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# Will Award-Seeking Whistleblower Lawyers Be Caught Between Conflicting SEC and State Ethics Rules?

***Lawyers blowing the whistle on issuer clients might be "rewarded" with state bar investigations for possible breaches of their duty of confidentiality***

## Introduction

Every issuer of securities is a repository of confidential information, and virtually every lawyer who works for an issuer has access to that repository. In addition, nearly every US issuer has a problem from time to time that could rise to the level of a violation of the federal securities laws. Now that the US Securities and Exchange Commission provides monetary awards to successful whistleblowers, issuers might wonder whether their lawyers will be tempted to disclose confidential information to the SEC in pursuit of an award.

Only unusual circumstances permit a lawyer to seek a monetary whistleblower award by disclosing confidential information to the SEC without client consent. This is true even though the SEC's rules applicable to attorneys representing issuers purport to expand the circumstances allowing reporting out to the SEC beyond the circumstances recognized in many states' ethics rules.[1] Now a respected local bar association in New York has challenged the SEC's authority to preempt state ethics rules and expand the circumstances allowing disclosure to the SEC of issuer-client confidences by lawyers seeking awards.[2]

This article analyzes the New York challenge to the SEC whistleblower award rules and explains how it relates to similar challenges made a decade ago to the SEC's "Part 205" attorney conduct rules.[3] Those earlier challenges, by bar associations in California and Washington state, came shortly after the SEC adopted Part 205. The New York challenge comes after the SEC incorporated portions of Part 205 by reference into its whistleblower award rules. All three challenges call into question the preemption rule in Part 205, which provides that an attorney who reports out to the SEC in good faith, under circumstances permitted by the SEC but not by a relevant state, "shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices."[4] So the risk of discipline under inconsistent state standards arguably remains, and to illustrate that risk we will tell the cautionary tale of a lawyer employed by the state of California who blew the whistle to the state legislature regarding significant corruption at the top of her agency and was rewarded with a state bar investigation into whether she violated her duty of confidentiality.

The SEC responded to the state challenges 10 years ago by asserting that federal rules prevail over conflicting state rules and offering to support any attorney who wishes to disclose confidential information to the SEC in good faith reliance on the SEC's preemption rule. Will the SEC now respond similarly and offer to support award-seeking attorneys who wish to disclose confidential information to the SEC in good faith reliance on the preemption rule?

## The SEC Whistleblower Rules Applicable to Attorneys

The SEC whistleblower award rules, adopted in 2011 to implement the SEC whistleblower provisions of the Dodd-Frank Act, generally exclude attorneys from eligibility for whistleblower awards if they try to use information obtained while performing their professional duties to blow the whistle on a client or employer. In particular, lawyers may not use information in this way if it is obtained through a privileged communication or in connection with the legal representation of a client on whose behalf the whistleblowing attorney or the whistleblower's employer or firm is providing services.[5]

But the SEC whistleblower rules carve out three exceptions to these general attorney exclusions. Confidential client information can be disclosed to the SEC without client consent — and qualify as "original information" that makes the provider eligible for an award — if such disclosure would otherwise be permitted under the SEC's attorney conduct rules, the applicable state attorney conduct rules, or "otherwise."[6]

## Interplay Between Part 205 and the Whistleblower Rules

The SEC's Part 205 rules apply only to attorneys "appearing and practicing" before the Commission in the context of providing legal services for an "issuer." Therefore, the eligibility exceptions in the SEC whistleblower rules created by reference to Part 205 potentially apply only to such attorneys. "Appearing and practicing" is broadly defined, however. It includes, for example, merely advising on a US securities law issue regarding a document that the attorney has notice will be incorporated into a document to be filed with or submitted to the Commission. "Issuer" is also broadly defined; it includes any person controlled by an issuer, where an attorney provides legal services to such person on behalf of, or at the behest of, or for the benefit of the issuer, regardless of whether the attorney is employed or retained by the issuer.

Part 205 deals primarily with when an attorney must cause reporting "up the ladder" within the confines of the issuer because the attorney has become aware of evidence of a "material violation" by the issuer or an issuer's agent. With respect to reporting outside the issuer as opposed to within it, Part 205 contains no requirements. Part 205 does, however, *permit* an attorney it covers to "report out" to the SEC without issuer consent to the extent the attorney reasonably believes necessary in any of the following cases:

- To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors[7]
- To prevent the issuer, in an SEC investigation or administrative proceeding, from committing perjury, suborning perjury, or knowingly and willfully perpetrating a fraud upon the Commission (*e.g.*, by concealing a material fact or making a materially false representation)
- To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used[8]

The Commission realized, when it adopted Part 205 in 2003, that permitting attorney disclosure under these three circumstances could conflict with an attorney's state law duty of confidentiality, so it included the following preemption clause in Part 205: "Where the standards of a state or other United States jurisdiction where an attorney is admitted or practices conflict with this part, this part shall govern."[9] A related "good faith" safe-harbor provision in Part 205 states: "An attorney who complies in good faith with the provisions of this part shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices."[10]

The SEC's final Part 205 release purported to put these three exceptions into context relative to then-applicable state ethics rules, noting that the exceptions corresponded to Model Rule 1.6 as previously proposed by several American Bar Association commissions (but not adopted by the ABA) "and as adopted in the vast majority of states." But that last point was an exaggeration. The "vast majority" of states had not, in fact, adopted exceptions that corresponded to the SEC's three exceptions.[11] In addition, as the Commission's release noted, a number of commenters on the proposed Part 205 rules had questioned the Commission's authority to preempt state ethics rules, at least without being explicitly authorized and directed to do so by Congress.

## The Washington and California Challenges to Part 205 Preemption, and the SEC's Response

Less than six months after the SEC adopted Part 205 in January 2003, the Washington State Bar Association (WSBA) issued a proposed interim formal ethics opinion disagreeing with the Commission's position that Part 205 preempted conflicting state ethics rules.[12] In response, the SEC's general counsel, acting for the Commission, submitted a comment letter to the WSBA disagreeing with the proposed ethics opinion and making the following points:

> The Commission is particularly interested in the Proposed Interim Formal Opinion because it interprets the Washington Rules of Professional Conduct in a manner that affects the intended operation of the Commission's rules. . . . First, the Proposed Interim Formal Opinion opines that WSBA members appearing and practicing before the Commission are prohibited - under threat of liability and bar disciplinary action - from disclosing to the Commission certain information that the Commission's rules permit them to disclose. Second, the Proposed Interim Formal Opinion opines that a Washington attorney cannot claim to be complying in "good faith" with the Commission's rules under Section 205.6(c) of the rules, if the attorney acts contrary to the Formal Opinion.
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> ...[H]owever, the Proposed Interim Formal Opinion is inconsistent with prevailing Supreme Court precedent. The Court has consistently upheld the authority of federal agencies to implement rules of conduct that diverge from and supersede state laws that address the same conduct. In particular, where, as here, a conflict arises because a state rule prohibits an attorney from exercising the discretion provided by a federal regulation, the federal regulation will take priority. Thus, Section 205.3(d)(2) of the Commission's rules will take precedence over any conflicting provision of RPC 1.6.[13]
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> Federal law will also determine whether, under Section 205.6(c) of the Commission's rules, an attorney has complied in "good faith" with the Commission's rules. Section 205.6(c) shields an attorney from discipline and liability under inconsistent state-law conduct rules if the attorney complies in "good faith" with the Commission's conduct rules. Because the issue whether an attorney has acted in "good faith" under Section 205.6(c) requires an interpretation of a Commission rule, states must defer to the Commission's construction. The purposes of the Commission's "good faith" provision would be frustrated by a state-based definition of "good faith" that is inconsistent with the Commission's interpretation. Thus, a conflicting state definition of "good faith" would be preempted.

> The Commission's rules would also be frustrated if, as contemplated by the Proposed Interim Formal Opinion, the WSBA were to initiate a disciplinary proceeding against an attorney who, in complying in "good faith" with the Commission's rules, did not comply with a conflicting RPC. Even if the WSBA proceeding exonerated the attorney, the proceeding itself would thwart the purposes of the Commission's rules by subjecting attorneys to disciplinary proceedings for attempting in good faith to comply with a Commission rule that conflicts with an RPC.[14]

Undaunted, the WSBA adopted the interim opinion.[15]

At around the same time, California — the state with the strictest attorney confidentiality rules[16] — fired a similar salvo at the SEC's preemption claim. In an August 2003 letter to the SEC, the Corporations Committee of the California State Bar made the following points: "First, California's law and rules of professional conduct prohibit lawyers from disclosing client confidences. Second, the ability of clients to confer fully with their attorneys without fear of disclosure is essential to our judicial system. Third, disclosure of client confidences can have serious consequences for both the client and the attorney. Fourth, it is unclear whether the SEC had the authority to adopt Rules 205.3(d) or 205.6(c) or that either of those rules preempts state laws and rules. Finally, the State Bar of California has no power to refuse to enforce California statutes on the basis of federal preemption unless an appellate court has so ruled."[17]

The Corporations Committee, joined by another California State Bar committee, followed up this letter with a March 2004 ethics alert that concluded: "While the Part 205 Rules purport to preempt state law, the preemption issue has not been resolved by any court and is currently the subject of much debate. Notwithstanding the 'good faith' defense of Rule 205.6(c), if the Part 205 Rules are held not to preempt state law, California attorneys disclosing client confidences to the SEC could potentially be subject to State Bar discipline and/or breach of fiduciary duty claims. Even if the SEC's claim of preemption is upheld, an attorney must take into account the risk that a court could conclude he or she did not satisfy the 'good faith' defense. Thus, California attorneys cannot presume there is a safe harbor if they disclose client confidences to the SEC."[18]

The SEC fired back in April 2004 in a speech given in Seattle by its general counsel, who reiterated the Commission's position on preemption — "where a federal rule says you may do something and a state rule says you may not, there is a conflict and the federal rule should prevail" — and indicated that the Commission would support any lawyer caught between the SEC and a state bar:

> In this connection, I would urge any lawyer who would like to make a disclosure under the Commission's rules, but who is concerned about a potential conflict with state bar rules to consult with us, either directly or through counsel. We on the staff would appreciate the opportunity to work with a lawyer facing such a conflict, either in addressing the issues before state bar authorities or, if necessary, in court. My expectation is that the Commission would be favorably disposed to supporting attorneys seeking to rely on the preemptive effect of its rules.

The next move of the Corporations Committee of the California State Bar was to publish in December 2004 what is to this day the most extensive analysis of these issues from the states' point of view, a 63-page law review article delving deeply into the California client confidentiality rules, the SEC's authority to preempt them, and the SEC's public statements regarding its preemption authority. The article concluded:

> An attorney relying upon the SEC's safe harbor in disclosing client confidences to the SEC would be doing so at his or her own peril. The attorney would have to be confident that:

- the attorney is “appearing and practicing” before the SEC in the representation of the issuer and the confidential information was related to that representation, as determined by the interlocking and confusing component provisions of the Part 205 Rules;
- disclosure was reasonably necessary to prevent or rectify a “material violation” likely to cause “substantial” injury to the financial interests or property of the client or investors, or other violations specifically covered by the Part 205 Rules, thereby falling within the threshold provisions of the safe harbor;
- he or she could satisfactorily demonstrate that such disclosure would be a “good faith” reliance on the safe harbor; and
- the SEC’s claim of federal preemption with respect to the Part 205 Rules being relied upon as justification for disclosure would be upheld despite the lack of case law and legislative history clearly and unambiguously supporting the SEC’s claim of preemption.[19]

After that, little was heard on the Part 205 preemption issue until 2013, even though the whistleblower award rules the SEC adopted in 2011 incorporated by reference the Part 205 preemption of conflicting state rules regarding attorney-client confidentiality.[20] This upped the ante, because now the SEC was not only purporting to permit attorneys to disclose confidential issuer-client information when state law did not permit disclosure, but also proposing to reward attorneys financially — perhaps to a life-changing degree — for doing so.

## The NYCLA Ethics Opinion

The first shot against preemption of state ethics rules in connection with SEC whistleblower awards was fired in October 2013, when the Committee on Professional Ethics of the New York County Lawyers’ Association (NYCLA) released a formal opinion concluding that New York lawyers “presumptively may not ethically serve as whistleblowers for a bounty against their clients under [the Dodd-Frank Act] because doing so generally gives rise to a conflict between the lawyers’ interests and those of their clients.”[21]

The opinion notes that the New York Rules of Professional Conduct (RPC) permit disclosure of confidential client information in different, more limited circumstances than the SEC rules. In particular, RPC 1.6(b)(2) permits an attorney to disclose confidential information to prevent a client from “committing a crime,” which overlaps to some degree with the “material violation” of the securities laws described in Part 205. However, “not all securities violations rise to the level of a crime.” Thus, “[t]o the extent that [Part] 205 permits (but does not require) reporting out of client confidences that amount to a material violation of the securities laws, regardless of whether the client’s conduct amounts to a crime or whether the lawyer’s services were used, it is broader than, and inconsistent with, the New York RPC exceptions to the confidentiality requirement.”

The opinion then aims directly at award-seeking whistleblowing by attorneys:

> Even when disclosure is permitted under the New York Rules, for example, when clear corporate wrongdoing rising to the level of crime or fraud has been perpetrated through the use of the lawyer’s services, preventing wrongdoing is not the same as collecting a bounty. Even in cases of clear criminal conduct or fraud, the lawyer’s disclosure must be limited to reasonably necessary information. As a general principle, there are few circumstances, if any, in which, in the Committee’s view, it would be reasonably necessary within the meaning of RPC 1.6(b) for a lawyer to pursue the steps necessary to collect a bounty as a reward for revealing confidential material. . . . Thus, in those circumstances in which the New York Rules apply, this Committee opines that disclosure of confidential information in order to collect a whistleblower bounty is unlikely, in most instances, to be ethically justifiable. This is because, under most circumstances,

such disclosure is not reasonably necessary, and does not fit within the enumerated exceptions of RPC 1.6(b).

The opinion then addresses what it calls an “even more significant ethical issue” — a conflict is “presumptively” presented when a corporate lawyer, functioning as a lawyer, seeks to collect an award for blowing the whistle on potential wrongdoing by the corporation:

> RPC 1.7(a)(2) precludes representation of a client, absent waiver, where a reasonable lawyer would conclude that “there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.” The prospect of a government payment to a whistleblower poses such a risk. While we cannot anticipate all potential circumstances and situations, and do not wish to paint a bright line rule applicable to all cases, it is the opinion of the Committee that the potential payment of an anticipated whistleblower bounty in excess of $100,000 presumptively gives rise to a conflict of interest between the lawyer’s personal interest and that of the client.
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> …We believe that a similar analysis applies in the case of a lawyer standing to profit from blowing the whistle on a former client in exchange for a monetary bounty.[22]

## A Cautionary Tale: the Ossias Case in California

Given these warnings by several state bars, an attorney whistleblower, before going to the SEC with confidential issuer information, would be wise to consult applicable state confidentiality rules, determine whether they are more restrictive than the Part 205 rules in any relevant ways, and if so analyze the potential risks.[23] Such precautions are especially important in states like California that severely restrict attorney disclosure.

If the experience of one California lawyer is any indication, blowing the whistle on real misconduct will not necessarily deter state disciplinary authorities from at least investigating the attorney’s possible violation of the duty of confidentiality. Cindy Ossias was an attorney in the California Department of Insurance (CDI).[24] The CDI investigated the claims handling practices of several insurance companies in connection with the massive Northridge earthquake of 1994 and concluded that the practices violated state insurance regulations. These conclusions were contained in confidential reports prepared by Ossias and other CDI attorneys. The attorneys recommended to Insurance Commissioner Chuck Quackenbush — an elected official who was considered a potential candidate for governor — that the companies be required to pay multimillion-dollar fines, including fines against a single company as high as $119 million. Instead of levying fines, the CDI entered into settlement agreements with three of the insurance companies, under which the CDI agreed not to finalize the confidential reports and the insurance companies agreed to make tax-deductible donations totaling about $12 million to charitable foundations supposedly dedicated to earthquake education and relief. Shortly after the settlement agreements were signed, Ossias and other attorneys who had recommended fines were instructed to shred documents containing those recommendations.

The Los Angeles Times and the legislature became aware of the settlement terms and began investigating Quackenbush’s actions. When a consultant to the Insurance Committee of the California legislature asked Ossias whether she knew anything about the settlements, she offered him the confidential reports. Portions of the reports were posted on the internet by the Insurance Committee. Quackenbush initiated a department-wide investigation. During an “interview/interrogation,” Ossias admitted that she was the whistleblower.[25] The next day, CDI management put her on administrative leave.

As investigations proceeded, Quackenbush's political and personal involvement with the charitable foundations began to surface. Testimony revealed that Quackenbush has ordered his staff to collect $4 million in settlements with insurance companies for TV commercials promoting earthquake education featuring Quackenbush himself and basketball superstar Shaquille O'Neal. According to Quackenbush, the Deputy Insurance Commissioner who was supposed to monitor the foundations engineered a scheme that allowed him to siphon away money for himself. The Deputy Commissioner resigned. Then, six days after Ossias was placed on leave, Quackenbush himself resigned. The Deputy Commissioner eventually pled guilty to federal charges.

Ossias was not fired by the CDI, because state whistleblower laws encouraged government workers to disclose improper governmental activities and protected them from retaliation. But each of those laws contained language to the effect that their protection applied only insofar as the disclosures did not violate other laws or duties. Rather than considering whether Ossias was worthy of an award, the California State Bar's Office of Trial Counsel (OTC) opened an investigation into whether she had violated her duty of confidentiality by revealing the documents to the legislature. At the end of the investigation, the OTC sent a letter to Ossias' attorney stating that Ossias had not engaged in conduct that warranted disciplinary prosecution, because her conduct was consistent with the spirit of the state Whistleblower Protection Act, advanced important public policy considerations, and was not otherwise subject to prosecution under the OTC's guidelines. The letter also noted that the new acting insurance commissioner had commended Ossias for her actions and had reinstated her to active employment with the CDI. The OTC letter did not address whether Ossias' conduct violated her duty of confidentiality.[26]

One observer called the Ossias case and its aftermath "a two-year journey to nowhere" and concluded, "The OTC's letter leaves open the issue of how future cases will be decided, when the publicity is not so intense, the officeholder not so brazen, and, perhaps, the whistleblower not so attractive and otherwise blameless."[27]

## Conclusion

All US attorneys are subject to state rules that prohibit them from disclosing client confidences without client consent unless an exception applies that permits or requires disclosure. But those prohibitions are modified by the SEC's attorney conduct rules — or so the Commission contends. When an attorney is appearing and practicing before the Commission on behalf of, or at the behest of, or for the benefit of an issuer, the SEC's rules provide that the attorney can disclose confidential information to the SEC without client consent (and potentially get an award) to the extent the attorney reasonably believes necessary in any of the following cases:

- To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors
- To prevent the issuer, in a Commission investigation or administrative proceeding, from committing perjury, suborning perjury, or knowingly and willfully perpetrating a fraud upon the Commission (by, *e.g.,* concealing a material fact or making a materially false representation)
- To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used

Further, the SEC's preemption rule provides that when an attorney reports out to the SEC in good faith under one of these three circumstances, the attorney "shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices."

Such "inconsistent standards" exist in many states — not just in New York and California.[28] Any of these states could challenge the SEC's preemption rule and seek to discipline or at least investigate the conduct of an attorney who claims to be within a Part 205 exception but appears also to have violated a state duty of confidentiality. Our advice to any attorney thinking about entering into such a situation with a view to receiving a monetary award is to study the applicable state and SEC attorney conduct rules, read the NYCLA ethics opinion and any statements SEC officials may make about it, consider the Ossias precedent, and decide whether the misconduct he or she perceives is so brazen and he or she is so otherwise blameless that the risks of a state disciplinary investigation are worth taking.

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If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

**Lawrence A. West**
lawrence.west@lw.com
+1.202.637.2135
Washington, D.C.

**Eric R. Swibel**
eric.swibel@lw.com
+1.312.777.7185
Chicago

**Jenny Allen**
jenny.allen@lw.com
+1.714.755.2229
Orange County

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**Endnotes**

1 See generally our primer Attorneys as SEC Whistleblowers: Can an Attorney Blow the Whistle on a Client and Get a Monetary Award? (Attorneys as SEC Whistleblowers), available at www.lw.com/ThoughtLeadership/SEC-whistleblowers.

2 New York County Lawyers' Association Committee on Professional Ethics Formal Opinion 746 (October 7, 2013) (NYCLA Opinion).

3 The SEC's attorney conduct rules are codified as Part 205 of Title 17 of the Code of Federal Regulations. See generally Implementation of Standards of Professional Conduct for Attorneys (Final Rule), Securities Act Release No. 33-8185, Exchange Act Release No. 34-47276 (Jan 29, 2003).

4 17 C.F.R. § 205.6(c).

5 Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) added new Section 21F to the Securities Exchange Act of 1934. Section 21F requires the Commission to pay awards to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to a Commission enforcement action in which over $1 million in sanctions is ordered. Awards range between 10 percent and 30 percent of money collected in the SEC and related actions.

[6] 17 CFR § 240.21F-4 (b)(4).

[7] "Material violation means a material violation of an applicable United States federal or state securities law, a material breach of fiduciary duty arising under United States federal or state law, or a similar material violation of any United States federal or state law." 17 CFR § 205.2(i).

[8] 17 CFR § 205.3(d)(2).

[9] 17 CFR § 205.1.

[10] 17 CFR § 205.6(c).

[11] See Attorneys as SEC Whistleblowers at 6.

[12] See Bishop, Fotenos, Hazen, & Wojtas, Conflicting Currents: The Obligation to Maintain Inviolate Client Confidences and the New SEC Attorney Conduct Rules, 32 Pepp. L. Rev. 89, 106 (2004) (Conflicting Currents).

[13] Section 205.3(d)(2), as described in the text above, sets out three circumstances permitting attorney disclosure to the SEC, while at the state level RPC 1.6 "governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client." ABA Comment on Model Rule 1.6.

[14] SEC General Counsel Giovanni P. Prezioso, Letter Regarding Washington State Bar Association's Proposed Opinion on the Effect of the SEC's Attorney Conduct Rules (July 23, 2003) (citations omitted), available at http://www.sec.gov/news/speech/spch072303gpp.htm.

[15] Some years later, following Washington's 2006 adoption of the Model Rule versions of Rules 1.6 and 1.13, the interim opinion was withdrawn.

[16] See, e.g., state-by-state chart in Attorneys as SEC Whistleblowers; Conflicting Currents at 109 et seq. California law permits attorneys to reveal confidential information relating to the representation of a client only "to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual." Cal. Rules of Prof'l Conduct R. 3-100(B).

[17] Conflicting Currents at 107.

[18] See Ethics Alert, The New SEC Attorney Conduct Rules v. California's Duty of Confidentiality (Spring 2004), available at http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=7xTdfWYEC3k%3D&tabid=834.

[19] Conflicting Currents at 149-50.

[20] In June 2013, one of the authors of the Corporations Committee's 2004 law review article, having read our primer Attorneys as SEC Whistleblowers, publicly questioned whether an SEC attorney who is a member of the California State Bar can ethically solicit disclosure of client confidences from another member of the State Bar. See Bishop, Does An SEC Attorney Commit An Ethical Violation By Encouraging Whistleblowing Lawyers? at http://calcorporatelaw.com/2013/06/does-an-sec-attorney-commit-an-ethical-violation-by-encouraging-whistleblowing-lawyers/.

[21] NYCLA Opinion at 15.

[22] Id. at 11 & 13. The California challengers to Part 205 preemption had made this point more generally in 2004: "Maintaining client confidentiality is further justified on the basis that it is necessary to prevent conflicts of interest between the attorney and the client. Absent the obligation of confidentiality, an attorney might be tempted to reveal a client's secrets in furtherance of the attorney's own interests." Conflicting Currents at 110, & also see n.9.

[23] See Attorneys as SEC Whistleblowers for a state-by-state chart summarizing these state confidentiality rules.

[24] Our information about the Ossias matter is taken from Conflicting Currents at 114 et seq.; Shpall, Note: A Shakeup for the Duty of Confidentiality: The Competing Priorities of a Government Attorney in California, 41 Loy. L.A. L. Rev. 701 (2008) (Shpall), available at http://digitalcommons.lmu.edu/llr/vol41/iss2/8; Request that the Supreme Court of California approve amendments to Rule 3-600 of the Rules of Professional Conduct (February 2002), available at http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=2mXQtyB-qpw%3D&tabid=769; http://www.chuckquackenbush.org/commissioneryears.html.

[25] See Shpall at 705.

[26] Zitrin, After the Whistle Blows (December 13, 2000) (article by Ossias' attorney, available at http://www.cacities.org/UploadedFiles/LeagueInternet/79/794614fd-2ce1-4ff7-b59b-83e2609f5d23.pdf).

[27] Doskow, The Government Attorney and the Right to Blow the Whistle: The Cindy Ossias Case and Its Aftermath (A Two-Year Journey to Nowhere), 25 Whittier L. Rev. 21 (Fall 2003) at 41-42.

[28] See the state-by-state chart in Attorneys as SEC Whistleblowers.