

Written Materials

Presidential Executive Orders & Law-Firm Survival

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Program: Talks On Law CLE — “Trump Orders: Law Firms on the Line”

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1 Key Legal Issue

Presidential directives issued in early 2025 single out specific law firms and impose severe restrictions—barring attorneys from federal buildings, revoking security clearances, and directing agencies to terminate or refuse contracts with the firms and their clients. Core questions:

- **Constitutional authority** – Do these orders exceed the executive’s procurement or national-security powers?
- **First Amendment** – Does punishing counsel for client choice infringe protected advocacy?
- **Separation of powers** – Can the executive bar counsel from courts without judicial process?

2 Summary of the Executive Orders (EOs)

EO Feature	Practical Effect
Building-access ban	Lawyers denied entry to courthouses & agencies
Clearance revocation	Loss of classified-matter capacity

Contract
cancellation

Agencies instructed to terminate or refuse contracts with firms &
clients

Heightened scrutiny Signals regulators to apply “extra review” to client matters

3 Core Legal Doctrines & Potential Claims

1. **First Amendment Retaliation** – *NAACP v. Button*, 371 U.S. 415 (1963)
2. **Bill-of-Attainder Prohibition** – U.S. Const. art. I, §9 cl. 3
3. **Separation of Powers** – Judiciary controls its own bar (*Ex parte Garland*, 71 U.S. 333 (1866)).
4. **Procurement-power limits** – Ideological contractor blacklists struck down (e.g., *Truong v. United States*).

4 Law Firm Structure and Ethics Constraints

Model Rule 5.4 – Professional Independence of a Lawyer

- Prohibits non-lawyer ownership, outside equity, and fee-sharing.
- Keeps capital tied to partners’ personal assets—raising liquidity pressure when revenue drops.

Model Rule 5.6(a)(1) – Restrictions on Right to Practice

- Bars agreements that prevent a lawyer from representing clients after leaving a firm, except for retirement benefits.
- Facilitates rapid partner mobility and client transfers—the very “run on the bank” Morley describes.

Relevance to the 2025 EOs

- Because firms cannot bring in passive capital under Rule 5.4, they operate on short credit lines; a sudden revenue shock from client flight leaves little cushion.
- Rule 5.6 ensures that departing partners can immediately compete, accelerating client migration once confidence wavers.
- Together, these ethics constraints magnify the existential risk: capital cannot be shored up quickly, and client-partner blocks can exit overnight.

5 Economic Mechanics of Law-Firm Collapse (Morley 2020)

- **Partner liquidity model** – profits distributed annually; minimal retained earnings.

- **Client pressure** → **revenue shock** – loss of government-dependent clients lowers PPP.
- **Bank-run dynamic** – rainmakers exit, credit tightens, confidence evaporates.

6 Relevant Liability Doctrines in Firm Unwind

Doctrine	Citation	Effect
Preference (11 U.S.C. §547)	90-day claw-back for insider repayments	Capital returned just before bankruptcy can be reclaimed
Fraudulent Transfer (11 U.S.C. §548)	2-year look-back	Distributions while insolvent at undervalue reversed
Unfinished Business	<i>Heller Ehrman LLP v. Davis Wright Tremaine</i> , 527 B.R. 24 (Bankr. N.D. Cal. 2014)	Post-dissolution profits on open matters belong to estate

7 Case Studies of Prior Collapses

- **Dewey & LeBoeuf (2012)** – leverage + partner flight; \$550 m debt.
- **Heller Ehrman (2008)** – real-estate downturn; unfinished-business litigation.
- **Howrey LLP (2011)** – antitrust group departures led to cascade.

8 Divergent Responses to the 2025 EOs

- **Litigation path** – Perkins Coie, Jenner & Block secure preliminary injunctions.
- **Settlement path** – Skadden, Paul Weiss accept enhanced pro-bono pledges.
- **Morley’s view:** outcome is “lose-lose”—settlers appear compliant; fighters face lingering government ire.

9 Practical Guidance for Lawyers & Firms

- Review partnership agreements for capital-return and unfinished-business clauses.
- Stress-test credit covenants against a 30–50 % revenue drop.
- Diversify practice portfolios to reduce dependence on federal clearances.
- Communicate proactively with clients about potential government-related delays.

10 Key Take-Aways for CLE Participants

1. **EOs weaponise routine regulatory touchpoints**—client risk is the primary pressure point.
2. **Collapse risk is structural**—ethics constraints and partner incentives amplify shocks.
3. **Litigation vs. settlement** brings reputational trade-offs with market implications.
4. **Governance & diversification** are critical to mitigating exposure.

11 Further Reading & Resources

- **Executive Order — Suspension of Security Clearances and Evaluation of Government Contracts (Feb. 25, 2025).**
<https://www.whitehouse.gov/presidential-actions/2025/02/suspension-of-security-clearances-and-evaluation-of-government-contracts>
- **Executive Order — Addressing Risks from Perkins Coie LLP (Mar. 2025).**
<https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-perkins-coie-llp/>
- **Fact Sheet — President Donald J. Trump Addresses Risks from WilmerHale (Mar. 27, 2025).**
<https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-addresses-risks-from-wilmerhale/>
- **Fact Sheet — President Donald J. Trump Addresses Risks from Susman Godfrey LLP (Apr. 9, 2025).**
<https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-addresses-risks-from-susman-godfrey/>
- *John Morley, “Why Law Firms Collapse,” Columbia Business Law Review (2020).***
https://law-economic-studies.law.columbia.edu/sites/default/files/content/docs/why_law_firms_collapse_11.0.pdf
- **ABA Model Rules of Professional Conduct 5.4 & 5.6 (American Bar Association).**
 - Rule 5.4
https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer/
 - Rule 5.6
https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_6_restrictions_on_right_to_practice/