



# Surviving a Government Fraud Investigation

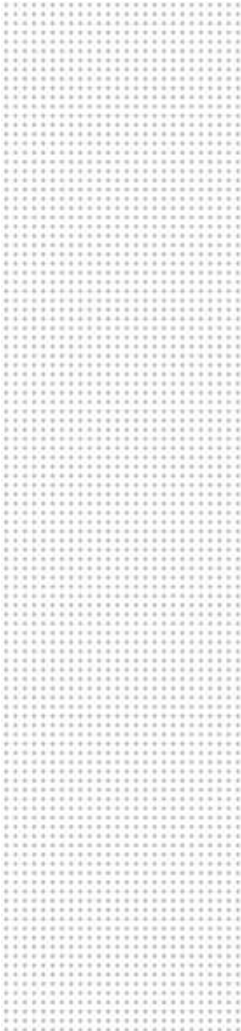

ALASKA BAR ASSOCIATION  
Ethics and Compliance Section  
Alaska Native Law Section

May 24, 2017

Presented by

Christine Williams, Outlook Law  
David Taylor, Perkins Coie

# Agenda

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- How it starts.
  - What are you up against?
  - What can you do to prepare?
  - How should you respond?
  - Avoiding common missteps.

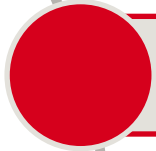
# How It Starts



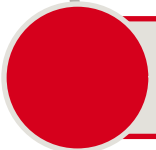
# Agenda



How it starts.



What are you up against?



What can you do to prepare?



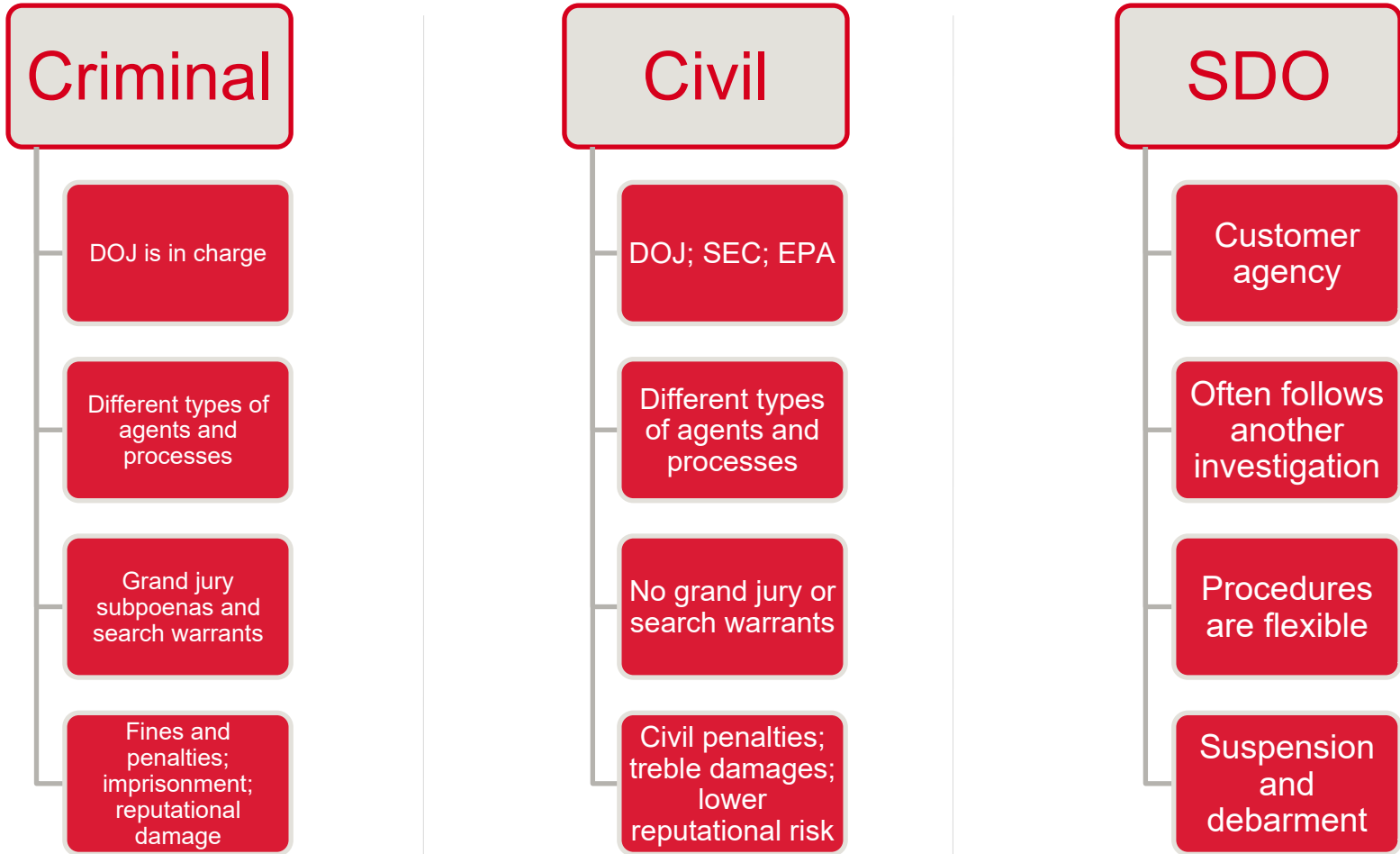
How should you respond?



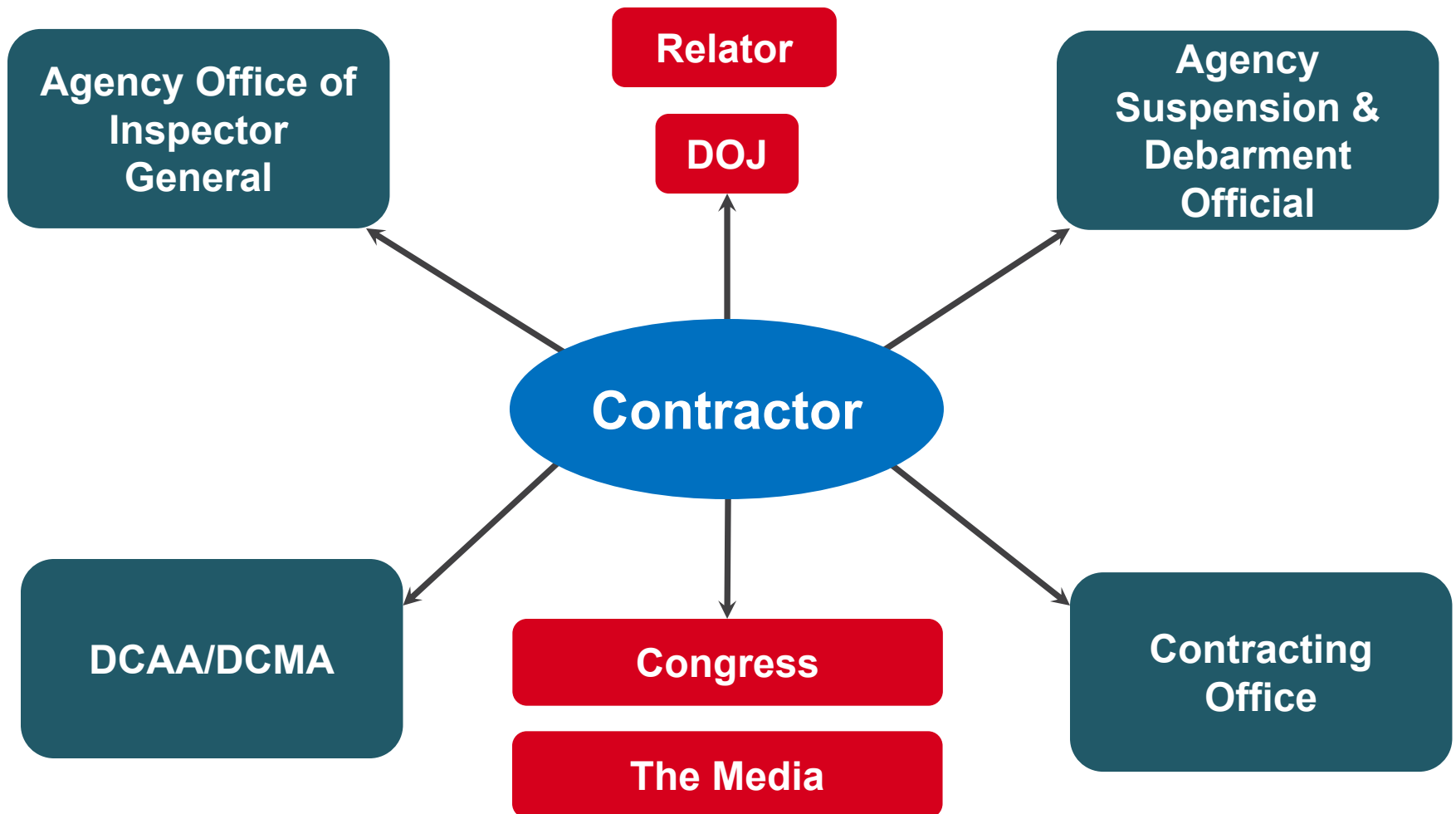
Avoiding common missteps.

# What Are You Up Against?

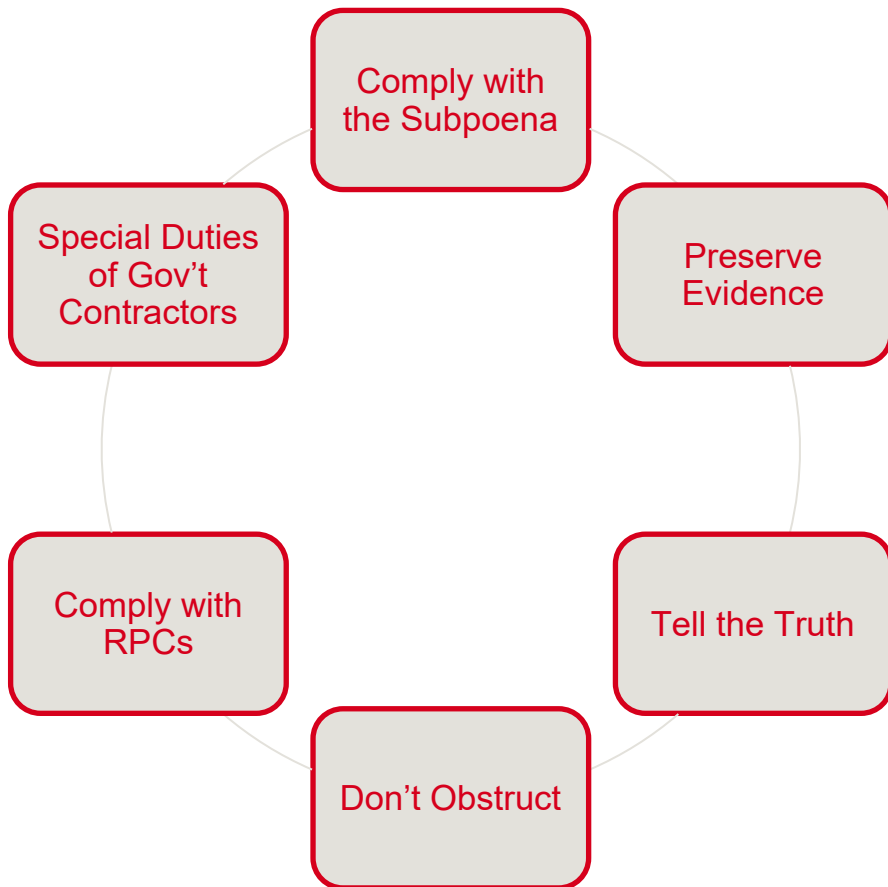
## Common Fronts in a Fraud Investigation



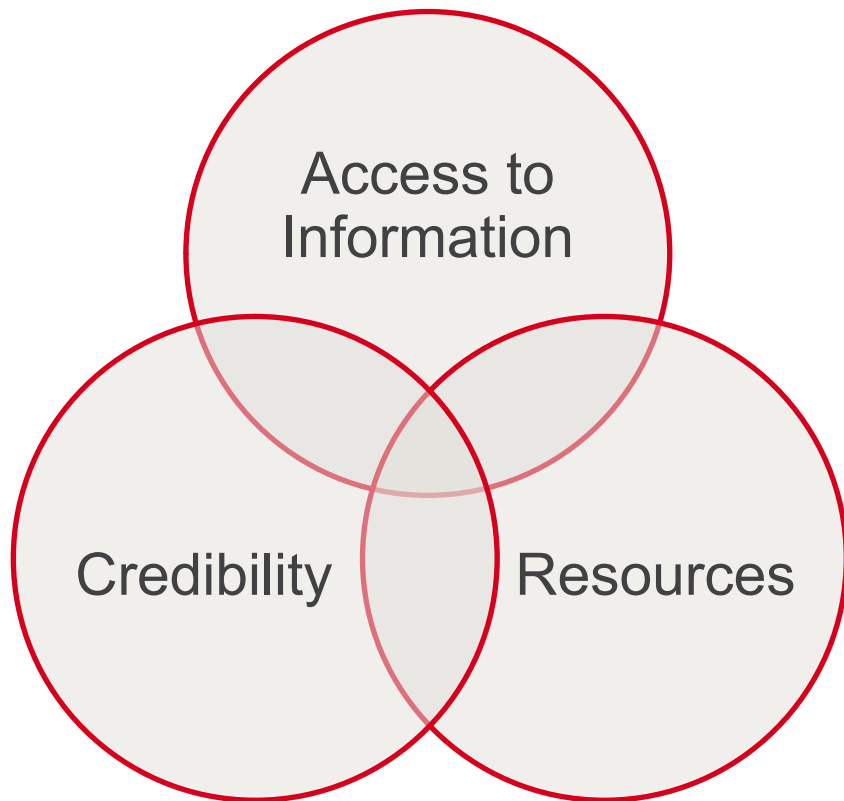
# What Are You Up Against? The Multi-Front Investigation



# What Are You Up Against? Your Obligations



# What Are You Up Against? Your Tools





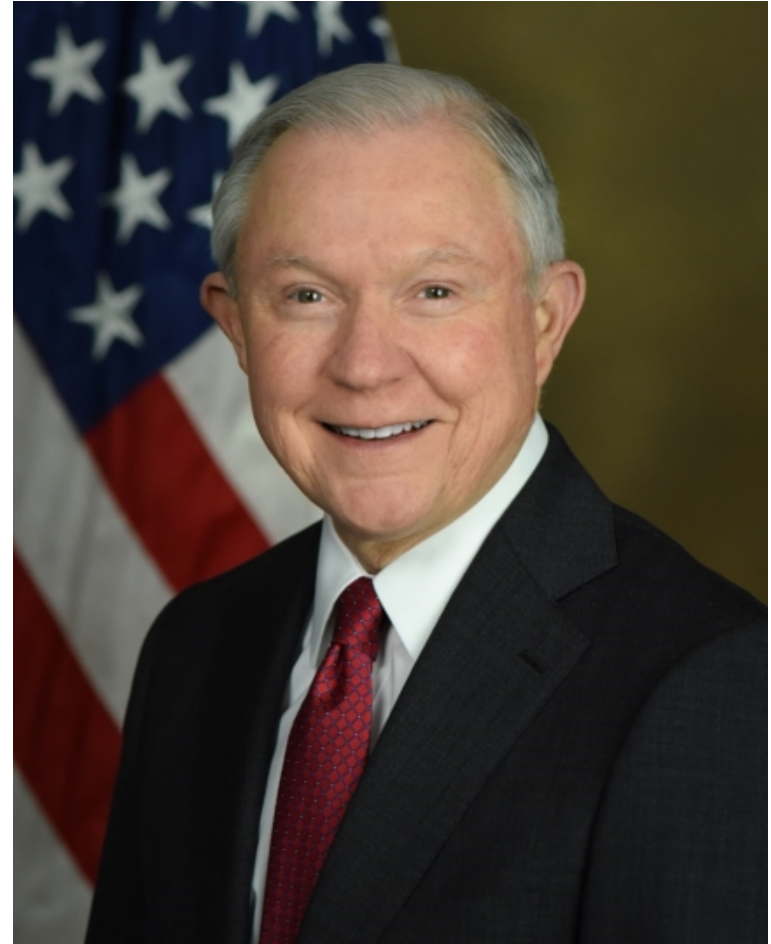
# What Are You Up Against? Current Status of Enforcement

## Under the Trump Administration

- Corporate crime
- False Claims Act
- Other

## The Yates Memo

- Applies to criminal and civil matters handled by DOJ
- To qualify for any cooperation credit, a corporation must provide “all relevant facts relating to individuals responsible for the misconduct”



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# What Can You Do To Prepare?



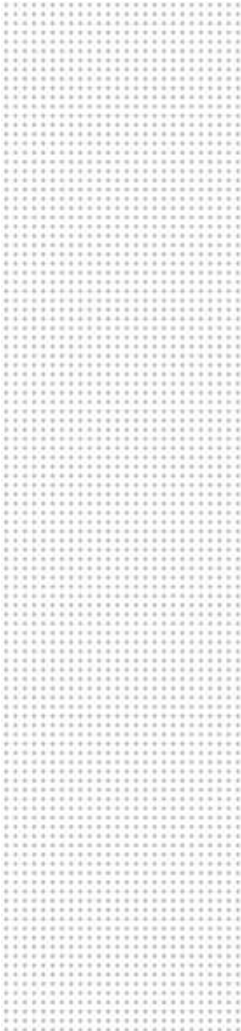
- Have an effective compliance program
- Have an effective document management program
- Identify the team
- Plan and prepare for emergencies

# What Can You Do To Prepare

## Sample Warrant Checklist for Reception

- Contact the designated person
- Obtain credentials from all agents and copy or record the information
- Obtain a copy of the search warrant and related materials
- Ask the agents to wait in a private location until the designated contact arrives
- Do not allow the agents to move around the office premises unattended
- Do not sign any documents or consent to any action
- Do not remove, discard, or hide anything that might be the subject of the search
- Do not provide computer passwords or information about employees
- Do not engage in any other conversation with the agents
- Be professional and courteous; do not obstruct the search or be confrontational

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# How Should You Respond? A Time of Magical Thinking



- This is just a subpoena
- This is a good company with good people who would never commit fraud.
- The [insert government customer or regulator] loves us, so this won't go anywhere.
- All we have to do is tell our side of the story and this will go away.
- This is just like civil litigation.
- There is nothing to be done.

# How Should You Respond? The First Three Days



- Contact *experienced* counsel
- Put together the team
- Preserve documents and data
- Inform stakeholders
- Communicate with the government
- Stop any misconduct
- Don't obstruct

# How Should You Respond? Search Warrants

- ❑ Immediately contact experienced counsel
- ❑ Carefully read the warrant
- ❑ Do not consent
- ❑ Escort the agents
- ❑ Object where necessary, but do not obstruct
  - Outside the scope
  - Privilege
- ❑ Monitor and make a record
- ❑ Obtain an inventory
- ❑ Expect the media





# How Should You Respond? The First Three Months



- Have a plan – and then modify it
- Comply with the subpoena
- Investigate
- Manage employees
- Manage press
- Continue to communicate with the government
- Do no harm

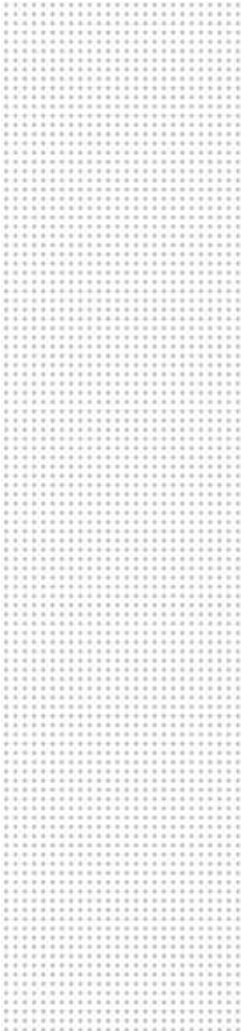

# How Should You Respond?

## The End Game

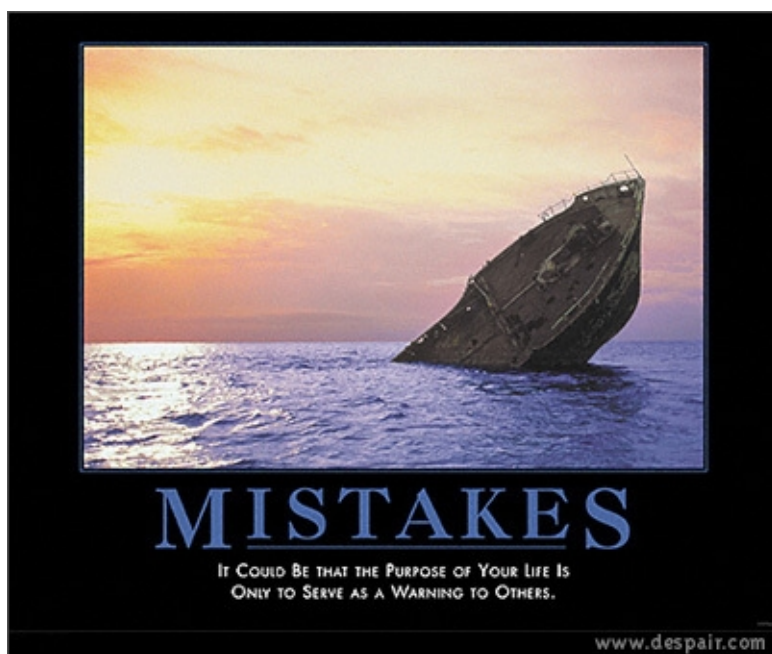
- ❑ Nature and seriousness of offense
- ❑ Pervasiveness of wrongdoing
- ❑ History of misconduct
- ❑ Timely and voluntary disclosure
- ❑ The compliance program
- ❑ Remedial actions
- ❑ Collateral consequences
- ❑ Adequacy of individual prosecutions or other remedies



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# Common missteps



- The Cousin Vinnie
- The Arthur Andersen
- The Hewlett-Packard
- The Wells Fargo
- Others
  - Who is my client?
  - Premature joint defense agreements
  - Retaliating against the whistleblower

# QUESTIONS?

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