

## Alerts

### Texas Lawyers May Reveal Corporate Client's Fraud to Client's Creditors

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*Lawyers for the Profession® Alert*

Professional Ethics Committee for the State Bar of Texas, Op. No. 603 (Nov. 2010)

#### Brief Summary

If revealing a corporate client's confidential information to the client's creditors is necessary to prevent the client's fraud, such disclosure is permissible. But the lawyer must first attempt to dissuade the client from committing fraud.

#### Complete Summary

The Professional Ethics Committee for the State Bar of Texas (Committee) discussed a lawyer's duty of confidentiality to a corporate client when the sole shareholder/director/officer of an insolvent corporate client intends to breach his fiduciary duty to the client, instructs the lawyer not to disclose the conduct, and the client's creditors likely will suffer substantial harm.

Tex. R. Prof'l Conduct 1.05(c)(7) provides that a lawyer *may* reveal a client's confidential information if necessary to prevent a crime or fraud. Tex. R. Prof'l Conduct 1.02(d) requires attorneys to attempt to dissuade clients from committing a crime or fraud likely to result in substantial financial harm to another. Similarly, Tex. R. Prof'l Conduct 1.12(c) adds, in the context of an officer's or other person's violation of a duty to a corporate client, that before revealing confidential information, the lawyer must take steps to resolve the violation internally.

The Committee first noted that a breach of fiduciary duty is not necessarily a fraud. Therefore, the attorney would only be permitted to reveal the client's confidences if the corporate representative's breach rose to the level of a fraud. Further, based on Tex. R. Prof'l Conduct 1.02(d) and 1.12(c), the lawyer must attempt to dissuade the corporation and its representative from committing the fraud before revealing confidential information.

The Committee further opined that Tex. R. Prof'l Conduct 1.05(c)(7) requires any disclosure of confidential information to be limited in manner and content to the extent necessary to prevent the crime or fraud. Applying this rule to the facts presented, the Committee noted that revealing confidential information to the

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client's creditors may or may not be permissible, depending upon whether the lawyer believes that doing so will prevent the fraud. The Committee also suggested that other avenues of disclosure may be adequate if available—for example, disclosure to a court for *in camera* review.

The Committee added that, while Tex. R. Prof'l Conduct 1.12(b) requires a lawyer to take action to prevent a corporate representative from substantially injuring the corporation, this rule would not apply under the facts presented because, given the corporation's insolvency, it likely would not experience substantial injury.

### **Significance of Opinion**

This opinion from the Texas Bar clarifies not only *when* a lawyer may reveal client confidences to prevent a crime or fraud, but also *how* he or she should go about disclosing the client's confidences, and more specifically, to whom the attorney should reveal such confidences. The permission to disclose is not a mandate for disclosure, however, and the facts will drive the decision and can include disclosure directly to the potential victim of a crime or fraud.

For more information, please contact your regular [Hinshaw attorney](#).

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