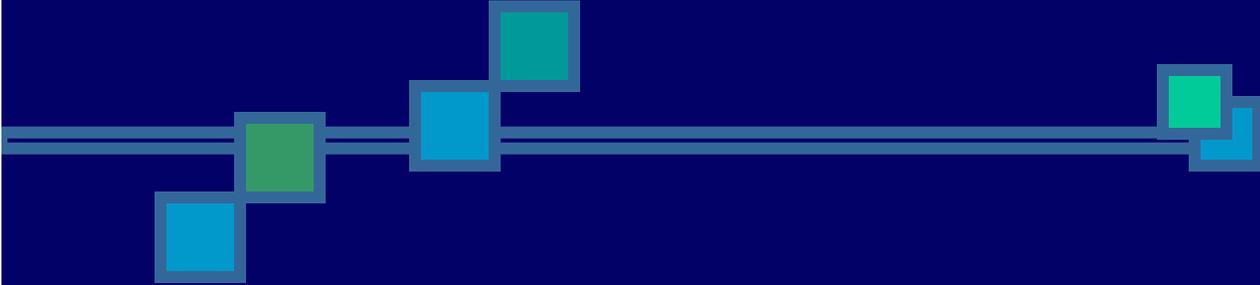


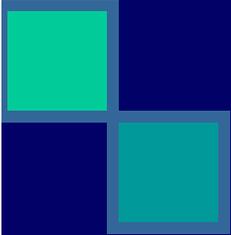
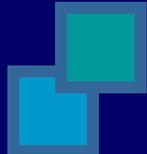
# Ethical Issues in Lawyer-Driven Class Actions

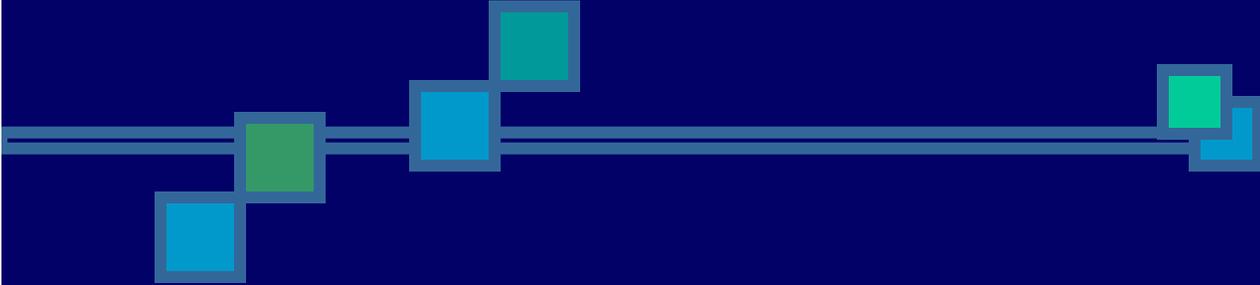


Terri Reiskin  
Lew Goldfarb

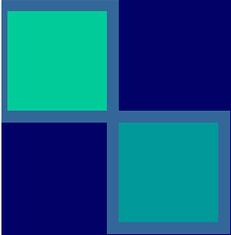
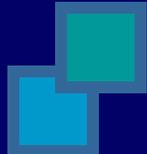


# The Class Action Industry

- 
- Traditional Model: Aggrieved individual or entity seeks out lawyer to represent him or her
  - Lawyer-driven class actions: Lawyer or groups of lawyers identify potentially lucrative area and solicit plaintiffs to serve as class representatives
- 



# Class Representatives:

- 
- Have no knowledge of the alleged wrong or injury before being contacted by the lawyer
  - Don't know all the lawyers who "represent" them
  - Don't understand what relief is being sought and why
- 

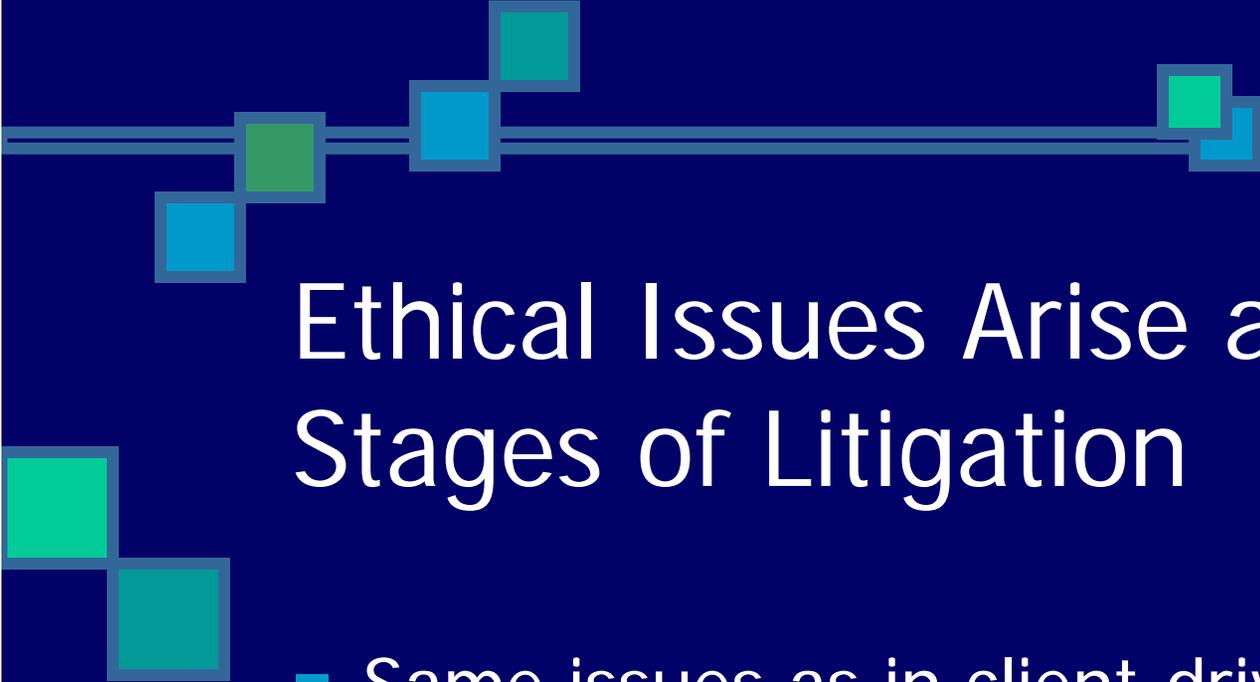


Ethical rules are based on  
one-to-one lawyer-client  
relationship, BUT:



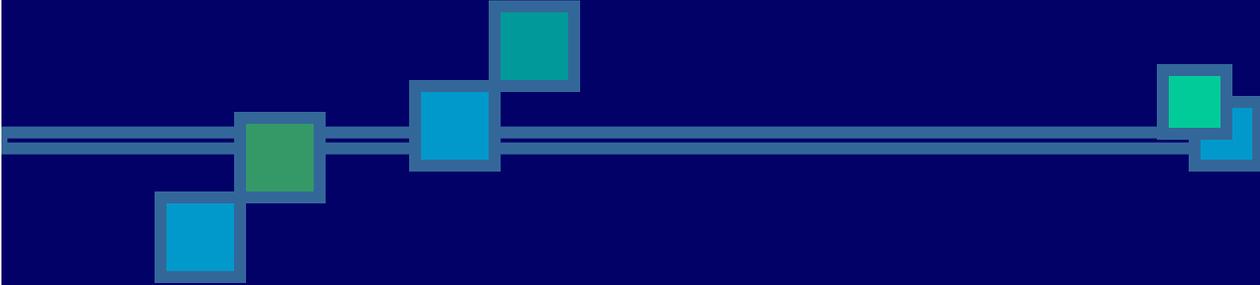
The model doesn't fit  
class actions.



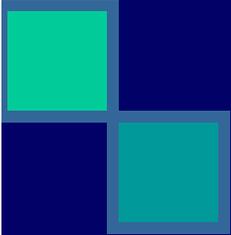
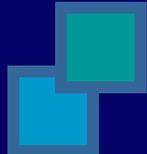


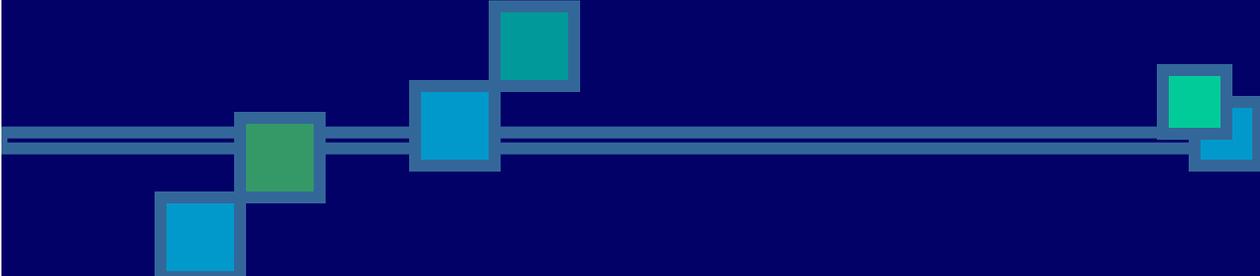
# Ethical Issues Arise at All Stages of Litigation

- Same issues as in client-driven class actions, but more pronounced because class representatives have no stake in the outcome
- 



# Who is the client – and when?

- 
- Class representatives?
  - Unnamed class members?
  - Before class certification or after?
- 



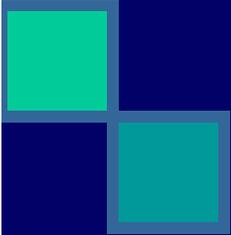
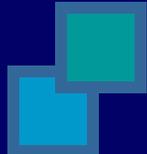
*Devlin v. Scardelletti*, 536 U.S.  
\_\_\_\_ (June 10, 2002)

“Nonnamed class members, however, may be parties for some purposes and not others. The label ‘party’ does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context.” Slip op. at 7

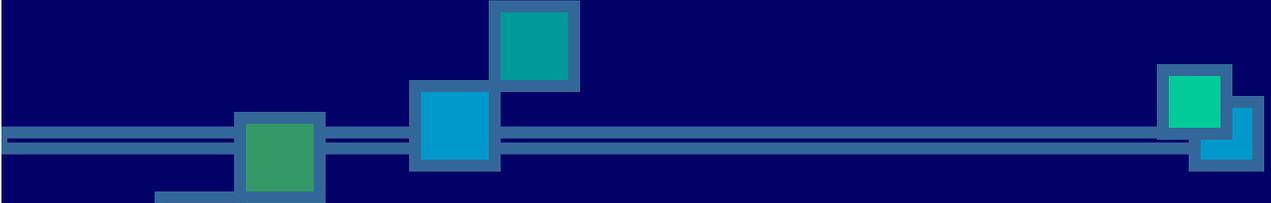




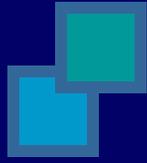
# Attorney Misconduct: Solicitation

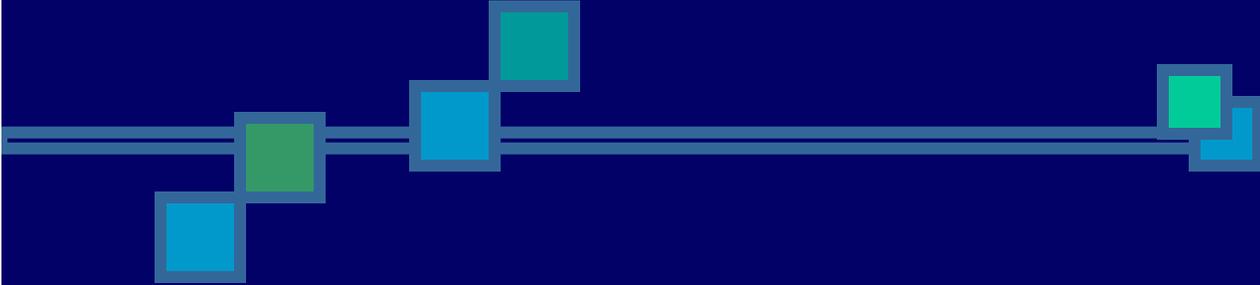
- 
- Injunction issued restraining non-party attorney from advertising for clients using false information about the litigation
  - Court rejected First Amendment argument
- 

*In re Lutheran Brotherhood Variable Insurance Products Co. Sales Practices Litigation*, No. 99-MD-1309 (D. Minn. May 31, 2002)

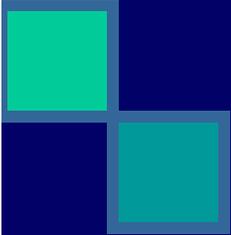


# Litigation Strategy: The Highest Amount of Legal Fees At the Earliest Possible Time

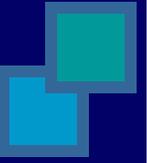
- Tailoring claims to maximize potential for class certification vs. likelihood of prevailing on the merits
  - Abandoning requests for remedies that would make the class members “whole” but would be harder to certify
- 

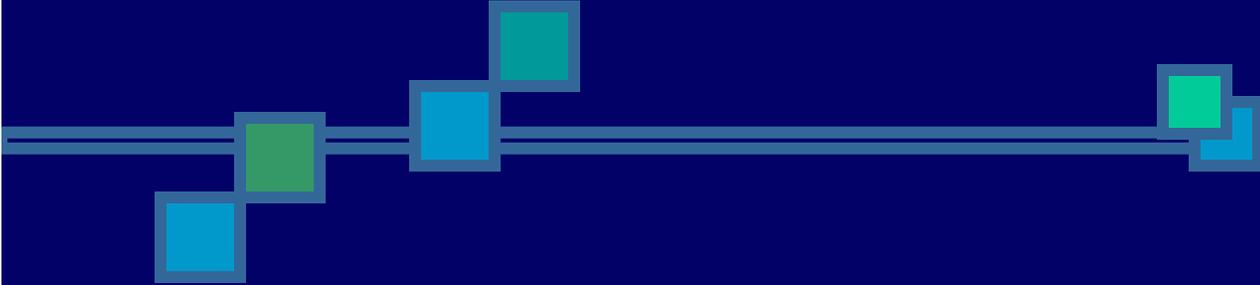


# “Firing” the Plaintiffs

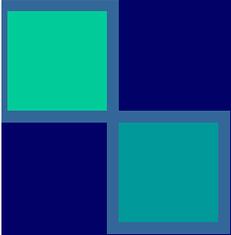
- 
- Lawyers feel free to drop plaintiffs who challenge their strategy

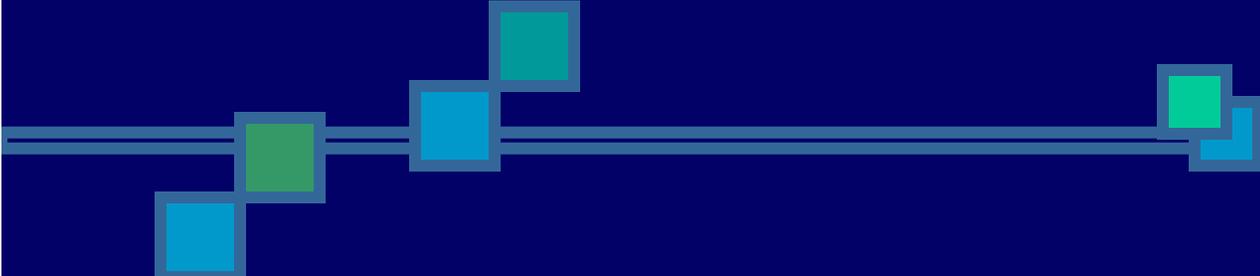
OR

- Add plaintiffs to shore up weaknesses in their case
- 

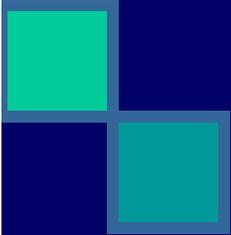
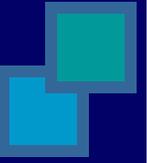


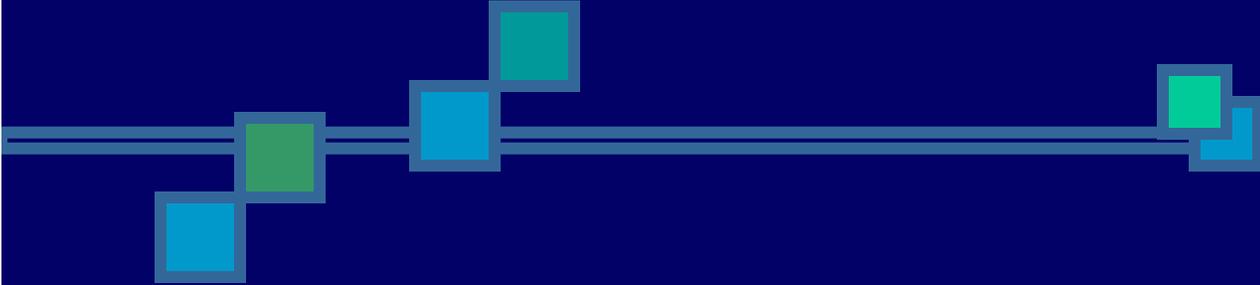
# Settlement

- 
- Internal Conflicts
    - Differences among class members
    - Present vs. future claimants
  - External Conflicts
    - Between attorneys and class members
    - Between class members and individual claimants represented by same attorneys
- 

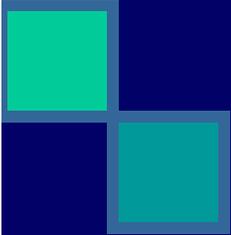
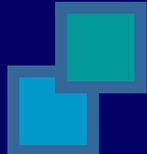


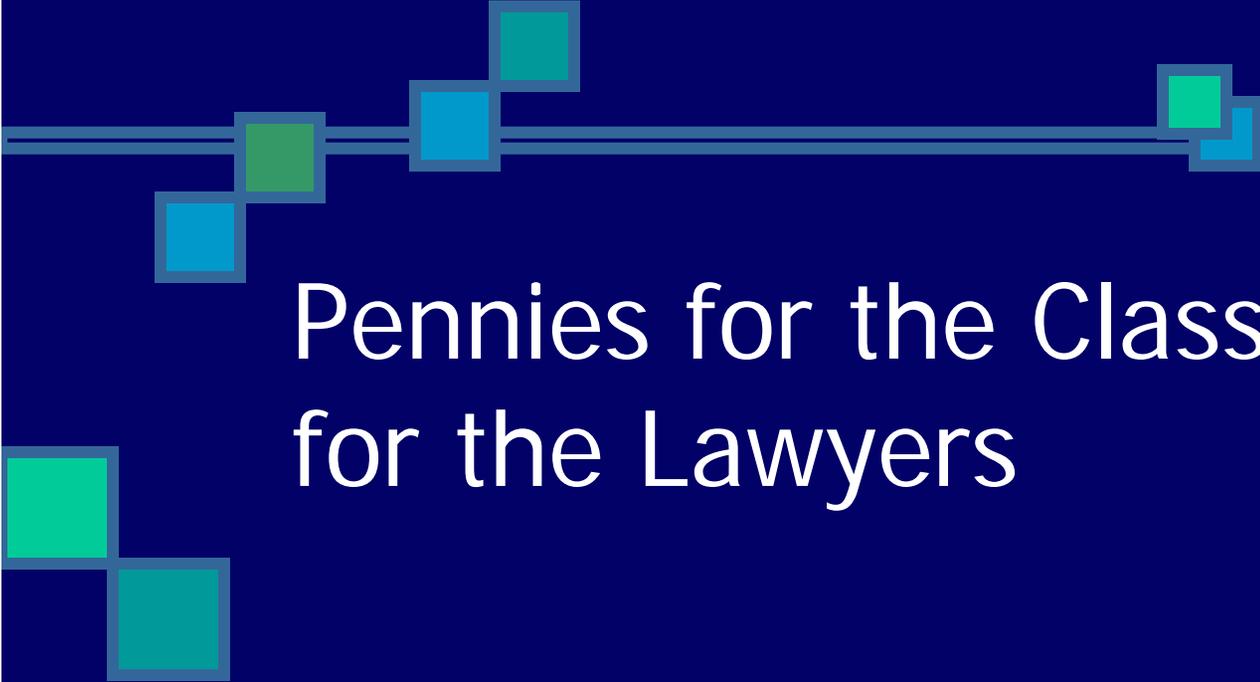
# Attorneys vs. Class Members

- 
- “Risk” Conflicts
  - “Control” Conflicts
- 



# Examples:

- 
- *Lazy Oil v. Witco*, 166 F.3d 581 (3d Cir.), *cert. denied*, 528 U.S. 874 (1999)
  - Coca-Cola Race Discrimination Suit
  - *In re Corn Derivatives Antitrust Litig.*, 748 F.2d 157 (3d Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985)
- 



# Pennies for the Class, Millions for the Lawyers

“ . . . the class action equivalent of the 'squeegee boys.' ”

*Florida Progress Corp., 2002*

