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Conflicts of Interest and Effective Representation: The Dilemma of Corporate Counsel

by
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In April of 1986, the New York law firm of Rogers & Wells agreed to the largest malpractice settlement ever reported, paying $40 million to settle 330 lawsuits that charged the firm with aiding and abetting fraud committed by a client investment company.[1] The lawsuits maintained that Rogers & Wells had failed to notify regulatory authorities and had continued to represent the investment company after learning of its securities law violations.

In March of 1987, the New York law firm of Fried, Frank, Harris, Shriver & Jacobson (Fried Frank) and one of its members were named as defendants in an action brought by limited partners in Ivan F. Boesky's arbitrage partnership.[2] The limited partners alleged, among other things, that Fried Frank and its member had (1) participated in the offer and sale of unregistered securities in violation of sections 5[3] and 12(1)[4] of the Securities Act of 1933, (2) assisted in the offer and sale of partnership securities by means of false and misleading offering materials in violation of section 12(2)[5] of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934,[6] and (3) breached their fiduciary duty to the limited partners. In July of 1987, the court denied Fried Frank's motions to dismiss.[7]

In June of 1987, the Securities and Exchange Commission (SEC) charged that a partner of Sullivan & Cromwell had failed to advise his

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1. Galante, *After $40M Payment, It's Not Over Yet for Rogers & Wells,* Nat'l L.J., Apr. 14, 1986, at 1, col. 1.
2. Arden Way Assocs. v. Boesky, No. 87 Civ. 1865 (S.D.N.Y. filed Mar. 20, 1987).
3. 15 U.S.C. § 77e (1975).
4. *Id.* § 77l(1).
5. *Id.* § 77l(2).
6. *Id.* § 78.
7. Arden Way Assocs. v. Boesky, 664 F. Supp. 855, 858 (S.D.N.Y. 1987).

client to promptly disclose confidential takeover negotiations in accordance with securities laws.[8] The lawyer was a director of a company that was the target of a hostile takeover. The lawyer also served as corporate counsel to the target and was allegedly responsible for the decision not to disclose the target's merger negotiations with a white knight. As of this writing, these charges are pending.

These cases are but a few examples of a growing number of lawsuits being brought against lawyers and law firms engaged in the practice of corporate and securities law. Such lawsuits often involve lawyers who are alleged to have assisted their clients in the commission of securities law violations.[9] An ever increasing number of suits, however, arise out of routine services provided by corporate and securities lawyers, such as preparing offering materials, issuing opinions, and determining the substance and timing of disclosures.[10] Moreover, suits against lawyers are more frequently being brought by persons who were not themselves clients of the lawyers, but who nonetheless claim that the lawyers have breached a duty owed to them.[11]

A number of underlying factors appear to explain the growing number of lawsuits being brought against corporate and securities lawyers. Section I of this Essay surveys several factors contributing to this increase. Section II discusses the ethical problems peculiar to the practice of corporate and securities lawyers.

I. Factors Contributing to the Rise in Lawsuits Against Lawyers

There are several factors underlying the trend toward naming lawyers as defendants in lawsuits. One factor is the trend of law firms to develop into specialty boutiques, handling the complex, sophisticated corporate work that cannot be handled in-house or by general practice law firms. As a consequence of this trend, a handful of law firms have cultivated specialized corporate practices that are eagerly sought out by increasing numbers of corporations requiring the expertise of these few

8. *In re* Allied Stores Corp., [current] Fed. Sec. L. Rep. (CCH) ¶ 84,142 (June 29, 1987).

9. *See, e.g.*, Freschi v. Grand Coal Venture, 767 F.2d 1041 (2d Cir. 1985), *vacated*, 106 S. Ct. 3325 (1986); *Arden Way*, 664 F. Supp at 857; *In re* American Principals Holding, Inc. Litig., No. 85-949, MDL 653 (S.D. Cal. filed Oct. 16, 1987); Koehler v. Pulvers, 606 F. Supp. 164 (S.D. Cal.), *aff'd*, 614 F. Supp. 829, 836 (S.D. Cal. 1985).

10. *See, e.g.*, Lewis v. Schultz, [1985-1986 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,363 (E.D. Ark. 1985); Kilmartin v. H.C. Wainwright & Co., 580 F. Supp. 604 (D. Mass. 1984); Reingold v. Deloitte Haskins & Sells, 559 F. Supp. 1241 (S.D.N.Y. 1984).

11. Labaton, *Parties Who Are Not Clients*, N.Y. Times, Sept. 7, 1987, at 26, col. 1.

select firms. This is particularly true in the mergers and acquisitions practice. The end result is that the specialty firm inevitably faces frequent and recurring conflicts of interest between present and former clients with adverse or potentially adverse interests.[12] These conflicts often result in lawsuits to disqualify the law firm[13] and, in some instances, in actions for malpractice.[14]

A second factor that has encouraged lawsuits against lawyers is the change in the way the public and the courts perceive lawyers and law firms.[15] In the past, the practice of law was considered a "profession" and held favored status. Today, law firms are perceived to be more like businesses. As a result, the courts are beginning to treat law firms like other businesses and eliminating the aura of protection and trust that enveloped law firms in the past.[16]

Increased and often fierce competition among top law firms that continue to offer a broad range of legal services also contributes to the rise in the number of lawsuits brought against attorneys. This competition has only increased the importance of the large corporate clients to law firms that depend on corporate clients as their main source of revenues. This climate, not surprisingly, develops in attorneys an eagerness to please clients or potential clients, as well as a struggle by law firms to differentiate and distinguish themselves.[17]

A fourth factor that cannot be overlooked is that the lawyer or law firm usually maintains a sizable malpractice insurance policy. Thus lawyers, like accountants and underwriters, are often seen as "deep pockets" and a ready source of settlement or award money.[18]

The final and foremost factor underlying the trend toward naming lawyers as defendants in lawsuits appears to be the failure of the profes-

12. *See, e.g.,* Eckerd v. Dart Group Corp., 621 F. Supp. 725 (D. Del. 1985) (disqualifying counsel for target of hostile takeover in situation in which counsel had previously represented acquiror in attempted takeover of different company).

13. *See id.*

14. The Maryland Deposit Ins. Fund Corp. v. Venable, Baetjer & Howard, No. 1112919 (Circuit Ct. Anne Arundle County July 3, 1986); *see also* Victor, *Venable Agrees to $27M Accord,* Nat'l L.J., May 25, 1987, at 3, col. 1 (discussing lawsuits against the Baltimore law firm Venable, Baetjer & Howard, which was charged with fraud, deceit, malpractice, and breach of fiduciary duty arising out of the firm's alleged impropriety in representing conflicting interests).

15. Gillers, *Ethics That Bite: Lawyers' Liability to Third Parties,* 13 LITIGATION 8 (Winter 1987).

16. *Id.* at 12.

17. *See* Marcus, *Risk of Ethics Litigation Raises Ante for Blue-Chip Law Firms,* Wash. Post, May 26, 1987, Metro, at B1, col. 2.

18. *See* Gray, *Under Fire: Regulators, the Courts and Clients Bear Down on Lawyers,* Wall St. J., Aug. 21, 1987, at 17, col. 3.

sional responsibility guidelines to address the problems of modern corporate law practice. The Model Code of Professional Responsibility (Model Code) speaks, for the most part, to trial lawyers, providing guidelines for the ethical dilemmas faced in a litigation context.[19] The Model Code fails to provide detailed guidelines for lawyers engaging in the practice of corporate or securities law.[20] How such lawyers should perceive their role and responsibilities in providing corporate counseling is a question on which the Model Code is remarkably silent. Recent case law indicates that Model Code guidelines, which apply more appropriately in the litigation context, are wholly inadequate when applied to the corporate counsel's practice.[21] The Model Rules of Professional Conduct (Model Rules), while shedding a glimmer of light on certain questions,[22] similarly fail to address the role of corporate and securities counsel.

II. Representing an Organizational Client

A. The Problem: Inherent Conflicts of Interest

In representing the organizational client, the corporate lawyer must often grapple with conflicting duties of loyalty, confidentiality, and zeal owed to the various "constituents" or interest groups that make up the organizational client.[23] In the case of a corporation, these "constituents" may consist of a board of directors, management, and shareholders. A limited partnership, on the other hand, consists of a general partner and one or more limited partners.

With respect to the representation of an organizational client, the Model Code provides:

> A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interest and his professional judgment should not be influenced by the personal desires of any person or organization.[24]

Similarly, Model Rule 1.13(a) provides that the lawyer for an organization "represents the organization acting through its duly authorized

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19. *See, e.g.*, MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 5-15, DR 5-102, 5-106, 7-101 to 7-110 (1980).

20. Burke, *The Duty of Confidentiality and Disclosing Corporate Misconduct*, 36 BUS. LAW. 239, 279 (1981).

21. *See infra* notes 48-61 and accompanying text.

22. *See* notes 36-47 and accompanying text.

23. Note, *Conflicts of Interest in the Legal Profession*, 94 HARV. L. REV. 1244, 1344 (1984).

24. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 5-18 (1980).

constituents."[25]

Problems for the corporate and securities lawyer arise because at various times, including securities offerings and corporate acquisitions, the interests of the organizational client's constituents diverge. The corporate counsel is then placed in the position of determining who commands his primary loyalty and how he can adequately fulfill his duties and responsibilities to each constituent in the face of their conflicting interests. Because the Model Code and Model Rules fail to explain how a corporate lawyer can determine the "entity's" interest in such situations, the lawyer must confront competing loyalties and duties of confidences to the various groups with little or no guidance as to how he might resolve the conflicts. The failure of professional guidelines to delineate how the corporate lawyer should respond has made corporate attorneys vulnerable to suits by disgruntled constituents.

B. Situations in Which Constituent Interests Diverge

Conflicts of interest among constituents of the corporate client frequently arise in the following situations: (1) derivative suits and direct actions against the entity; (2) cases of fraud and self-dealing by management;[26] and (3) battles for corporate control.[27] This section will focus on fraud and self-dealing.

Management fraud or self-dealing may occur in the securities offerings context and often involves the failure to make appropriate disclosure to investors, the public, or the SEC.[28] When self-dealing or fraud is committed by management, the interests of management directly conflict with the interests of the shareholders, limited partners, or other investors in the entity. The corporate lawyer who is advised of the fraud or self-dealing or learns of it as a consequence of his own investigation thus confronts a situation in which the entity's constituent groups have sharply conflicting interests. The lawyer must determine what is in the entity's best interest and how it can be achieved. In responding to this situation, the lawyer must proceed with extreme caution.

Even if the lawyer does not obtain actual knowledge of the fraud or self-dealing, he may nevertheless be held liable as an aider and abettor if the wrongdoing was so obvious that he should have been aware of it[29] or

25. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.13(a) (1983).

26. Note, *supra* note 23, at 1337-45.

27. *See generally* Steinberg, *Attorney Conflicts of Interest in Corporate Acquisitions,* 39 HASTINGS L.J. 579 (1988).

28. *See infra* notes 48-61 and accompanying text.

29. *See* SEC v. Frank, 388 F.2d 486, 489 (2d Cir. 1968).

if he recklessly disregarded the wrongdoing.[30] The lawyer may also have a duty to investigate a client before assisting in a securities offering.[31] In such cases, the lawyer's failure to discover fraud or self-dealing has been held to be actionable if a reasonable investigation would have uncovered the fraud.[32]

Moreover, the defense that the lawyer did not know of the fraud or self-dealing may be ineffective in disposing of these cases in the early stages because the lawyer's lack of knowledge may be difficult to prove on a motion to dismiss or a motion for summary judgment.[33] This will be especially true if the lawyer's relationship with the client was long-standing or closely knit, for example, if the lawyer sat on the client's board of directors[34] or held even a nominal position in management.[35]

If the corporate or securities lawyer learns of an ongoing fraud or self-dealing by management, he frequently finds that it is difficult to determine an appropriate method of response. On the one hand, the lawyer owes a duty to protect the entity and thus presumably its beneficial owners. On the other hand, the lawyer may also owe a corresponding duty to the managers who committed the fraud or self-dealing.

C. Ethical Guidelines

The Model Code is not particularly enlightening on the issue of how a corporate or securities lawyer should respond upon discovering that his organizational client's management has committed securities fraud. The Model Code provides that a lawyer who discovers that his client has engaged in fraud shall promptly ask the client to "rectify" the fraud.[36] The lawyer may not reveal the fraud to third parties if the information has been obtained in the context of a privileged attorney-client communication.[37] The revelation of management misconduct may also be prohibited by Canon 4 of the Model Code, which requires a lawyer to preserve the secrets and confidences of a client.

30. Rolf v. Blyth, Eastman Dillon & Co., 570 F.2d 38, 44 (2d Cir.), *cert. denied,* 439 U.S. 1039 (1978).

31. Felts v. National Account Sys. Ass'n, 469 F. Supp. 54, 67 (N.D. Miss. 1978) (citing Escott v. Barchris Constr. Corp., 283 F. Supp. 643 (S.D.N.Y. 1968)).

32. *Id.* at 67-68.

33. *See, e.g.,* Kilmartin v. H.C. Wainwright & Co., 580 F. Supp. 604, 608 (D. Mass. 1984) (holding that "[k]nowledge [of fraud] may be averred generally" and denying attorney's motion to dismiss claims for aiding and abetting securities fraud).

34. Escott v. Barchris Constr. Corp., 283 F. Supp. 643, 691 (S.D.N.Y. 1968).

35. *See* Feit v. Leasco Data Processing Equip. Corp., 32 F. Supp. 544, 575-76 (E.D.N.Y. 1971).

36. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-102(B)(1) (1980).

37. *Id.* DR 4-101.

Where the client is an "entity" and fraud is committed by its management, the Model Code leaves unclear whether the corporate lawyer may reveal the fraud to the entity's beneficial owners (*i.e.*, shareholders or limited partners) so that they may protect their interests.[38] Some authorities have maintained that the lawyer may reveal the fraud to the entity's owners. For example, the New York City Bar, has opined such disclosure would not violate Canon 4, at least when the lawyer for an entity owes his duty of loyalty to the entity and not to the defrauding manager.[39]

The Model Code gives the lawyer two possible courses of conduct if his client refuses to rectify the fraud. Ethical Consideration 7-5 provides that a lawyer may continue to represent a client even when that client pursues a course of conduct contrary to the lawyer's advice as long as the lawyer does not "thereby knowingly assist the client" in illegal conduct.[40] Ethical Consideration 7-5 further provides, however, that a lawyer should never encourage or aid his client in committing criminal acts or counsel his client on how to violate the law or to avoid punishment for its violation. Thus, the Model Code permits a lawyer to withdraw from representing the client if "the client personally seeks to pursue an illegal course of conduct" or "insists that the lawyer pursue a course of conduct that is illegal or that is prohibited by the Disciplinary Rules."[41]

Although the Model Code gives the lawyer little guidance in electing the proper course to take, as an overall policy the Model Code seems to discourage withdrawal.[42] This policy appears to be aimed at protecting the client's right to counsel of his choice and the client's interest in retaining continuity of representation in the litigation context.[43] Thus, any policy against withdrawal should not be interpreted to apply with equal force to the corporate context, especially when management engages in fraud. In the corporate setting, any client "right" to counsel of his choice is less compelling. Moreover, where the client continues to engage in fraud or refuses to rectify his wrongdoing despite his lawyer's advice, the lawyer runs the risk of appearing to assist the client in the fraud. Particularly in the current legal environment, where this risk can

38. *Id.* DR 7-102(B).

39. N.Y. City Bar Formal Op. 1986-2 (Apr. 30, 1986); *see also* SEC v. National Student Marketing Corp., [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,360 (D.D.C. 1972).

40. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-5 (1980).

41. *Id.* DR 2-110.

42. *See, e.g., id.* EC 2-32 ("a decision by a lawyer to withdraw should be made only on the basis of compelling circumstances").

43. *See id.* DR 2-110 (dealing with representation of a client before a tribunal).

result in civil liability for the lawyer, the lawyer should be free to withdraw from such employment without violating his ethical obligations.

The Model Rules attempt to provide more explicit direction to a corporate lawyer who encounters fraud by management. Model Rule 1.13(b) provides that a lawyer who discovers fraud that is "likely to result in substantial injury to the organization . . . shall proceed as is reasonably necessary in the best interest of the organization."[44] The measures taken by the lawyer must be "designed to minimize disruption to the organization and the risk of revealing information relating to the representation to persons outside the organization."[45] The rule suggests various measures that may be taken when a lawyer discovers fraud: (1) asking management to reconsider the matter; (2) advising management to obtain a separate legal opinion; (3) referring the matter to a higher authority in the organization; and (4) resigning if the lawyer's other efforts to dissuade clearly illegal conduct are unsuccessful.[46]

A version of the Model Rules provision was adopted by the SEC as the appropriate response for a securities lawyer who discovers that his client is failing to make appropriate disclosures. In *In re Carter & Johnson,*[47] the SEC held that when a lawyer becomes aware that his client is engaged in a substantial and continuing failure to satisfy disclosure requirements, his continued representation violates professional standards unless he takes prompt steps to end the client's noncompliance. The lawyer should first advise the client to make proper disclosure. If the lawyer's advice is not followed, however, the lawyer must take affirmative steps to avoid being "co-opted" into the ongoing fraud. Such steps should first include a direct approach to the board of directors or to members of management not involved in the fraud. If all else fails, the lawyer may resign.

D. Recent Decisions Involving Claims Against Corporate and Securities Lawyers

Despite the existence of these rules, recent lawsuits have evidenced an increase in the number of claims brought against lawyers who allegedly failed to take appropriate action when an organizational client was engaged in an on-going fraud or securities law violation.

A large number of these cases involve investors who claim that they

44. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.13(b) (1983).

45. *Id.*

46. *Id.* Rule 1.13(b), (c).

47. Exchange Release No. 17,597 [1981 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 82,847 (Feb. 28, 1981).

relied on false or misleading offering materials.[48] Such investors claim that the lawyer for the issuer assisted in the offer and sale of securities by means of offering materials that the lawyer knew contained material misstatements or omissions. Investors have argued that lawyers were instrumental in the sale of securities by (1) soliciting investors,[49] (2) making misrepresentations regarding the investment,[50] or (3) structuring the offering to avoid disclosure requirements.[51] Other investors have alleged that the lawyer assisted in the fraud merely by rendering routine legal services, including preparation of offering materials and issuance of legal opinions.[52] Those allegations, coupled with the pleading of scienter, have been held sufficient to state a claim against lawyers. [53]

Lawyers have also been charged with having acted improperly by continuing to represent their organizational clients after learning of management's continuing fraud.[54] According to these cases, upon discovering the fraud the lawyer should have resigned from representing the entity. Instead, the lawyer continued to represent the entity and lent "an appearance of legitimacy" to the illegal securities offering for which liability is sought to be imposed.[55]

The beneficial owners of an organizational client have claimed that the lawyer owes them a duty that is breached by the lawyer's failure to advise them of management's fraud.[56] Support for this argument is found in authorities holding that the lawyer represents the interest of the beneficial owners, at least when management is perpetrating a fraud on the entity.[57] In cases involving start-up corporations that fail, investors

48. *See, e.g.,* Junker v. Crory, 650 F.2d 1349 (5th Cir. 1981); Arden Way Assocs. v. Boesky, 664 F. Supp. 855, 856 (S.D.N.Y. 1987); Block v. First Blood Assocs., 663 F. Supp. 50 (S.D.N.Y. 1987); Kilmartin v. H.C. Wainwright & Co., 580 F. Supp. 604 (D. Mass. 1984); Hagert v. Glickman, Lurie, Eiger & Co., 520 F. Supp. 1028 (D. Minn. 1981).

49. Plaintiffs' Amended Complaint at 137-40, Arden Way Assocs. v. Boesky, 664 F. Supp. 855 (S.D.N.Y. 1987).

50. *Id.; Junker,* 650 F.2d at 1356; Excaliber Oil, Inc. v. Sullivan, 616 F. Supp. 458, 465 (D.C. Ill. 1985).

51. Plaintiffs' Amended Complaint at 137-40, Arden Way Assocs. v. Boesky, 664 F. Supp. 855 (S.D.N.Y. 1987); Koehler v. Pulvers, 606 F. Supp. 164, 169 (S.D. Cal. 1985).

52. *See, e.g., Block,* 663 F. Supp. at 51; Seidel v. Public Serv. Co., 616 F. Supp. 1342, 1361 (D.N.H. 1985); *Kilmartin,* 580 F. Supp. at 608.

53. Reingold v. Deloitte, Haskins & Sells, 599 F. Supp. 1241, 1267-68 (S.D.N.Y. 1984); *Kilmartin,* 580 F. Supp. at 608.

54. *See, e.g., In re* American Principals Holding, Inc. Litig., No. 85-949, MDL 653 (S.D. Cal. filed Oct. 16, 1987).

55. *Id.*

56. Plaintiffs' Amended Complaint at 137-40, Arden Way Assocs. v. Boesky, 664 F. Supp. 855 (S.D.N.Y. 1987).

57. *See, e.g.,* Skloff v. Bickley, No. 85-5555, slip op. (E.D. Pa. Dec. 31, 1986); N.Y. City Bar Formal Op. 1986-2 (Apr. 30, 1986); Texas Bar Op. 387 (1977); *cf.* Garner v. Wolfinbarger,

can rely on cases holding that corporate counsel may owe a duty to them when they are the intended beneficiaries of the lawyer's actions.[58]

The mergers and takeovers context is conducive to claims against lawyers for involvement in the organizational client's securities violations. To preserve their own positions, the incumbent management or board of directors may be reluctant to make certain disclosures. A lawyer's failure to advise in favor of required disclosures to the SEC may lead to securities violation claims against him.[59] A material misrepresentation or omission to shareholders by management in defending against a hostile tender offer may also result in a securities violation claim against a lawyer.[60] Finally, a lawyer's failure to disclose to shareholders his potential self-interest in a merger could also result in a securities violation.[61]

Conclusion

The recent onslaught of lawsuits against corporate and securities lawyers signals a warning to lawyers to be increasingly vigilant in their representation of organizational clients. The ethical problems faced by corporate and securities lawyers now present the additional risk that such problems may result in steep liability. Recent decisions make clear that lawyers are more vulnerable to lawsuits when they step out of their professional role and take a more active part in their client's business by promoting deals, soliciting investors, conducting meetings at the firm's premises, and becoming tied to client companies as directors or general partners. Such conduct makes lawyers appear less like advisors and more like principals, who may be charged with participating in and fur-

430 F.2d 1093, 1103-04 (5th Cir. 1970) (availability of attorney-client privilege for corporate client in a suit against stockholders is subject to the right of stockholders to show cause why it should not be invoked, as required for protection of stockholders interests), *cert. denied,* 401 U.S. 974 (1974).

58. Hi Stickney, Inc. v. Dahal & Appel, No. 81 Civ. 4732 (S.D.N.Y. May 21, 1982) (LEXIS, Genfed library, Dist. file); Morgan v. Prudential Group, Inc., 527 F. Supp. 957, 961 (S.D.N.Y. 1981), *aff'd,* 729 F.2d 1443 (2d Cir. 1983).

59. *See In re* Allied Stores Corp., [1987 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 84,142 (June 29, 1987) (lawyer who served as a director and outside counsel violated securities laws by failing to advise organizational client to properly disclose to the SEC actions undertaken by existing management to defend against a hostile tender offer).

60. *See* SEC v. National Student Marketing Corp., 457 F. Supp. 682, 711-12 (D.D.C. 1978) (lawyers' conscious decision to close a merger agreement before management disclosed to shareholders new financial statements that indicated a significant adjustment violated antifraud provisions of the securities).

61. *See* Kas v. Financial Gen. Bankshares, 796 F.2d 508, 513-15 (D.C. Cir. 1986) (court recognized a duty to disclose, in proxy materials for cash-out merger, a lawyer's conflicting roles as both counsel and director of the corporation).

thering the client's wrongful conduct. Yet there are no clear-cut guidelines for resolving many of the complex ethical dilemmas that arise for corporate counsel. The corporate and securities bar should initiate revisions to the Model Code and Model Rules to guide counsel through the minefield of conflicts in corporate representation.