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# 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 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



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- ◆ 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)