



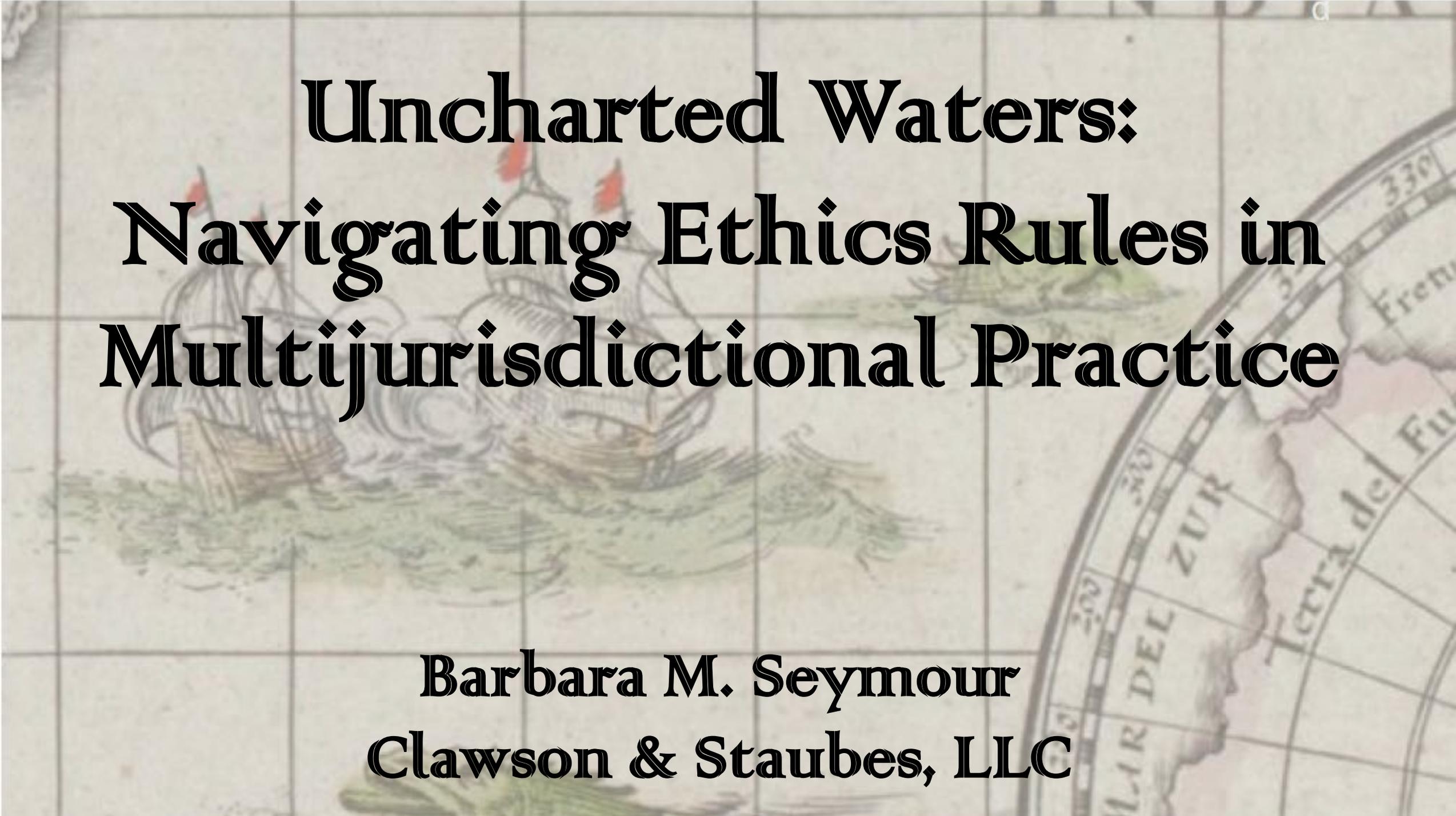
# Legal & Regulatory Conference

IN PARTNERSHIP WITH

GRIDLIANCE

A blurred background image showing several people in a professional setting, likely a conference or meeting. The image is overlaid with a semi-transparent blue filter.

*Examine Together*

The background of the slide is a historical map. On the left, there is a detailed illustration of a three-masted sailing ship with red sails, navigating through a green, hilly landscape. On the right, a portion of a globe is visible, showing latitude and longitude lines. Text on the globe includes 'MAR DEL ZUR' and 'Terra de Fu'. The overall theme is navigation and exploration.

# **Uncharted Waters: Navigating Ethics Rules in Multijurisdictional Practice**

**Barbara M. Seymour  
Clawson & Staubes, LLC**

# *Here there be Monsters...*

- Unauthorized Practice of Law
- Pre-Litigation Investigation
- Conflicts of Interest
- Law Firm Marketing
- Statements to the Media

# Unauthorized Practice of Law

- Multijurisdictional Practice Rules
- In-House Counsel Rules
- Pro Hac Vice Admission
- Disciplinary Jurisdiction
- Choice of Law



# Multijurisdictional Practice Rules

ABA Model Rule 5.5(b)(1): A lawyer who is not admitted to practice in this jurisdiction shall not establish an office or other systematic and continuous presence for the practice of law, except as authorized by these

Rules or other law



# Multijurisdictional Practice Rules

ABA Model Rule 5.5(c) – Temporary Practice Rule  
(EXAMPLE ONLY)

- Admitted in another US jurisdiction
- Not disbarred/ suspended in any jurisdiction
- Providing legal services on a temporary basis



# Multijurisdictional Practice Rules

## ABA Model Rule 5.5(c) – Limitations on Temporary Practice (EXAMPLE ONLY)

- association with an admitted lawyer who actively participates
- related to a pending/ potential proceeding if lawyer is authorized to appear by law or order (or reasonably expects to be)
- pending/ potential ADR that is related to lawyer's home practice
- otherwise related to lawyer's home practice

# Multijurisdictional Practice Rules

## ABA Model Rule 5.5(d) – Temporary Practice Rule (EXAMPLE ONLY)

- Admitted in another US jurisdiction or otherwise lawfully practicing as in-house counsel
  - Not disbarred or suspended
  - Providing legal services through an office or other systematic and continuous presence
- 

# Multijurisdictional Practice Rules

## ABA Model Rule 5.5(c) - Limitations on Continuous Presence (EXAMPLE ONLY)

- Services are provided to the lawyer's employer or its organizational affiliates
- Not services that require pro hac vice admission
- Services are authorized by federal or other law or rule



# Multijurisdictional Practice Rules

- Model Rule 5.5 applies in only about 12 states
- Most states have adopted modified versions
- A couple of states do not permit MJPr at all



# Multijurisdictional Practice Rules

- Is my work the ‘practice of law’?
- If so, is my presence ‘temporary’ or ‘systematic and continuous’?



# Multijurisdictional Practice Rules

Temporary:

- Do I need to associate with local counsel?
- If so, at what point?
- Do I need pro hac admission?
- If so, at what point?



# Multijurisdictional Practice Rules

Systematic or continuous:

- Is there an exception for in-house counsel?
- Do I qualify?
- Are there limitations on what I can do?
- Must I register with the Bar?



# In-House Counsel Rules

- Do I qualify under state MIP exceptions?
- Do I qualify under state registration rules?
  - Am I in good standing somewhere?
  - Am I in good standing everywhere?
  - Is registration limited to reciprocal states?
  - Will representation be limited to my employer?
  - Does my employer qualify?
  - Is there a residency requirement?



# In-House Counsel Rules

- Is there a grace period?
- One-time registration or annual?
- Is there a CLE requirement?
- What if I change employers?
- Will my work require pro hac vice admission?



# Pro Hac Vice Admission Rules

- Is pro hac vice admission required for:
  - Court appearance?
  - Arbitration/ mediation?
  - Administrative agency?



# Pro Hac Vice Admission Rules

- Do I qualify for pro hac vice admission?
  - Is there a non-residency requirement?
  - Is there a regular practice or business activity limitation?
  - Is there a limit to frequency of appearances or number of matters?
  - Do I have disqualifying disciplinary history?



# Pro Hac Vice Admission Rules

- At what point must I apply for PHV admission?
- Is local counsel required?
- Am I competent to handle the matter?
- Is my local counsel competent to handle the matter?
- What does local counsel do?



# Matter of Reitzel

- Licensed in North Carolina
- Clients were North Carolina residents
- Clients owned property in South Carolina
- Property-related litigation in South Carolina



# Matter of Reitzel

- Lawyer filed Answer for clients:
  - No local counsel
  - No pro hac vice application or order
- Clients held in default:
  - Lawyer sent a letter to judge opposing default
  - Opposing counsel inquired as to admission in SC
  - Lawyer claimed to have frequently filed answers without objection



# Matter of Reitzel

- South Carolina Supreme Court:
  - Permanent Debarment
- North Carolina State Bar Court:
  - Four-Year Suspension  
(eligible for reinstatement after service of two)



# Disciplinary Jurisdiction

◦ *ABAM* Model Rule 8.5(a):

◦ Home State has jurisdiction regardless of where the conduct occurs

◦ *MIP/PHV/UPL* State has jurisdiction regardless of lack of regular license



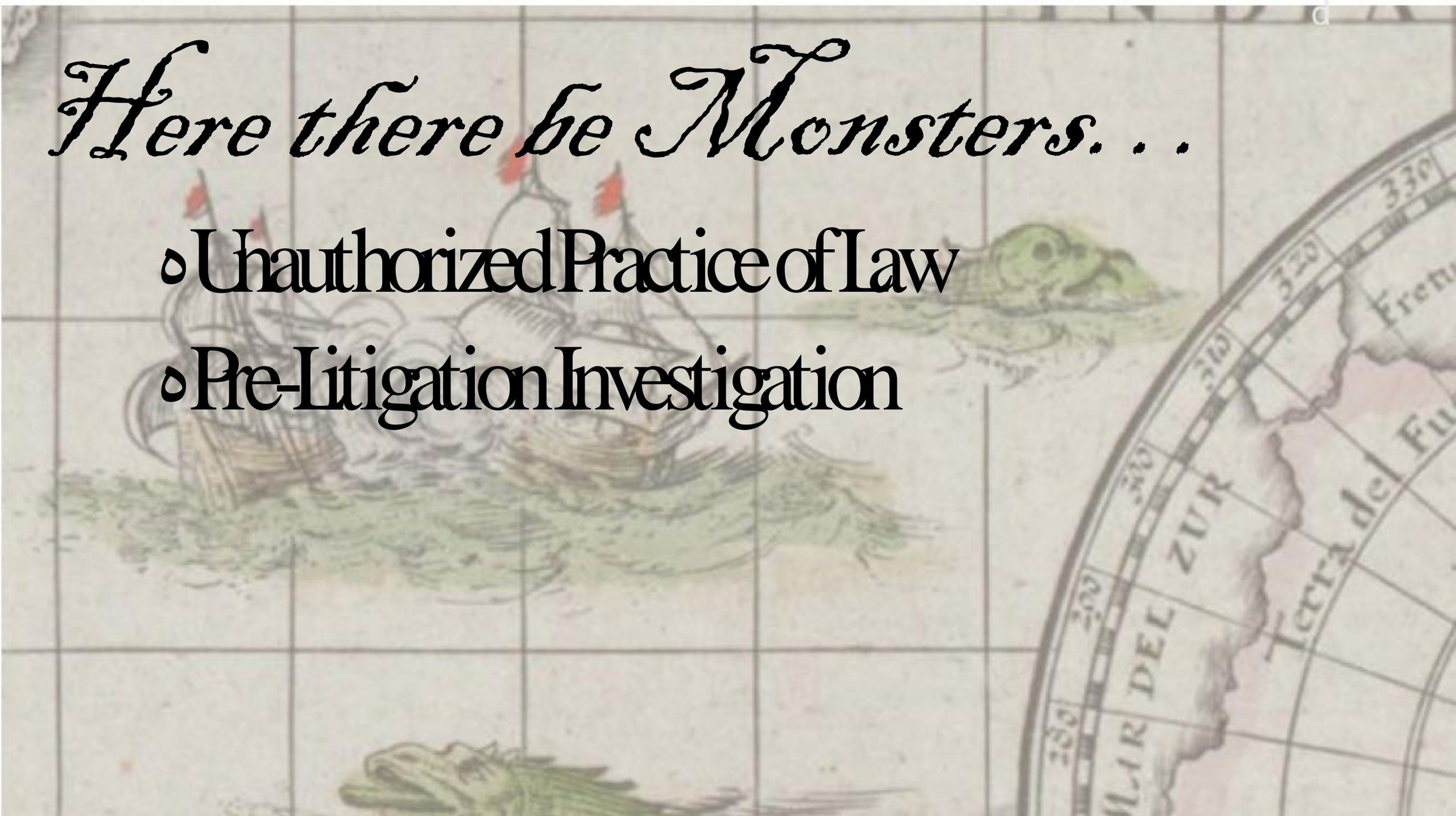
# Choice of Law

- Conduct related to a case pending before a tribunal – law of the state where the tribunal sits will apply.
- Other conduct:
  - Where the conduct occurred OR
  - Where the conduct has predominant effect



*Here there be Monsters...*

- Unauthorized Practice of Law
- Pre-Litigation Investigation



# Pre-Litigation Investigation

- Local Counsel Requirements
- Pretexting & Dissembling
- Surreptitious Recording



# Matter of Nolan

- Licensed in Arkansas
- Defendant was a company in South Carolina
- Client was a university in Georgia
- Lawsuit originally filed in Georgia
- Removed to South Carolina



# Matter of Nolan

- Sent law firm investigators to SC
- Posed as customers
- Secretly recorded employees



# Matter of Nolan

- Federal statutes and more than two-thirds of states permit taping of conversations as long as one party to the conversation consents.
- Called the “one-party rule”



# Matter of Nolan

- ABA Formal Opinion 01-422: “A lawyer who electronically records a conversation without the knowledge of the other party or parties to the conversation does not necessarily violate the Model Rules.”
- Generally:
  - Ethically OK if it is not illegal.
  - Cannot lie about recording.



# Matter of Nolan

◦ Arkansas & Georgia:

◦ ‘One-party’ recording is legal.

◦ No rule or advisory opinion regarding ethical propriety of recording.

◦ South Carolina:

◦ ‘One-party’ recording is legal.

◦ Recording without disclosure to all parties is unethical.



# Matter of Nolan

◦ South Carolina Supreme Court:

Rule 8.4 precludes an attorney from recording any conversation or portion of a conversation without the prior knowledge and consent of all parties to the conversation, irrespective of the purpose for which the recording is made.

In re Anonymous, 404 S.E.2d 513 (S.C. 1991)



# Matter of Nolan

- South Carolina:

  - Public Reprimand

- Arkansas:

  - No reciprocal discipline



# *Here there be Monsters...*

- Unauthorized Practice of Law
- Pre-Litigation Investigation
- Conflicts of Interest

# Conflicts of Interest

- Screening
- Imputation to Firm
- Choice of Law by Agreement



# *Here there be Monsters...*

- Unauthorized Practice of Law
- Pre-Litigation Investigation
- Conflicts of Interest
- Law Firm Marketing

# Matter of DeFillo

- Licensed in Florida
- Opened ‘federal only’ practice in South Carolina
- Used one website to promote both Florida practice (immigration, criminal, family) and SC practice (immigration only)
- Violated several SC advertising rules



# Matter of DeFillo

- Initially responded to disciplinary inquiry.
- Made false statements in response to notice.
- Failed to comply with multiple disciplinary subpoenas.
- Failed to answer formal charges.



# Matter of DeFillo

- South Carolina:

- Permanent Debarment (by default)

- Florida:

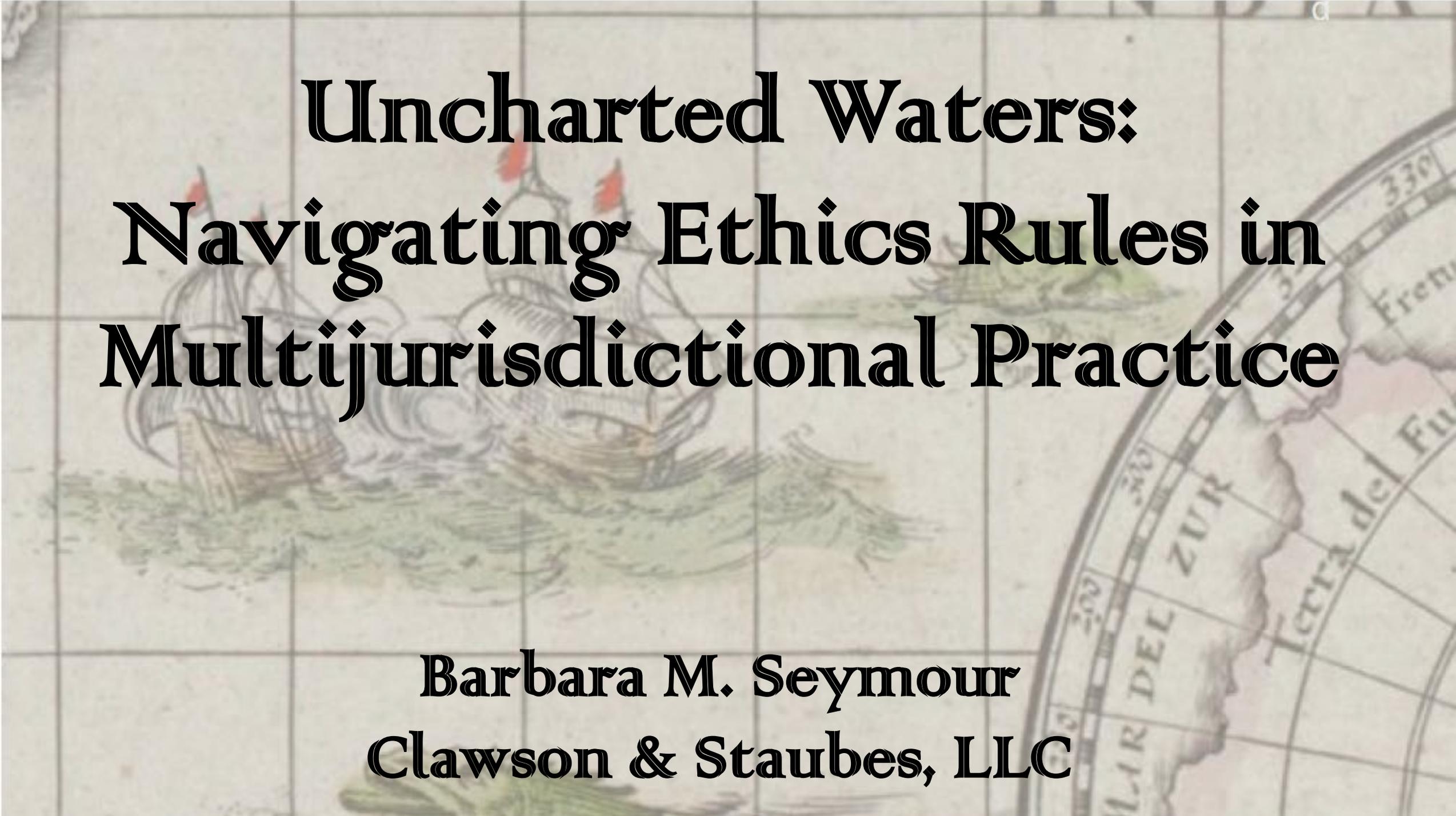
- Permanent Disbarment

- (for misconduct in SC and in FL)



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