



**CLIENT-LAWYER RELATIONSHIP:  
ORGANIZATIONS AS CLIENT** | **RULE  
1.13**

## RULE 1.13: GENERAL RULE

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

## RULE 1.13(B) - DUTIES TO AN ORGANIZATION

(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 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.

## RULE 1.13(B)

...**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.

## **RULE 1.13(C)**

(c) Except as provided in paragraph (d), if  
(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, **AND**

## RULE 1.13(C)

...(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

...then the lawyer **MAY** reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

## **RULE 1.13(D)**

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

## RULE 1.13(E)

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

## RULE 1.13(F)

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

## RULE 1.13(G): DUAL REPRESENTATION

(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.

## RULE 1.13 - COMMENT 1

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.

Officers, directors, employees and shareholders are the constituents of the corporate organizational client.

## 1.13 – COMMENT 2

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6.

## 1.13 – COMMENT 2

[2] ...**For example**, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6.

## **1.13 – COMMENT 2**

This does not mean, however, that constituents of an organizational client are the clients of the lawyer.

The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

## **1.13 – COMMENT 3**

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful.

Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province.

## 1.13 – COMMENT 4

Ordinarily, referral to a higher authority would be necessary. In some circumstances, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; **for example**, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority.

## 1.13 – COMMENT 4

If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization.

If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent.

## **1.13 – COMMENT 5**

**[5] ...The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body.**

## 1.13 – COMMENT 8

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

## **1.13 – COMMENT 9**

[9] The duty defined in this Rule applies to governmental organizations.

Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the gov't context and is a matter beyond the scope of these Rules.

## 1.13 – COMMENT 9

**For example,** if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of gov't may be the client for purposes of this Rule.

## 1.13 – COMMENT 9

**...Moreover,** in a matter involving the conduct of gov't officials, a gov't lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances.

## **1.13 – COMMENT 10**

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents.

In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation.

## 1.13 – COMMENT 10

...Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.