



The Fiduciary Duty: Legislative & Regulatory Trends

fi360 National Conference

May 7, 2010

Mercer Bullard, AIF[®]

President and Founder, Fund Democracy

The Fiduciary Duty

Fiduciary Duty

A duty to act solely in the best
interests of the client.

The Fiduciary Duty

Fiduciary Duty

“[T]o say that a man is a fiduciary only begins analysis; it gives direction to further inquiry.

- To whom is he a fiduciary?
- What obligations does he owe as a fiduciary?
- In what respect has he failed to discharge these obligations?”

The Fiduciary Duty

Fiduciary Duty = A duty to act solely in the best interests of the client.

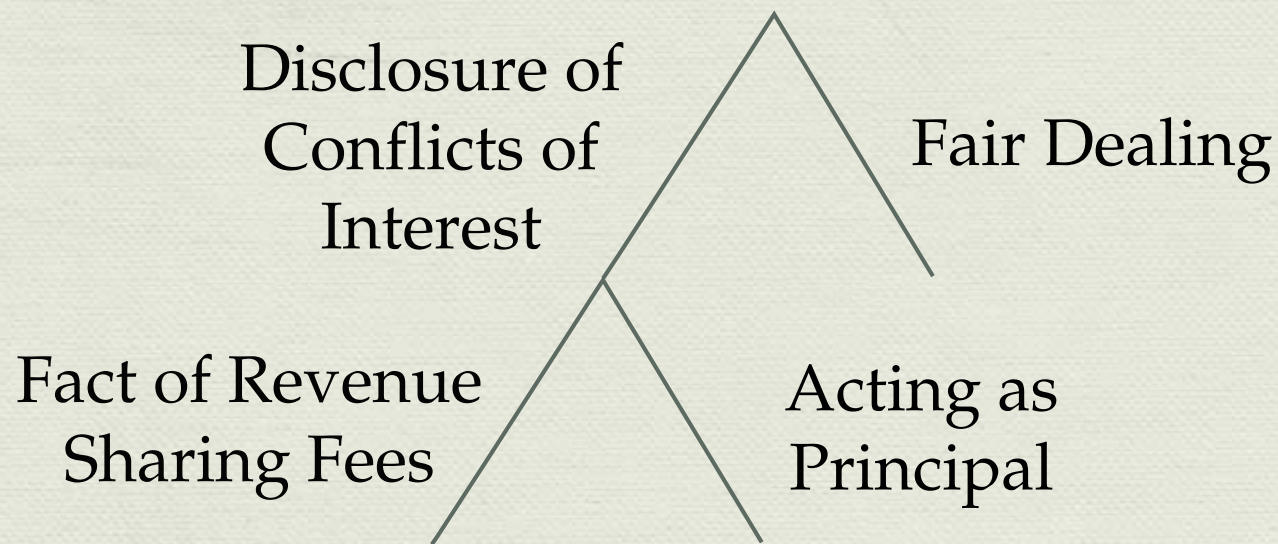
Disclosure of
Conflicts of
Interest

Fair Dealing



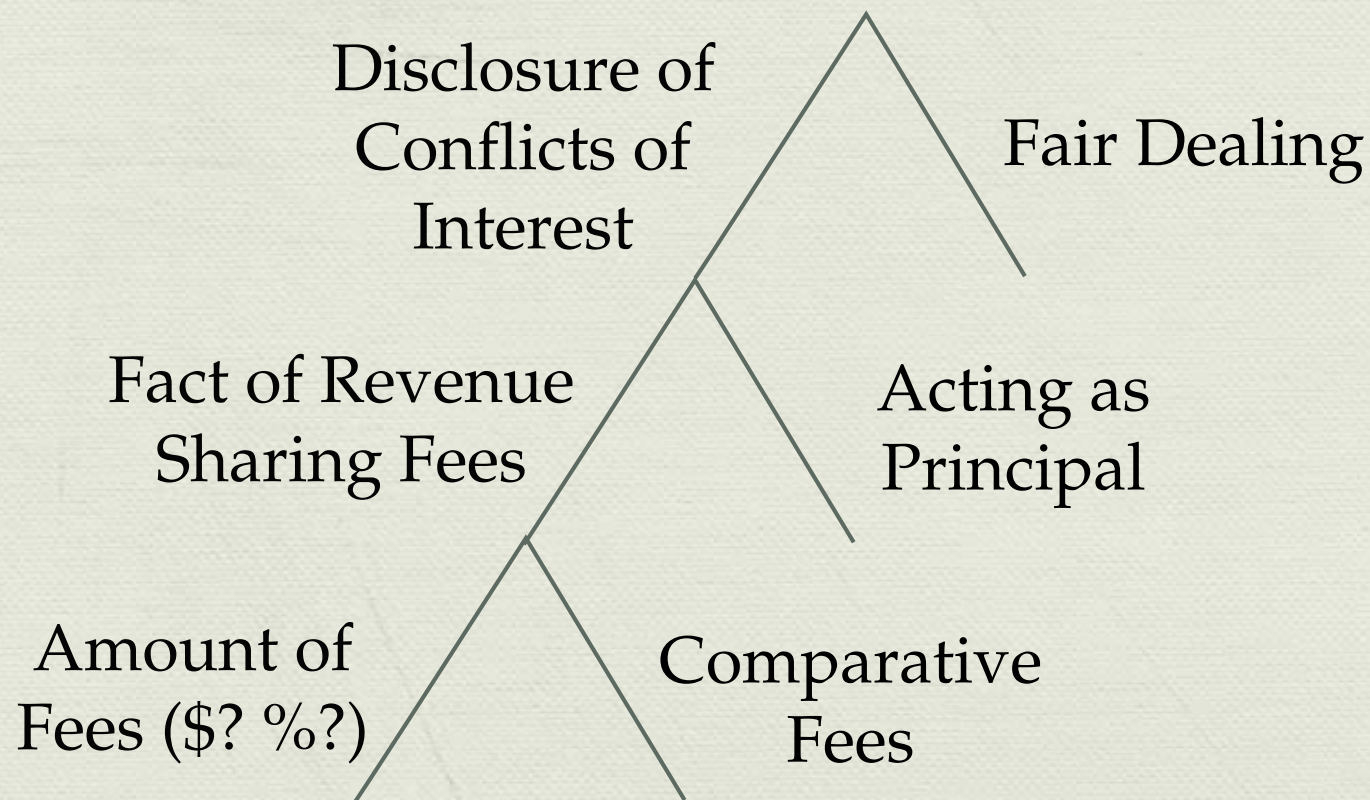
The Fiduciary Duty

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The Fiduciary Duty

Maximum Annual Asset Fees (Based on \$10,000 of fund assets owned)	Maximum Sales Fees (Per \$10,000 of fund assets purchased)	Total Earned during 2009 ¹
\$2.89 ²	\$__	\$40.0 million
\$10.00		\$0.6 million
\$5.00		\$10.2 million
\$13.00		\$5.2 million
\$13.00	\$0	\$11.0 million
\$10.00	\$0	\$11.2 million
\$9.00		\$0.3 million
\$13.00		\$1.8 million
\$__		\$0.3 million
\$13.00	\$0	\$13.6 million

2.9 bps =
\$40m

13 bps =
\$13.6m

2009
Net Income:
\$164.3m
Rev. Sharing:
\$124.9m

The Fiduciary Duty

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\$13.00		million
\$__		million
\$13.00	\$0	\$13.6 million

2.9 bps =
\$40m

13 bps =
\$13.6m

13 bps =
\$180m

2009
Net Income:
\$164.3m
Rev. Sharing:
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The Fiduciary Duty

25 bps

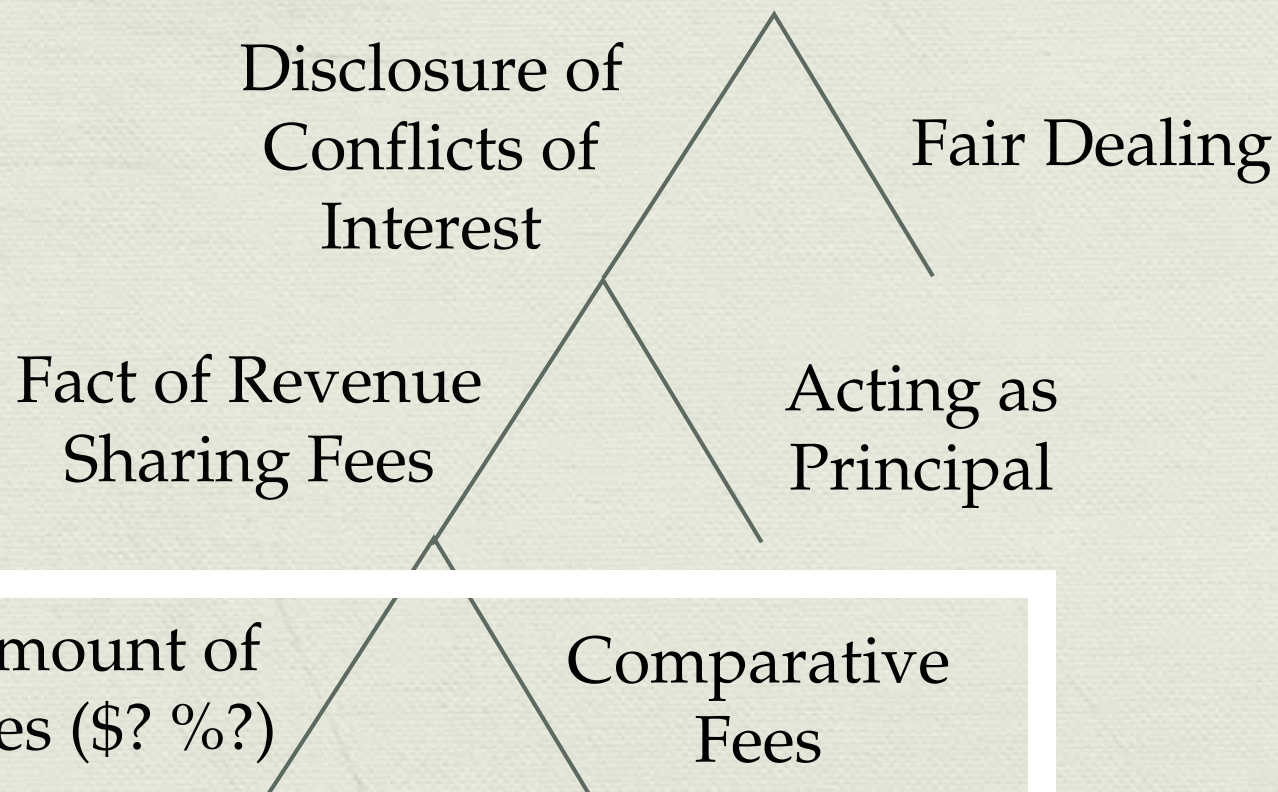
15 bps

Maximum Annual Asset Fees (Based on \$10,000 of assets owned)	Maximum Sales Fees (Per \$10,000 of assets purchased)	Total Earned during 2009 ^{1,2}
\$25.00	—	\$0.06 million
\$10.00	—	\$1.1 million
\$10.00	\$25.00	\$9.9 million
\$15.00	\$25.00	\$2.4 million
\$15.00	\$25.00	\$6.8 million
\$15.00 ³	\$12.50	\$4.2 million
\$15.00	\$20.00	\$__ ⁴
\$15.00	\$25.00	\$2.9 million

2009
 Net Income:
 \$164.3m
 Rev. Sharing:
 \$124.9m

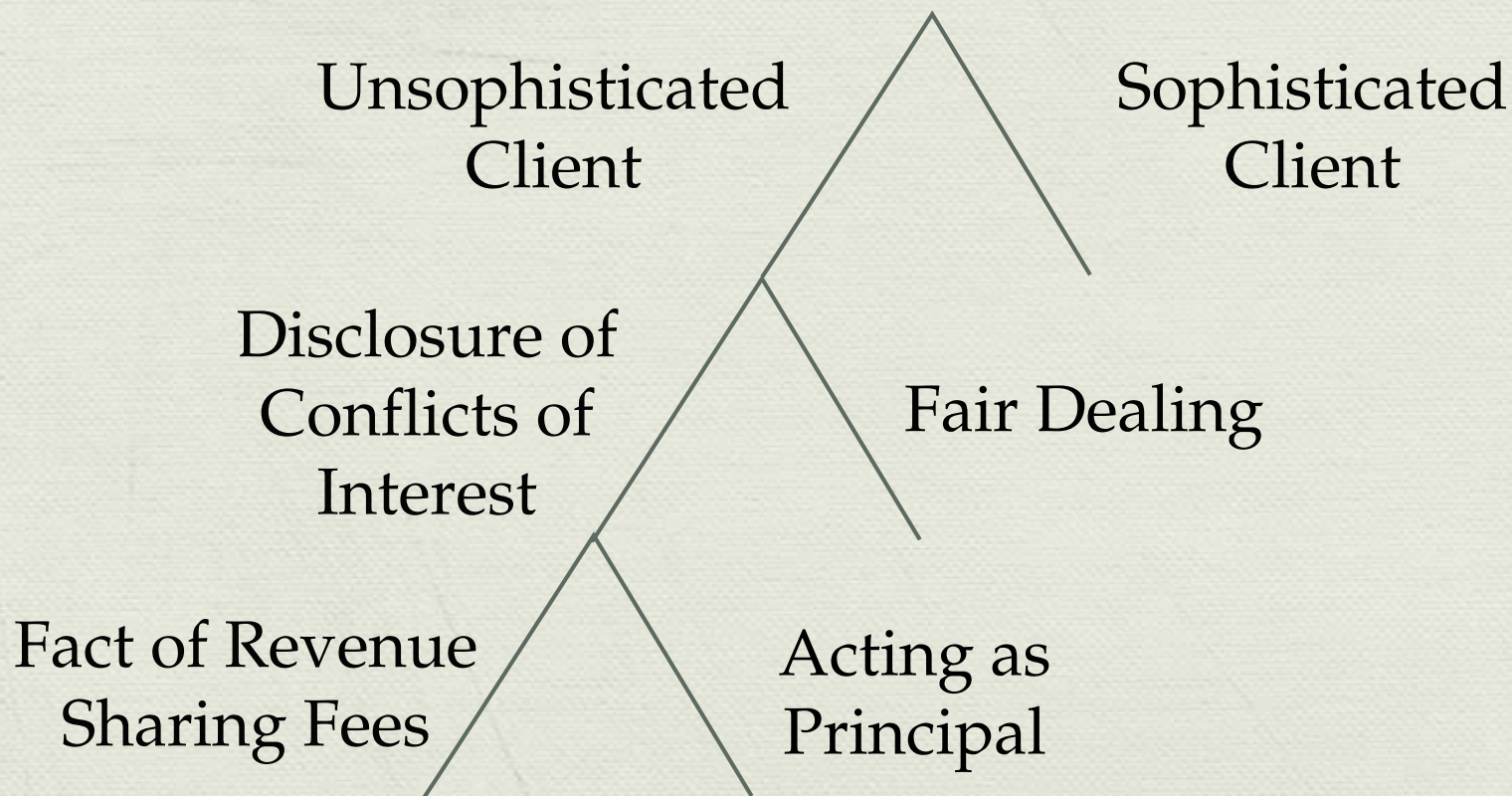
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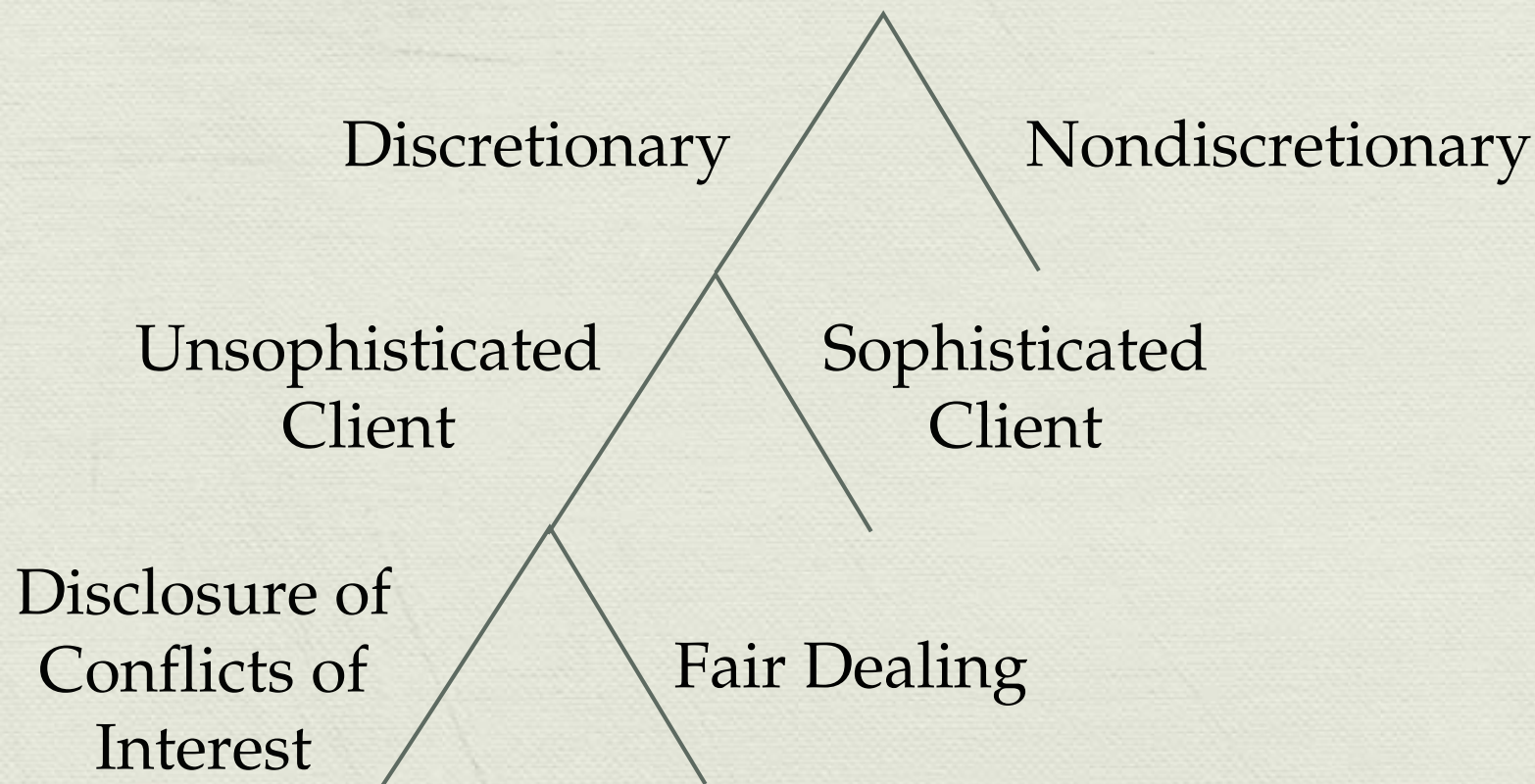
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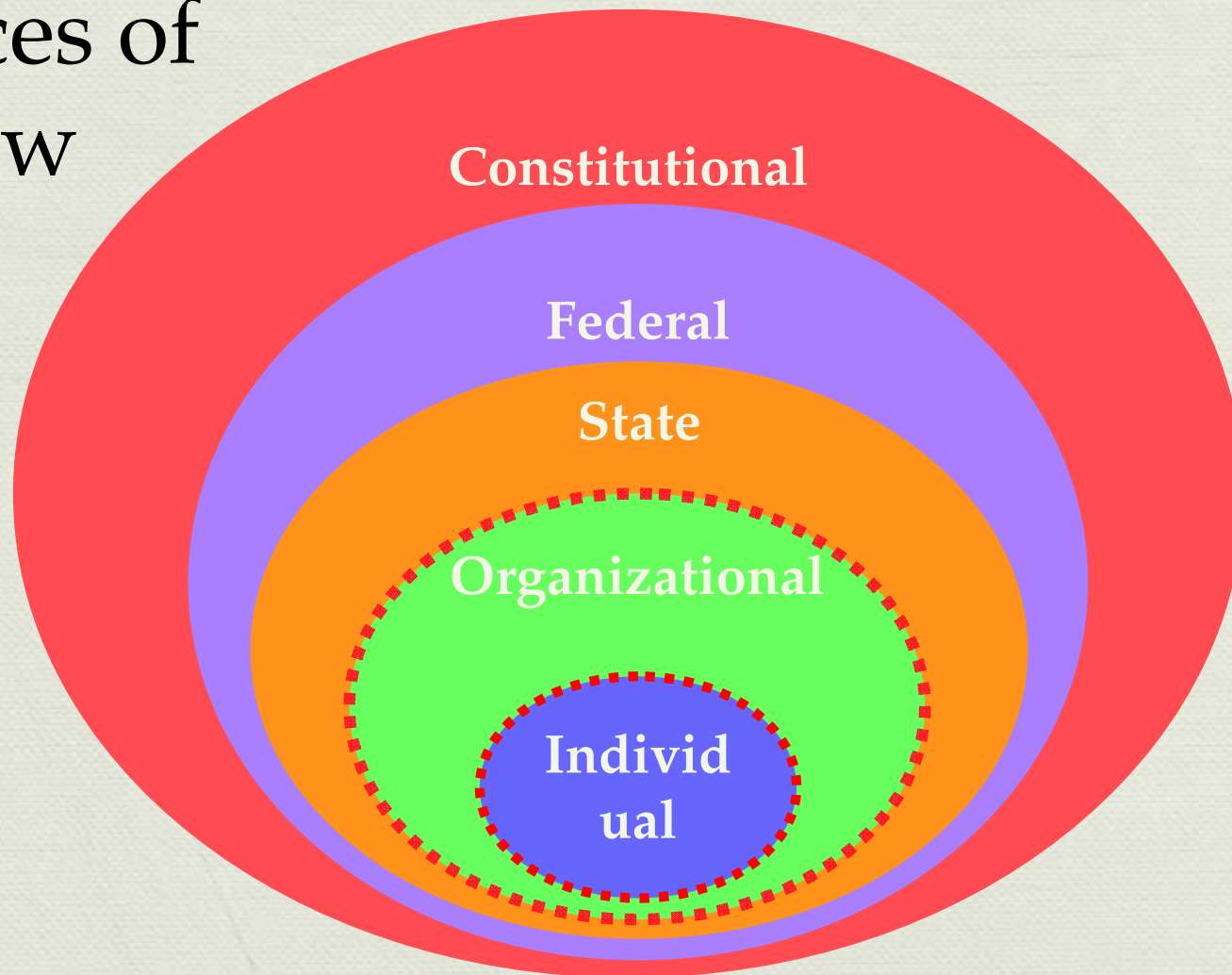
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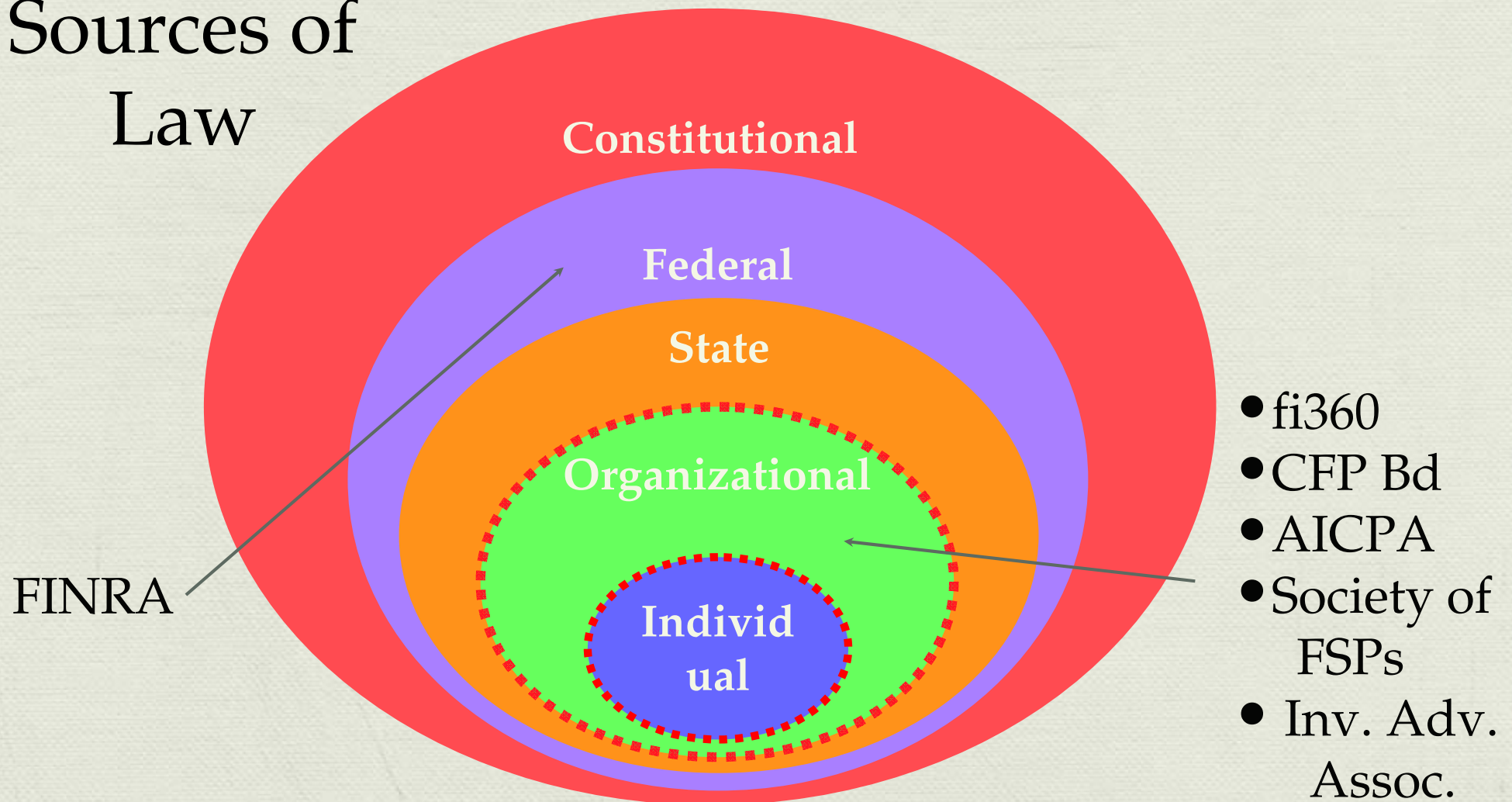
The Fiduciary Duty

Sources of
Law



The Fiduciary Duty

Sources of Law



The Fiduciary Duty

Do you have a duty to act in the best interests of your clients:

“I believe we have a duty to serve our clients well.”

“Not only do I believe that we do, I believe that we did.”

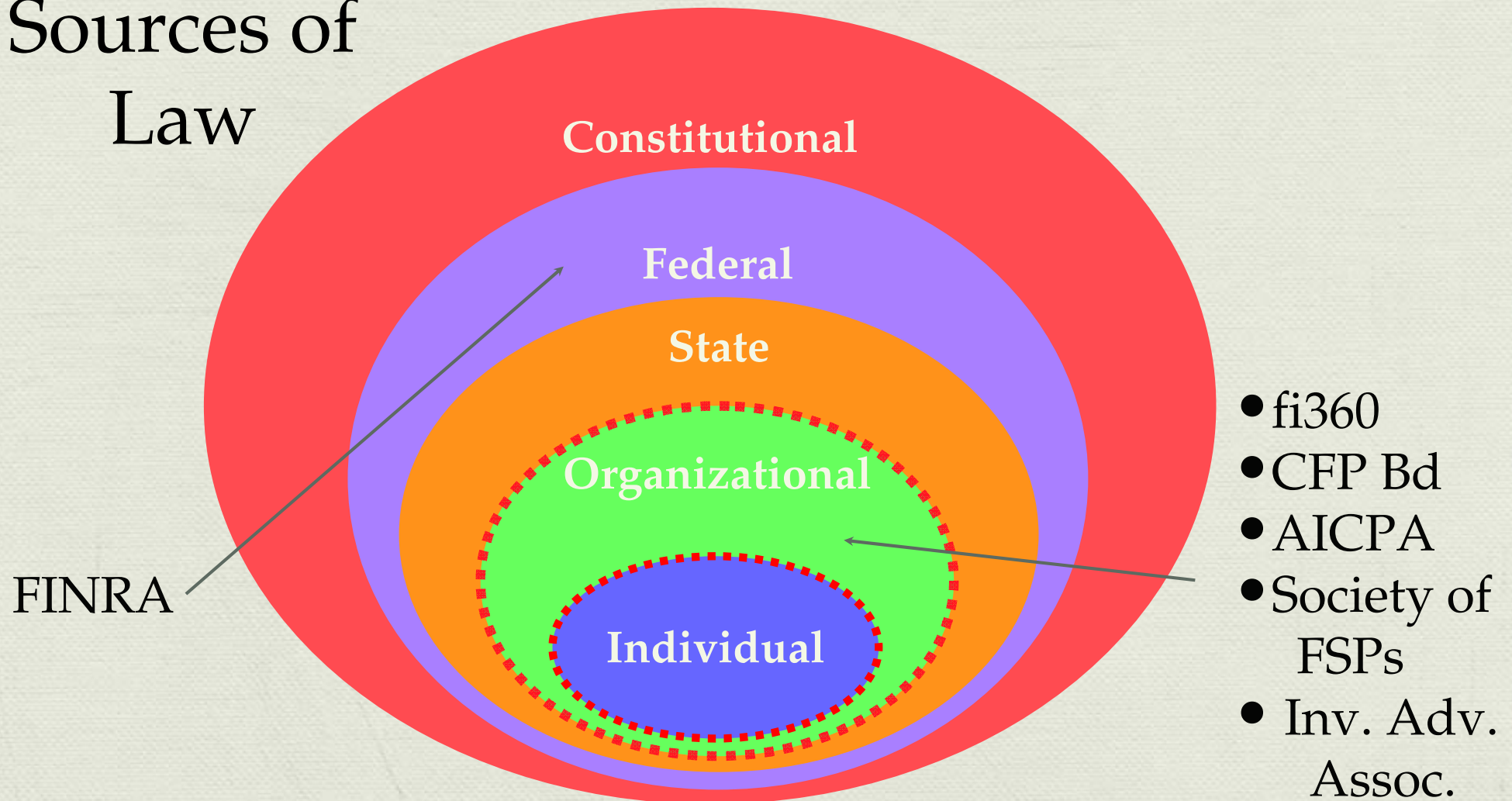
“I believe we have a duty to serve our clients, to show prices and provide liquidity.”

The Fiduciary Duty

“Boy, that timberwo[l]f was
one sh***y deal.”

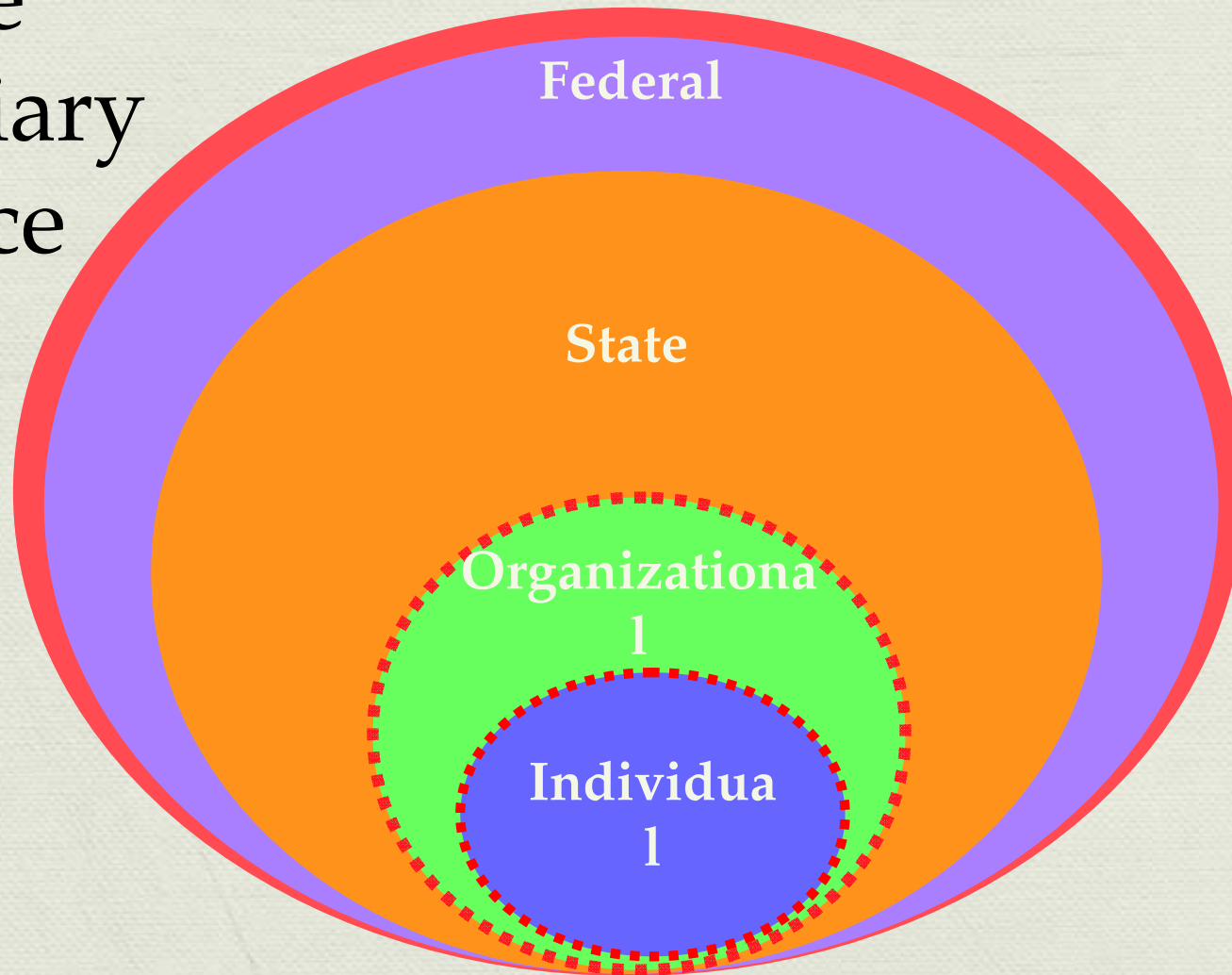
The Fiduciary Duty

Sources of Law



The Fiduciary Duty

The
Fiduciary
Space



The Fiduciary Duty

Other Determinants:

Code-Based — Common Law

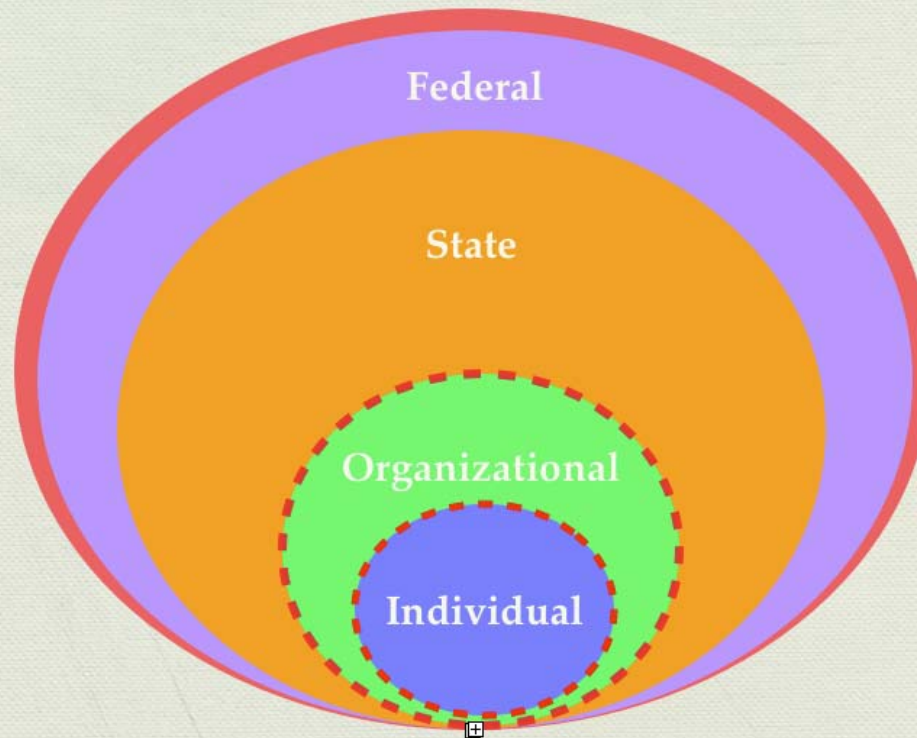
Private Claims — Public Enforcement

The Fiduciary Duty

A Fiduciary Law Model

Code/Common
Law

Private/
Public Law



Disclosure
of Material
Conflicts

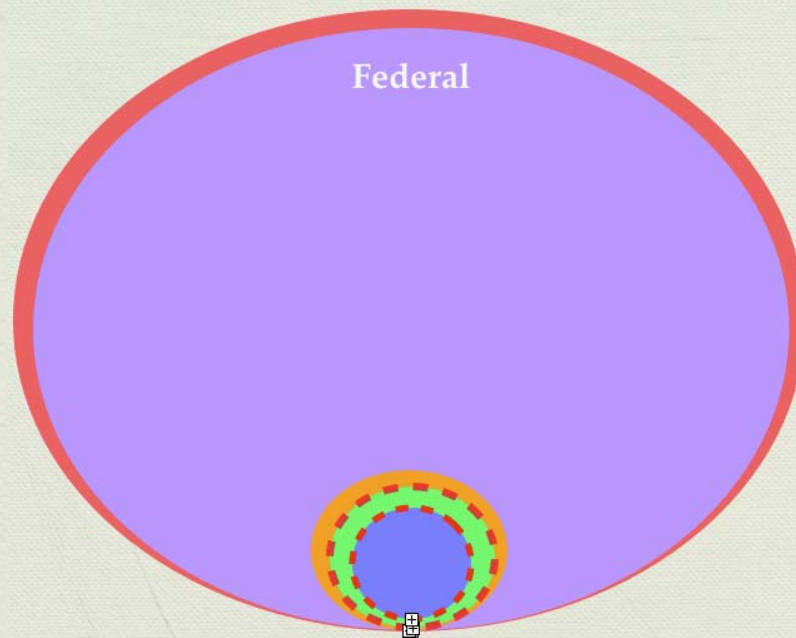
Fair Dealing

The Fiduciary Duty

The ERISA Fiduciary Space

Code/Common
Law

Private/
Public Law



Disclosure
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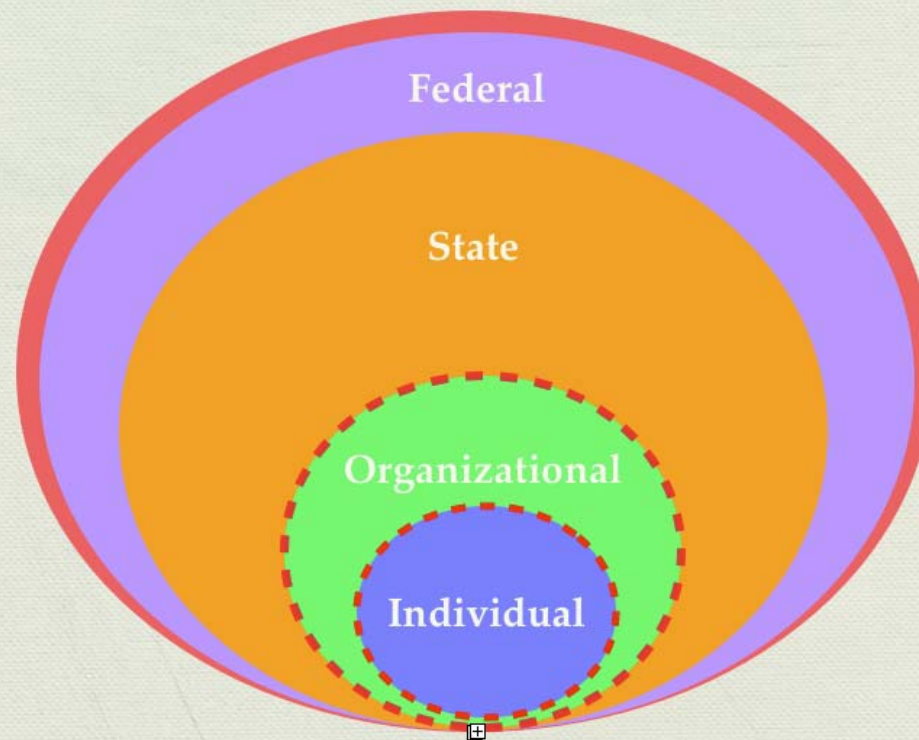
Fair Dealing

The Fiduciary Duty

Registered Investment Advisers

Code/Common
Law

Private/
Public Law



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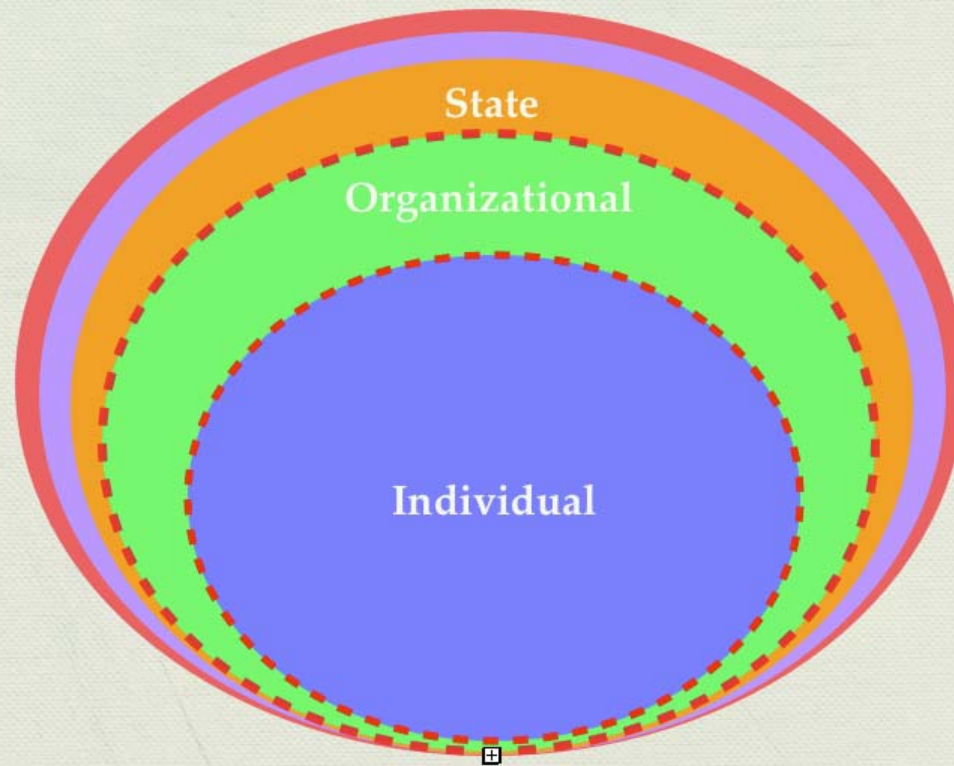
Fair Dealing

The Fiduciary Duty

Brokers

Code/Common
Law

Private/
Public Law



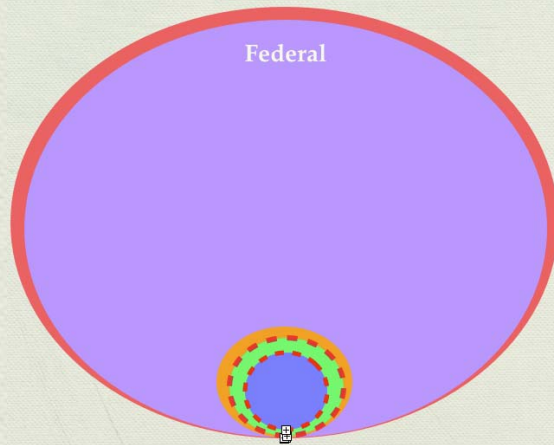
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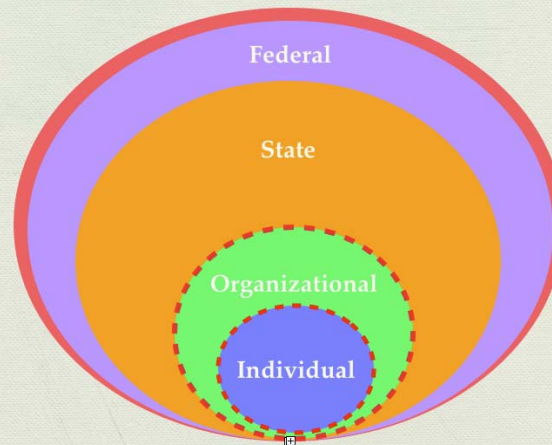
The Fiduciary Duty

The Fiduciary Space

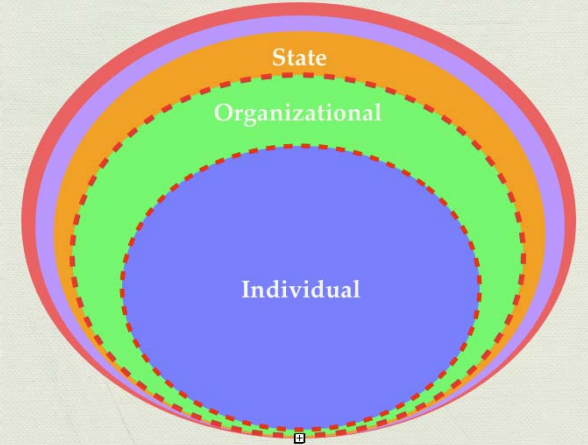
ERISA



RIAs

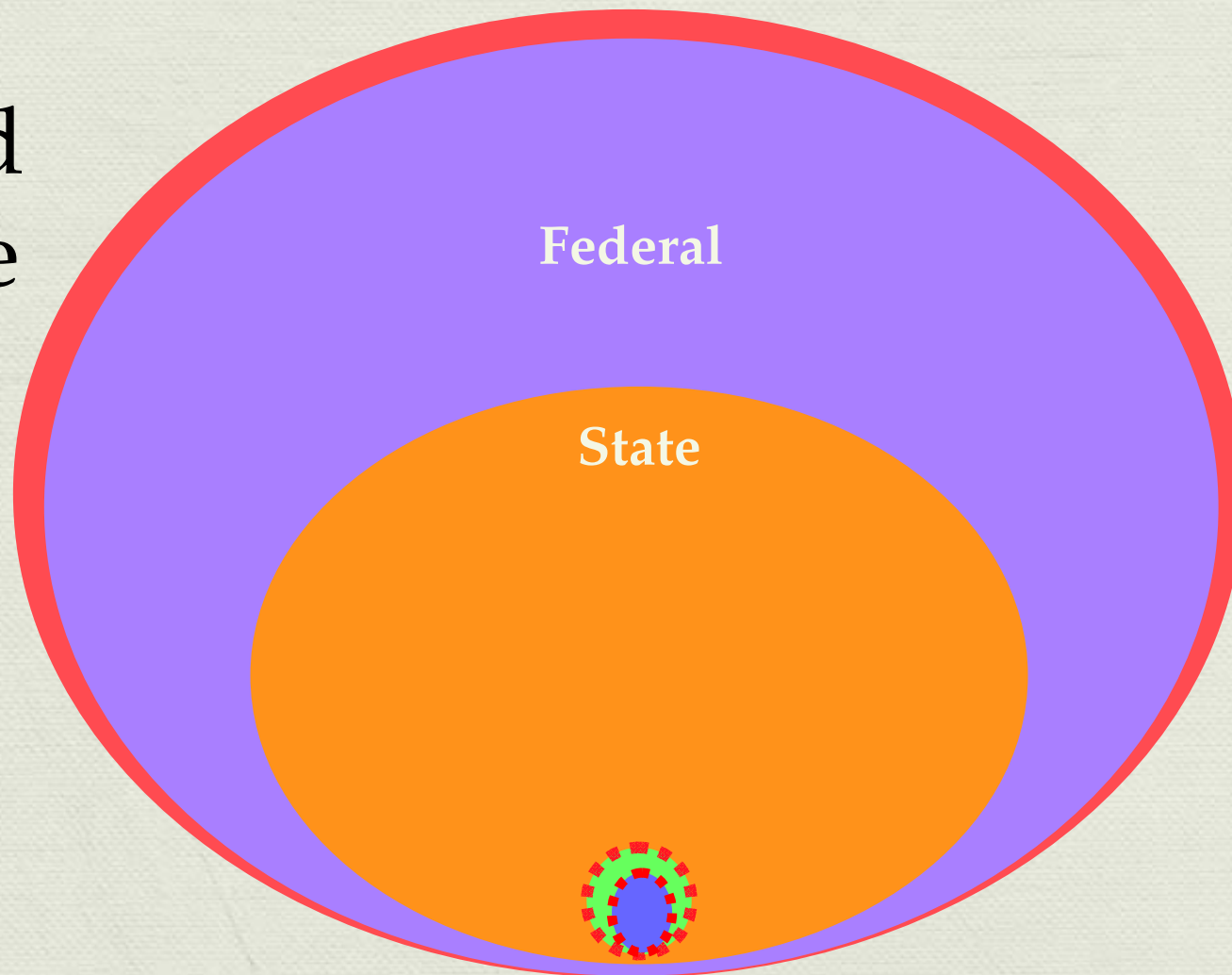


Brokers

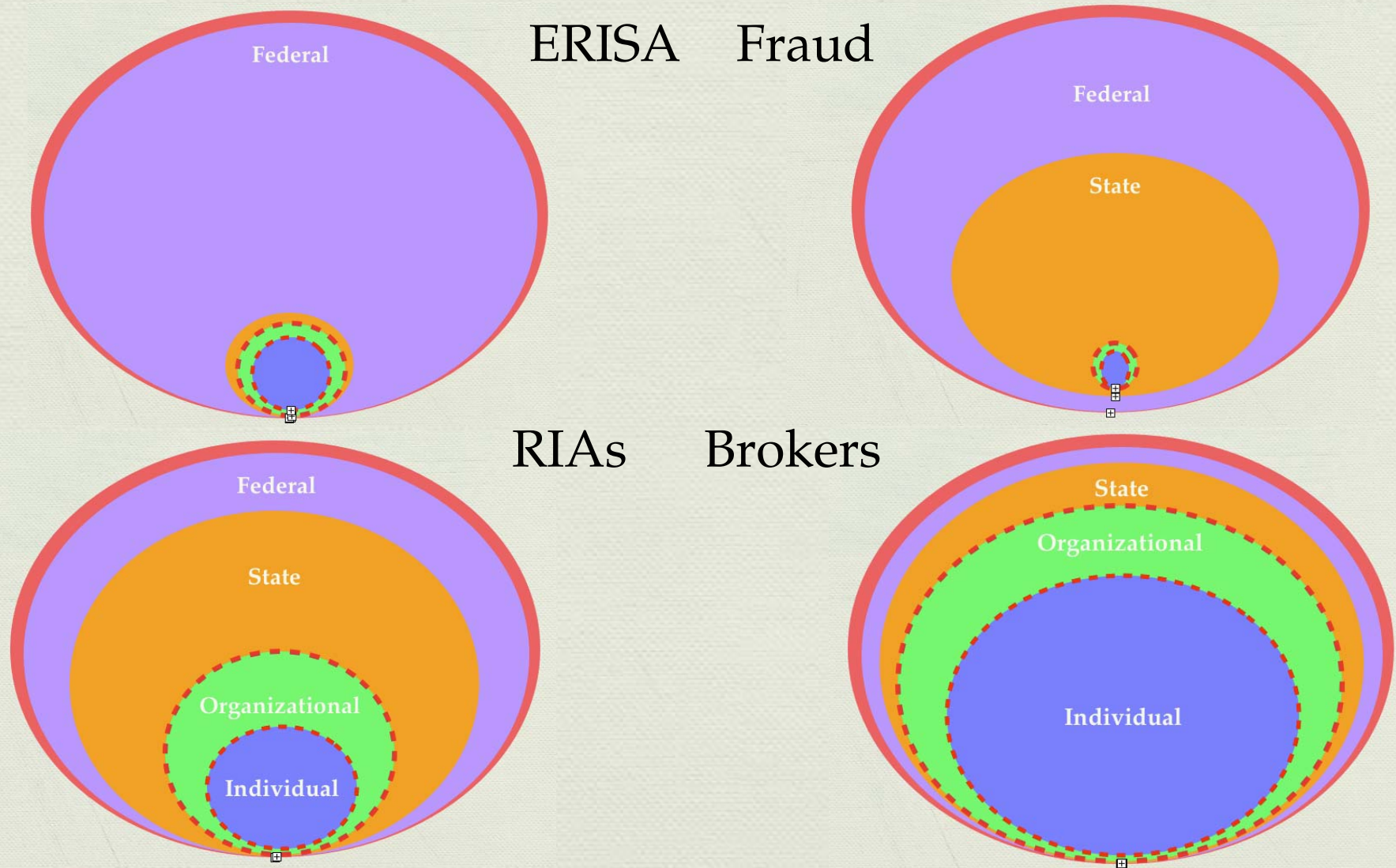


The Fiduciary Duty

The
Fraud
Space



The Fiduciary Duty



Fiduciary Paths

Fiduciary duty by:
Federal statute
SEC rulemaking
FINRA rulemaking

OR

Separate financial planning regulation

House Bill

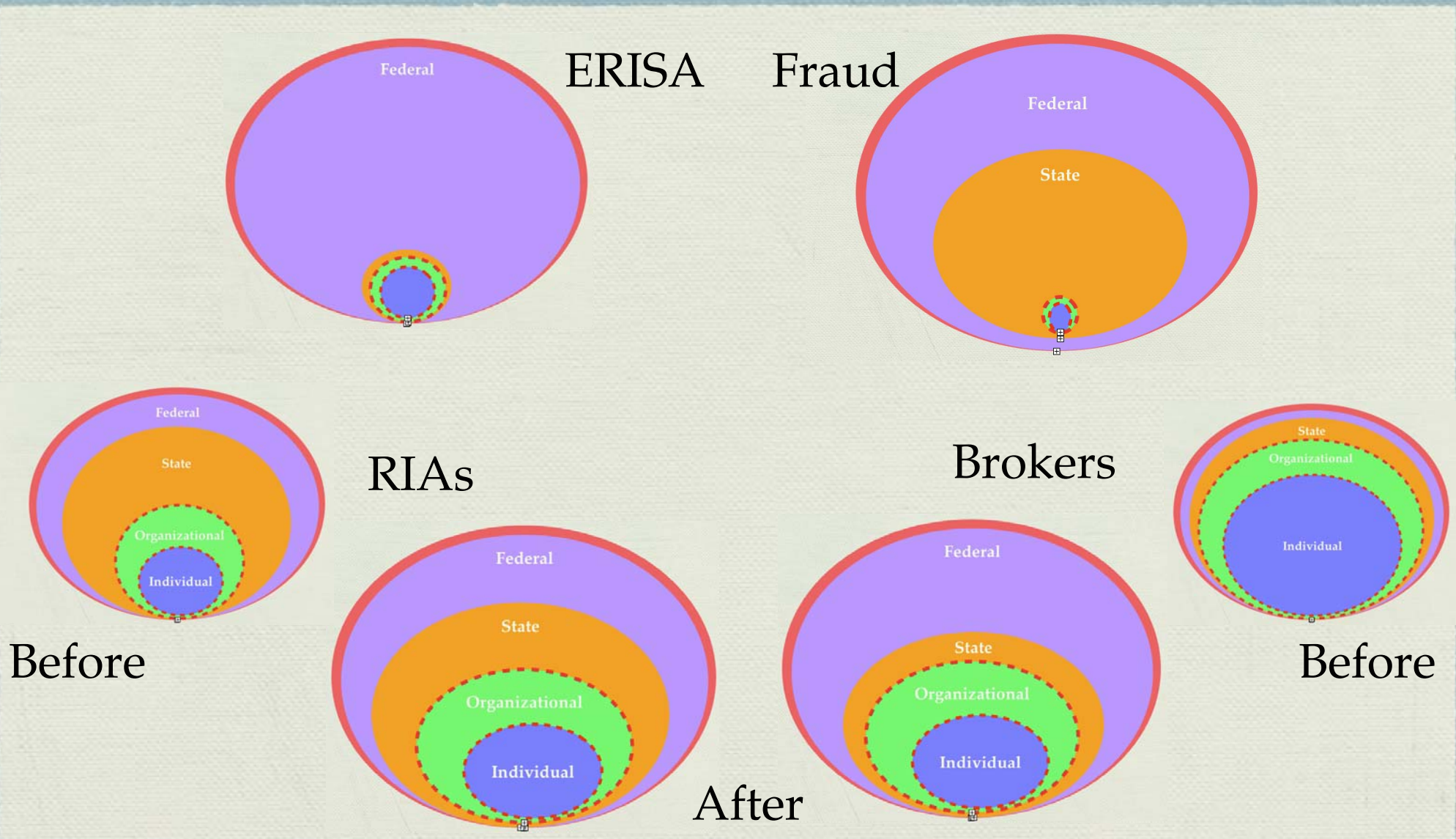
Establishment of Fiduciary Duty
for Brokers Dealers, and Investment Advisers, and
Harmonization of Regulation

House Bill

Establishment of Fiduciary Duty for Brokers Dealers, and Investment Advisers, and Harmonization of Regulation

- ◆ What?
 - ◆ “act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.”

The Fiduciary Duty



The Fiduciary Duty

RIAs &
Brokers

