

ETHICS AND THE ORGANIZATION

*March 8, 2018
United States District Court of Guam
Annual District Conference*

Panel Members

- The Hon. Margaret M. McKeown, U.S. Court of Appeals for the Ninth Circuit;
- Thomas Sterling, Esq.;
- Minakshi V. Hemlani, Esq.; and
- Rodney J. Jacob, Esq (Moderator).

Rule 1.13 Organization As Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

WHO'S MY CLIENT?

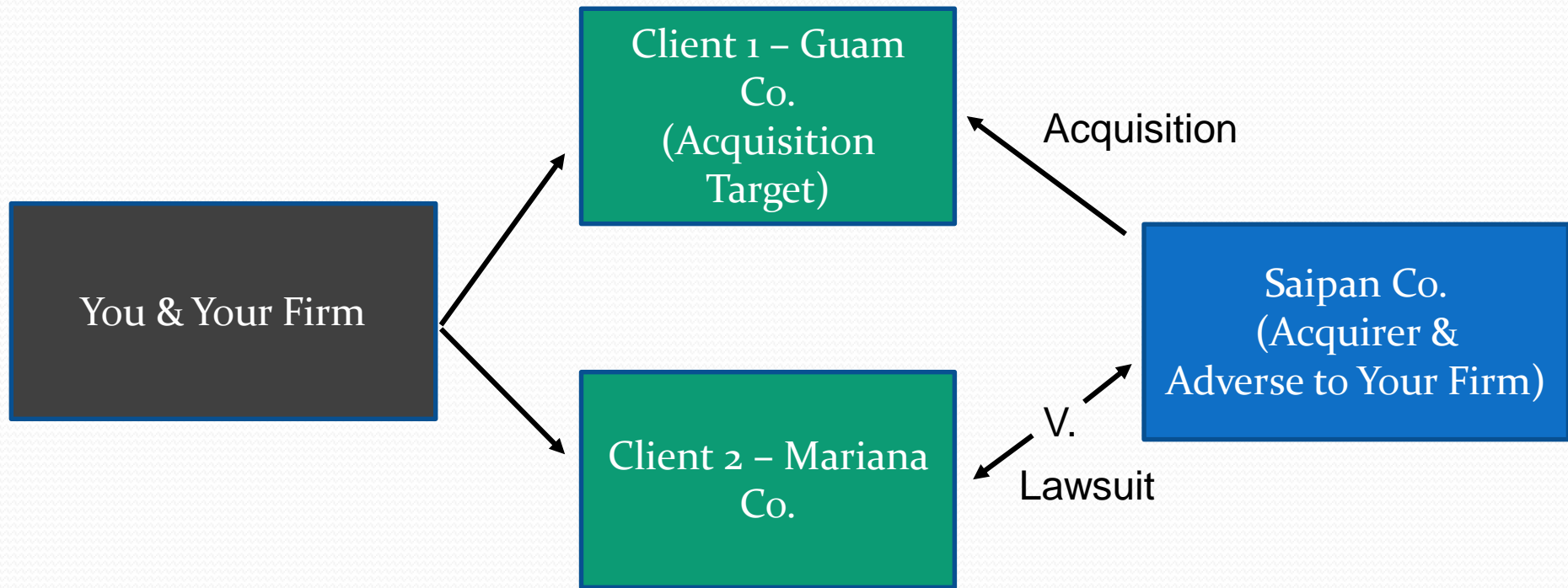
- SCENARIO 1:

- LAWYER REPORTS TO THE PRESIDENT.
PRESIDENT IS STEALING FROM CORPORATION

Rule 13(b):

If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

- Scenario 2: Client Sold Mid-Stream



Rule 1.7: Conflicts of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client *will be directly adverse to another client*; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer *in the same litigation or other proceeding before a tribunal*; and
- (4) each affected client gives informed consent, confirmed in writing”
(emphases added)

Is My Waiver Effective?

- **SCENARIO 3:**

- **LAWYER REPRESENTS COMPANY BASED ON WAIVER
BOARD/MANAGEMENT CHANGES AFTER SALE**
- **BOARD/MANAGEMENT CHANGES AFTER SALE
BOARD DEMANDS PRIVILEGE INFORMATION OBTAINED
FROM PRIOR PRESIDENT**

Rule 13(g):

A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.



Thank You!