Ethics and Licensing

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Gotchas

- Client fraud
- Client identity
  - Conflicts
  - Payment of fees
- Third party communications
- Metadata
Gotcha #1—Client Fraud

- RPC 1.2(d): can’t help client commit crime/fraud
- RPC 1.6(b): lawyer must whistleblow on client to prevent crime/fraud that will cause substantial financial injury
- RPC 4.1: in negotiations, lawyer can’t misrepresent important facts/laws, and must disclose material facts to prevent client crime/fraud

Trouble spots
- Client lies during sales process
- Sham contracts to “impress” investors
- Back-dating contracts
Gotcha #2—Client Identity

- **RPC 1.7(a):** Can’t represent one client directly adverse to another client unless lawyer reasonably believes representation won’t adversely affect client relationship
- **RPC 1.7(b):** Can’t represent client when representation will be materially limited unless representation not adversely affected
- **RPC 2.2:** Lawyer acting as “intermediary”
- **RPC 1.8(f):** Need consent to accept 3rd party fee payment

**Trouble spots**
- Representing multiple legal entities in a corporate family
  - Working for sub at parent’s direction
  - Intercompany agreement between parent/sub (both clients)
- Representing employee/investor and company
  - Especially close corporations
Gotcha #3—
3rd Party Communications

❖ RPC 4.2: Can’t talk to represented adverse party without adverse lawyer’s consent
❖ Trouble spots
  ■ Conference calls/meetings where other lawyer doesn’t show
  ■ “Reply to all” emails

❖ RPC 4.3: Can’t tell unrepresented party that lawyer is disinterested; if unrepresented party confused about lawyer’s role, lawyer must correct
❖ Trouble spots
  ■ Conference calls/meetings
Gotcha #4—Metadata

- Metadata can include document revisions and info about document source
- Metadata mismanagement theoretically RPC violation/malpractice, but more likely just embarrassing

Solutions
- Create clean documents
- Use third party redlining & scrubbing utilities
- Before sending, publish documents in new formats (i.e., PDF)