



# Climbing Together: Working to Achieve Client Objectives

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A CLE Seminar  
presented by

Joseph Hollander & Craft  
*Lawyers and Counselors* LLC

# Today's Presenters

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# INTRODUCTION / OVERVIEW

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- DUTY TO PURSUE CLIENT OBJECTIVES – WHY?
- RULES – HISTORY
  - CANONS
  - MODEL CODE
  - MODEL RULES – RULE 1.2
- DISCIPLINE CASES – FAILURE TO PURSUE OBJECTIVES
- OBJECTIVES VS. MEANS



# INTRODUCTION / OVERVIEW

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- “LAWFUL” OBJECTIVES – DUTY TO INQUIRE?
  - A NEW ABA ETHICS RULE
- PRACTICAL TIPS & SUGGESTIONS



# THE POINT

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- LAWYERS HAVE AN ETHICAL AND PROFESSIONAL RESPONSIBILITY
  - TO PURSUE THE CLIENT'S OBJECTIVES
  - UNLESS CRIMINAL OR FRAUDULENT
- CLIENTS ESTABLISH AND DIRECT THE *OBJECTIVES*
- LAWYERS CONTROL THE *MEANS* OF ACCOMPLISHING THOSE OBJECTIVES



# PURSUE CLIENT OBJECTIVES – WHY?

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- CLIENTS HIRE LAWYERS
- CLIENTS TRUST LAWYERS
  - CONFIDENCES
  - INTERESTS
  - ASSETS
  - SECRETS
  - AMBITIONS
  - GOALS
  - AIMS
  - OBJECTIVES



# PURSUE CLIENT OBJECTIVES – WHY?

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- **KANSAS OATH:** WILL DISCHARGE YOUR DUTIES AS AN ATTORNEY
  - WITH FIDELITY BOTH TO THE COURT AND TO YOUR CAUSE
- **MISSOURI OATH:** WILL PRACTICE LAW
  - TO THE BEST OF MY KNOWLEDGE AND ABILITY
  - WITH CONSIDERATION FOR THE DEFENSELESS AND OPPRESSED



# PURSUE CLIENT OBJECTIVES - WHY? (CONT.)

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- LAWYERS – EMPOWERED BY LAW TO ACT FOR CLIENTS
  - CONFIDENTIAL COMMUNICATIONS PROTECTED
  - ONLY LAWYERS CAN APPEAR IN COURT FOR CLIENTS
- LAWYERS ARE PROFESSIONALS
- LAWYERS – PROFESSIONALLY BOUND
  - DO EVERYTHING POSSIBLE (WITHIN LEGAL BOUNDARIES)
- WHAT ARE WE TO DO IF NOT SEEK TO FULFILL CLIENTS' GOALS AND OBJECTIVES?



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# WHY NOT PURSUE CLIENT OBJECTIVES?

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- WHY WOULD A LAWYER FAIL TO PURSUE CLIENT OBJECTIVES?
  - LAWYER TOO BUSY – NO TIME FOR CLIENT'S MATTER
  - LETS MATTER SLIDE – IGNORES DEADLINES
  - SEES MATTER AS JUST ANOTHER ROUTINE CASE
    - LAWYER HAS MANY CASES
    - CLIENT HAS JUST THE ONE CASE – IMPORTANT TO HIM/HER



# WHY NOT PURSUE CLIENT OBJECTIVES? (CONT.)

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- LAWYER NOT BUSY ENOUGH –
  - FREEZE INTO INACTION – OR –
  - AGGRESSIVELY GO BEYOND THE SCOPE OF ENGAGEMENT



# WHY NOT? (CONT.)

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- LAWYER HUNGRY – TAKES ACTIONS TO JUSTIFY BILLING
  - MAYBE NOT CONSISTENT WITH CLIENT'S GOALS
- LAWYER DISAGREES WITH CLIENT'S OBJECTIVES (SHOULD WITHDRAW)
- LAWYER IN TROUBLE –
  - GAMBLING
  - ALCOHOL
  - DRUGS
  - DEPRESSION



# HISTORY

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- **CANONS OF PROFESSIONAL ETHICS**
- ABA - 1908
- ADOPTED BY ALL OTHER STATES
- KANSAS = 1920
- FIRST NATIONWIDE CODE OF PROFESSIONAL ETHICS FOR LAWYERS



# CANONS

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- **CANON 32**
  - NO DISLOYALTY TO CLIENT
  - NO DISRESPECT OF THE JUDICIAL OFFICE
  - NO CORRUPTION OF PUBLIC OFFICE OR PRIVATE TRUST
  - NO DECEPTION OR BETRAYAL OF THE PUBLIC
  - IMPRESS UPON CLIENT: STRICTEST PRINCIPLES OF MORAL LAW
  - MUST OBSERVE AND ADVISE CLIENT TO OBSERVE THE LAW

# CANON 15

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**Canon**

- REMAIN WITHIN THE BOUNDARIES OF LAW
- AVOID FRAUD AND “CHICANE”
- STEADFASTLY CARRY OUT GREAT TRUST

**Chicanery**

# MODEL *CODE* OF PROFESSIONAL CONDUCT

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- ABA [REPLACED CANONS] = 1969
- ADOPTED BY 49 STATES
  - [CALIFORNIA DID NOT ADOPT]
- KANSAS = 1971
  - “CANONS”
    - + “DISCIPLINARY RULES” (DR’S)
    - + “ETHICAL CONSIDERATIONS” (EC’S)



# MODEL CODE

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- **DR 7-101(A)(1):**
  - LAWYER SHALL NOT INTENTIONALLY “[F]AIL TO SEEK THE *LAWFUL OBJECTIVES* OF HIS CLIENT THROUGH REASONABLY AVAILABLE MEANS.”
- **EC 6-4:**
  - “HAVING UNDERTAKEN REPRESENTATION, A LAWYER SHOULD USE PROPER CARE TO SAFEGUARD THE *INTERESTS OF THE CLIENT*.”



# MODEL *CODE* (CONT.)

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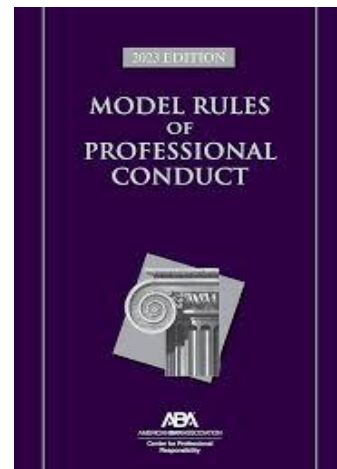


- **EC 7-5:**
- GIVE PROFESSIONAL OPINION
- CONTINUE REPRESENTATION EVEN THOUGH CONTRARY ADVICE
- NOT KNOWINGLY ASSIST THE CLIENT IN ILLEGAL OR FRIVOLOUS CONDUCT

# MODEL *RULES* OF PROFESSIONAL CONDUCT

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- ABA [REPLACED CODE] – 1983
- ADOPTED BY ALL STATES [WITH MODIFICATIONS]
- KANSAS = 1989
- RULE 1.2



# RULE 1.2, MRPC

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- LAWYER SHALL ABIDE CLIENT'S DECISIONS
  - CONCERNING THE *LAWFUL OBJECTIVES* OF THE REPRESENTATION
- SHALL CONSULT WITH THE CLIENT AS TO THE *MEANS*
- ABIDE BY CLIENT'S DECISION WHETHER TO SETTLE



# RULE 1.2, MRPC (CONT.)

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- IN CRIMINAL CASE ABIDE BY CLIENT'S DECISION
  - PLEA
  - WAIVE JURY TRIAL
  - WHETHER THE CLIENT WILL TESTIFY



# COMMENTS TO RULE 1.2

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- BOTH LAWYER AND CLIENT
  - AUTHORITY AND RESPONSIBILITY IN THE OBJECTIVES AND MEANS
- *CLIENT HAS ULTIMATE AUTHORITY = PURPOSES TO BE SERVED*
  - WITHIN THE LIMITS IMPOSED BY LAW AND
  - LAWYER'S PROFESSIONAL OBLIGATIONS



# RULE 1.2 – REVIEW

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- SUMMARY: ABIDE CLIENT'S DECISIONS ON OBJECTIVES
  - PURSUE CLIENT OBJECTIVES WITH COMMITMENT, DEDICATION, ZEAL
  - (RULE 1.3 – DILIGENCE)
- CLIENT CONTROLS **OBJECTIVES**
  - [OBJECTIVES MUST BE LAWFUL]
- LAWYER CONTROLS **MEANS** (IN CONSULTATION WITH CLIENT)
- DISCIPLINE FOR FAILURE TO PURSUE CLIENT OBJECTIVES



# MISCONDUCT

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- **RULE 8.4(A):**
  - PROFESSIONAL MISCONDUCT TO:
  - VIOLATE OR ATTEMPT TO VIOLATE THE RULES OF PROFESSIONAL CONDUCT
  - KNOWINGLY ASSIST OR INDUCE ANOTHER TO VIOLATE RULES
  - VIOLATE RULES THROUGH THE ACTS OF ANOTHER

# BOARD OF DISCIPLINE

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- **RULE 204:** BOARD OF DISCIPLINE
- **RULE 203(B):** MISCONDUCT IS A GROUND FOR *DISCIPLINE*
- **RULE 201(N):** "*MISCONDUCT*" MEANS CONDUCT THAT
  - VIOLATES THE KANSAS RULES OF PROFESSIONAL CONDUCT
  - VIOLATES THE RULES RELATING TO DISCIPLINE OF ATTORNEYS
  - VIOLATES THE ATTORNEY'S OATH OF OFFICE



# DISCIPLINARY ADMINISTRATOR

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- **RULE 205:** ACTS UNDER AUSPICES OF BOARD OF DISCIPLINE
- **RULE 208:** COMPLAINT
- **RULE 209:** INVESTIGATION
- **RULE 211:** REVIEW COMMITTEE



# DISCIPLINARY ADMINISTRATOR (CONT.)

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- **RULES 215, 216, 218:** PLEADINGS, DEPOSITIONS, PREHEARING PROCEDURE
- **RULES 223, 224:** HEARING
- **RULE 226:** DECISION
- **IF:** VIOLATION AND DISCIPLINE (DISBARMENT, SUSPENSION, DEFINITE PROBATION, CENSURE (NOT INFORMAL ADMONITION) TO SUPREME COURT
- **RULE 228:** SUPREME COURT

PROCEDURE



# DISCIPLINE FOR FAILURE TO PURSUE CLIENT OBJECTIVES

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- FREQUENT DISCIPLINE
- STANDARD RULING:
  - "RESPONDENT FAILED TO ACT TAKE APPROPRIATE ACTION TO ACHIEVE THE OBJECTIVES OF THE REPRESENTATION OF THE CLIENTS."

*IN RE LOBER*, 204 P.3D 610, 613 (KAN. 2009)(INDEFINITE SUSPENSION)



# NUMEROUS CASES

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- **FAILED** TO FILE THE CORRECTED AMENDED FINAL JUDGMENT. THUS, THE HEARING PANEL CONCLUDES THAT THE RESPONDENT VIOLATED KRPC 1.2(A).

*IN RE VAUGHN*, 368 P.3D 1088, 1098 (KAN. 2016)(SUSPENDED).

- **FAILED** TO ABIDE BY CLIENT'S DECISIONS CONCERNING THE LAWFUL OBJECTIVES OF REPRESENTATION - FAILED TO PREPARE AND FILE A MOTION TO CHANGE CUSTODY

*IN RE WATSON*, 280 KAN. 375, 121 P.3D 982, 987 (2005)(SUSPENDED).



# MORE CASES (CONT.)

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- RESPONDENT DISMISSED CLIENT'S CASE WITHOUT AUTHORITY.

*IN RE JOHNSON*, 300 KAN. 851, 335 P.3D 634, 640  
(2014)(SUSPENDED).

- RESPONDENT DISMISSED CLIENT'S LAWSUIT WITHOUT CONSULTING WITH CLIENT.

*IN RE CLINE*, 217 P.3D 455, 461 (KAN. 2009)(SUSPENDED).



# MORE CASES (CONT.)

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- RESPONDENT VIOLATED KRPC 1.2(A) WHEN HE FAILED TO COMPLY WITH CLIENT'S REQUEST THAT RESPONDENT WITHDRAW FROM CRIMINAL CASE.

*IN RE CURE*, 547 P.3D 489, 495 (KAN. 2024)(SUSPENDED).

- THE RESPONDENT FAILED TO ABIDE BY CLIENT'S DECISIONS REGARDING THE SETTLEMENT OF THE DIVORCE ACTION
  - AGREED TO A JOURNAL ENTRY THAT INCLUDED TERMS CONTRARY TO CLIENT'S POSITION.

*IN RE LAMPSON*, 147 P.3D 143, 148 (KAN. 2006)(SUSPENDED).

# MORE CASES (CONT.)

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- THE RESPONDENT VIOLATED KRPC 1.2(A) WHEN HE STIPULATED TO THE DISMISSAL OF CLIENT'S CASE WITHOUT PERMISSION.

*IN RE GREEN*, 156 P.3D 628 (KAN. 2007)(SUSPENDED).

- RESPONDENT VIOLATED MRPC 1.2 WHEN HE FAILED TO ABIDE BY CLIENT'S DECISION CONCERNING THE LAWFUL OBJECTIVES OF LEGAL REPRESENTATION.

*MATTER OF COLEMAN*, 249 KAN. 218, 223, 815 P.2D 43 (1991)(DISBARRED).



# MORE CASES (CONT.)

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- RESPONDENT FAILED TO CONSULT WITH CLIENT PRIOR TO SENDING A LETTER REQUESTING THAT THE PARTIES ENGAGE IN SETTLEMENT TALKS.

*IN RE WENGER*, 279 KAN. 895, 901, 112 P.3D 199 (2005)(DISBARRED).

- RESPONDENT'S INACTION ALL BUT GUARANTEED THAT HIS CLIENT'S OBJECTIVES WOULD NOT BE MET.

*ATTORNEY GRIEVANCE COMM'N V. EDWARDS*, 462 MD. 642, 697, 202 A.3D 1200, 1231 (2019)(DISBARRED).



# MORE CASES (CONT.)

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- RESPONDENT ALLOWED STATUTE OF LIMITATIONS TO EXPIRE
- DIRECTED STAFF TO PROVIDE A SETTLEMENT CHECK
- DISBURSEMENT STATEMENT SHOWING FEES, LIENS, AND COSTS
- “WE SEE IN THIS NASCENT PATTERN A **DISREGARD OF CLIENT OBJECTIVES AND NEEDS** WHEN THEY CONFLICT WITH RESPONDENT'S OWN PURPOSES.”

Check details:

- Payor: JANE DOE, 12345678901, ANYTOWN, IL, 60000
- Date: 11/15/2012
- Pay To The Order Of: Whole Foods Market
- Amount: \$ 150.00
- Text: ONE HUNDRED AND FIFTY Dollars
- MEMO: groceries
- Signature: Jane Doe
- Bottom line: | 000000000 | 00000000000000 | 0000

# MORE CASES (CONT.)

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- IT SHOULD BE CLEAR IT IS INCUMBENT UPON EVERY LAWYER CLEARLY TO UNDERSTAND THE CLIENT'S OBJECTIVES, AND THEN
- **DILIGENTLY TO PURSUE THOSE OBJECTIVES, USING THE LEGAL MEANS AVAILABLE.**

*PEOPLE V. MUHR*, 370 P.3D 677, 678-79, 699 (COLO. 2016)  
(SUSPENSION-PROBATION)

# OBJECTIVES & MEANS

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- **RULE 1.2:**
- CLIENT = OBJECTIVES
  - ESTABLISH
  - CONTROL
  - DIRECT
  - AMEND
  - ABANDON
- **COMMENT: “THE CLIENT HAS **ULTIMATE AUTHORITY** TO DETERMINE THE PURPOSES TO BE SERVED BY LEGAL REPRESENTATION”**

**AUTHORITY**

# OBJECTIVES & MEANS

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- **LAWYER – MEANS**
- I.E. HOW TO *ACCOMPLISH* THE CLIENT’S OBJECTIVES
- **COMMENT: “IN QUESTIONS OF *MEANS*, THE LAWYER SHOULD ASSUME RESPONSIBILITY FOR TECHNICAL AND LEGAL TACTICAL ISSUES.”**
- **CONFER WITH CLIENT**
- **ESP. RE. EXPENSE AND CONCERN FOR THIRD PERSONS**

# OBJECTIVES VS. MEANS

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- **OBJECTIVES =**
  - DECISIONS THAT DIRECTLY AFFECT THE ULTIMATE RESOLUTION OF THE CASE
  - SUBSTANTIVE RIGHTS OF THE CLIENT
- **MEANS =**
  - DECISIONS THAT ARE PROCEDURAL OR TACTICAL IN NATURE.
  - “THE CLIENT GENERALLY HAS CONTROL OVER THE FORMER, AND THE LAWYER OVER THE LATTER.”



*ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT, 7TH ED., P. 34.*

# OBJECTIVES

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- **OBJECTIVES = GOALS AND AIMS**
- CLIENT HIRES LAWYER FOR SOME OBJECTIVE
- NUMEROUS LAWYERS HAVE BEEN DISCIPLINED FOR FAILING TO PURSUE THEIR CLIENTS' OBJECTIVES.
- **MEANS AND METHODS = HOW TO GET THERE**
- LAWYER = MORE QUALIFIED AND ABLE – KNOWLEDGE & SKILL
- COMMENT [MODEL RULES]: “A LAWYER MAY TAKE SUCH ACTION ON BEHALF OF THE CLIENT AS IS IMPLIEDLY AUTHORIZED TO CARRY OUT THE REPRESENTATION.”

# MEANS AND METHODS

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- TACTICS
- PROCEDURES
- MEANS AND METHODS
- PURELY TECHNICAL PROCEDURAL TACTICAL MATTERS
- "THE ADVERSARY PROCESS COULD NOT FUNCTION EFFECTIVELY IF EVERY TACTICAL DECISION REQUIRED CLIENT APPROVAL."

*TAYLOR V. ILLINOIS*, 484 U.S. 400, 418-19 (1988); *MILLS V. STATE*, 62 SO.3D 574, 587 (ALA. 2010).

# DUTY TO INQUIRE?

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- RULE 1.2(D):
  - NOT COUNSEL OR ASSIST CLIENT TO ENGAGE IN CONDUCT THAT THE LAWYER *KNOWS* IS CRIMINAL OR FRAUDULENT
- NOT INTENTIONALLY ASSIST CLIENT TO PERPETRATE FRAUDULENT DOCUMENTS / SCAM TRANSACTION,





# FRAUDULENT OBJECTIVES

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- **RULE 1.16:**
- LAWYER SHALL *NOT REPRESENT* CLIENT – AND –
- MUST *WITHDRAW* FROM REPRESENTATION
  - IF CLIENT PERSISTS IN CONDUCT WHICH LAWYER REASONABLY BELIEVES IS CRIMINAL OR FRAUDULENT.
- CAN TRUST CLIENT'S STATEMENT OF OBJECTIVES
- IF RED FLAGS, MUST INQUIRE INTO MOTIVES / OBJECTIVES

# DUTY TO INQUIRE?

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- **CRIMINAL/FRAUDULENT BEHAVIOR.**
- RULE 1.2(d): NOT COUNSEL OR ASSIST A CLIENT IN CONDUCT
  - LAWYER **KNOWS** IS CRIMINAL OR FRAUDULENT
  - BUT: MAY COUNSEL RE. EFFECTS OF CRIME OR FRAUD

**WHO KNOWS**

# CRIMINAL CONDUCT

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- LAWYER PROCESSED FALSE HUD-1 SETTLEMENT STATEMENT,
  - PREPARED & EXECUTED FALSE DECLARATION OF VALUE FORM – OVERSTATING VALUE
  - FAXING FALSE CLOSING FIGURES TO TITLE COMPANY
  - TOOK SALE PROCEEDS
  - ISSUED \$55,000 REFUND TO THE CLIENTS FROM TRUST ACCOUNT



# CRIMINAL CONDUCT (CONT.)

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- UNDER THESE FACTS, WE FIND THAT [RESPONDENT] KNOWINGLY ASSISTED HIS CLIENT IN DEFRAUDING THE BUYER'S LENDER, INTERBAY FUNDING. THUS, [RESPONDENT] VIOLATED RULE 32:1.2(D).

*Iowa Supreme Court Attorney Disciplinary Board, v. Bieber, 824 N.W.2d 514, 519 (Iowa 2012)(SUSPENDED).*

**BIEBER**

# CRIMINAL CONDUCT (CONT.)

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- LAWYER:
  - PREPARED FOUR FALSE CHECKS TOTALING \$1,662,500
  - INFO PROVIDED BY CLIENT – AT DIRECTION OF CLIENT
  - CLIENT SIGNED THE CHECKS (FORGED)
  - LAWYER DEPOSITED CHECKS INTO HIS TRUST ACCOUNTS
  - OBTAINED CASH FROM HIS TRUST ACCOUNT
  - PURCHASED CASHIER'S CHECKS – GAVE TO CLIENT.

*In the Matter of Charles E. Feeley, 354 S.C. 427, 429, 581 S.E.2d 487 (2003)(disbarred).*



# DUTY TO INQUIRE?

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- MUST PURSUE CLIENT'S OBJECTIVES
- NOT ASSIST CLIENT IN PURSUING UNLAWFUL OR IMPROPER OBJECTIVES
- WHAT DUTY TO INQUIRE INTO THE BONA FIDES OF THE CLIENT OR THE PROPRIETY OF HIS OBJECTIVES?



# DUTY TO INQUIRE?

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- SHOULD BE ABLE TO TRUST CLIENT
- RELY ON REPRESENTATIONS
- DEVELOP MUTUAL RELATIONSHIP OF TRUST
- “ATTORNEY MAY RELY ON HIS CLIENT'S RECITATION OF THE FACTS IN ANY CASE OR CONTROVERSY, UNLESS THEY ARE PLAINLY DEVOID OF TRUTH.”

*Tomb & Assocs., Inc. v. Wagner*, 612 N.E. 2d 468, 471, 82 Ohio App. 3d 363, 368 (1992).



# WILLFUL BLINDNESS

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- REMINDER:
- RULE 1.2(f): NOT COUNSEL OR ASSIST CLIENT IN CONDUCT THAT THE LAWYER **KNOWS** IS CRIMINAL OR FRAUDULENT,
- RULE 1.1(f) STATES: "KNOWS" = ACTUAL KNOWLEDGE, WHICH MAY BE INFERRED FROM CIRCUMSTANCES.
- COMMENT [13] TO RULE 1.2: KNOW OR **REASONABLY SHOULD KNOW**



# WILLFUL BLINDNESS

- “KNOWS” INCLUDES THE DUTY NOT TO ENGAGE IN “WILLFUL BLINDNESS”
- “SUBJECTIVE KNOWLEDGE = *ACTUAL* KNOWLEDGE OR *WILLFUL BLINDNESS* TO FACTS.”
- LANDMARK CASE:
  - **A WILLFULLY BLIND DEFENDANT IS ONE WHO TAKES DELIBERATE ACTIONS TO AVOID CONFIRMING A HIGH PROBABILITY OF WRONGDOING AND WHO CAN ALMOST BE SAID TO HAVE ACTUALLY KNOWN THE CRITICAL FACTS.**

*Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766, 131 S. 2060, 179 L.Ed.2d 1167 (2011).

# WILLFUL BLINDNESS (CONT.)

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- NOT MERE NEGLIGENCE
- ALMOST EQUIVALENT TO INTENTIONAL CONDUCT
- STUDIED IGNORANCE
- CANNOT IGNORE RED FLAGS
- IF NO RED FLAGS – NO DUTY TO INQUIRE FURTHER



# ABA OPINION 491

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- OPINION 491 (2020)
  - FACTS INDICATE A **HIGH PROBABILITY** CLIENT INTENDS TO USE LAWYER FOR CRIME OR FRAUD
  - DELIBERATE FAILURE TO INQUIRE = “ACTUAL KNOWLEDGE”
- LAWYER SHOULD MAKE INQUIRIES *IF* THE LAWYER BELIEVES THERE IS A “HIGH PROBABILITY” OF CRIMINAL OR FRAUDULENT INTENT

# PRESENT LAW - DUTY TO INQUIRE – SUMMARY

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- ACCEPT CLIENT'S STATEMENT OF OBJECTIVES ON FACE VALUE
- NO DUTY TO INQUIRE FURTHER
  - ABSENT SOME RED FLAG
- LAWYER CANNOT BE "WILLFULLY BLIND" TO A CLIENT'S FRAUDULENT OR CRIMINAL INTENTIONS



# *AMENDED* MODEL RULE 1.16(A)

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- NOT ADOPTED ANYWHERE - YET
- AMENDMENT TO MODEL RULE 1.16(a) (APRIL 14, 2020):
  - A LAWYER **SHALL INQUIRE** INTO AND
    - ASSESS THE FACTS AND CIRCUMSTANCES OF
    - **EACH** REPRESENTATION
    - TO DETERMINE WHETHER THE LAWYER MAY ACCEPT OR CONTINUE THE REPRESENTATION
    - BECAUSE OF CRIMINAL OR FRAUDULENT INTENT

# *AMENDED* MODEL RULE 1.16(A). (CONT.)

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- COMMENTS: RULE IMPOSES AN AFFIRMATIVE **OBLIGATION** TO INQUIRE AND ASSESS CLIENT OBJECTIVES
  - EVERY CASE
  - CONTINUES THROUGHOUT THE REPRESENTATION
  - EVEN ABSENT A RED FLAG

**AMENDED**

# *AMENDED* RULE 1.16(a)

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- WIDELY CRITICIZED
- *UNPRECEDENTED* AND *AFFIRMATIVE* DUTY
- CONDUCT INDEPENDENT INVESTIGATION AND ANALYSIS OF CLIENT'S POSSIBLE INTENTIONS
- NO GUIDANCE OR INSTRUCTIONS ON THE STEPS
- “BREATH-TAKING AND WILL DEPUTIZE LAWYERS TO INVESTIGATE”
- EVEN WITHOUT ANY SUSPICION OF ILLEGAL ACTIVITY

# *AMENDED* RULE 1.16(a) (CONT.)

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- WOULD ENGENDER **MISTRUST** BETWEEN LAWYER AND CLIENT AT THE OUTSET
- FURTHER **ERODE** THE LAWYER'S SENSE OF SOLE ALLEGIANCE TO THE CLIENT
- WHO IS TO BEAR THE **COST** OF THE OBLIGATORY INVESTIGATION?
- **OPPOSE** THE RULE
- NO STATE HAS YET ADOPTED
- HOPE IT IS NOT ADOPTED BY STATES





# TIPS AND SUGGESTIONS

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## 1. LEARN THE CLIENT'S OBJECTIVES

- INQUIRE INTO THE FACTS AND CIRCUMSTANCES
  - ANALYZE POSSIBLE LEGAL ISSUES
  - PROPERLY COMMUNICATE WITH CLIENT
  - UNDERSTAND CLIENT'S EXPECTATIONS
  - LEARN ABOUT CLIENT'S PARTICULAR LEGAL AND FINANCIAL SITUATION
  - INDEPENDENTLY INVESTIGATE ANY 'RED FLAG' AREAS
- *IN RE: DAY V. KAKOL*, 73 BANKR. CT. DEC. 119, AT \*26 (BANKR. N.D. GA. APR. 5, 2024).

# TIPS: MAKE SURE YOU ARE *COMPETENT*

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## 2. BE COMPETENT - REVIEW THE AREAS OF LAW INVOLVED

- ENSURE LAWYER IS COMPETENT (WITH STUDY AND/OR ASSISTANCE FROM OTHERS IF NECESSARY) TO HANDLE THE MATTER

RULE 1.1, MRPC



# TIPS: MAKE SURE YOU ARE *DILIGENT*

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## 3. DILIGENCE - RULE 1.3, MRPC:

- “A LAWYER SHALL ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING A CLIENT.”
- DILIGENT IN PROVIDING REPRESENTATION
- ZEALOUSLY PURSUE THE CLIENT'S OBJECTIVES
- *STEPHEN V. GATEWOOD*, 150 IDAHO 521, 248 P.3D 1256, 1261 (2011).

# TIPS: MAKE SURE YOU *COMMUNICATE* REGULARLY, FULLY AND TRUTHFULLY

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## 4. COMMUNICATE - KEEP CLIENT INFORMED

- WORKING RELATIONSHIP REQUIRES COMMUNICATION
- REMEMBER – LAWYER IS RESPONSIBLE FOR MEANS
- BUT: “INFORMING THE CLIENT REGARDING THE ESSENTIALS OF THOSE MEANS IS STILL REQUIRED. SEE [RULE] 1.4 (COMMENT).”

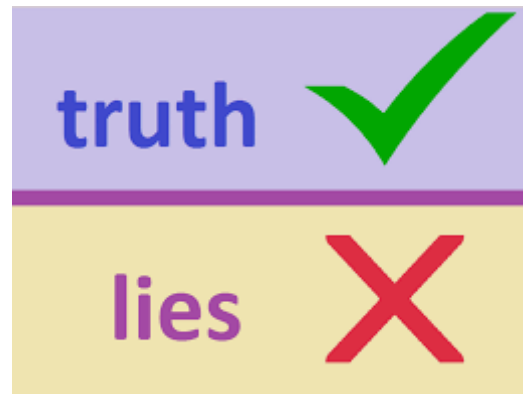
*MATTER OF WOLFRAM*, 174 ARIZ. 49, 847 P.2D 94, 102 (ARIZ. 1993)(SUSPENDED).

# TIPS: MAKE SURE YOU *COMMUNICATE* REGULARLY, FULLY AND TRUTHFULLY (CONT)

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- MUST BE TRUTHFUL

*IN RE DRUTEN*, 267 KAN. 790, 982 P.2D 978 (1999) ("RESPONDENT REPEATEDLY MISLED HIS CLIENT." CENSURE).



# CONCLUSION

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conclusion

- MANDATORY AND PROFESSIONAL OBLIGATION
  - TO FULFILL THE LAWFUL OBJECTIVES OF CLIENT
  - LAWYER'S PRIMARY JOB
  - LAWYER'S VERY *RAISON D'ETRE*
- CLIENT CONTROLS THE **OBJECTIVES** AND DIRECTS THE REPRESENTATION
- LAWYER CONTROLS **MEANS**, IN CONSULTATION WITH CLIENT

# CONCLUSION

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## CONCLUSION

- TO DO THIS:
  - **MUTUAL UNDERSTANDING** OF THE CLIENT'S GOALS, AIMS, AMBITIONS, AND OBJECTIVES
  - **COMMUNICATE** WITH CLIENT
    - **COMMUNICATE** FREQUENTLY AND TRUTHFULLY
  - **ENSURE** EXPERTISE AND **COMPETENCE**
  - **HANDLE** THE MATTER WITH **DILIGENCE**

OPPOSE ABA AMENDED RULE 1.2

# THANK YOU!

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