

***No Candy For You:***  
**Tricky Ethics Issues for IP Lawyers**

**23<sup>rd</sup> Annual Advanced Patent  
Law Institute**

Austin, Texas  
November 1, 2018



**Michael E. McCabe, Jr.**  
McCabe Law LLC



## Overview

- Who Is My Client?
- Conflicts in Subject Matter
- Why You Shouldn't Represent Your In-Laws

# Who Is My Client?



3

## Knowing IP Client Matters

- Ethical duties based on client relationship.
  - Competence
  - Diligence
  - Confidentiality
  - Communications
  - Loyalty
  - Reasonable fees
- Legal duties.
- Disqualification.

4

# Forming Client Relationship

- A relationship of client and lawyer arises when:
  - A person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and
  - either
    - lawyer manifests consent; or
    - lawyer fails to manifest lack of consent and lawyer knows or reasonably should know the person reasonably relies on lawyer to provide the services.

*Restatement (Third) of the Law Governing Lawyers § 14*

5

# The Entity As Desired Client

- “A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

ABA M.R 1.13(a); 37 C.F.R. 11.113(a)
- But that general rule does not automatically insulate lawyer from claim that someone else also was the lawyer's “client”
  - e.g. Family of companies.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: No Candy for You: Tricky Ethics Issues for IP Lawyers

Also available as part of the eCourse

[2018 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the  
23<sup>rd</sup> Annual Advanced Patent Law Institute session

"No Candy for You: Tricky Ethics Issues for IP Lawyers"