A DEEP DIVE INTO

WITH ETHICAL CONSIDERATIONS

* PRIOR RESULTS DO NOT GUARANTEE A FUTURE OR SIMILAR OUTCOME

GOLDBERGSEGALLA

** NO ATTORNEY-CLIENT RELATIONSHIP IS FORMED AND THIS MATERIAL DOES NOT CONSTITUTE AND SHOULD NOT BE CONSIDERED LEGAL ADVICE

About Me

The Law Firm GC

I defend lawyers and law firms sued for legal malpractice, facing ethics grievances and serve as outside General Counsel for solo to mid-sized law firms.

I strive to use simple systems to protect law firms BEFORE disaster strikes.

I'm admitted in NY and CT.



Jeff Cunningham, Esq.

Partner at Goldberg Segalla, LLP

Legal Mal

Outline

- Big Picture
- The Risk
- Ethics
- Elements
- Defenses
- Scenarios
- Action

AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE.

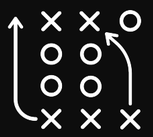
BENJAMIN FRANKLIN



primary source of risk = clients

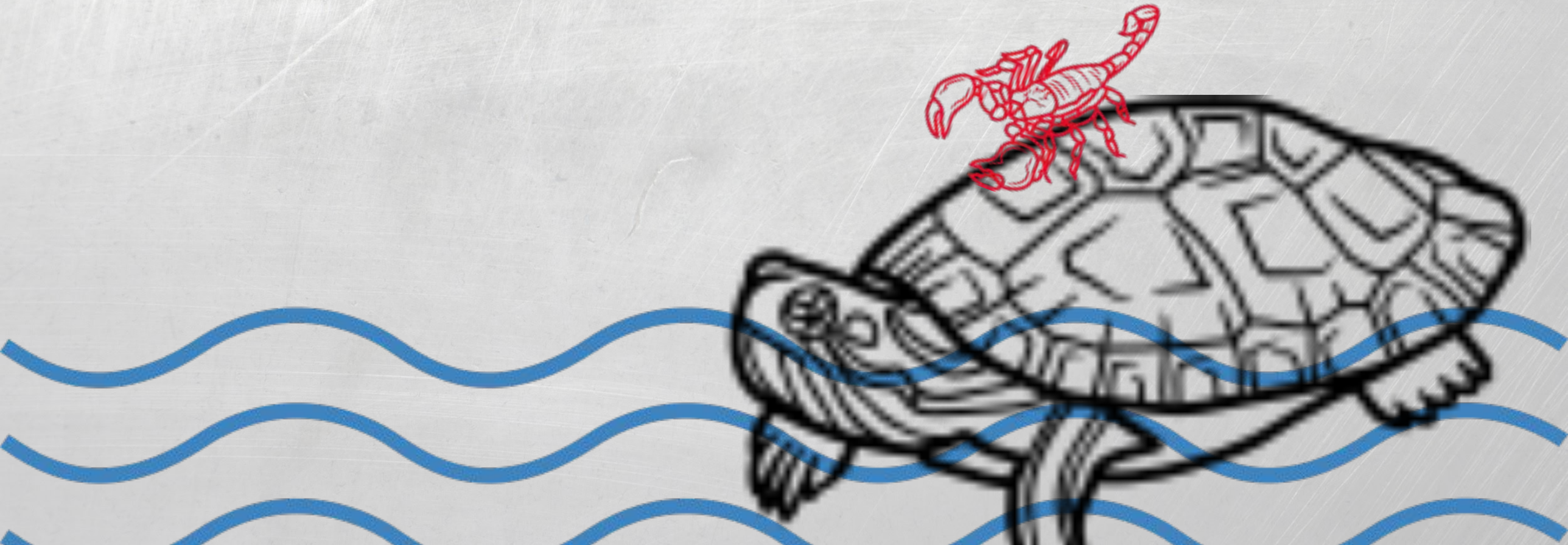








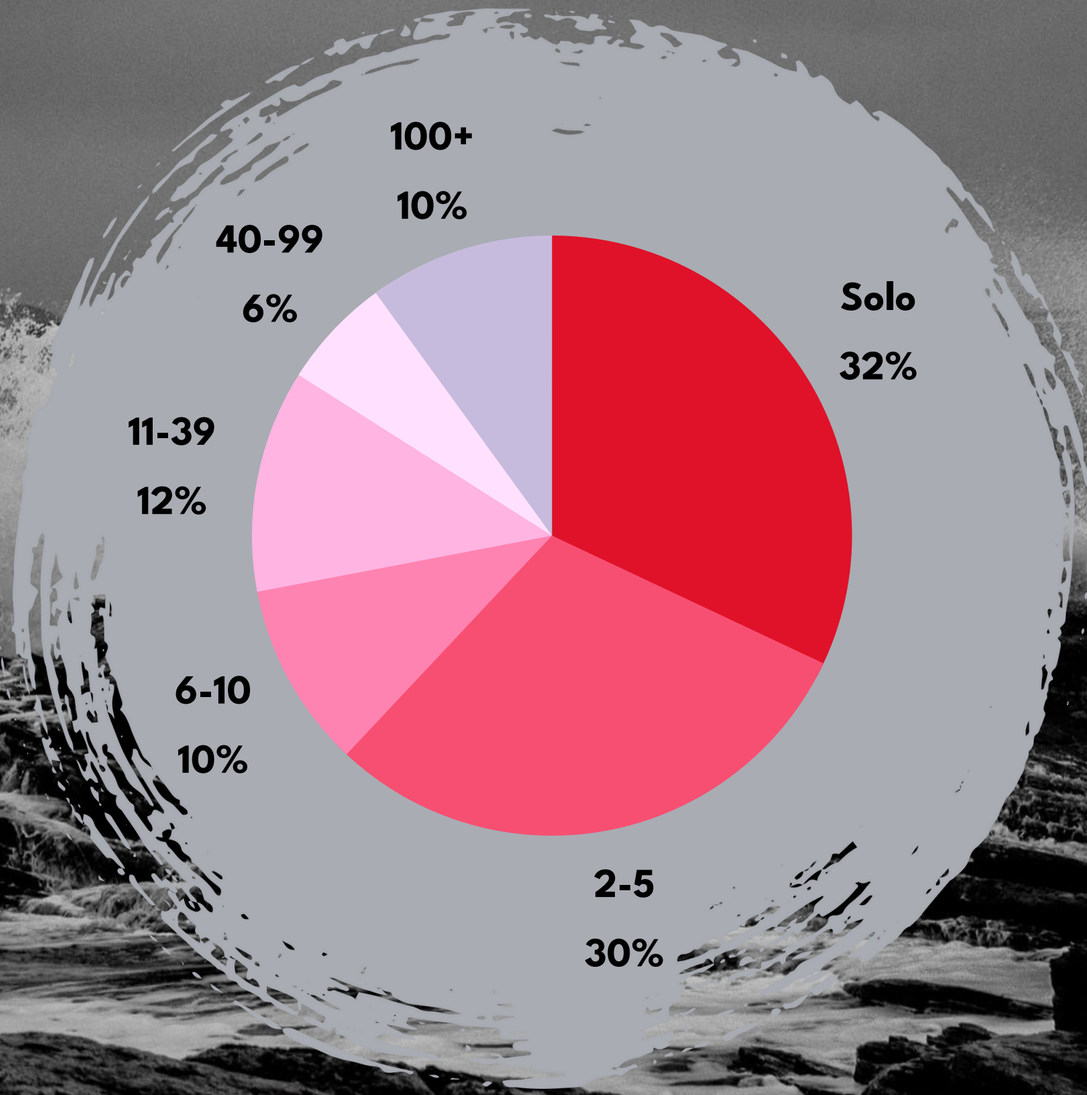
The Scorpion answered: "It is nothing more than this, that my nature instigates me to sting."



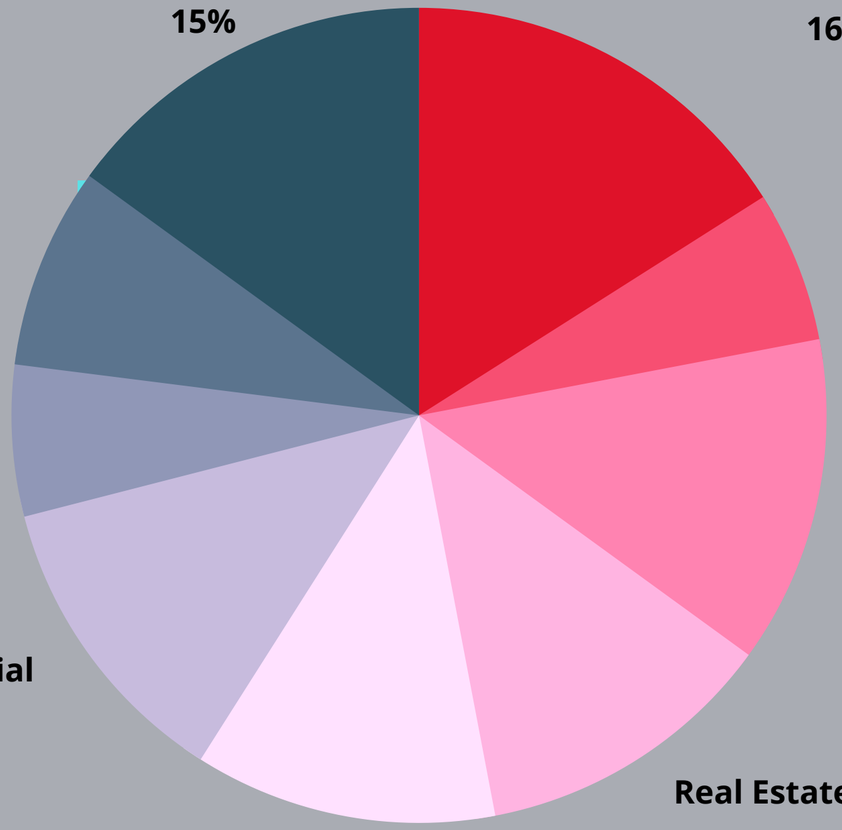
Ethics v. Malpractice



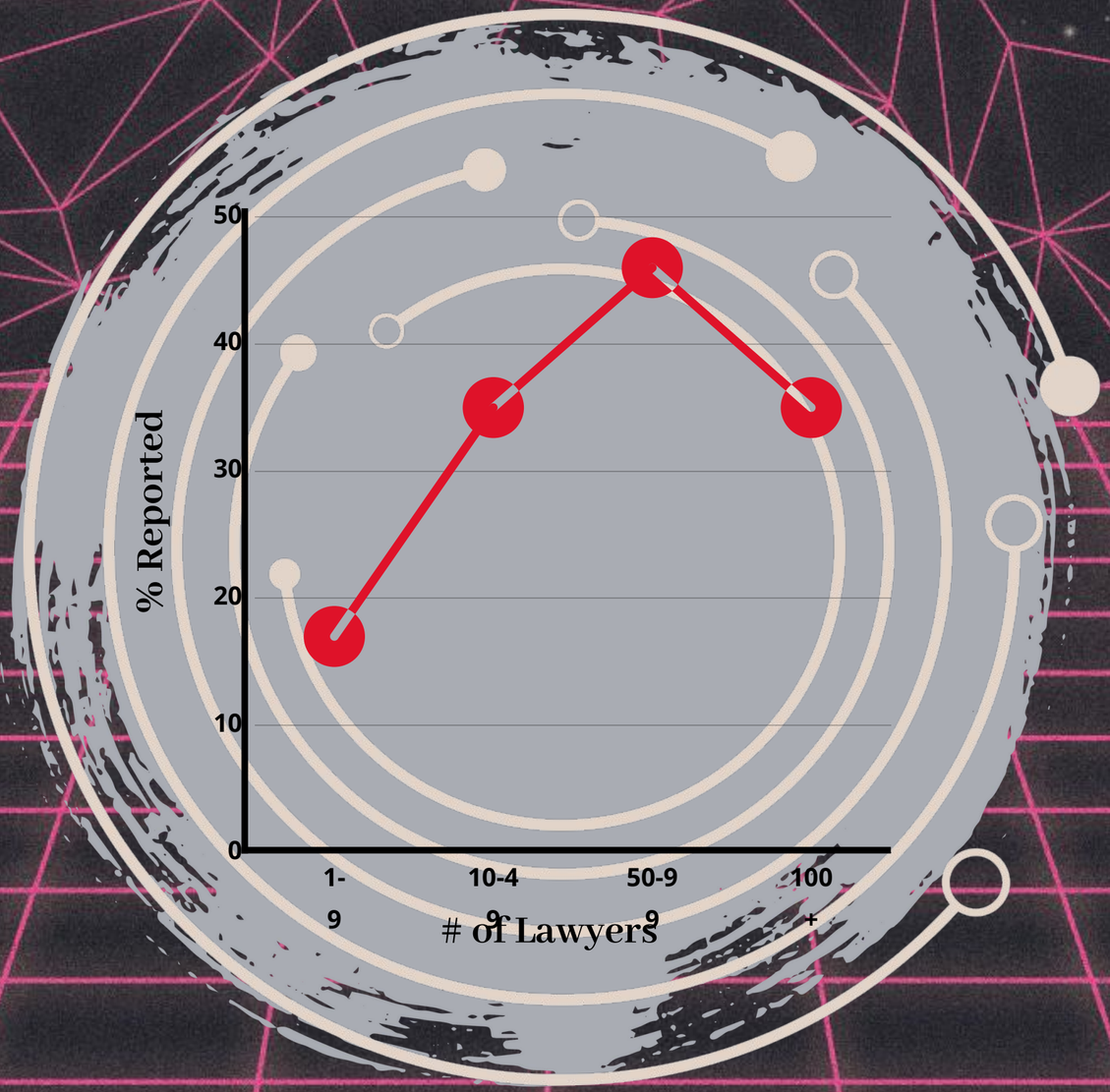
FIRM SIZE & RISK



PRACTICE TYPE



E-RISK



WELLNESS



Approximately 55% of all disciplinary proceedings and legal malpractice claims involve mental health or substance abuse issues.

ETHICS

- ABA MODEL RULES OF PROFESSIONAL CONDUCT
- LAWYER CODES
- JURISDICTIONAL RULES
- ETHICS OPINIONS
- COURT DECISIONS
- YOU



01 privity

02 breach

03 proximate cause

04 damage



Defenses

STATUTE OF LIMITATIONS

ABSOLUTE PRIVITY
SOPHISTICATED CLIENT

JUDGMENT CALL
COLLECTIBILITY

INNOCENCE REQUIREMENT

Each Element

is an opportunity





01 - Privty

Attorney-Client Relationship

The Scorpion and the Turtle

'Near-Privity' and the Wild West

- 1.2 - scope
- 1.4 - communication
- 1.16 - declining/terminating
- 8.4 - misconduct



Defenses

STATUTE OF LIMITATIONS

ABSOLUTE PRIVITY
SOPHISTICATED CLIENT

JUDGMENT CALL

COLLECTIBILITY

INNOCENCE REQUIREMENT

Scenario

Personal Injury Spouse

- retainer agreement key
- spouse as translator
- spouse took solo phone calls





02 - Breach

Reasonable similiarly situated attorney.

usually requires expert opinion





- 1.1 - competence
- 1.2 - scope
- 1.8-1.14 - conflicts
- 5.1-5.3 - supervisors
- 8.4 - misconduct



Defenses

STATUTE OF LIMITATIONS

ABSOLUTE PRIVITY

SOPHISTICATED CLIENT
JUDGMENT CALL

COLLECTIBILITY

INNOCENCE REQUIREMENT

Scenario

LANDLORD TENANT WAR

6 lawsuits

criminal investigation

novel apporach to settlement but ineffective

03 - PROXIMATE

CAUSE

ANYTHING TO SEVER

THE CAUSAL CHAIN

'BUT FOR' CAUSATION



- 1.1 - competence
- 1.2 - scope
- 5.1-5.3 - supervisors
- 8.4 - misconduct



Defenses

STATUTE OF LIMITATIONS

ABSOLUTE PRIVITY
SOPHISTICATED CLIENT

JUDGMENT CALL

COLLECTIBILITY
INNOCENCE REQUIREMENT

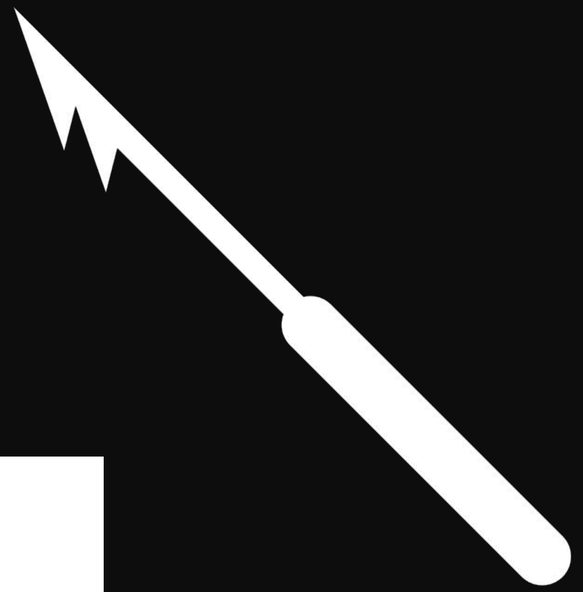
REAL ESTATE MOGUL



KIDNAPPING

speedy trial time

actual and legal innocence



04 - DAMAGES

ACTUAL & ASCERTAINABLE

PECUNIARY LOSS ONLY



- 1.5 -fees
- 2.1 - advisor
- 8.4 - misconduct



Defenses

STATUTE OF LIMITATIONS

ABSOLUTE PRIVITY
SOPHISTICATED CLIENT

JUDGMENT CALL
COLLECTIBILITY

INNOCENCE REQUIREMENT

SCENARIO



PERSONAL INJURY BY GATE

- WC bar for employer
- property owner leased control
- 'lost' case was worthless



Defenses

STATUTE OF LIMITATIONS

ABSOLUTE PRIVITY
SOPHISTICATED CLIENT

JUDGMENT CALL
COLLECTIBILITY

INNOCENCE REQUIREMENT

RETAINER AGREEMENTS

your first line of defense
bespoke for each client

CLIENT SCREENING

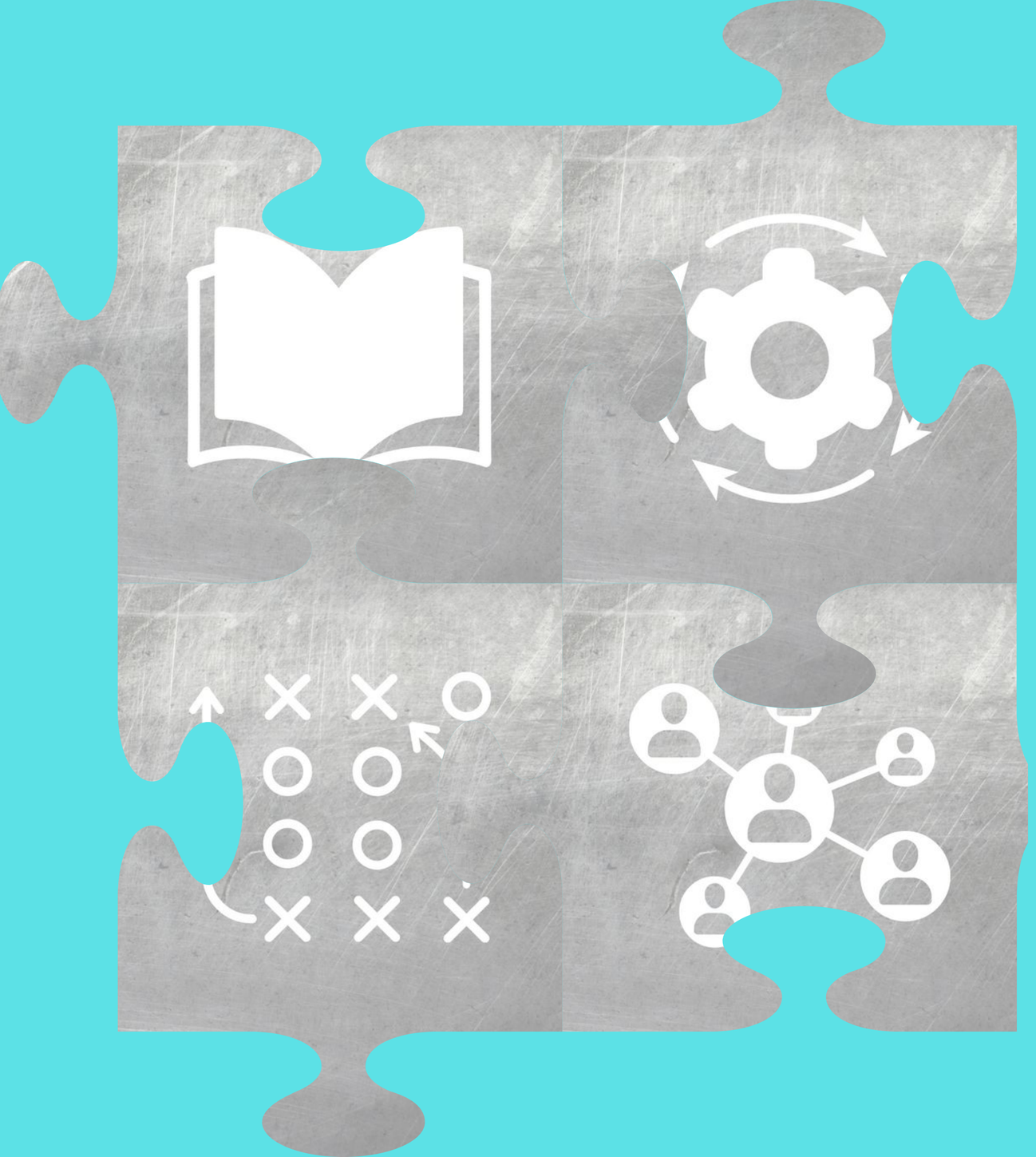
look for red flags
use defenses

TURN DOWN LETTERS

trigger the statute of limitations

CLIENT COMMUNICATION

contemporaneous written communications, dual approach - periodic and triggered



Education

Systems

Plans

Teams

Thank You!





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* prior results do not guarantee a future or similar outcome