 3:20, 8:4, 8:10**
See also Resignation, this index

NON-LOCAL LICENSES
Association of Corporate Counsel (ACC), list of states authorizing non-locally licensed in-house counsel, chart, **App 3-1**

OFFICERS, CORPORATE
Advancements of criminal defense costs
Generally, **§ 5:8**
Agreement for indemnification and advancement, **App 5-1**
As legal advisor, duties to constituents
advisie on potential legal risks and deal with errant officer, **§ 3:14**
Attorney-client privilege
Generally, **§ 1:4**
Former officers' right to assert, **§ 1:22**
Attorney-client relationships with, **§ 3:14**
CEO discussions and represented party contacts, **§ 3:25**
Chief Legal Officers, this index
Client and co-clients status, **§ 1:4**

OFFICERS, CORPORATE—Cont'd
Criminal liability of corporations for conduct of agents, **§ 5:2, 5:5**
Criminal proceedings and outside counsel, **§ 5:8**
Discipline during investigations, **§ 5:38**
Errant, duties to constituents
advisie on potential legal risks and deal with errant officer, **§ 3:14**
Indemnification of criminal defense costs
Generally, **§ 5:8**
Agreement for indemnification and advancement, **App 5-1**
Investigations, discipline during, **§ 5:38**
Joint defense arrangements, **§ 1:4**
Law violations by, ethical issues, **§ 3:7**
Malpractice claims of, **§ 6:4**
Outside counsel representation of
Generally, **§ 3:14, 4:18**
Criminal proceedings, **§ 5:8**
Represented Party Contacts, this index
Responsible corporate officer doctrine, **§ 5:6**
Sarbanes-Oxley Act certification requirements, **§ 7:2**
Scope of employment, agent's criminal acts in, **§ 5:5**
Target-of-investigation status and representation by independent counsel, **§ 1:4**
Up-the-ladder reporting rules
Generally, **§ 8:1 et seq.**
See also Sarbanes-Oxley Act, this index
Up-the-ladder reports to, **§ 8:4**
Waiver of privileges by, **§ 1:22**

OUTSIDE COUNSEL
Accommodation clients, **§ 5:8**
Attorney-client privilege
Generally, **§ 1:16**
Employee communications with, **§ 1:3**
Attorney-client relationship, **§ 1:3**

OUTSIDE COUNSEL—Cont'd

Billing considerations, § 4:5 *et seq.*
 Budgeting and billing, § 4:6
 Communications with, § 1:3
 Complaints about, § 4:19
 Confidential information, access of inside counsel to, § 4:24
 Conflicts of interest
 Generally, § 3:4
 Criminal prosecutions, § 5:8
 Litigation supervision, § 4:19
 Separate counsel, § 4:18
 Waivers, § 4:19
 Corporate family disputes, disqualification motions, § 3:8
 Criminal defense
 Generally, § 5:7, 6:19
 Accommodation clients, § 5:8
 Conflicts of interest, § 5:8
 Fee arrangements, § 5:7
 Individual liability for corporate crimes, opinions re, § 5:6
 Individuals, separate representation of, § 5:8
 Personal experience as factor, § 5:7
 Plea agreements, § 5:30
 Privileges, preservation of, § 5:9
 Decision to retain, § 3:9, 4:4
 Directorships, ethical issues in holding of, § 3:32
 Disqualification motions, corporate family disputes, § 3:8
 Document reviews by, § 5:17
 Duty to advise of inside vs outside counsel, § 3:13
 Employees, separate counsel for, § 4:18
 Engagement letter identifications of responsibilities, § 3:14
 Fee arrangements
 Generally, § 4:5 *et seq.*
 Corporate payment for individual's defense, § 5:8
 Criminal proceedings, § 5:7
 Grand jury investigations, § 5:15
 Inadvertent disclosures by, § 1:23
 Incentivized billing, § 4:7

OUTSIDE COUNSEL—Cont'd

Individual liability for corporate crimes, opinions re, § 5:6
 Investigations, use in, § 1:18
 Management approvals of litigation activities, § 4:16
 Multi-jurisdictional matters, § 3:2
 Officers
 Representation of, § 3:14
 Separate counsel for, § 4:18
 Party conflicts, § 4:18
 Personal experience as factor, criminal proceedings, § 5:7
 Privileges, preservation of in criminal proceedings, § 5:9
 Privity defenses, erosion of, § 6:3
 Responsibilities, engagement letter identifications of, § 3:14
 Sarbanes-Oxley obligations
 Generally, § 8:1 *et seq.*
 See also Sarbanes-Oxley Act, this index
 Selection of, § 4:4
 Staff litigators vs, strategic considerations, § 4:4
 Staffing changes, § 4:19
 Supervision
 Generally, § 4:1 *et seq.*
 See also Litigation Supervision, this index
 Task-based billing
 Generally, § 4:5
 PriceWaterhouseCoopers Report, **App 4-1**
 Trial practice, role of inside counsel in, § 4:23
 When decisions required, § 3:9
 Work product doctrine, § 2:5

PARENT AND SUBSIDIARY CORPORATIONS

Attorney client privilege
 Communications with subsidiary employees, § 1:3
 Waivers, § 1:22
 Communications between and confidentiality, § 1:12
 Fiduciary duties in affiliated corporation conflicts, § 3:8

INDEX

PARENT AND SUBSIDIARY CORPORATIONS—Cont'd
Identifying the client, § 3:8
Independent professional judgment, duty to provide, § 3:6
Liabilities in criminal proceedings, § 5:37
Prima facie conflicts, § 3:8
Waiver of privileges, § 1:22

PARTY CONTACTS
See Represented Party Contacts, this index

PATENT WORK
Attorney-client privilege, § 1:6, 1:19

PERJURY
Ethical concerns, § 3:19

PERMISSIVE WITHDRAWAL
Generally, § 3:20

PERSONAL COUNSEL
Use of term, § 6:4

PRESS CONTACT
Ethical concerns, § 3:33

PRIVILEGES
Attorney-Client Privilege, this index
Confidentiality, this index
Grand jury investigations, § 5:16
Loss of Privileges, this index
Multi-jurisdictional practice, ethical issues, § 3:2
Self-incrimination. See Criminal Proceedings, this index
Waiver of Privilege, this index
Work Product Doctrine, this index

PROFESSIONAL CONDUCT RULES
See Ethical Concerns, this index

PROTECTIVE ORDERS
Represented party contacts, § 3:23

PROXY FIGHTS
See Control Contests, this index

PUBLIC CONTRACTS
Contractor Business Ethics Compliance Program and Disclosure

PUBLIC CONTRACTS—Cont'd
Requirements, App 5-12
Debarments of Government Contractors, this index
Defense contractors, § 5:20
Defense Industry Initiative on Business Ethics and Conduct, § 5:4
Disbarment of government contractors, Federal Regulations, App 5-8
Eligibility
Generally, § 5:32
Federal Regulations, App 5-8
False Claims Act, § 5:20
Suspension of government contractors
Generally, § 5:32
Federal Regulations, App 5-8

PUBLIC POLICY
Privilege challenges, § 1:1

PUBLIC RELATIONS ACTIVITIES
Attorney-client privilege, § 1:6
Litigation supervision, § 4:21
Work product doctrine, § 2:6

PUBLICITY
Ethical concerns, § 3:33

QUALIFIED LEGAL COMPLIANCE COMMITTEES (QLCC)
Generally, § 8:4
CLO reports to, § 8:6

QUI TAM ACTIONS
See False Claims Act, this index

RECORDS
Accountants' records, § 7:4
Alterations, § 7:4
Custodians
Generally, § 5:17
Instructions to custodian, App 5-3
Instructions to employees, App 5-4
Destruction of Documents, this index
Falsification, § 7:4
Privileges, this index
Sarbanes-Oxley Act, this index
Subpoenas duces tecum, § 5:17

REGULATED INDUSTRIES

Administrative actions following criminal prosecutions, **§ 5:35**
 Business vs legal advice distinction, **§ 1:16**
 Cease and desist orders, **§ 6:12**
 Generally, **§ 6:12**
 Sarbanes-Oxley Act, **§ 8:7**
 Certifications of reports
 Generally, **§ 7:1 et seq.**
 See also Sarbanes-Oxley Act, this index
 Collateral consequences of criminal convictions, **§ 5:31 et seq.**
 Criminal Proceedings, this index
 Debarments of Government Contractors, this index
 Defense contractors, **§ 5:20**
 Disclosures to regulators and privilege waivers
 Attorney-client privilege, **§ 1:24**
 Work product doctrine, **§ 2:12**
 Ethical issues in dealing with regulators, **§ 3:31**
 False Claims Act, **§ 5:20**
 Financial Institutions, this index
 Health Care Providers, this index
 Indemnification of individual defense costs
 Generally, **§ 5:8**
 Agreement for indemnification and advancement, **App 5-1**
 Investigations, this index
 Reporting of criminal conduct
 Generally, **§ 5:20**
 Sarbanes-Oxley Act, **§ 8:9**
 Represented party contacts, government investigations
 Generally, **§ 3:26**
 No-contact admonitions, **§ 3:29**
 Required disclosures, **§ 5:2**
 SEC Regulated Activities, this index
 Self-incrimination privilege, applicability to business entities, **§ 5:4**
 Voluntary disclosure programs, **§ 5:20, 5:21**

RELATED ENTITIES

Affiliated Corporations, this index
 Parent and Subsidiary Corporations, this index

REPORTS AND REPORTING

See also Whistleblowers, this index
 Accident reports, work product protection, **§ 2:7, 2:13**
 Bank Secrecy Act, **§ 5:20**
 Certifications of reports
 Generally, **§ 7:1 et seq.**
 See also Sarbanes-Oxley Act, this index
 Chief legal officers (CLO), **§ 8:6**
 Criminal conduct
 Generally, **§ 5:20**
 See also Criminal Proceedings, this index
 Currency transaction reports (CTR), **§ 5:5, 5:20**
 Liabilities of counsel, **§ 6:5**
 Self reporting adjustments to sentencing guidelines, **§ 5:30**
 Suspicious activity reports (SAR), **§ 5:20**
 Up-the-ladder reporting rules
 Generally, **§ 8:1 et seq.**
 See also Sarbanes-Oxley Act, this index

**REPRESENTED PARTY
CONTACTS**

Generally, **§ 3:21 et seq.**
 Admonitions. No contact admonitions, below
 Agents, contacts through, **§ 3:25**
 Bright-line rules and gray areas, **§ 3:23**
 Circumventions of no-contact rule, **§ 3:25**
 Criminal proceedings, **§ 5:13**
 Generally, **§ 3:26**
 No-contact admonitions, **§ 3:29**
 Current employees, **§ 3:23**
 Directors
 Generally, **§ 3:22**
 No-contact admonitions, **§ 3:28**
 Disqualification sanctions, **§ 3:21**

INDEX

REPRESENTED PARTY

CONTACTS—Cont'd

Employees

- Generally, § 3:21 *et seq.*
- No-contact admonitions, § 3:28

Federal government as litigant, § 3:27

Federal investigations

- Generally, § 3:26
- No-contact admonitions, § 3:29

Former employees, § 3:21, 3:24

Government investigations

- Generally, § 3:26
- No-contact admonitions, § 3:29

Investigations

- Generally, § 3:26
- No-contact admonitions, § 3:29

No-contact admonitions

- Generally, § 3:28
- Federal investigations, § 3:29

Officers

- Generally, § 3:22
- CEO-level contacts, § 3:25
- No-contact admonitions, § 3:28

Pre-litigation contacts, § 3:22

Privileges, abrogation of, § 3:21

Prosecutor interviews, § 5:13

Prosecutors' activities, § 3:26, 3:29

Protective orders, § 3:23

Sanctions, § 3:21

Scope of no-contact rule, § 3:22

Supervisory personnel, § 3:23

Third parties, contracts through, § 3:25

Waiver of privileges through, § 3:21

RESIGNATION

Confidentiality, post-termination, § 3:20

Duty to resign as ethical issue

- Generally, § 3:20
- Wrongful termination claims, § 6:7

Implications for inside counsel, § 3:1

Management-ownership conflicts, § 3:7

Noisy withdrawal, § 3:19, 3:20, 8:4, 8:10

Permissive withdrawal, § 3:20

RESIGNATION—Cont'd

Private vs employed counsel, § 3:20, 6:7

Up-the-ladder attempts to resolve issue, § 3:20

RESPONDEAT SUPERIOR

Collective corporate knowledge doctrine and criminal liability, § 5:5

RISKS

Criminal investigations, § 5:10

Litigation risk analyses, § 4:2, 4:3

SARBANES-OXLEY ACT

Generally, § 7:1 *et seq.*

Accountants' records, § 7:4

Affirmative duties of CLOs, § 8:3

Alteration of records, § 7:4

Appropriate responses to up-the-ladder reports, § 8:4

Attorney-client privilege conflicts, § 8:9, 8:11

Attorneys subject to Act, § 8:2

Cease and desist orders, § 8:7

Certification requirements

- Generally, § 7:2
- Criminal liabilities, § 7:3
- Officers' signatures, § 7:2
- SEC rules, § 7:2

Confidentiality conflicts with up-the-ladder reporting rules, § 8:9

Corporate governance standards, § 7:1

Criminal liabilities, § 7:3

Criminal prosecutions, § 5:2

Destruction of documents

- Generally, § 5:12
- Criminal penalties, § 7:1
- Notice to employees of pending investigation, App 5-2

Document retention, § 8:9

Electronic records, § 7:4

Falsification of records, § 7:4

Federal standards for financial reports, § 7:1

Foreign law violations and up-the-ladder reporting, § 8:3

Gatekeeper role of inside counsel, § 6:12

SARBANES-OXLEY ACT—Cont'd

- Good faith of reporter, § 8:11
- Internal controls standards, § 7:2
- Investigative attorneys, § 8:2, 8:5
- Legal compliance committees (QLCC)
 - Generally, § 8:4
 - CLO reports to, § 8:6
- Materiality and up-the-ladder reporting rules, § 8:3
- Materiality of violations, § 8:3
- No-violation opinions and up-the-ladder reporting, § 8:3
- Officers' signatures, § 7:2
- Officers who must be informed under up-the-ladder reporting, § 8:4
- Outside counsel, retaliation against, § 8:10
- Oversight Board, § 7:4
- Personal legal advice and up-the-ladder reporting rules, § 8:3
- Practice before SEC, § 8:2
- Practice status of employee-attorneys, § 8:2
- Preemption of conflicting rules, § 8:11
- Professional conduct rule conflicts with up-the-ladder reporting, § 8:9, 8:11
- Reasonable responses to up-the-ladder reports, § 8:4
- Retaliatory discharges of reporters, § 8:10
- Sanctions, § 8:7
- Scope of Act, § 8:2
- SEC certification rules, § 7:2
- Sentry role of inside counsel, § 6:12
- Signatures on certifications, § 7:2
- State professional conduct rule conflicts with up-the-ladder reporting, § 8:9, 8:11
- Subordinate attorneys, up-the-ladder reporting, § 8:8
- Supervisory attorneys, § 8:2
- Supervisory attorneys and up-the-ladder reporting rules, § 8:6, 8:8
- Up-the-ladder reporting rules
 - Generally, § 8:1 et seq.
 - Affirmative duties of CLOs, § 8:3

SARBANES-OXLEY ACT—Cont'd

- Up-the-ladder reporting rules
 - Cont'd
 - Appropriate responses, § 8:4
 - Attorney-client privilege conflicts, § 8:9, 8:11
 - Attorneys subject to, § 8:2
 - CLO responsibilities, § 8:6
 - Conduct triggering, § 8:3
 - Confidentiality conflicts, § 8:9
 - Document retention, § 8:9
 - Documentation requirements, § 8:4
 - Foreign law violations, § 8:3
 - Good faith of reporter, § 8:11
 - Initial requirements, § 8:4
 - Investigative attorneys, § 8:2, 8:5
 - Involved officers, reports to, § 8:4
 - Materiality of violations, § 8:3
 - No-violation opinions, § 8:3
 - Officers who must be informed, § 8:4
 - Personal legal advice, § 8:3
 - Practice before SEC, § 8:2
 - Practice status of employee-attorneys, § 8:2
 - Preemption of conflicting rules, § 8:11
 - Professional conduct rule conflicts, § 8:9, 8:11
 - Reasonable responses, § 8:4
 - Retaliatory discharges, § 8:10
 - Sanctions, § 8:1, 8:7
 - Subordinate attorneys, § 8:8
 - Supervisory attorneys, § 8:2
 - Supervisory attorneys, § 8:6, 8:8
 - Triggers, § 8:3
 - Violations, § 8:7
 - Violations of up-the-ladder reporting, § 8:7
 - Whistleblower protections, § 6:11
- SCOPE OF EMPLOYMENT TEST**
 - Attorney-client privilege, § 1:3
- SCREENING PROCEDURES**
 - Conflicts of interest, § 3:4
- SEC REGULATED ACTIVITIES**
 - Accountants records, § 7:4

INDEX

SEC REGULATED ACTIVITIES

—Cont'd

- Aiding and abetting liability of counsel, § 6:5
- Cease and desist orders, § 6:12
- Certifications of reports
 - Generally, § 7:1 et seq.
 - See also Sarbanes-Oxley Act, this index
- Completeness of disclosures, § 5:22
- Counsel, securities fraud liabilities of, § 6:5
- Criminal liabilities of successor corporations, § 5:36
- Currency transaction reports (CTR), § 5:20
- Disclosure laws and criminal proceedings, § 5:22
- FD Regulation disclosures, § 5:22
- Insider trading, § 5:22
- Practice before SEC, § 8:2
- Practice sanctions, § 6:12
- Sarbanes-Oxley Act requirements
 - Generally, § 7:1 et seq.
 - See also Sarbanes-Oxley Act, this index
- Securities law disclosures and criminal proceedings, § 5:22
- S-K disclosures, § 5:22
- Successor corporations, liabilities of, § 5:36
- Supervisor status of CLOs, § 6:12
- Suspicious activity reports (SAR), § 5:20
- Up-the-ladder reporting rules
 - Generally, § 8:1 et seq.
 - See also Sarbanes-Oxley Act, this index
- Wells submissions, § 5:22

SETTLEMENTS

- Criminal proceeding plea agreements
 - Generally, § 5:30
 - Form, App 5-7
- Global settlements of civil and criminal charges, § 5:34
- Litigation, § 4:20
- Negotiations, ethical issues, § 3:18
- Wells submissions, § 5:22

SHAREHOLDERS

- Close corporations, legal advisors to, § 3:16
- Control Contests, this index
- Corporations as Clients, this index
- Counsel liabilities to, § 6:5
- Derivative Actions, this index
- Management-Ownership Conflicts, this index

STATE HEALTH PROGRAMS

- Criminal proceedings, Federal Regulations, App 5-9

SUBJECT MATTER TEST

- Attorney-client privilege, § 1:3

SUBORDINATE ATTORNEYS

- Sarbanes-Oxley Act liabilities, § 8:8

SUBSTANTIALLY RELATED MATTER

- Ethical concerns, limitations on working with competitors, § 3:34

SUCCESSOR CORPORATIONS

- Criminal liabilities, § 5:36

SUPERVISORY ATTORNEYS

- See also Chief Legal Officers, this index
- Ethical issues, § 3:30
- Up-the-ladder reporting rules, § 8:6, 8:8

SUSPENSION OF GOVERNMENT CONTRACTORS

- Generally, § 5:32
- Federal Regulations, App 5-8

SUSPICIOUS ACTIVITY REPORTS (SAR)

- Generally, § 5:20

SWORD AND SHIELD DOCTRINE

- Generally, § 1:25

TAKEOVERS

- See Control Contests, this index

TAX MATTERS

- Attorney-client privilege, § 1:16, 1:20

TORTS

Crime-fraud exception to privileges, applicability to intentional tort actions, **§ 2:16**

TRANSNATIONAL PRACTICE

Ethical issues, **§ 3:2**

TRIAL PUBLICITY

Ethical concerns, **§ 3:33**

TRIBUNAL TRUMPS PRINCIPLE

Generally, **§ 3:2**

UNAUTHORIZED PRACTICE OF LAW

See License Requirements, this index

UNION COUNSEL

Conflicts of interest, **§ 6:4**

UNMERITORIOUS CLAIMS

Generally, **§ 3:18**

UPJOHN TEST

Attorney-client privilege, **§ 1:3**

UP-THE-LADDER REPORTING

See Sarbanes-Oxley Act, this index

WAIVER OF PRIVILEGE

Generally, **§ 1:21 et seq., 2:9**

Advice of counsel claims, **§ 1:25, 6:18**

Attorney-Client Privilege, this index

Authority of corporate agents, **§ 1:2**

Authority to waive, **§ 1:22**

Crime-fraud exception

Attorney-client, **§ 1:26**

Work product, **§ 2:16**

Delayed assertion of waiver, **§ 1:21**

Deliberate disclosures

Attorney-client, **§ 1:24**

Work product, **§ 2:12**

Derivative actions

Attorney-client privilege, **§ 1:27, 3:10**

Work product, **§ 2:13**

Directors, authority of, **§ 1:4**

Disclosure and waiver, **§ 1:21**

Discovery procedures and inadvertent disclosures, **§ 1:23**

WAIVER OF PRIVILEGE—Cont'd

Document reviews by outside counsel, **§ 5:17**

Garner doctrine

Attorney-client, **§ 1:27**

Work product, **§ 2:13**

Implied waiver, **§ 1:21, 1:23**

Inadvertent waiver

Attorney-client privilege, **§ 1:23, App 1-4**

Work product doctrine, **§ 2:11**

Intercorporate disclosures and confidential communications with counsel, **§ 1:12**

Joint defense arrangements

Generally, **§ 1:4**

Non-waiver provision, **App 1-2**

Negotiations, disclosures made during, **§ 1:24**

No-contact rule violations, **§ 3:21**

Officers, authority of, **§ 1:4**

Outside counsel, document reviews by, **§ 5:17**

Parent and subsidiary, **§ 1:22**

Proof of attorney-client privilege, **§ 1:21**

Reasonable steps to protect work product, **§ 2:11**

Regulatory agencies, disclosures to Attorney-client privilege, **§ 1:24**

Work product, **§ 2:12**

Represented party contacts, **§ 3:21**

Scope of waiver, **§ 1:21**

Selective disclosure, attorney-client privilege, **§ 1:21**

Sword and shield doctrine, **§ 1:25**

Testimonial use, waiver of work product protection by, **§ 2:15**

Who may waive

Attorney-client privilege, **§ 1:22**

Work product protection, **§ 2:10**

Work Product Doctrine, this index

WELLS SUBMISSIONS

Generally, **§ 5:22**

WHISTLEBLOWERS

See also Reports and Reporting, this index

INDEX

WHISTLEBLOWERS—Cont’d

- Attorney-client privilege problems of proof, **§ 6:11**
- Compliance program hotlines, **§ 5:30**
- Employed counsel, **§ 6:11**
- In-house counsel, **§ 6:11**
- Management-ownership conflicts, inside counsel’s duties, **§ 3:7**
- Reporting, **§ 6:11**
- Sarbanes-Oxley Act, **§ 6:11**
- Up-the-ladder reporting rules
 - Generally, **§ 8:1 et seq.**
- See also Sarbanes-Oxley Act, this index

WITHDRAWAL

- See also Resignation, this index
- Noisy withdrawal, **§ 3:19, 3:20, 8:4, 8:10**
- Permissive, **§ 3:20**

WORK PRODUCT DOCTRINE

- Generally, **§ 2:1 et seq.**
- FRCP 26(b)(3)
 - Generally, **§ 2:1**
 - State adoptions, **§ 2:1**
 - Substantial need and undue hardship, **§ 2:13**
- Accident reports
 - Generally, **§ 2:13**
 - Anticipation of litigation, **§ 2:7**
- Actuality of litigation, **§ 2:6**
- Advantages to corporate defendants, objections based on, **§ 2:1**
- Agent of attorney, preparation by, **§ 2:4**
- Agents’ opinions as, **§ 2:2**
- Anticipation of litigation
 - Generally, **§ 2:5**
 - Accident reports, **§ 2:7**
 - Actuality of litigation, **§ 2:6**
 - Arbitration, documents prepared for, **§ 2:8**
 - But-for test, **§ 2:7**
 - Dual purpose documents, **§ 2:7**
 - Employee-counsel, mixed duties of, **§ 2:5**
 - FRCP 26(b)(3), **§ 2:7**
 - Immediacy of litigation, **§ 2:6**

WORK PRODUCT DOCTRINE

—Cont’d

- Anticipation of litigation—Cont’d
 - In-house counsel, mixed duties of, **§ 2:5**
 - Investigatory reports, **§ 2:7**
 - Labeling of documents, **§ 2:6**
 - Likelihood of litigation, **§ 2:6**
 - Motivation for document’s creation, **§ 2:6**
 - Possibility of litigation, **§ 2:6**
 - Prior litigation, documents prepared for, **§ 2:8**
 - Public relations advice, **§ 2:6**
 - Reasonable anticipation, **§ 2:6**
- Arbitration, documents prepared for, **§ 2:8**
- At-issue exception, **§ 2:14**
- Attorney-client privilege
 - distinguished, **§ 2:1**
- Blanket assertions, **§ 2:1**
- Choice of law, **§ 2:1**
- Consultant’s work products, **§ 2:4**
- Corporate clients
 - Generally, **§ 2:1 et seq.**
 - Agent-prepared documents, **§ 2:4**
 - Purpose for which document prepared, **§ 2:4**
 - Who may waive or assert privilege, **§ 2:10**
- Criminal defense conflicts, **§ 6:21**
- Derivative actions, **§ 2:13**
- Document management systems, **§ 2:3**
- Dual purpose documents, **§ 2:7**
- Employee statements, **§ 2:13**
- Ethics breaches, loss of protection through, **§ 2:9**
- Exceptions
 - Generally, **§ 2:9**
 - Crime-fraud exception, **§ 2:16**
 - Employee statements, **§ 2:13**
 - Substantial need and undue hardship, **§ 2:13**
- Expert’s work products, **§ 2:4**
- Factual vs opinion work product
 - Generally, **§ 2:2**
- At-issue doctrine, **§ 2:14**

WORK PRODUCT DOCTRINE**—Cont'd**

- Factual vs opinion work product
 - Cont'd
 - Crime-fraud exception, § 2:16
 - Substantial need and undue hardship, § 2:13
 - Garner doctrine, § 2:13
 - Immediacy of litigation, § 2:6
 - Inadvertent waiver, § 2:11
 - Indiscriminate claims, § 2:1
 - Intangible records, § 2:3
 - Investigatory reports
 - Generally, § 2:2
 - Anticipation of litigation requirement, § 2:7
 - Undue hardship requests for, § 2:13
 - Likelihood of litigation, § 2:6
 - Litigation. Anticipation of litigation, above, § 2:5
 - Litigation supervision, § 4:3
 - Loss of privilege
 - Generally, § 2:9
 - Crime-fraud exception, § 2:16
 - Deliberate disclosures, § 2:12
 - Derivative actions, § 2:13
 - Ethics breaches, loss of protection through, § 2:9
 - Garner doctrine, § 2:13
 - Inadvertent waiver, § 2:11
 - Reasonable steps to protect, § 2:11
 - Regulatory agencies, disclosures to, § 2:12
 - Regulatory disclosures, § 2:12
 - Substantial need and undue hardship, § 2:13
 - Motivation for document's creation, § 2:6
 - Multi-jurisdictional practice, ethical issues, § 3:2
 - Opinion. Factual vs opinion work product, above

WORK PRODUCT DOCTRINE**—Cont'd**

- Outside counsels' activities, § 2:5
- Possibility of litigation, § 2:6
- Pre-litigation protection
 - Generally, § 2:6
 - Anticipation of litigation, above
- Prepared by attorney or party, § 2:4
- Prior litigation, documents prepared for, § 2:8
- Privilege or doctrine, § 2:1
- Property rights in privileged documents, § 6:16
- Public relations advice, § 2:6
- Purpose for which document prepared, § 2:4
- Purpose of doctrine, § 2:5
- State court rules, § 2:1
- Strategies, § 2:2
- Substantial need, § 2:13
- Tangible and intangible records, § 2:3
- Testimonial use, waiver by, § 2:15
- Undue hardship, § 2:13
- Waiver
 - Generally, § 2:9
 - See also Waiver of Privilege, this index
 - At-issue doctrine, § 2:14
 - Authority to waive, § 2:10
 - Conflicts of interest, § 2:10
 - Crime-fraud exception, § 2:16
 - Deliberate disclosures, § 2:12
 - Derivative actions, § 2:13
 - Garner doctrine, § 2:13
 - Inadvertent waiver, § 2:11
 - Reasonable steps to protect, § 2:11
 - Regulatory disclosures, § 2:12
 - Testimonial use, § 2:15
 - Who may waive, § 2:10
- Witness affidavits, § 2:3
- Witness interviews, § 2:2
- Zone of privacy analysis, § 2:1