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Riker Danzig LLP

New Jersey In-House Counsel Ethics Training

Protect the organization through eligibility, clear client identity, independent judgment, and repeatable controls.

For in-house counsel, GCs and legal department managers

The Rules of Professional Conduct and In-House Counsel

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Ethics compliance depends on repeatable decisions

Build the same decision discipline into every matter.

01

Eligibility

Am I authorized to perform this work?

02

Client identity

Whose interests do I represent?

03

Escalation

Who must act on this risk?

04

Privilege

Is this confidential legal advice?

05

Oversight

Who verifies implementation?

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SECTION 01

Practice Eligibility

A limited license is not unrestricted admission

Rule 1:27-2 authorizes a defined in-house role—not general New Jersey practice.

Within the limited license

Legal work in New Jersey solely for the designated employer.

New Jersey RPCs apply despite admission elsewhere.

Not authorized by the license alone

Court appearances for the employer.

Other activity requiring pro hac vice admission.

Practice eligibility requires active monitoring

Do not rely exclusively on the employer's administrative systems.

Track status

Registration, annual assessments, CLE and limited-license requirements.

Require immediate reporting

Suspension, ineligibility or restrictions affecting practice authority.

Stop legal work immediately when ineligible

Also stop appearances, legal-system access and representations of attorney status.

Non-lawyer administrative representation has narrow limits

Authorization to appear does not create general authority to act as counsel.

01

Signatures

Generally no consent-order or stipulation signature for a party.

02

Limited exception

Specified agency and closely held corporation representatives need specific entity authorization.

03

Accountability

Applicable conduct standards; authority may be revoked and sanctions imposed.

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SECTION 02

Client & Judgment

The organization, not the executive, is the client

Authority to instruct counsel does not create an individual attorney-client relationship.

ORGANIZATION · CLIENT

Officers & directors	Employees	Shareholders & others

Clarify client identity when organizational and constituent interests may differ.

Dual representation requires more than consent

Assess before representing both the organization and a constituent.

01

Capability

Reasonable belief in competent, diligent representation of each client.

02

Permissibility

Not prohibited by law; no client-against-client claim in the same proceeding.

03

Consent

Each affected client's informed consent, confirmed in writing.

Public-entity caveat: cannot waive a concurrent conflict under RPC 1.7(b)(1).

Personal financial interests require separate analysis

One conflict consent does not satisfy every rule.

Lens 1 · RPC 1.7

Does an investment, loan, equity interest or side agreement materially limit independent professional judgment?

Lens 2 · RPC 1.8(a)

Does a business transaction with a client separately comply with the rule?

Do not equate conflict consent with transaction compliance.

Separate employee counsel can reduce divergence risk

Choose the representation model deliberately; payment alone does not create a conflict.

Joint representation

Interests may diverge.

Disqualification may affect one or both clients.

Confidentiality and privilege require separate analysis.

Separate employee counsel

Organization may fund representation under RPC 1.8(f) and 5.4(c).

Fee payment is distinct from control of professional judgment.

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SECTION 03

Escalation & Reporting

Organizational misconduct calls for an escalation response

RPC 1.13(b): legal obligation violation + organizational imputation + likely substantial injury.

01

Reconsider

Ask the constituent to reconsider, as appropriate.

02

Independent view

Advise a separate legal opinion when appropriate.

03

Higher authority

Refer upward, including to the highest authority capable of acting.

Document the response accurately. Distinguish legal advice from business recommendations.

Disclosure and withdrawal require distinct decisions

New Jersey's conditions matter: there is no general automatic reporting-out permission.

Disclosure beyond ordinary authority

Highest authority refuses remedy or insists on substantially injurious conduct;

reasonable belief it advances conflicting personal or financial interests;

disclosure necessary to protect the organization.

Required withdrawal

IHC knows the organization is using the lawyer's services to further criminal, unlawful or fraudulent conduct.

Analyze separately from disclosure.

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SECTION 04

Attorney-Client Privilege

Privilege follows legal function, not counsel's presence

Evaluate the purpose and confidentiality of the particular communication.

Potentially privileged

Confidential communication seeking or receiving legal advice.

Corporate officers or authorized representatives may communicate in that capacity.

Not privileged merely because…

Counsel is copied.

Counsel attends.

A business communication is labeled "privileged."

Privilege boundaries require disciplined handling

01

Responsibility

Responsible for or significantly involved in determining the organization's legal position.

02

Context

Outline applies the concept in litigation and nonlitigation matters.

03

Former personnel

May qualify when prior responsibilities satisfy the applicable standard.

Limit distribution to legal-matter need. No blanket privilege designations.

Inadvertent materials require a prompt protocol

Act when there is reasonable cause to believe the material was inadvertently sent.

01

Stop

Refrain from reading or stop reading.

02

Notify

Promptly notify the sender.

03

Return

Return the document.

04

Secure

For electronic material: delete and take reasonable measures to make inaccessible.

SECTION 05

Litigation
Conduct

Witness preparation cannot obstruct discovery

Voluntary disclosure and compulsory process are different.

Outline permits

Under RPC 3.4(f), request an employee or other client agent refrain from voluntarily giving relevant information to another party.

Not permitted on employment status alone

Disregard compulsory discovery.

Skip a deposition.

Decline a proper question.

Formal discovery is not voluntary. Employees cannot assert organizational privilege after the organization waives it.

Candor failures create personal disciplinary exposure

Gonzalez · 2024

3-month suspension

Material omission misleading the tribunal; other violations.

Chase · 2025

Censure

Reciprocal matter; false statements and communication failures.

Pepsny · 2025

Censure

Multiple material false statements; discipline by consent.

Chambers · 2025

Reprimand

Stipulated tribunal-candor and related violations.

Preservation requires implementation, not just a notice

When litigation is reasonably anticipated, oversee the hold from issue through compliance.

01

Issue hold

Communicate preservation duties.

02

Map sources

Identify custodians, relevant data and required backups.

03

Suspend deletion

Stop routine destruction of potentially relevant ESI.

04

Monitor

Oversee implementation and compliance.

Metadata: request, confer on scope and format, then apply burden and proportionality limits.

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SECTION 06

Internal Investigations

Investigations need a documented legal purpose

Counsel's involvement does not blanket the investigation with privilege.

01

Direction

Identify who directs the investigation and receives findings.

02

Purpose

Document facts needed for legal advice—not merely business-policy enforcement.

03

Evaluation

Review communication by communication; underlying facts are not privileged.

Voluntary disclosure to government may waive privilege, potentially including related underlying materials.

Employee interviews begin with client-identity warnings

Give all five explanations at the beginning of the interview.

1. **Client**

   IHC represents the organization.

2. **Individual role**

   IHC does not represent the employee unless separate joint representation is established.

3. **Legal purpose**

   Information is needed to provide legal advice to the organization.

4. **Sharing**

   Communications may be shared with others acting for the organization.

5. **Privilege control**

   The organization decides whether to assert or waive privilege.

Government submissions must be factually reliable

Legitimate advocacy does not protect personal participation in a false or misleading submission.

01

Verify

Check material factual representations.

02

Preserve

Retain relevant records.

03

Test completeness

Avoid omissions that create material misrepresentation.

04

Submit reliably

Do not conceal, falsify or knowingly misrepresent.

Brettschneider · 2026: Supreme Court disbarment following federal false-statement convictions.

SECTION 07

External Communications

Represented-person contact requires counsel's consent

Consent must come from the represented party's attorney—not merely the party.

BEFORE A SUBSTANTIVE REPLY ALL

To

Recipients

Opposing counsel + represented person

Check

Consent

Has counsel consented to this direct contact?

Record

Scope

Scope of consent, including business-person communications

Copied recipients alone do not necessarily establish consent.

Negotiation latitude stops at material deception

Diligent advocacy remains subject to truthfulness, confidentiality and withdrawal duties.

May be conventional positions

Negotiating goals.

Estimates of value.

Acceptable outcomes.

Willingness to compromise.

Not permissible

Fabricated evidence or false objective costs.

Material factual misstatements or deceptive silence.

Exploiting a known execution-copy error that departs from the actual agreement.

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SECTION 08

Oversight & Controls

Delegation does not eliminate oversight responsibility

Outside counsel's independent status does not replace reasonable systems and corrective action.

01

Engage

Scope, objectives, conflicts and reporting.

02

Monitor

Staffing, billing, strategy, deadlines and entrusted funds.

03

Close & correct

Client property, unearned advances and prompt remediation.

DRB recommendations in outline: Brunson—disbarment; Lento—two-year suspension. Not stated here as Court-imposed sanctions.

Convert the rules into a legal-department checklist

Make the controls repeatable, documented and actionable.

Licensing

Maintain status records; require immediate reporting; stop unauthorized work.

Conflicts

Identify client; document analysis and permitted consent; separate RPC 1.8(a) review.

Privilege

Separate legal purpose; limit distribution; avoid blanket labels.

Investigations

Warnings, monitored holds, verified facts and documented independence.

Financial controls

Review billing and entrusted funds; investigate credible warning signs.

Supervision

Assign responsibilities; review deadlines; escalate and document corrective action.

Outline · Practical Compliance Measures; RPC 1.7, 1.8(a), 1.13, 5.1; R. 1:27-2



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