

# **ETHICAL ISSUES IN THE LIFE CYCLE OF THE BUSINESS ENTITY**

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# INTRODUCTION

1. **At the beginning**
2. **Along the way**
3. **At the end**
4. **Consequences**

# PERSPECTIVE

- ▶ *Managing risk  
in conflicts & fees*
- ▶ *Consequences beyond  
Bar discipline*

# AT THE BEGINNING

- ▶ **RPC 1.13**
  - **Entity client rule**
  - **New to the RPCs in 2006**
  - **Generally defines client as the entity**
  
- ▶ **Importance of defining client in the engagement agreement**

# AT THE BEGINNING

- ▶ *Eriks v. Denver*,  
118 Wn.2d 451, 824 P.2d 1207 (1992)
  - Conflicts
  - Breach of fiduciary duty
  - CPA claim

# AT THE BEGINNING

- ▶ **RPC 1.8(a) and investing with/in clients**
- ▶ **ABA Formal Ethics Op. 00-418 (2000)**
- ▶ ***Holmes v. Loveless*,  
122 Wn. App. 470, 94 P.3d 338 (2004)**

# ALONG THE WAY

- ▶ **Back to RPC 1.13: Who is your client?**
- ▶ **RPC 1.7: Multiple client conflicts**
- ▶ ***Hicks v. Edwards*,**  
**75 Wn. App. 156, 876 P.2d 953 (1994)**

# ALONG THE WAY

- ▶ **RPC 1.8(a) and modifying fee agreements**
- ▶ ***Valley/50<sup>th</sup> Avenue, L.L.C. v. Stewart*,  
159 Wn.2d 736, 153 P.3d 186 (2007)**



# AT THE END

- ▶ **Back to RPC 1.13: Who is your client?**
- ▶ **RPC 1.7: Multiple client conflicts**
- ▶ ***Bertelsen v. Harris*,  
459 F. Supp.2d 1055 (E.D. Wash. 2006)**

# AT THE END

- ▶ **RPC 1.5 and collecting fees**
- ▶ ***Simburg, Ketter, Sheppard & Purdy, LLP v. Olshan*, 97 Wn. App. 901, 988 P.2d 467 (1999), *amended*, 109 Wn. App. 436, 33 P.3d 742 (2000)**

# CONSEQUENCES:

## Back to *Eriks v. Denver*

- ▶ Civil damage claims for breach of fiduciary duty
- ▶ Fee disgorgement/denial
- ▶ CPA claims

# **FOR FURTHER READING**

- ▶ **“The ‘Who is the Client?’ Question Revisited”**  
*August 2006 WSBA Bar News*
- ▶ **“Taking Stock: Investing in Clients”**  
*November 2005 WSBA Bar News*
- ▶ **“Managing Conflicts”**  
*October 2004 WSBA Bar News*

# QUESTIONS?