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# Lights, Camera, Ethics !

## Cautionary Tales From Lawyers

### in the Movies



#### With Panelists:

**Elaine Conway**  
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# *The Corporate Balancing Act*



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*“Run it by legal.”*


*“Run it by accounting.”*

# Who is the Client?

*What do you do when the interest of the company diverges from that of one of the company's employees or officers?*



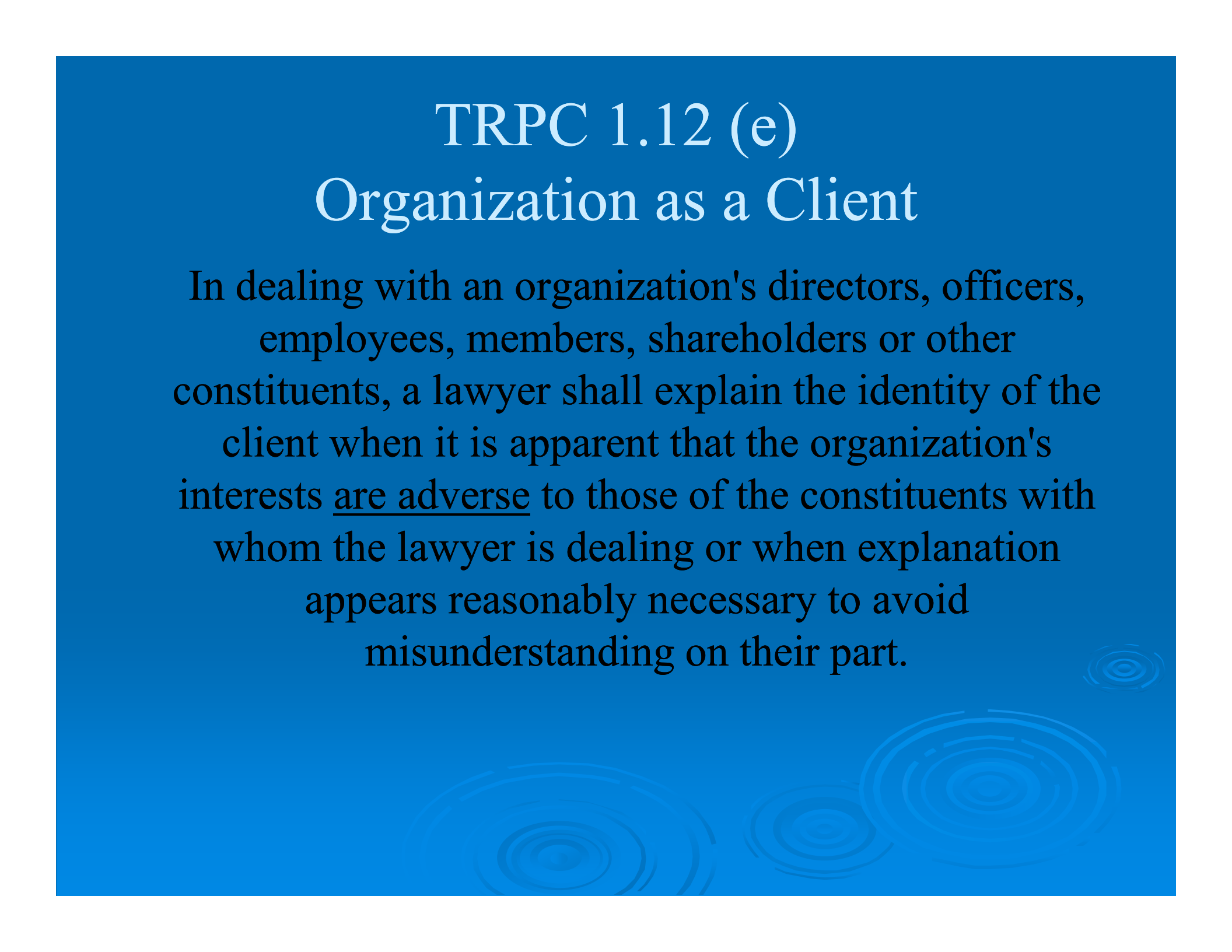
# Common Scenarios

- When employee is the whistle-blower
  - When employee is implicated in some form of wrongdoing.
  - When employee asks for personal advice.
  - When an employee ends up at odds with the company over a company policy or procedure.
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# TRPC 1.12 (e)

## Organization as a Client

In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.




# Questions for the Panel

Tips on handling the following scenarios:

- When employee is the whistle-blower
- When employee is implicated in some form of wrongdoing.
- When employee asks for personal advice.
- When an employees ends up at odds with company over a company policy or procedure.

# Organization as a Client

*What do you do if you find  
out your organization is  
doing something wrong?*



# Common Scenarios

- The lawyer discovers that the company has fallen out of compliance with certain legal requirements.
- The lawyer gives legal advice and the client chooses to ignore it.

## TRPC 1.12 (c)

Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer *shall first attempt to resolve a violation by taking measures within the organization.*

Such procedures, actions and measures may include, but are not limited to, the following:

- (1) asking reconsideration of the matter
- (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

# Questions for the Panel

What are some practical tips for handling each of these scenarios?

- The lawyer discovers that the company has fallen out of compliance with certain legal requirements.
- The lawyer gives legal advice and the client chooses to ignore it.

# No Frivolous Claims

*What do you do if you are getting pressure to file a claim that has no merit?*




# Common Scenarios

- Department head wants to use litigation to hurt the competition.
- Company officers want to make the adverse party's life difficult; or
- Company employee wants vengeance for a perceived wrong.

## TRPC 3.01

### Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.



# Questions for the Panel

- What is some practical advice for handling the situation where you are being asked to bring a meritless claim?


# Attorney-Client Privilege



*TRE 503(b)*  
*Lawyer-Client Privilege*

# TRE 503(b)

## Attorney-Client Privilege Basics

- Protects communication.
  - Must be confidential.
  - Made to facilitate the rendition of professional legal services.
  - Privilege belongs to the client.
  - Continues as long as the client asserts it.
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# Question for Panel

What are some practical tips for an in-house attorney looking to maintain the attorney-client privilege?



# Useful Practices (Review)

- ✓ Keep legal and business information and files separate.
- ✓ Designate true attorney-client communications “confidential.”
- ✓ Identify legal considerations in written communications that counsel the client about business decisions.
- ✓ Be careful about forwarding communications with outside counsel.
- ✓ Avoid discussing confidential information when non-privileged individuals are present.

# Candor to the Court

*What do you do when you find out something you have submitted is not entirely true?*




# Common Scenario

Lawyer is tasked with preparing a brief to be submitted to a court based on facts provided by others. After the document has been submitted, the lawyer comes to find out that information contained in document is not entirely correct.



## TPRC Rule 303(b)

If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.



# Questions for the Panel

What are steps the lawyer can take to prevent this from happening?



# Questions?



*Thank you!*

