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Greetings, internet and welcome to an attorneys guide to ethically advising startups 2020 update. I'm Todd Cogan, a solo practitioner out of a great state and city of New York, which doesn't seem as great as it was before the pandemic. But hey, we're in New York tough. So today is a today's, I'm gonna find this rather exciting and hope you do, too. This is all about my startup practice. And that's when I started my practice about eight years ago, this was really what I wanted to focus on, which was the concept of startup businesses. And so what we're going to do today is we're going to go through, yes, we're going to go through the chapter and verses on the ethics rules, because you know, we got to do that. However, we're going to do that within the context of working in what I believe to be the very exciting realm of working with startup businesses. So just like any other presentation, we start with our agenda, second slide here. So first of all, first and foremost we're going to do is I'm going to give you an introduction to startup practice. And by doing so I'm going to give you not just like, here's what a startup is, I'm also going to mostly going to deal with a few startup related business concepts that you might not be aware of already. And if you are great, it'd be a good refresher, if you're not, and you're interested in startup practice, I think this will be very helpful. And then we're going to go through the chapter and verse and going through the major rules, professional responsibility, I'm going to be going through maybe using the model rule, or I should say, the ABA rule, and where it differs from, say, the New York rule. And yes, I understand the National CLE I have the New York's but New York person, and New York center kind of guy. But I will, I will try my best not to rely overly on New York, sometimes New York is a little different. And that becomes very important, especially when you're dealing with startup companies. So we'll go through that in some detail. And specifically, we're gonna go through confidentiality, I'm gonna go through conflict interest, which has some really interesting implications when you're dealing with startups. So let's be anti solicitation rule, and specifically doing that one networking. Now, this is really important, if you like me, are responsible for the

business development of your practice. But even if you're not responsible for it, you know, you may be out there on the world and doing some networking anyway. And so this will be helpful for you. And I suppose the No Contact will and yes, it will be the plain vanilla, no contact rule that I'm going to apply it as it applies to startup companies. I'm going to talk about referral fees, when to give them when not to give them etc. Then we're gonna talk about communicating with unrepresented persons, which is something that happens all the time, in start up practice, I think you'll find it quite helpful. Thanks, we'll go through attorney as third party neutral, this is something that

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I occasionally have

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to deal with. And so I think is very helpful, then trust account issues. I know, every single ethics course, says, Don't do anything with your trust account or keep everything separate. Otherwise, you're gonna be flayed alive, like on Game of Thrones, and there's definitely a big risk involved with the trust account. That doesn't mean that we can't use it. And doesn't mean that I can't give us some practical advice on how to use it. Now, if you're already if you're part of a firm that already has a department for that, or a person for that, awesome, good for you, this won't be as applicable to you. If you're like me and solo practitioner, this is very important because your your trust account is effectively your license. But even if you don't have enough, you're not fully responsible for understanding the rules and how it works on a practical level may be helpful for you on estimates about non law practice activities, because we are living in 2020. And the gig economy is a thing. And people have multiple side hustles. So we'll talk about what non law practice related side hustles look like and how to deal with that within the rules. Next, we're going to talk about what to me is always the big important question, should you take equity in a company that you represent? I'm going to go through a go through a ethics opinion that deals specifically with that. I'm hearing a little disappointed in what it says. But then we're going to talk about some some of the more practical things that I can advise about based on my experience in dealing with startups. And then finally we're going to talk about cryptocurrencies which Yes, that particular gold rush is now mostly over but it's still a thing and something you need to be aware of. Keep in mind we're not going to be talking about choose to take cryptocurrency as payment that is a totally separate thing. By the way, the short answer is yes, you can, if your state lets you do it. board members talking about when you are representing a company that is offering cryptocurrencies, as part of its package, either by company sensation as a bonus, or if you are representing a company in their, you know, IPO or Ico. So again, we'll get into that in detail. That said, Let's start with the fundamentals. What is a startup? a startup is any business that one is in its first five years of operation, or nine or two, has not fully developed as initial customer base yet,

or is based on an innovation that is early in the adoption curve. And you'll see there's no citation here. Why? Because this is my own personal definition of startup as it's developed over the last eight years of practicing in this particular space. Now, everyone sort of has a different way of looking at startups, this happens to be mine. So the first part having being in its first five years of operation, the reason I say that is because 95% of businesses fail within the first five years. So it just seems to be it seems to make sense that once you've hit that five year mark, you've been in business for four or five years, then you're past the so called you could be considered past the so called startup phase.

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Alternatively, if it hasn't fully developed its initial customer base yet look, it's entirely possible that your company or you know, the your client startup has been in operation for five years and hasn't even hit the market yet. Why? Because they're still developing their IP, or, or they're developing their go to market strategy or something else. So it's another thing that needs to be kept in mind. Or number three, based on innovation is early in the adoption curve. Now what the heck do I mean by that? You'll find out in just a few moments. So what does a start up look like? Now, I understand that Facebook could no longer be considered a startup in any capacity. However, Facebook started when I was in college, and to me it is the quintessential startup company that you can, you know, you can insert whatever, you know, unicorn, you want to and this metaphor. So you see here, I have two images here, I have Facebook on the one end, which, again, to me is sort of the quintessential, you know, startup unicorn, you know, was an idea that turned into, you know, billions of dollars and effectively controls the universe right now. On the other end, you have this stock photo lady opening up a store, presumably for the first time. Now, why am I showing you this, I'm showing you this because not every startup is going to look the same. In fact, most startups are going to look different from one another. And it's really important if you're dealing with startup clients to understand that the folks like the Facebook folks, at least when they first started, and the people who are just like starting an e commerce or something like that, for the very first time, they both deserve the same amount of attention they both deserve. They're both equally exciting to the client, and therefore should be equally exciting to you. And you really should be treating them similarly, in that regard. So the innovation curve is the Rogers adoption of innovation curve is older than me. And it is a really great way of measuring where a particular innovation is in the marketplace. So the reason I bring this up is going based on the definition of startup I gave you before, which is say that it was basically nowhere they believe is a third prong of it, which is that the company is based on an innovation are a technology, which is early in the adoption curve. So going through Rogers adoption, innovative innovation curve, it is a bell curve, just like very many others. And it is incredibly instructive in how innovation comes into the marketplace. So let's start on the very far left. With innovators. This is about 2.5% of the population. These are the people who are coming up with the new thing, or they are within the within the inner circle of the new thing. And they are, say the alpha or even early beta testers of

the new thing. So here's an example. Let's go with the iPhone that now sort of, you know, eponymous thing, it's ubiquitous, it's everywhere. It's you know, can't live without our smartphones. Right? Well, you know, way back in the dim mists of time, what about like 10 years ago, there were 2.5% of the population. They were the innovators on on say the iPhone, right. And they were the ones who were developing it. They were the ones who were doing the initial testing on it. And it was it could have been theoretically in the marketplace, but really 2.5% of population we're dealing with that. Then comes the early adopters. These are the people who want to see the new thing. Sort of as soon as it hits the market in a significant way, these are the people who bought the first iPhone when it first came out, like, Oh, this is really cool. That's about 13.5% of the population. And then you move over into early majority, these were people who waited for the iPhone two to come out the iPhone three to come out before buying the iPhone one. Alright, so this is 34% of the population. This is a large chunk of the consuming public. And so when you are in this far left area of the innovation curve, when you're an innovators, early adopters, and going into early majority, this is where you are looking to be if you are a startup Now, if you're really, really lucky. Or if your client is really, really lucky, they can get their product into the early majority phase that is rare, when you are dealing with a startup more likely than not, when you're in that startup phase, you are dealing with the innovators when it comes to that beta testing phase. And then if and the vast majority of the time you're dealing with the early adopters, like the people who are looking at it on who this new iPhone thing, I'm going to grab it, I'm going to try it, I'm going to you know, start using it.

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So when you hit early majority, that's when things get really exciting, because then you have economies of scale, right. So instead of having, you know, 100 units on the shelves, you're having hundreds of 1000s of units on the shelf, but it's not really gangbusters quite yet. gangbusters comes in late majority, which is the next stage. And that's another 34% of the population. These are the people who are buying the iPhone two when the iPhone five out, and they're looking at it, and they are you know, they're enjoying it. So your iPhone two is still you know, is still selling units in the late majority. But meanwhile, your later iterations of the thing are, are still being picked up by the early majority. And finally, there are the laggards of 16% of the population at the very end. These are the people who, as of today are just now interested in a smartphone at all right? These are people who are way behind the curve. These are folks that you're not your startup clients are not really going to be interested in dealing with and look, there's these people are going to exist regardless of the thing. You you get to a point, when you're when you're when your laggards are buying into technology, it's really no longer considered an innovation. It is something that's so ubiquitous, that it's like part of everyday life, for you know, the entire country may the entire world. So when you are counseling your clients about where their particular piece of technology is, or where their business model is, it is helpful, not only for the clients education to the exempt than already aware of it, but also important for you as an attorney to understand where the

where the client's product or service is in the Rogers adoption of innovation curve. And that'll be extremely helpful. When you are negotiating on behalf of a company with investors, it'll be very helpful when you are setting expectations for future rounds of funding or future rounds of operation. And so I'm very, very important. Now, there's another curve that I want you to be aware of as we as we chat about startups. Now, this one also isn't mine. And this one's not older than I am. It's only about you know, six or seven years old. And that's the adjusted startup curve, which Paul Graham put out a bunch of years ago from knife capital. And this isn't about the This isn't about adoption of innovation. It's about what happens to a startup as it moves forward and starts to become an actual, an actual going concern. So we start here at the very beginning the initial enthusiasm Wow, I just started my business. I'm super excited. I got maybe even got your first customer like wow, things are gonna be really great. I'm going to be the next Steve Jobs. And then immediately thereafter comes the reality check. Oh, god, this is hard. This is not you know, as easy as I was initially led to believe or maybe as easy as I've sort of convinced myself was the case and you get your reality check and that's usually a big tip down then you have lack of traction. By the way that takes time in order to get anything off the ground. It takes time. I don't care how experienced you are. don't care how great your product or services, you have to prepare your client for the fact that this lack of traction is going to happen because it takes time for a market to accept what your client is doing. And sometimes it takes a while for your client to really understand what they're doing, and then really make things work. So you see, towards the end, a lack of traction, we have a we have what's called the crash of an aptitude, and the crash of an aptitude. It's when you've hit rock bottom as an entrepreneur of Oh, God, I don't know what I'm doing. This isn't working. You know, you're thinking about your opportunity cost like, Am I really, you know, what am I losing in other opportunities by doing this for cockta startup.

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And this is where a lot of folks fall flat. This is where the separates the adults from the children so to speak. And what if you are able to get past this, then things start to move up a little bit slowly, but surely. And so after the question. ineptitude. If you're able to move forward from there, you'll have a plan. And you'll have a plan not based on your assumptions about the market, but based on how the market is actually reacting to your product or service. And as you are, as you're there, then you are, you're you're getting your skills, your networks and your funding, you're you're starting to gain a little traction. And finally, you get to growth and stay scale and the path to sustainability. What am I mean by sustainability, a, or a company is now able to be run without you there. And as a going concern. This, of course, is the holy grail for any startup founder and the Holy Grail for any one of your particular clients. Or just the other day, I was speaking with a client who said, Really, I just want to have a business that is run like a business. And that doesn't feel like I'm just the chief employee that I feel like the CEO. That takes time, it takes blood, sweat, and tears, and it is what it is. But um, you know, if you and this is something I tell my clients all the time and something I want to impart on you today. If your clients go through this process, and they

trust the process, and they challenge their market assumptions, and they always look at the data and interpret the data not based on how they want things to be but how things actually are, they will have a shot at not only surviving but thriving. So now we've talked about startup businesses, let's talk about what sort of lawyers do in order folks like us do? Well, at the very basic service we provide is entity formation, I would also call it entity structuring. Depending on this model, we also draft form contracts, we negotiate deals, we help form partnerships, we do Investor Relations, we determine liability in the business model, or rather, should I say, We advise about liability in the business model, because the business model really determines where the liability is, it's just our job to identify where the potential liability is and advise the client as to how to mitigate that liability. Finally, startup lawyers protect the startups intellectual property. Now, you may be thinking yourself, Well, you know, not every, you know, not everything is patentable. And that's absolutely true. But I would just go so far as to say that every every startup has some kind of intellectual property, it might not be register a bowl, but it's still intellectual property. So what am I talking about at the sort of hard IP level, or we're talking about patentable things we're talking about, you know, trade secrets that have to do with technology. And then the like, on the other hand, we have marketing, intellectual property. This is stuff like copyrights, and trademarks, and trade dress. And finally, as sort of the softest I can think of is, are those trade secrets, which are considered proprietary information, but are not registerable in really any way. And that's things like, your, your client list, or your excuse me, your customer list, sort of how the distributions work, how your business model works on the inside, that's all intellectual property, and that all needs to be protected. Now, that does not mean that every person that you're your client interacts with needs to sign a nondisclosure. But it does mean that your startup client should have a form non disclosure that works for them on hand, in case they're in a situation where they're going to speak with somebody who can do something with their intellectual property. So we'll, you know, it's just something that, you know, a lot of folks look at and say, Well, you know, this is a software as a service or this is, you know, e commerce is a really IP. Well, yes, there always is some form of intellectual property. Enough about that. Well Let's go into the actual nitty gritty

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of the rules of professional responsibility now that we've gone through sort of what a startup company is, and sort of what startup lawyers do. And with all of these things, we're going to start with what the rule is, we're going to go through the chapter and verse because that's something that we have to do in a CLE. And then we're going to apply it as it relates to startup companies and startup practice. So commonly, jelly will be the first one model rule 1.6 chapter and verse, a lawyer shall not reveal information relating to the representation of a client, very important thing that mentioned there, unless the client gives informed consent informed very important, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted generally. And of course, we'll 1.18 this standard applies to the initial consult, regardless of whether you end up representing the client or not. Now, the public policy reasoning behind

confidentiality is rather clear. It's something that's been beaten into our heads since law school, but is worth mentioning here. You want your client to be able to tell you the truth at all times without worrying about, you know, things getting out to third parties. And of course, this is very important. And I'm not going to you know, I'm not going to say that it isn't. But in the startup community, things are treated slightly differently. So let's talk about startup confidentiality issues. So what is confidential with a startup? All right? Well, I think first and foremost, is the business model information, that that's where most of the trade secrets lie, right? These are the things that you can't really register as intellectual property, but are considered proprietary and secret, the business model information, the secret sauce to how this business is supposed to work and make money. That may be might be the most confidential thing that you'll receive, as an attorney do with a startup business. So you absolutely should keep the business model information as confidential unless and this is very important unless the client says yes, you can disclose that. Now, that goes back to what we're talking about before and the chapter and verse about informed consent, what does it mean to have informed consent? Well, technically speaking, what it means is the client a that you've gone through with your client, what confidentiality is, and what the risks are, if you do give permission to or whether if the client gives you permission to make that disclosure, as a great I understand, and I'm giving you the giving you authority to disclose this thing anyway. Now, sometimes, actually, it's a most of the time, you can do that in writing, right? You do that over email, you could do that over a contract, you know, one page contract or something like that. But sometimes you can't do that. For example, let's say we're on a zoom, right, or on a on a conference call or something like that. And you're in a conference with your client and a third party, and maybe that third party has a nondisclosure agreement in place with your client, and maybe they don't, but hopefully, they do if you've done this, right. So and a question comes up that in order to answer it would require you to divulge confidential information to the third party in the call. So what you do you say, okay, client, I've received this, you know, I've been asked this question, or on this thing is recorded or not recorded, you know, make sure you get consent that that was recorded? In order to answer it, I need to provide confidential information. Is that okay? Right. answer any questions you have, maybe we maybe if you want, we can go to I know, on these platforms, you can do a breakout room, if you have questions about it, but you put your client on the spot a little bit and say, Is it okay?

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Nine times out of 10? They're gonna say yes. And then you can move forward. And at least at least everyone on the call is heard, okay, what's about to be said is meant to be confidential. Between everyone on the call that way you protect yourself and you protect your client. Next networking on your clients behalf is something that I do a lot actually. And even in the pen, the age of the pandemic, I network on my clients behalf. And what that means is as I go out into the world, I meet people and I see that there's potential contact for a client of mine or their potential customer or a potential source of insight or anything like that. I try to make connections. When

you are doing when you are networking on your clients behalf and you know, hopefully it's something that you do because certain attorneys really shouldn't be doing that. Because they have a vested interest effectively in the in their clients. So what you do is you say, Hey, I have a client who I think you should meet. I think you guys have a lot of synergies. I can't I can tell you broadly what they do, but I can't give him anything confidential. Would it be okay? If I made introduction, maybe we can have a conference call nine times out of 10. They'll say yes. And you move forward from there. That way you have made the connection on behalf of the client, while at the same time protecting their confidentiality, which is always helpful. Next, trade secrets. Now trade secrets, as we've already discussed, are form intellectual property. They're not register rubble. But here's the thing, trade secrets are, are enforceable, right, you can get an injunction against somebody who is infringing upon your trade, your your trade secrets, but the enforceability of a trade secret, as intellectual property is only as strong as the secret keeping mechanism itself. So I would say as a start up attorney, if you are dealing with your clients trade secrets, almost always, I say almost because you should never say you shouldn't say always or never right. But no trade secrets. You know, if you're going to be dealing with it, the other side on that conversation needs to have a nondisclosure agreement signed. And unless the client completely understands what the problem is what the issue is, and says it's fine. Try to insist upon it, because ultimately, it'll protect the client and will protect you. Next patentable items. Now, once something is patented, fine, it's registered, it's fully, you know, it's fully out there in the open, you can talk about it all you want, because it's patented, and it has a shelf life, and that's it. But if it's patented or bold, and has not been patented yet, or it's patent pending, we received a provisional patent. And guess what, it don't talk about it other than the other general broad strokes. Finally, discussing matters of the client in public places. No, this is not just for litigators is also for startup attorneys and other transactional attorneys. Now, during this covid 19 pandemic, it is not necessarily even within the realm of plausible that you're gonna be in a public place your client very often. But before then, and hopefully, you know, when this nightmare is over, we hope after the pandemic, we'll be in public places with our clients, again, maybe we'll be in a coffee shop will be and someone else's office or something like that. If you're going to discuss a matter a confidential matter with a with a client in a place where other people can hear. And sometimes that's inevitable. You have the rules say that you need to try to you know, try as best you can, practically speaking, to protect the confidentiality of the conversation. So if you're starting to if you're in a coffee shop with a client, and you know, he start he or she starts talking about, you know, something relevant, but it's always confidential, say, hey, this place, literally anyone can hear us right now, maybe let's go to the corner, maybe let's find a place that's quiet or something like that. Just do what you can to keep what you're talking about out of earshot. That way you haven't waived confidentiality, because that's super, super important. Okay, now we're done with confidentiality, let's go through conflict of interest. And as always, we start with the chapter and verse, New York and model rules 1.7 through one point, 10 deal with conflict of interest. So definition, accomplishments arises when one of the representation of one client will be directly adverse to a another client, or not, and or to there's a significant risk that the representation of

one or more clients will be materially limited by the lawyers responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer. So that, you know, number one is really straightforward, right? example, you shouldn't be representing both sides in a transaction, we're going to go through a case study, by the way, of someone who tried doing that in the worst possible way.

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The second one is a little more, a little more subtle, has some nuance to it, which which I can appreciate. So the first thing is there's a significant risk, well, once a significant risk, not nothing, right? The reputation of one or more clients will be materially limited, by law responsibilities to another client. So where does that come up in the startup world, you can represent competition, and I'm talking about competition that's not publicly traded companies are, you know, in situations where, you know, everyone is representing everyone you know, and like fortune 500, or something like that. I'm talking about, you know, those startup niche areas where, if you under if you have reprise if you currently represent one member of the, of the startup community, in a particular sector, and you have the duty to protect their interests and to protect them. And their whole their secret secret. On the other hand, you have another new client, or, you know, another new client or Oh, and or an old client comes in and says, Hey, I'm switched over to this market, you know, can you represent, you know, can you represent both? Even if it's on the same transaction? Like, can you really serve each client properly? Is the question that you need to answer a former client. So someone used to represent a course or a third person, if you have a duty to a third person who's not your client, say you own a piece of another company that is in direct competition with your client that can sometimes happen. Although I would say that we're not necessarily talking about Oh, my retirement account occasionally has stock in this other company. Now we're talking about like a personal vested interest now, in which you have a duty to a third person. And finally, personal interest of the lawyer, let's say you are a competitor in one of your side hustles, or something along those lines. So there are of course, exceptions as a conflict of interest rule. And really, we have to live in those exceptions, otherwise, sometimes will be really difficult to do anything at all. So one lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client to representation is not permitted by law. No, we haven't seen the word or yet, at least not significantly. Three of our station does not involve the estimation of a claim by one client is another client, represented by the lawyer in the same litigation or the proceeding for a tribunal. So that's rather obvious, you can't represent both plaintiff and defendant in a lawsuit. And finally, we have that conjunction for each affected client gives informed consent confirmed in writing, there's an informed consent phrase again. So what because this is and and not, or we have to all four must apply, in order to be able to move forward where there's a potential conflict of interest. So let's just take it together, the lawyer reasonably believes that they'll be able to provide common diligent representation to each of them, that is something that you need to determine on your own. If it's not prohibited by

law, that's rather obvious, check the statutes, if it doesn't involve a claim of one directly against another. In other words, if the interests of the two clients are aligned, right, if two clients are working together in a joint venture, right, and they and you want to represent both of them on one side of transaction versus the other side of transaction, cool, their interests are aligned, if they diverged, you have a problem. And finally, each affected client gives informed consent confirmed in writing. The way I like to do it, is to of course, we all have our conflict of interest forums, I have my own, feel free to email me if you would like a copy of mine. And what I do is I make an event of it. I, I either dwell used to be I would get them both in a room. But now I guess, you know, it's a Zoom Room or something like that. I'll say, Okay, guys, or gals, or both. Here's a potential conflict of interest comes up. Because of X, Y, and Z.

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I give them a spiel about you know what that means. Is that right? If the two of you are interested in still having me represent both of you, here's our fault. Here's my form, or they're my conflict waiver, let's go through it together and kind of go through what it means what it is, ask and ask any questions you'd like. Because I can and if you want, if you're comfortable sign, if not, don't but I can't read both of you, unless you both sign this document. If you make an event out of it, they're going to remember that it happened, as opposed to, if you just kind of put a thing in front of this, they just sign this thing. Right, which some attorneys do that and you know, that works for them. For me, because because when you're dealing with any potential malpractice, or potential issues with the attorney Grievance Committee was always best is a rather should I say the the client always gets deference in terms of what they remember, or in terms of what it is because these rules do not exist to protect us. If you have a if you take one thing from this presentation, it's this. The rules professional responsibility, for the most part do not exist to protect lawyers. They exist to protect clients, and the rules virtual responsibility. Assume that the public is a bunch of morons. And maybe they're right, maybe they're wrong, I'm not sure. But we still have to treat it as such. But so just a thing that humans do. If they don't remember stuff very easily. Just it is what it is. It's our biology works. And so if you make an event out of it, make it look as serious as it actually theoretically could be. It will stick on the client's mind and it'll stick in the clients mind in two ways. I think a significant one, for the ethics rules purposes, there can be no doubt that this person gave informed consent, number one, number two, if you make a an event out of it, they, the client thinks, wow, this person is really interested in making sure that my interests are protected. That makes them feel good, that makes them provide referrals. And that makes everyone happy. So let's talk about business conflict issues, right. So now we've gone through the the rule and the exception, let's go through, you know, some scenarios in which you're going to have to deal what you may have to deal with it, and start a practice number one representing clients competition. This happens sometimes, sometimes you are, you know, just doing transactional work. And you are you've built a niche for yourself in a particular industry. And you're representing a, you know, say you have a and b and a is an is competitor with being you've represented a currently

represent a in transaction x, you currently and you want to represent B and transaction y. And a is not in transaction. Why? You know, can you you know, is there a potential conflict of interest? Yes, is that waivable? Absolutely, so long as you do it, right. Next, represent any former clients competition, this is slightly more complex, because in the A and B situation, you're no longer representing a, but you still have a duty to a, so keep that in mind. Next, negotiating both sides of a transaction. I don't like to negotiate on both sides of the transaction, really ever. When I do a Caitlin I will occasionally allow, at least in my own practice, is if the two sides of a transaction have really come up with what they want, and they have all their deal points worked out, then I will do the attorney escribe thing and you know, write up a contract, in accordance with the deal points that they have jointly agreed to insane email or a letter of intent. And of course, if I do that comp waiver seem to be excited. Now, sometimes these conflicts can be waived, sometimes they can't. Right. So you know, you can't you can't waive conflict, when you're trying to represent both the plaintiff and defendant in the same lawsuit right. Now, the thing, only the importance of informed consent to waive a conflict, I think discussed this already enough. But just one thing bears repeating that the rules will assume

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that

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the rules will assume that the client needed to be handheld through the informed consent process. This is not like in the medical field where you just, you know, just sign an informed consent waiver. And for the most part, you're fine. Again, if you make it an event, if you educate the client, generally, and they and they sign the waiver, generally it will stick. Okay. confidentiality and venture capital, I bring up venture capital specifically, because is a particular thing that we startup attorneys deal with on a regular basis. And there are special special considerations that need to be taken. They need to be taken. So introductions of venture capital and angel investors is not without risk, and in fact, is one of the highest malpractice risk areas. Why? Because you're making an introduction from your client to a potential investor. And by virtue of doing that saying, Hey, I am endorsing this investor, this investor will be good for you. But the seas and so called angels there, for the most part, adversaries really, and you know, the it's really the, the ratio of VCs and angels that are, you know, that respect confidentiality and respect intellectual property versus those that, you know, play the game. It's really out of whack. So, when you're just you're so when you're dealing with the venture capital, angel investor, folks, do not provide business model information to them, have the client do it directly. Non disclosure agreements are key, especially when you're dealing with stuff that's trade secret related, as we discussed, the enforceability of a trade secret is only as strong as a secret keeping mechanism. And a nondisclosure agreement is considered a secret key mechanism. Now, what about if you hold equity in this in the startup

company and you're making introduction to a venture capital form? Or to angel investor? Be wary? Right? Be careful about this. And I'm personally not a fan of holding equity in general. However, if you're going to do it, and you know the rules say technically you can just remember that not only are you an equity holder, you are also the attorney for the company. And the rules will always assume that you're acting in your capacity as the attorney for the company, not in your capacity. As an equity holder, remember, these rules don't exist to protect us, the attorneys they exist to protect public feel for better, for worse, we have to interact with that. Next, ball rule 8.4 misconduct, this is the time to scare right? Once again, chapter and verse is professional misconduct for a lawyer to a violate or attempt to violate the rules professional conduct, knowingly assist or induced another to do so or it is through the acts of another be committed a criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer. in other respects, I would argue that there are very few criminal acts meaning misdemeanor or above, which would not respected or reflect adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects, but teach their own see engaging in conduct involving dishonesty fraud, deceit, or misrepresentation, I would actually go so far as to say intentional misrepresentation, you know, keeping in mind that the language of subsection C here really is about intent. So if you, you know, if you say something to, you know, on behalf of your client that you know, to be false. That's dishonesty or fraud. If your client tells you something, and you believe to be true at the time, your client told you that, and you tell someone else, it turns out, that wasn't true. That's not dishonesty, fraud, deceit, or misrepresentation. Because at the time you believe it to be true, it really is about intent, B and B engaging content that is prejudicial to the administration of justice, that is just vague enough to work. I mean, really, that's that's kind of a catch. All right, if you're trying to prevent if you're trying to, if you're if you are committing the crime of obstruction of justice, for example, right, that's prejudicial to the administration, justice, II state or imply an ability to influence and properly and government agency or official or to achieve results by means of violate the rules of Professional Conduct or other law. So let me give me an example. If you're a litigator, and you have a, you know, you were trying to get the Get your would be clients sign on with you. You say, Hey, I know this judge. I've, you know, I work, you know, I've

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contributed to this judges campaign before. I think they're, I think this judge is going to give us an honest shake. And I know how they think that's okay. If you, on the other hand, say, Hey, I know this judge, I contributed to this judges campaign, I'll make a phone call and see if I can't get a good ruling out of them. That's not okay. That's misconduct. F, knowing knowingly assisted judge judicial officer and conduct as violation of applicable rules or conduct. So effectively, the sorry, the example that I had just given but to its logical conclusion, where you bribe a judge, or you blackmail a judge, or you say, Hey, will you help a judge to to perform misconduct themselves? Obviously, that's considered misconduct. And finally, it's subsection G. And this may be my

favorite because it it does have an interesting variant within the different states. Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability age, sexual orientation, gender identity, marital status, or socio economic status and conduct related to the Brexit law. This paragraph does not limit the ability of the lawyer to accept decline or withdraw from representation in accordance with rule 1.16. And it does not preclude legitimate advice or advocacy consistent with these rules. So why do we have that second sentence? The parables element, the ability to learn to accept the client withdraw from orientation in accordance with 1.16? Well, if you're not supposed to discriminate on the basis of socioeconomic status, that does not mean that you have to take on clients who will not pay you or cannot pay you, unless you really want to, right, that's not discrimination, that's actual business. Now, know all of the different categories here in module 8.4, race, sex, religion, national origin, ethnicity, disability age, etc. And note that it says specifically, is harassment or discrimination. Right. Let's look at the New York rule. And keep in mind that New York did adopt the model rules reversion models few years ago, however, there is there are some subtlety, some subtle differences here. And if you're not a New York Attorney, you know, please at least take me at least have the takeaway here that you really should check your state's version of the rules, because there are subtle differences up let's look at a lyrical a point for a lawyer or a law firm. All right, let's flag that right away. It says At the top and the model rule misconduct for a lawyer to and in New York, or a law firm. Why, because law firms have certain certain corporate and cultural status in the state of New York, and law firms are considered lawyers for the purposes of for of the of the rules, at least in New York, at least they want to make that explicit. So, A, effectively the same thing, as the model rule be the exact same language as the model rule, C, and D, are, again, effectively the same thing, ie effectively the same thing f again, exactly the same thing. Now, G. Here's what I find to be interesting, at least the first half minutes intersect unlawfully discriminate in the practice of law, including in hiring, promoting, or otherwise determining conditions of employment. So we're being really specific here, right? It's not just in the practice of law, it's in your employment choices on the basis of age, race, creed. Now, there was no no term creed in the previous and the model rule, color. Also not in the previous in the previous version. It was race or religion, right? Sex, disability, marital status, or sexual orientation. Nothing here about gender identity. Right. Now I am I'm all for trans rights, most certainly. And I hope that someday, the New York will, you know, the New York rules will be modified to, you know, to have that category in there. So but keep in mind, the state of New York, generally speaking, that's not a thing you can discriminate against, at least under the moat under the new york rule. So that's something I just want you to keep in mind, as you go forward to always check your state. Right, you see here, new rule 8.4 is almost exactly the same. But there is a few subtle differences in subsection G. And we have subsection H, which doesn't even exist in the model rule.

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Which is that the IRS is engaged in any other conduct that adversely reflects on the lawyers fitness as a lawyer. That's the catch. All right, that allows the committee to say, Yep, I don't you know, I can't define pornography. But I know what when I see it, and it's this as the I don't remember which judge so famously said, but it's, you know, rather it's axiomatic at this point. You know, and this allows the committee to say, Yep, this reflects adversely on the lawyers fitness as a lawyer, and I cannot tell you, it doesn't fit into any of these other categories. But I know when I see it. Also note that that's again, not in the not in the model. So look, this is not me saying, Oh, look, you can get away with it here, but not there. That's not what I'm trying to trying to say here. I'm trying to say here is know your state. Now, let's go through a case study. And I hope you'll find this interesting. And this is actually something from my own practice from a few years ago. A let's just go through the facts. So an attorney in state of soda, let's call him Mr. S, represents both sides on the purchase of privately held stock in a publicly traded company. Yes, by the way, that's the thing sometimes, the consideration for the purchase of stock as a downpayment and promissory note, Mr. s does not obtain a written conflict waiver from either client. Okay. So he has no is no evidence that he was good and received informed consent from both clients. After one year the purchaser misses their payments, and Mr. s brings an action against the purchaser on behalf of the seller. Mr. Ss litigating against his own client. Well, that's rather interesting. The person brings a counterclaim represented by separate counsel against the seller and the stress personally for malpractice as he probably should. As litigation begins, Mr. s advises the seller to rename himself CEO of the company, and begin operating again since he knows that the purchaser the rightful CEO has no interest in running the company. This is Mr. S, advising his client to deceive the public into and unlawfully run this company. to fund the litigation between purchaser and seller seller seeks a loan from a third party called Mr. g for operations. Mr. s represents both sides on a loan agreement. The loan agreement stipulates as collateral shares in the company that Mr. s knows the seller doesn't own and are the subject of that litigation. Mr. s doesn't inform Mr. g of that fact and places a warranty in the agreement that the shares belong to the seller free and clear. And finally, Mr. S is the notary on the loan agreement for both parties signatures, just perfect storm. So during some negotiations of the litigate Mr. s represents the seller in the purchase of the same shares by Mr. g. We're calling it the new purchase, who believed until now the shares were in the sellers possession. During the negotiation of the new purchase, Mr. s reveals the truth to Mr. G's attorney, that's me that the original purchaser owns the shares. The seller has been holding himself out as a CEO when he has no legal right to and if the shares are subject to litigation hold. When asked about the loan agreement, Mr. s stated to me the attorney for Mr. G, that he drafted it but wasn't aware about whether it was signed or not. Remember, he was the notary that stamped on both signatures. So to what extent did Mr. s violate the model rules of Professional Conduct? We could talk about it all day long. But I think it's rather clear that he did so in every step of the way. So we represented multiple sides on on both transactions on two transactions without informed consent, he sued a previous client on behalf of his other client with regard to the transaction that he represented both of them on massive conflict of interest that's not waivable as we, as we know, in the loan agreement, he actively helped his client, his one client, I guess, the

original client, let's say, deceive his other client and the thinking that, you know, that the the facts were one thing when they weren't fact another thing, and then negotiating this new purchase or final sale that he misrepresented, knowingly, that, you know, as to whether the, you know, his knowledge about the the loan agreement, I'll tell you this, when I, when I sent this person emailed this Mr. s an email, saying, okay, you told me this, here's a copy of the sign loan agreement and your as your notary stamp.

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All of a sudden, the communication got a lot more adversarial, front and side, I guess, understandably so. But, you know, this really is a perfect storm of sort of what not to do. And it is, is really unfortunate, because this deal could have been saved. But for this other attorney, just doing the wrong thing over and over and over. So now, now that we're like, I'm done scaring you now. To the extent that I'm even scary around like a, like a panda bear. I am like, it's scary. But let's move on to solicitation. New York and model rule 7.3 are exactly the same thing. A lawyer shall not buy in person alive telephone or real time electronic contact, you know, what's that, you know, like a zoom, or a, like a conference call or something like that. solicit professional employment when a significant motive for the lawyers doing so is the lawyers for culinary game? Well, when Wouldn't it be for the lawyers beginning here, again, when you're when you represent Legal Aid, or some other kind of pro bono service, then it's not for your pecuniary gain, it's really the one situation I can pick up, unless the person contacted, either one is a lawyer, him or herself or q has a family close personal, prior professional relationship with the lawyer. So you're allowed to solicit former clients for more work, you're allowed to ask family members to give you a referral or to or to give you legal work, close personal friends, or any other any other type of prior professional relationship with you're allowed to do that, but you're not allowed to do is cold call somebody and say, Hey, I would like you to hire me as a lawyer. It doesn't work that way. Now, there, you know, it used to be that lawyers couldn't advertise to that's changed. And we'll go over that in a little a little bit of detail later. But there are a couple of things that startup lawyers deal with in this particular area that you need to be aware of. So more networking within the rules. So once you have met somebody in networking, you do not have a close personal or prior professional relationship with a lawyer yet, right? Sometimes people think that they do, but they don't. So what do you do? When you network within the rules, you say, Okay, let's talk to each other, see how we can help each other. And in the conversation if something comes up, you know, say hey, only legal advice I can give you here as you should get a lawyer to talk with you to talk with you about that. I might be able to help you if you're interested. But that's that's more of a warm interaction. It's not, you know, calling someone for the very first time or speaking with somebody very rough diamond saying, Oh, you should hire me for thing. Again, that's not going to work that's in violation of the rules. But when you network within the rules, you come off as way less creepy, which is always nice. But what also happens is you start building a relationship with that would be client you go from there. We're all familiar with the, with the sales funnel here,

where it's know, like trust, right, you have three tiers know, like trust, the closer you are, the faster you can get down to trust, the faster you get hired, think of think of complying with this rule as the best way to get down the sales funnel of no like trust. So the warmer the relationship is, the more before you say for for you asked for the work, the more, the more compliant you are with the rule, and the more likely you are to actually get that work, which is rather nice. And that's the live seminar problem. We often do live seminars as solo practitioners or a startup lawyers in general. And sometimes, you know, granted back in the day, most of time when we did things in person, people will come up to you after and ask you questions about their specific situation. Now, technically speaking, they're coming to you, right? But in order to remain in compliance with the rule, and just make sure that there's no

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way to go through, there's

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no doubt, say, Hey, I would love to help you out here, I'd love to chat with you about it. This is not the setting to do it. Not only because, you know there, there are lots of people here in it to talk about appeal. But also, if you're going to show me confidential information, you don't want to do that from all these other people call me and let's make an appointment or email me and let's make an appointment. That way, you're in compliance with the rule. And you're more likely to actually get the work and also the would be client will respect you more for it. Okay, advertisements, and marketing. I'm gonna go through this quickly, because very few. You know, not all of us deal with this on a regular basis, but it's something that needs to be dealt with. So model rules, 1.711712 and 7.4. We're going to be really quick about them. Well, 7.1 don't mislead people in your advertisement. Not only would you be, be in violation of the model rules of professional responsibility, you're also being in violation of your state, your state, truth in truth and advertising law, so don't do it. Number two, allows for media, advertisers and payment for advertising services. Whoo. Back 30 years ago, that wasn't the thing. Now it is. And for better or worse. They're lawyers on TV soliciting work over advertising now in their advertising agencies welcome our next representational practice areas 7.4. If you specialize in a thing, you cannot say that in your marketing unless you have been certified by a court of competent jurisdiction, that you are an expert or a winglet are specialists in that thing, which is really hard to do for startup attorneys, right? Like, I can't I can't get a court of competent jurisdiction to say that I'm an expert in cryptocurrency, no court will ever have that kind of that kind of certification, what you can do is you say you handle a you handle matters and bump up, because that's true. But you can't say you specialize in it, which is rather annoying, but it is what it is. Now to in New York ethics of pain that note, social media posts and online reviews, social media posts are considered the visitor to advertising. So you need to put in the usual advertising disclaimer saying it's attorney advertising.

If you are differentiating yourself from other attorneys, or providing any legal information or any error, saying anything that would lead someone to believe I should hire this person. So really any social media posts that your firm does, other than Congratulations, you know, to this, you know, gratulations on this, you know, personal very personal thing. Our partner, one of our partners had a baby or something like that. And online reviews, you are allowed to solicit online reviews from your clients. And you should just keep in mind that the rule state flat out that you're not allowed to obtain a testimonial from somebody about a pending matter, it has to be about something that's already been completed and finished. Just keep that in mind. And of course, I've provided the citations if you want to look at the opinions. Now here's a really good example of why you should check your state. New York rule 7.1 requires more than the model rule about advertising. So Wilson miracle 7.1 requires two additional disclosures that requires attorney advertising and big prominent letters. It requires the Sarbanes Oxley language prior results do not guarantee similar outcome. You're not allowed to use trade names and apply results. like like like million dollar verdict lawyer.com or something like that. You can't use actors and commercials they have to be, you know, the actual attorney. Alright, so you know, Rosolino, thank god he's photogenic because he can actually I'm gonna say hi, um, Selena Selena one barn's rather, I think it's now he's separated out now. But you know what I mean? It's, he can't have an actor or come in and say, you know, I'm wrestling, you can't have say, I want to know, Leonardo DiCaprio, come over, look at the, at the screen and say, Hi, I'm Russell Leno, you should hire me to do your personal injury attorney work, that doesn't really work. Now what you can do is you can have actors read testimonials, so long as you put a disclaimer that they're not the you know, they're an actor reading word for word, the testimony from the client that you can do. Now rules on, excuse me, the rules with regard to TV

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advertising applies to online advertising as well. So if you are doing the SEM things search engine marketing thing, you got to make sure that you're everything you advertise as, at least in the state of New York says attorney advertising prior results do not guarantee similar outcome. If you are in another state. For example, in Florida, you don't have to put in prior results not guarantee some more outcome. I remember being at my in laws house in Boca just a year ago, and seeing a commercial for bankruptcy attorney and just said attorney advertising I thought, well, that's not compliant, what the hell. And it turns out now in Florida, you can do that a lot of other things. But that's a story for another day. Now, the No Contact rule, this is perhaps one of those under overlooked rules. And I want to go through quickly with you because it's important. In representing a client, a lawyer shall commit not communicate about the subject of the representation with a person that the lawyer knows is represented by another lawyer unless that lawyer has a consent of the other lawyer or is authorized to do so by a court order. So in the in the startup world in transactional law, if the other if you know, the other side of a transaction is represented by counsel, you can't talk to them directly. Right? You can't about about the thing,

right? You talk about about the weather, fine, but you can't really talk to them about the transaction. Unless you get the other attorney to say yes, you can talk to them. And that does happen sometimes. By the way, what do you can do is you can email the other side and copy their attorney on the call and the email. That is permissible because the attorney is involved in that form of communication. So you can write a letter to the other side, and email the other side directly and say, you know, Mr. Johnson, Baba, Baba, Baba, blah, we want to do this, we want to do that, you know, we think you should do this. Hugs and kisses talk coke. And that's why, but you can if you copy the attorney on it, the attorneys aware of it, you're complying compliance with the rules. So that is something you might want to consider. All right, New York has an additional rule. A lawyer may cause a client to communicate with an unrepresented person unless the observers is not legally competent and may counsel the client respect to those communications by the lawyer gives reasonable advance notice to represent a person's counsel, such communications will be taking place, what does that mean? Our clients can talk to each other. Unless one side is not legally competent. In other words, they needed a guardian ad litem or something like that, you know, they're there, they can't be held responsible, they're not mentally competent to do it. You know, call it whatever you want. But, you know, it's important that if communications are going to occur between the clients who are represented, but just together, you know, sometimes you want the business owners just to work it out. Let the other attorney know. And you just let it happen. Okay, now, let's move on to referral fees with respect to non lawyers. So New York has rule 7.2, there's no model rule that's particular to this. You can't give, you can't give referral fees to non lawyers. It's just not a thing. You can't do it. You can't share legal fees with non lawyers. In any state, New York just has a really particular rule about referral fees. Now, one thing you can do is if you share legal fees between attorneys, you can do that. But you have to make sure it's a real co counsel kind of relationship, and this is my policy on it and feel free to use it or not, as the case may be. If I'm working on a file with somebody, and we're splitting the fee, it's fine. As long as we're working on the file together, if someone comes to me and says, Hey, I'm giving you this client, I want a percentage of the fee. I don't do it. Not just because the rule station do it, because I just don't want to do it. I'd rather you know, I'd rather just get the client myself or, or just have it be a clean relationship. I don't want to be that, you know, that kind of thing. So referral fees in the real world because there's thing other industries and professionals give referral incentives, sometimes it's inspected, right, what do you do? So, when you're dealing with somebody, especially a salesperson who is in another industry, They're looking for a referral fee. You explain the rules that applies to lawyers. Look, I can't do that I would lose my license. And that's not really it. No amount of business is worth losing my license over which they'll understand. Call an exchange of goodwill. And if you want to be not a hypocrite, you can not take referral fees on the other side, although theoretically you could. Now dealing with an unrepresented party, this is kind of interesting. This is a different flavor of the no party or the No Contact rule model rule 4.3. And then the New York rule is effectively the same thing. When dealing with an unrepresented party, so you know, a and b are in a transaction you represent a B doesn't have an attorney.

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A lawyer shall not state or imply that the lawyer is disinterested, don't say, Oh, I'm on your side to buddy say I'm A's attorney. When a lawyer knows a reason, we should know that the unrepresented person misunderstands the lawyer's role in the matter. And by the way, sometimes it's what I call willful ignorance, meaning that they're trying to give themselves a position when they're not. When they don't have it. The lawyer shall make a reasonable effort to correct the misunderstanding, do so in writing and do so in all caps, you'll be glad you did. And finally, the lawyer shall not give legal advice to an unrepresented person other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interest of such person or R or R or have a reasonable possibility of being conflict in the interests of the client, A and B are in a transaction B's unrepresented. Toby, you should get a lawyer, you don't have to get a lawyer, you should have a lawyer. That's the only legal advice you can give. Now, let's just do a couple of quick hypotheticals. Company x is founded by two partners A and B, you're represented, retained to represent a and negotiations would be how you handle negotiations. If b is represented by counsel, fine, you can communicate with the other attorney, you can communicate with the plot with the other attorneys client, whether you're going to communicate with B, so long as counsel is is on that communication. Or if the B's counsel said Sure you can talk to them alone. If B isn't represented by counsel, what we just described is the is the case, you don't imply the are disinterested? If they tell if they say oh, yeah, well, you're my lawyer to you say No, I'm not. And you do that in writing. And the only legal advice you're allowed to give them is you should get your own attorney. And finally, if B was wrong representative, but they lawyer up during the process, all communications from the point in time, after which you are given notice that this person has representation, you treat it less if they're represented because they are. Now rule 1.16. This is perhaps my favorite rule, because it's the only one that that protects us as attorneys, firing a client. The model rule 1.16, as a lawyer shall not represent a client or repetitions commenced shall withdraw if, and there are a bunch of different reasons. But let's just break it down into the couple of categories. category one, you find out that the client is doing something criminal or something that you fundamentally disagree with, or two, and they're not paying you and you've received a lot and you've received permission from a court. If you're dealing with litigation, if it's a transaction, that your letter of engagement allows you to withdraw if you're not getting paid. But if you do withdraw, for whatever reason, so long as it's on this list, you can you have to make sure that you give the client reasonable enough notice of the termination of representation, and make every effort to transition it over the representation over to a new council. You know, don't do it the day before a court deadline, that's dumb and really kind of kind of sucky. But you know, say, look, you got it. There's another 90 days before this hearing is coming up. I'm withdrawing representation for x reason. Go find yourself other counsel and I will do everything I can to help transition that that works. Alright, rule 2.4 client, excuse me attorney as third party neutral. This is when you are acting as a mediator, you're allowed to do this. And it can be a lot of fun. It can also be a nightmare. But sometimes it can be a lot of fun. Will 2.4 says that when you are serving a supreme new neutral, do not you can't let them you can't imply that you're representing one or

the other, you have to make it very clear that you are in a neutral capacity here. And otherwise there being massive conflict of interest. So there's that now trust account considerations. Let's go through that pretty quickly. So everyone knows now it's commingled funds. There are some pitfalls to avoid, which are not obvious they only say weren't to me when I started my own practice, and will never take cash out of the escrow account even to give it straight to a client Always use triple wire transfer. Why? Because 1.15 says you have to have a written record of every transaction. Even if you have it in your ledger, which we'll talk about in a second. Just never take out cash, it's it's just never a good idea. To keep a ledger that shows the following data transaction name of the client transactional funds,

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purpose of the transaction sources, funds, and any other necessary information, make sure that you keep your, your accounting strong and your record keeping strong. And if you need if you have an accountant or bookkeeper, have them, take care of it. But make sure you recognize them have them reconcile at least once a month. Next one using an iolta or Iola account, make sure the rest of our agreements have the clients waive interest. Because the interest longs to local pro bono fund. Why do we care about this? Well, because if you're dealing with and this sometimes happens, if you're dealing with a multimillion dollar transaction, or or $100 million transaction that stays in escrow for two months, that builds interest. And sometimes a client wants to gain interest that's accrued on that, on that account. It makes sense, it's intuitive, but when you're using an iolta, or an i o account, that interest is waived, because it goes to the pro bono fund, make sure that the client has informed consent on that, highlight it in your letter of intent and your letter of representation, or your letter of engagement, make sure they fully understand that by using escrow in this particular way. They're not getting any interest, and neither were you. Okay, now non legal services. Now, an attorney may offer non legal type services without those activities being subject to the rules of professional responsibility, if and only if, if the client does not reasonably if they are being represented by an attorney. So that's just vague enough to work right. But let me give you a practical example. I have two companies, I have my law firm, and I have a consulting company where I do business consulting. Now, a good chunk of the time, a business consulting client will want to hire me as an attorney later, that's fine. We have separate agreements for that. But here are some tricks that you can use when you are when you're doing something like this northern shore separation, open a separate entity for your non legal type service business, I have a separate LLC for my consulting business, you should have non disclosure agreements signed between your non legal service client and your non legal service company. Why? Because if you have that, then the would be non legal services client doesn't have to say, Oh, I have this attorney client privilege, right, like what's not, but we are under an NDA. So you can still talk to me and it's still confidential. Next, probably disclaim any attorney client relationship at any and all contracts to your non legal services business and their clients. Do it prominently do in giant font, do it, highlight in bold, whatever it needs, whatever it takes, and

sometimes even like to have the client initial right next to that paragraph. So

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there's no

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plausible deniability on that front. And finally, don't make your client base unless you reasonably believe that your independent judgment as an attorney representing that client would be completely unaffected by your own legal service relationship. That's not what the rule says. That's just something that I recommend. Now, finally, the question of should you take equity and of course, cryptocurrency as relates to that question, so taking equity is actually really common practice in the in the startup legal field, equity in a company in exchange for legal services is really common. Is there a conflict of interest? Well, sometimes Yes, and sometimes No, really depends. Now, what I would say and what I advise people for years as a solo practitioner, or just as someone who's you know, responsible for developing business in their firm balance the risk reward, because there's always a risk that the equity certificates and stock certificates in your clients company are more useful as toilet paper than as equity is what it is. supplemental fees is something that you could do, if you are not if you want to take equity, but you also want to, you know, make sure that they have skin in the game or the the, you're making some money, here's the Okay, I'm willing to take this much value worth of stock and this much value worth of money for my services, have it be a supplement. Now, is it different if you're not counsel for the company itself? Is it different if you're getting it from your client who is CEO of the company, we're not representing the company? Quite possibly, that is something that you need to need to consider. A Phantom equity alternative is kind of cool. Phantom equity is a type of compensation for employees and consultants, in which in the event, it's a contract and a plan that in the event that the company either goes public or is sold, the a portion of the proceeds from that liquidity event is divided amongst the Phantom equity holders. But it's not actual equity. And that's what's really important. There's no fiduciary duty by the client to you there other than to make that payment in a score in accordance with the contract. That's an interesting alternative. And finally New York actually weighed in on this, to my knowledge, there's no other there there very few other opinions about the so far. I put the I put the citation in the slide here. Essentially, it says, it may be a conflict of interest and it may be permissible, it depends on what you have to use your judgment as an attorney. So again, just big enough to work. And finally, cryptocurrency consideration so as companies begin to undergo their Icos or initial coin offerings, the question of using cryptocurrencies to compensate attorneys comes up. Unlike equity compensation or Phantom equity plans, equity securities aren't in play. So the fiduciary issue isn't the same. So ask yourself the following questions. If this comes up, does your advice change the value of the cryptocurrency you're receiving? are you handling the company's Ico if you are and be aware of your advice

effects of Icos viability in addition to when you're getting paid? If not, you can rely on the cryptocurrency you can you rely on cryptocurrency counsels analysis depends on who cryptocurrency counselors, or if they have cryptocurrency counsel at all, that's also important. And finally, how confident are you that the Ico token isn't a security? If it could be considered a security be aware of potential insider trading related liability, especially when you weren't dealing with us based cryptocurrencies? Because the SEC has made it very clear that unless it's a true utility, they're going to consider it a security so be aware. And then that's it for me. I hope you enjoyed. enjoy learning from this as much as I enjoyed giving this presentation. If you have any questions or comments, you just want to shoot the breeze or run an idea by me. One of the reasons I love doing these CLE is is to hear from you, the legal community I want to I want to exchange ideas and scholarly thing it's fun and really, the pandemic is a very boring situation to be in so communication between colleagues would be kind of nice, so feel free to shoot me an email to Double D at Culkin law comm that's to DD at KULK i en la calm or feel free to give me a call at 212-485-9884 thank you so much for watching. I'm Todd Cogan for LexVid and I'll see you next time