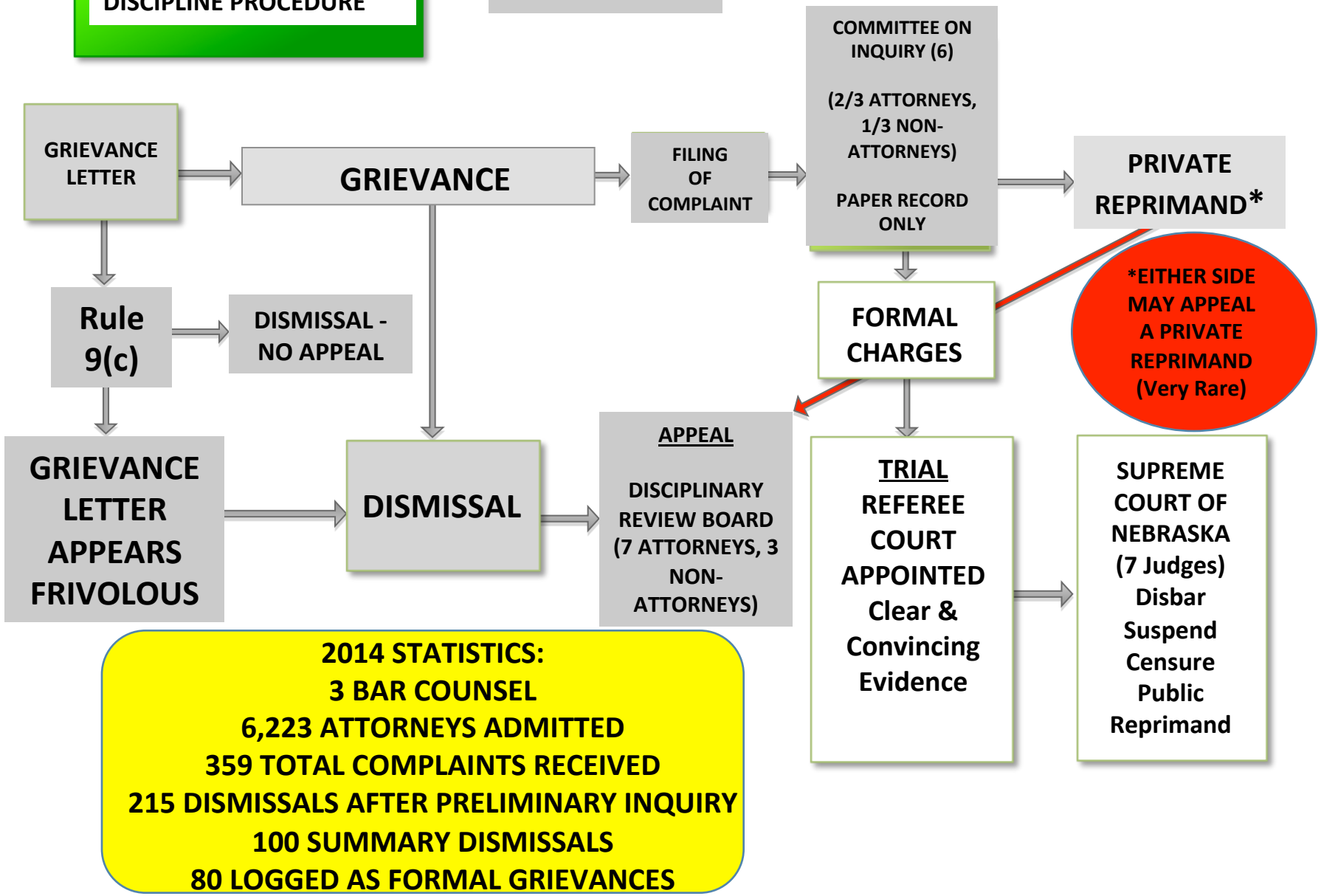
Changes, Procedures, Advisory Opinions and Ethical Issues Facing the Nebraska Attorney

Lincoln Bar Association - Ethics Presentation
Cornhusker Hotel – November 19th, 2015
Mark A. Weber - Nebraska Counsel for Discipline

FLOWCHART OF NEBRASKA COUNSEL FOR DISCIPLINE PROCEDURE

SHADED AREAS CONFIDENTIAL



2014 STATISTICS:
3 BAR COUNSEL
6,223 ATTORNEYS ADMITTED
359 TOTAL COMPLAINTS RECEIVED
215 DISMISSALS AFTER PRELIMINARY INQUIRY
100 SUMMARY DISMISSALS
80 LOGGED AS FORMAL GRIEVANCES

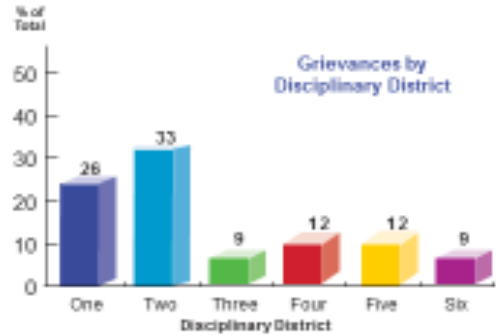
Happy Anniversary To Me!

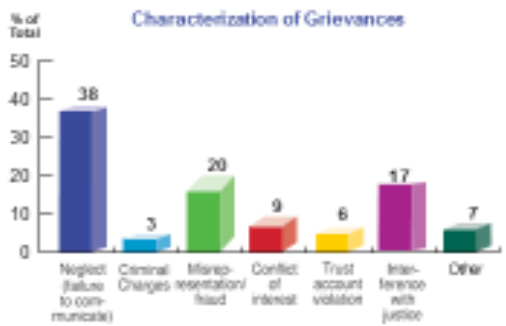
- 56 weeks – 63 Speaking engagements
- I'm Converting the office into the 20th Century with automation -
- 3 Attorneys to one in a Year! I do have 1 part-timer - and we are hiring a new prosecutor
- We continue to field your calls and try to help the best we can – (in spite of the ABA Audit)
- I enjoy the GREAT support of The Court and they back me on nearly 100% of C4D decisions I make.

What I've learned in One Year

- I'm rarely put on hold
- Calls are returned very quickly – at least **twice** as fast as when I was in private practice
- But – people sound and act differently now when I call them for some reason. I wonder why?
- When I do call someone and ask them for something, i.e., to volunteer – they always say yes
- The hardest day on the job is still easier than the night before trial; and
- Nebraska Lawyers are for the most part **VERY** Solid People:

2014 DISCIPLINARY REPORT





Disciplinary Sanctions Imposed Against Nebraska Attorneys

Year	Private Reprimands	Public Reprimands	Suspensions	Disbarments
2002	20	2	6	7
2003	17	2	7	4
2004	17	7	17	5
2005	13	5	7	6
2006	14	6	13	8
2007	16	6	13	5
2008	22	4	13	2
2009	11	2	12	8
2010	16	1	5	6
2011	5	3	3	5
2012	10	5	10	5
2013	7	5	6	5
2014	10	6	6	5

Mark's Ten* Commandments

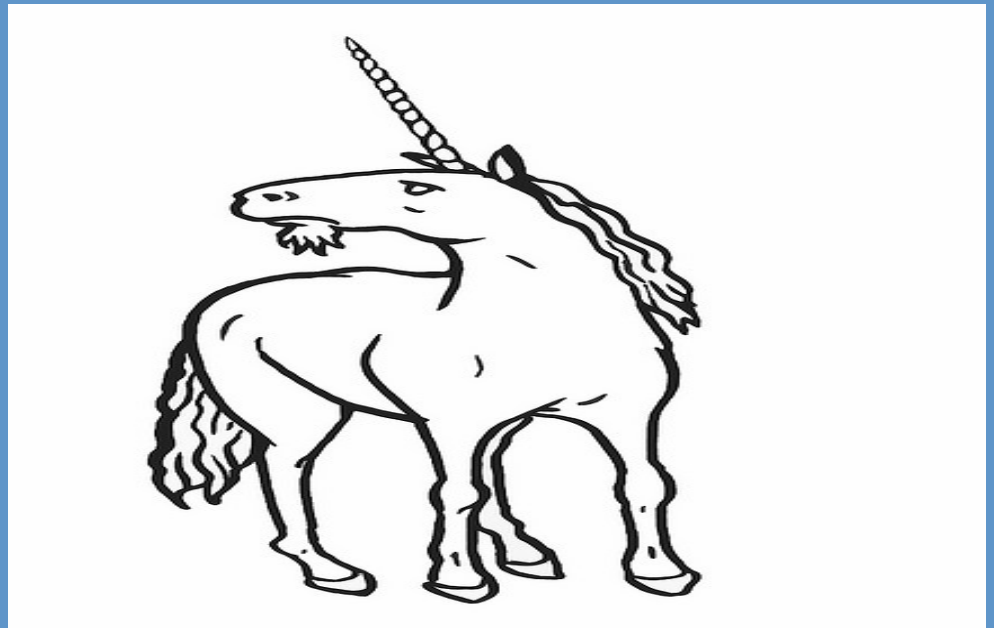
I. Do Not Lie (To a Lawyer; Client or Judge)
II. Do Not Cheat
III. Do Not Steal
IV. Pick up After Yourself – Be Organized
V. Account for Yourself – Good Bookkeeping
VI. Play Nice With each Other
VII. Play Nice with My Office
VIII. Communicate – Answer your Phone/Return Calls
IX. Be Diligent – And Be on Time!
X. Charge a Fair Price
XI. Keep a Secret

4 Types of Letters Come out of C4D After My Initial Review

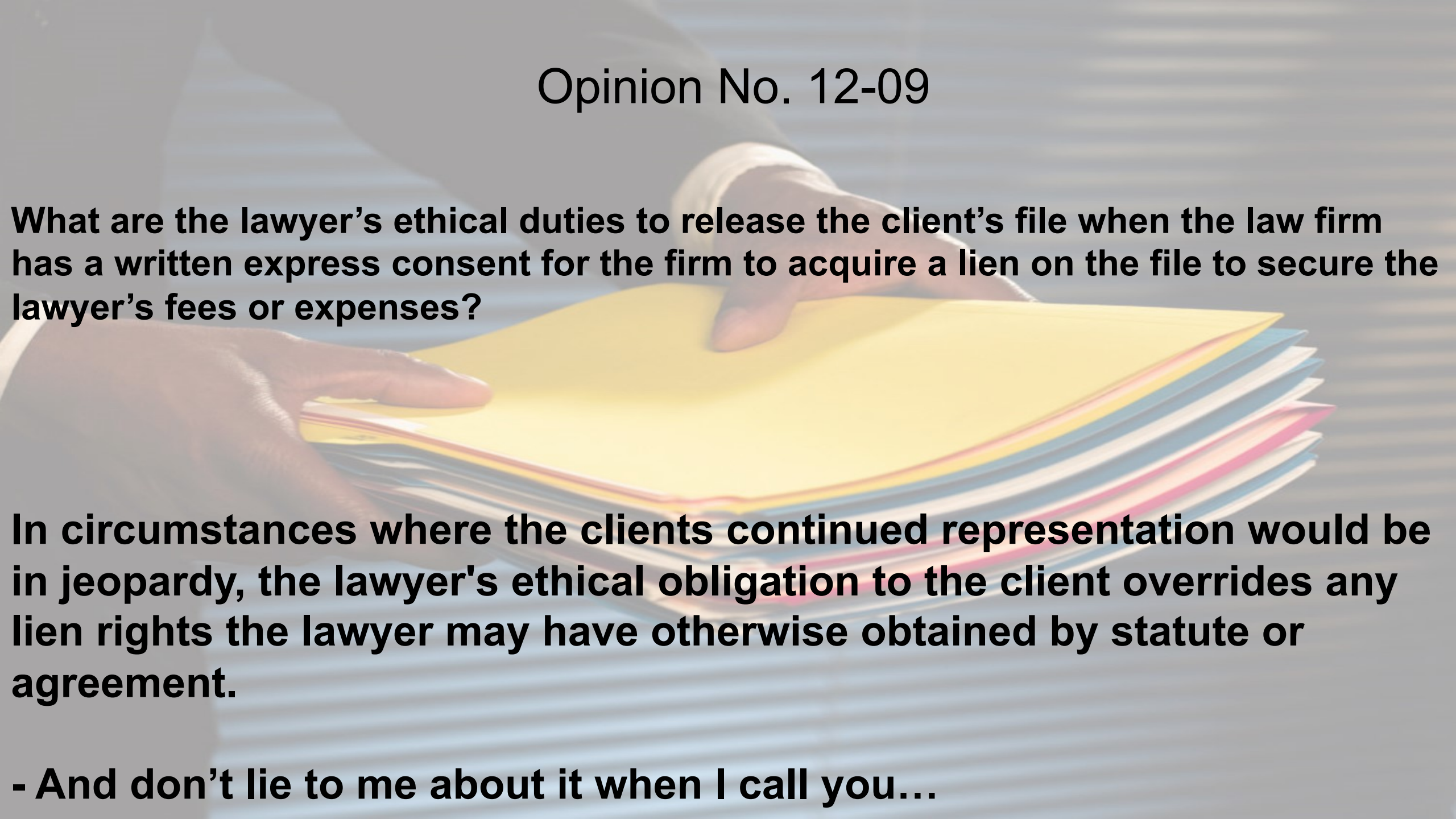
- 1. “Miscellaneous”
- 2. Trust Account Violations
- 3. 9(C)’s; and
- 4. Formal Grievances

Fee Agreements

- 1. Put it in Writing
- 2. Have the Client Sign Off
- 3. Keep your Time!; and
- 4. Beware the “Non-Refundable Flat-Fee”



Opinion No. 12-09



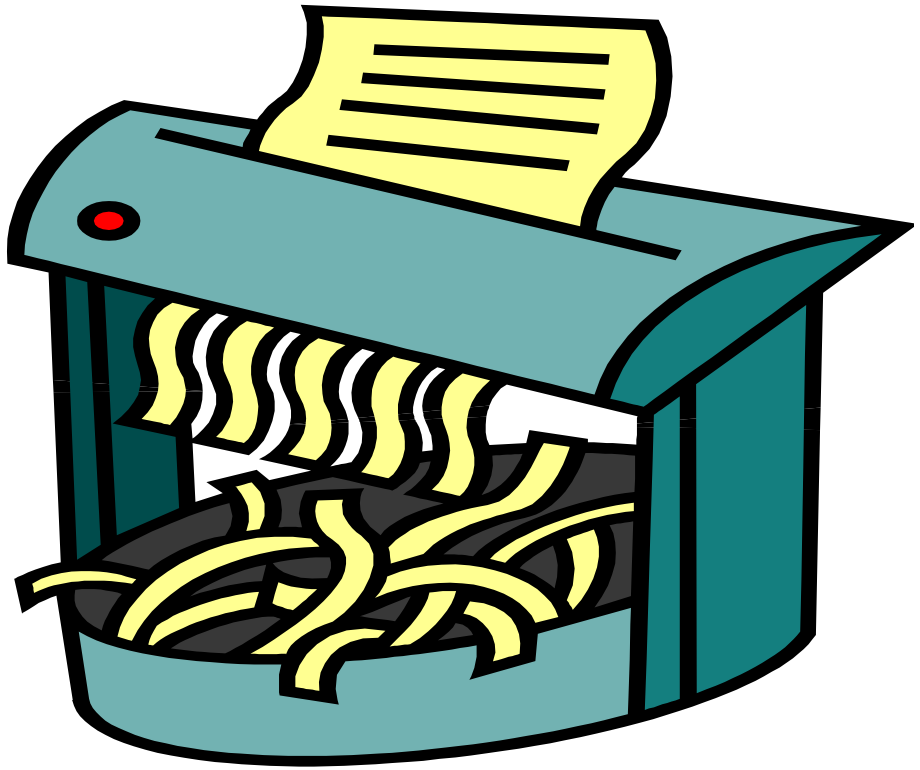
What are the lawyer’s ethical duties to release the client’s file when the law firm has a written express consent for the firm to acquire a lien on the file to secure the lawyer’s fees or expenses?

In circumstances where the clients continued representation would be in jeopardy, the lawyer's ethical obligation to the client overrides any lien rights the lawyer may have otherwise obtained by statute or agreement.

- And don’t lie to me about it when I call you…

Nebraska Ethics Advisory Opinion for Lawyers No. 88-3 provided:

It is not possible to state a definite time as to when closed client files may be destroyed. The retention or destruction of client files is primarily a matter of good judgment, weighing the client's interests and expectations in the retention of file materials, the reasonably expected future usefulness of the file contents, the careful preservation of confidentiality and the availability of storage space.



88-3 No Longer Controls- 12-07 Does

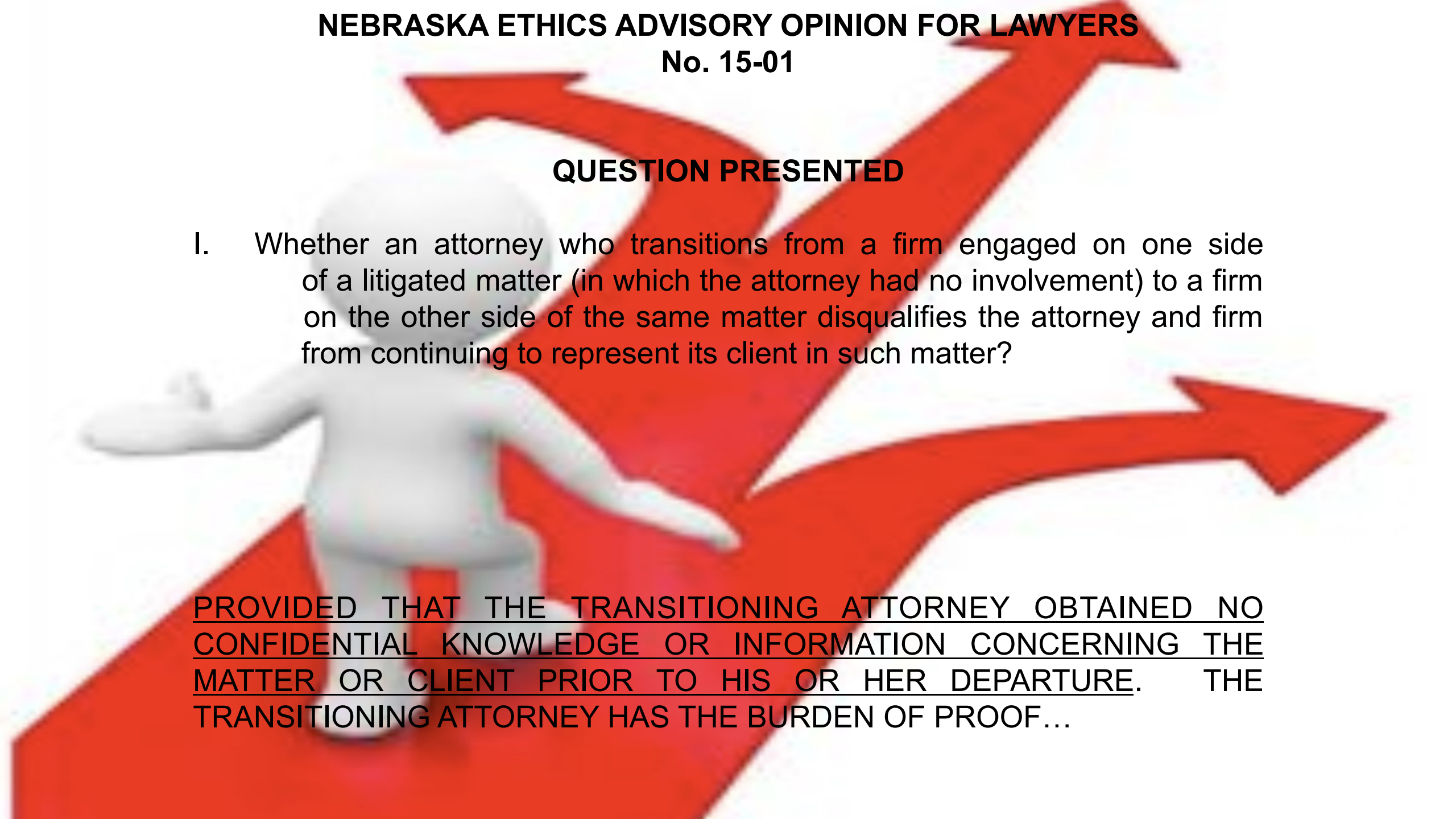
Ethics Advisory Opinion No. 88-3 does not still control as the rules have changed, but many of the underlying reasons and conclusions remain sound. **Client files may be destroyed after five years,** but efforts should be put in place to make reasonable efforts to contact the client should be proportionate with the value of importance of the filed materials which remain in the lawyer's possession after the filed is closed.

If the attorney lacks updated information, it would seem appropriate to do a Google search, a public record search , or a Facebook search. If important or valuable materials are involved, hire a private investigator, an in the case of being unable to contact numerous people, to perhaps publish notice in a legal newspaper for that purpose

Financial Record Retention 1.15

Lawyer must keep for 5 years after the event they record:

- Retainer agreements or contingent fee agreements,
- Statements to clients,
- Bills to clients,
- Records of payments to experts, reporters, etc., and
- Bank statements.
- "Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of **5 YEARS** after termination of the representation" Neb. RPC 1.15(a).



NEBRASKA ETHICS ADVISORY OPINION FOR LAWYERS
No. 15-01

QUESTION PRESENTED

I. Whether an attorney who transitions from a firm engaged on one side of a litigated matter (in which the attorney had no involvement) to a firm on the other side of the same matter disqualifies the attorney and firm from continuing to represent its client in such matter?

PROVIDED THAT THE TRANSITIONING ATTORNEY OBTAINED NO CONFIDENTIAL KNOWLEDGE OR INFORMATION CONCERNING THE MATTER OR CLIENT PRIOR TO HIS OR HER DEPARTURE. THE TRANSITIONING ATTORNEY HAS THE BURDEN OF PROOF…

15-02

QUESTIONS PRESENTED:

1. May an attorney who has been elected as county attorney in one county accept appointments as guardian ad litem in another county in Nebraska?
2. If not, does the conflict extend to other members of the attorney's private firm?

NEBRASKA ETHICS ADVISORY OPINION FOR LAWYERS

No. 15-02

A Nebraska lawyer serving as county attorney may not accept appointments as guardian ad litem in a juvenile court proceeding in any county in Nebraska. The prohibition also extends to other members of the lawyer's private law practice.

However, a Nebraska lawyer serving as county attorney may accept appointments as guardian ad litem in private civil cases in which the State of Nebraska has no interest and is not a party.

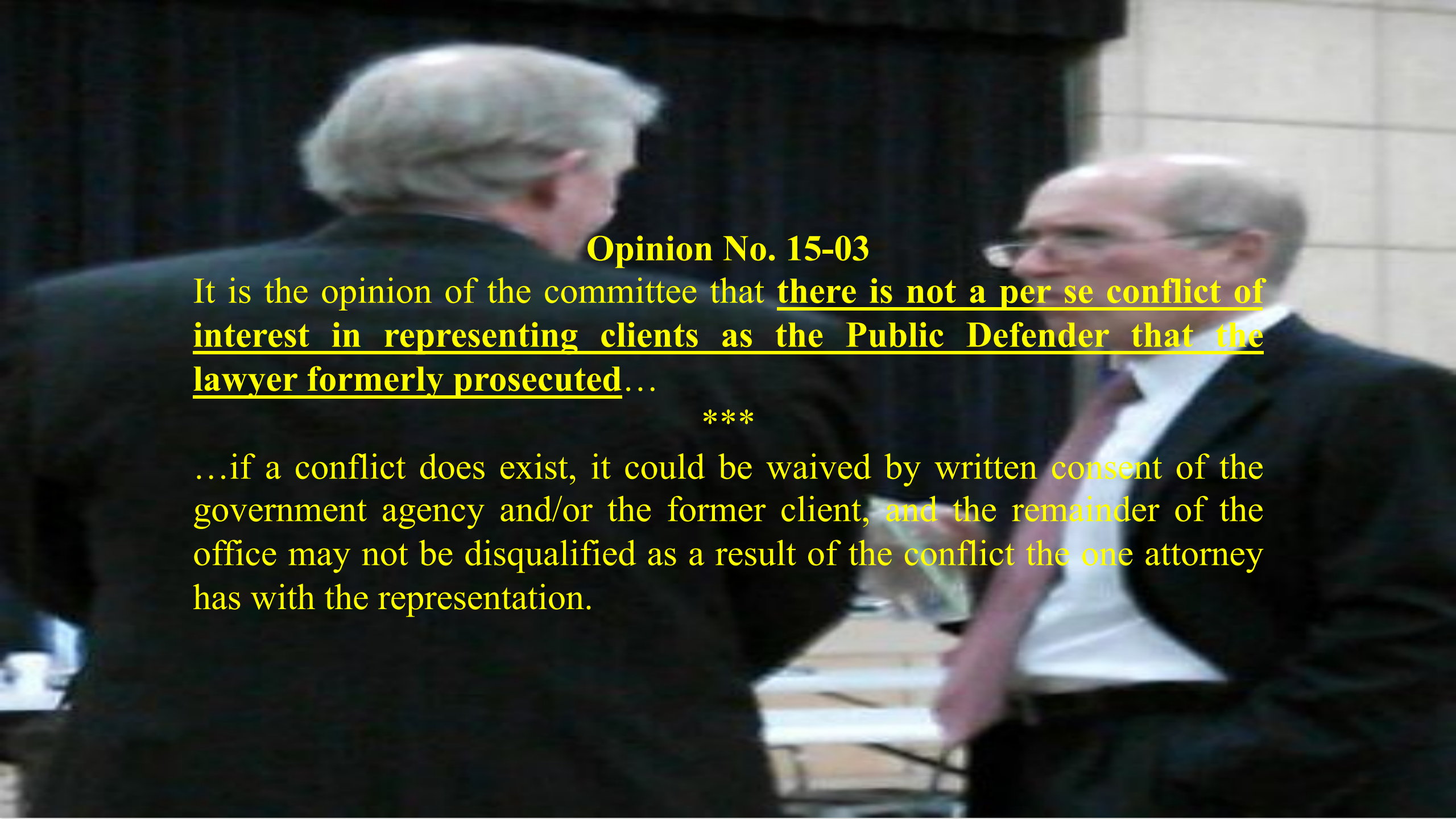
QUESTIONS PRESENTED

I.

Whether a County Attorney may accept employment in the office of the Public Defender of the same county and, if so, what safeguards must be in place to avoid a conflict of interest in the representation of clients.

II.

Whether a lawyer, as Public Defender, represent clients in new cases that the lawyer has prosecuted in cases prior to leaving the County Attorney's office.



Opinion No. 15-03

It is the opinion of the committee that **there is not a per se conflict of interest in representing clients as the Public Defender that the lawyer formerly prosecuted**…

***

…if a conflict does exist, it could be waived by written consent of the government agency and/or the former client, and the remainder of the office may not be disqualified as a result of the conflict the one attorney has with the representation.

NEBRASKA ETHICS ADVISORY OPINION FOR LAWYERS No. 15-04

Questions Presented

May an Attorney enter directly into a contract for fees as a Guardian ad Litem with a County Board, bypassing the administrative Court Orders for Court Ordered payment, when that County Attorney's office files the original petition and represents a separate party in the case? The County Attorney's office represents the County in the contract negotiations with Attorneys who will appear as Guardians ad Litem as well.

If yes to question 1, What, if any, information and in what detail can a Court appointed Guardian ad Litem provide to the County and general public in such a flat fee contractual arrangement about specific cases? If the answer is none for a specific case, may information be provided in aggregate form so as to no allow the identification of a specific child or a specific case except that which is already public record?

An Attorney may enter directly into a contract for fees as a Guardian ad Litem with a County Board, bypassing the administrative Court Orders for Court Ordered payment, when that County Attorney's office files the original petition and represents a separate party in the case unless there is a "significant risk" that the attorney's representation would be materially limited by the attorney's personal interest in maintaining the contractual arrangement and therefore in violation of §3-501.7(a)(2). Whether a particular attorney's representation would violate §3-501.7(a)(2) will vary on a case-by-case basis and will be dependent on the particular financial impact of the contractual agreement on the particular attorney.

In the event that the attorney does have a conflict of interest, that conflict may not be waived because, under Neb. Rev. Stat. §43-272 (2), an attorney appointed to perform guardian ad litem services is appointed both to represent the juvenile and the juvenile's "interests" and the juvenile's "interests" is not capable of providing informed consent necessary to waive the conflict of interest.

Assuming that §3-501.7(a)(2) does not bar representation, an attorney appointed to perform guardian ad litem services must nevertheless obtain informed consent from the client to perform the representation because the attorney is to be compensated by someone other than the client. See, §3-501.8(f)(1). This is true regardless of whether the third-party payor is the court, another governmental entity, or anyone other than the client. In the event that the client is incapable of providing informed consent contemplated under §3-501.8(f)(1), the representation is impliedly authorized and §3-501.8(f)(1) would not serve as a bar to the representation.

An attorney appointed to perform guardian ad litem services may submit itemized billing statements but must limit the detail provided in the itemization so as to prevent the disclosure of any confidential or other information what would negatively impact the client. While the level of detail permissible will inevitably differ on a case-by-case basis, the importance depends on the particular client and the nature of the representation and not on the person or entity receiving the information.

Trust Accounts Letters and Trust Account Problems

- Overdrafts
- “Cushions” are OK
- Savings Account is **NOT** OK
- Changing Firms
- Comingling of Funds
  - Settlement Funds
  - Use as an Operating Account

Honor Thy Lien-Holder!!!

- Lawyer represents client in workers' compensation case. During the case the lawyer receives a letter from chiropractor saying he expects to get paid out of client's settlement. Case settles with check to client and lawyer for $50,000.
- Client tells lawyer not to pay doctor.
- Must lawyer pay chiropractor?

- Worst thing lawyer can do is disburse all the money to client.
- If client does not agree to disburse to doctor then the lawyer must take steps to resolve the dispute or implead the funds.

§ 3-501.15. Safekeeping property

- (d) …a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

- (e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

§ 3-501.15. Safekeeping property (Cont.)

- See Comment [4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. **A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client**.

- In such cases, when the third-party claim is not frivolous under applicable law, **the lawyer must refuse to surrender the property to the client until the claims are resolved**. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, **the lawyer may file an action to have a court resolve the dispute**.

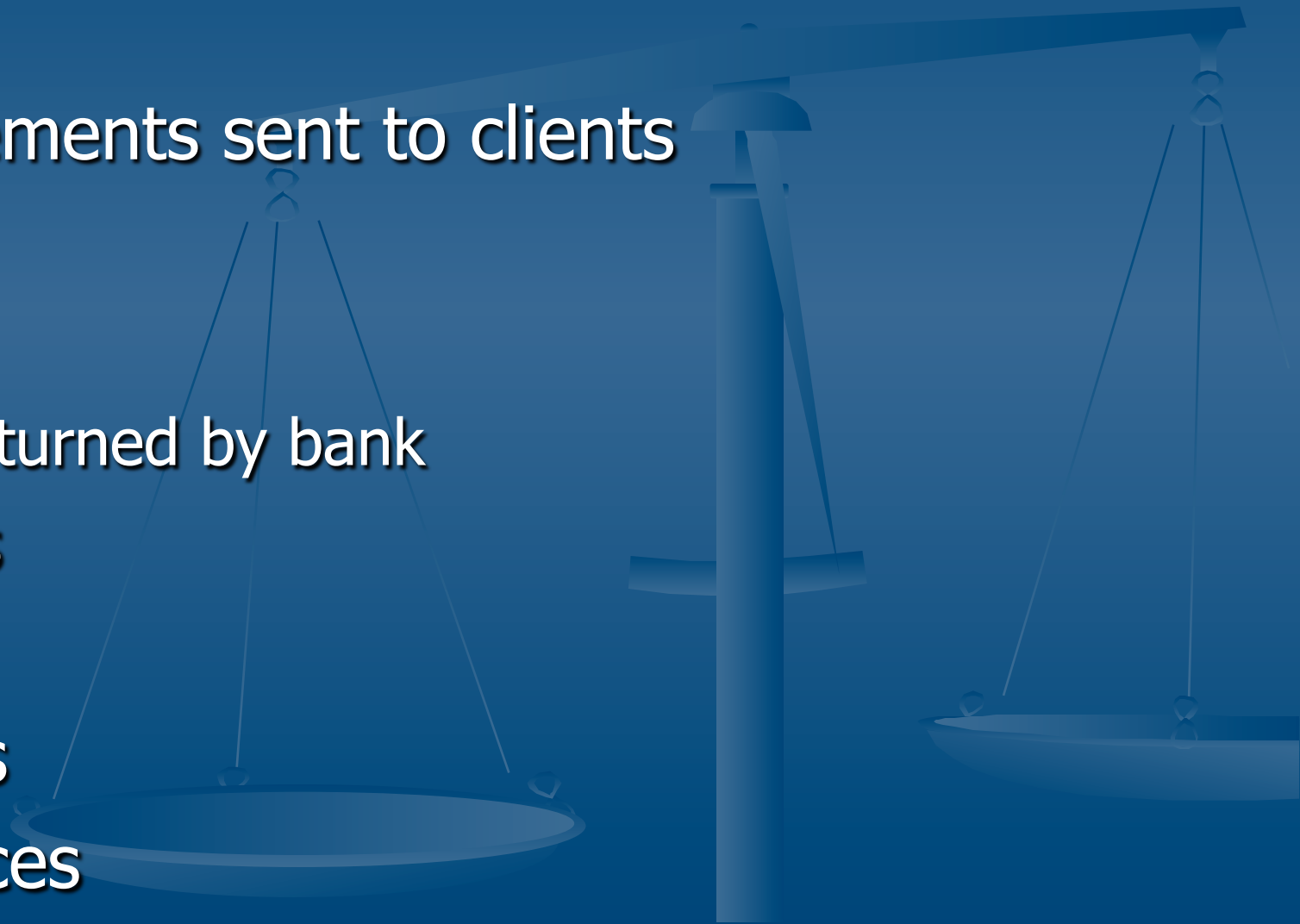
Bookkeeping § 3-501.15. Safekeeping property – Cont'd

You **must** have the following:

- A record keeping system that identifies each trust client.
- Records showing the source of all funds for deposits for that client.
- Records showing the amount and description of all withdrawals.
- Records showing the names of those to whom money was disbursed.
- You must do a reconciliation no less than QUARTERLY of each client ledger

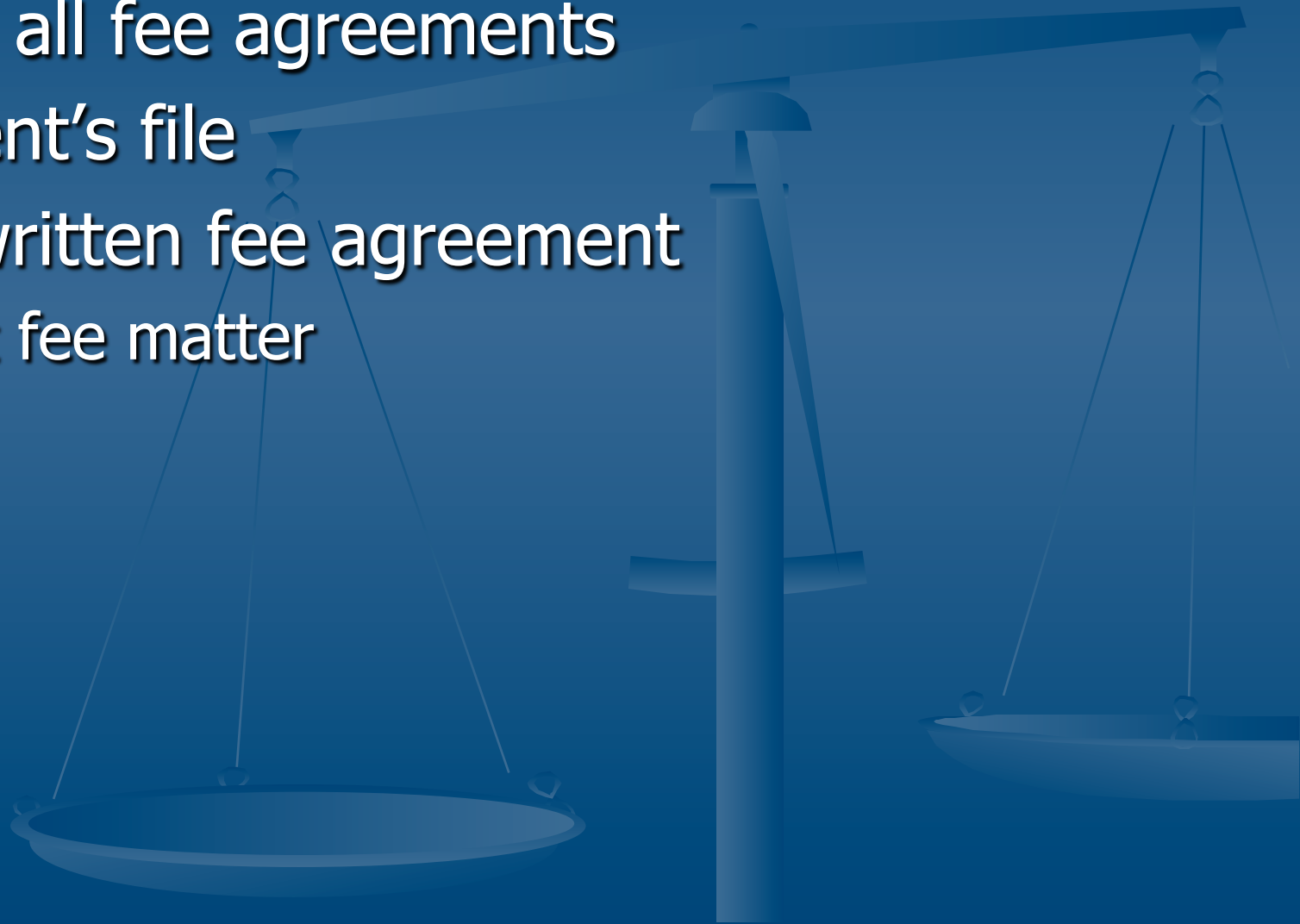
What documents will you keep?

- Fee agreements
- Copies of bills or statements sent to clients
- Bank statements
- Copies of checks
  - Ask for copies to be returned by bank
- Copies of deposit slips
- Deposit receipts
- Service charge notices
- Wire transfer fee notices



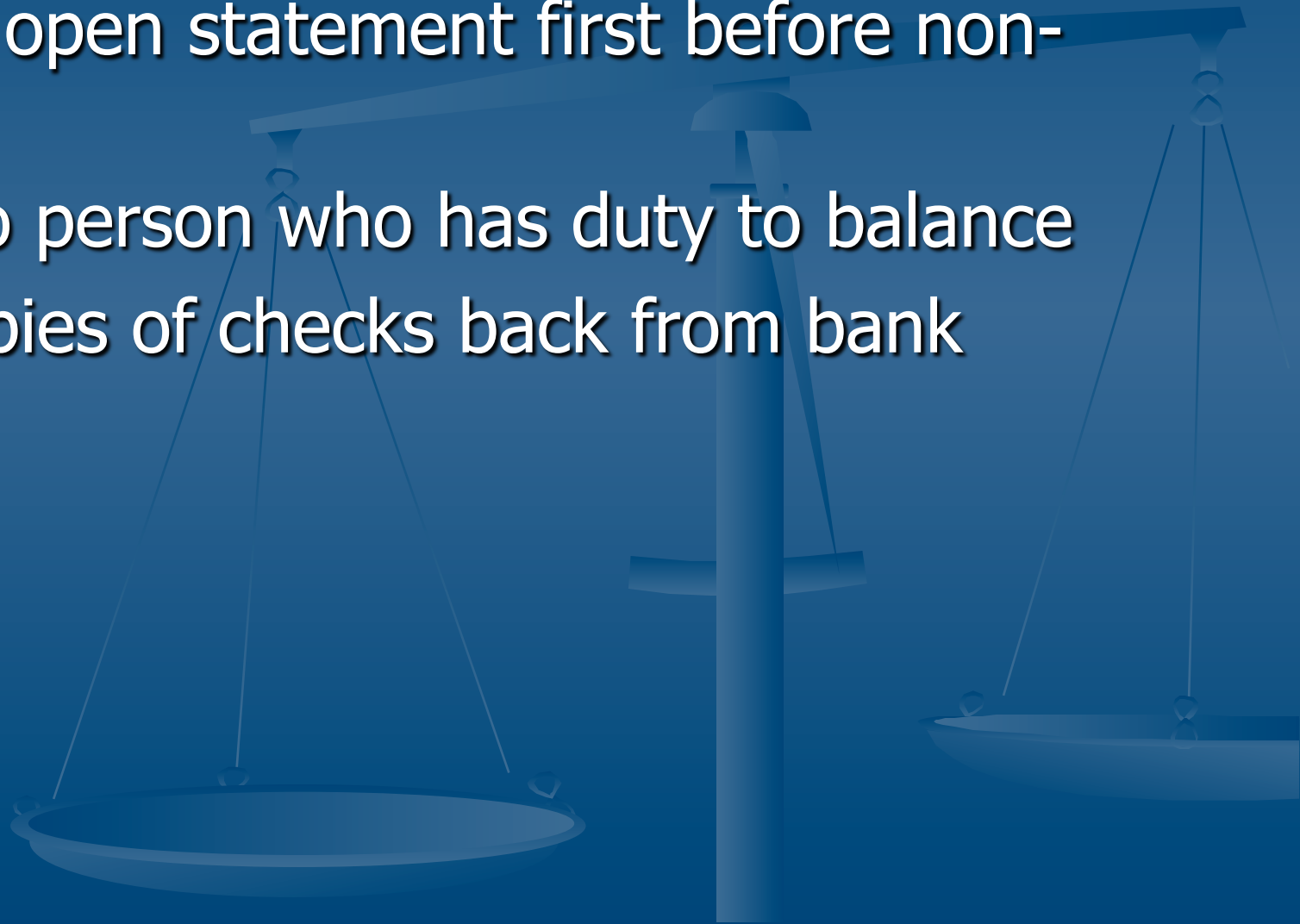
Fee Agreements

- Keep copy in a file for all fee agreements
- Keep copy in each client's file
- Make sure you have written fee agreement
  - Required in contingent fee matter



Bank Statements for Trust Account

- Lawyer in firm should open statement first before non-lawyer
- Review it, then give to person who has duty to balance
- Make sure you get copies of checks back from bank



Training and Supervision

- Delegation of the duty to maintain trust account is not improper.
- Lawyer must still know all the rules and requirements of trust accounts.
- Lawyer must train and supervise personnel adequately.
- Lawyer cannot just delegate and hibernate.

Neb. RPC 5.3(b)

- Neb. RPC Rule 5.3(b) mandates that "**a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer**"

Examples: Lack of Supervision

- See, State ex rel. NSBA v. Statmore, 218 Neb. 138, 142-43 (1984)

- "A lawyer's poor accounting procedures and sloppy office management are not excuses or mitigating circumstances in reference to commingled funds." (Citations omitted.) Similarly, "[a]n attorney may not escape responsibility to his clients by blithely saying that any shortcomings are solely the fault of his employee. He has a duty to supervise the conduct of his office."

In re Disciplinary Action Against LaChapelle, 491 N.W.2d 17 (Minn. 1992)

In the early 1980's, respondent hired his wife Mary to be his office manager. Her delegated duties included maintaining separate accounts for business expenses, personal costs, and client funds. The respondent failed to maintain proper client trust books since at least 1988 and failed to supervise Mary properly in her maintenance of these books in violation of Minn.R.Prof. Conduct 1.15(g).

Attorney Grievance Commission of Maryland v. Goldberg, 441 A.2d 338 (Md. 1982)

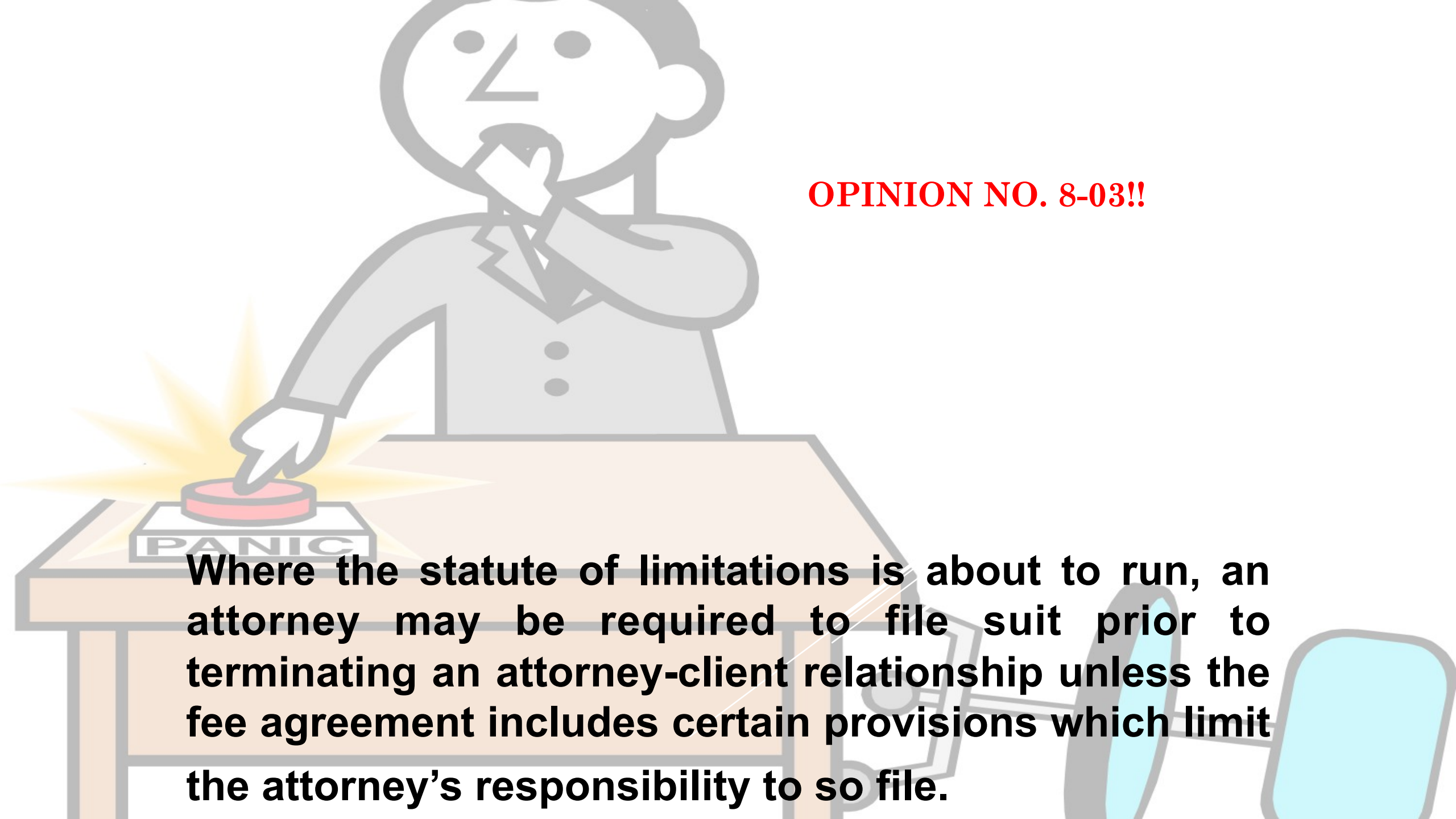
An attorney may not escape responsibility to his clients by blithely saying that any shortcomings are solely the fault of his employee. He has a duty to supervise the conduct of his office. A very telling aspect here is that although at one time the escrow account showed an overdraft of nearly $40,000 (possibly brought about by the secretary's apparent tardiness in depositing a check), the lawyer was unaware of this because he never at any time took the simple precaution of running his eye over bank statements at the end of the month.

Training

- You need to educate personnel who do your Trust Account books about your obligations to clients and third persons
- Go over billing process with that person
- Go over trust account reconciliation
- Hiring a bookkeeper – get references if possible

Regular Supervision

- Lawyer must be directly involved in maintaining trust account.
- Review monthly bank statements.
- Review trust account general ledger and client ledgers monthly.
- Review copies of cancelled checks monthly.
- Review reconciliation monthly.



OPINION NO. 8-03!!

Where the statute of limitations is about to run, an attorney may be required to file suit prior to terminating an attorney-client relationship unless the fee agreement includes certain provisions which limit the attorney's responsibility to so file.

ADVERTISING

I want in on the latest "Big Thing" in Litigation. I want to send out a mass mailing to current and former clients. Do I need to tell them "this is an Ad"?.

Advertising (cont.)

- Direct contact via social networking sites is prohibited in person solicitation, except for contact with **current & former clients, lawyers, and people with whom the lawyer has a prior professional relationship** or who have requested information about the lawyer/firm
- This is exactly what Nebraska Advisory Committee Opinion # 09-04 says - https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/ethics/lawyers/09-04.pdf

What do I do about this stuff?

We generally get calls asking us BEFORE the ads go out.

We didn't here…

Lawyers and Judges – Do Not Lie

- I have seen waaaay too many instances in the past year:
  - Lawyer lies directly to the Court
  - Lawyer lies to the Jury
  - Lawyer lies to Appellate Court; or
  - Lawyer Lies to My Office

What I'm Doing About It

Bar Counsel may initiate investigations once notified by counsel (or the Court).

We see evidence of misconduct in the newspaper.

We see evidence of misconduct in published opinions.

“Because we have determined that Rodriguez' DUI conviction should be reversed on other grounds and **because there is no reason for the State to engage in the same conduct on remand**, it is not necessary to our disposition of this appeal to decide whether the district court abused its discretion and should have declared a mistrial at the first opportunity on the basis of the State's conduct in this trial. **Notwithstanding our disapproval of the State's conduct on this issue**, we are not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before us. See *State v. Pangborn,* 286 Neb. 363, 836 N.W.2d 790 (2013).

State v. McSwine, Neb. App. 791 (2015)

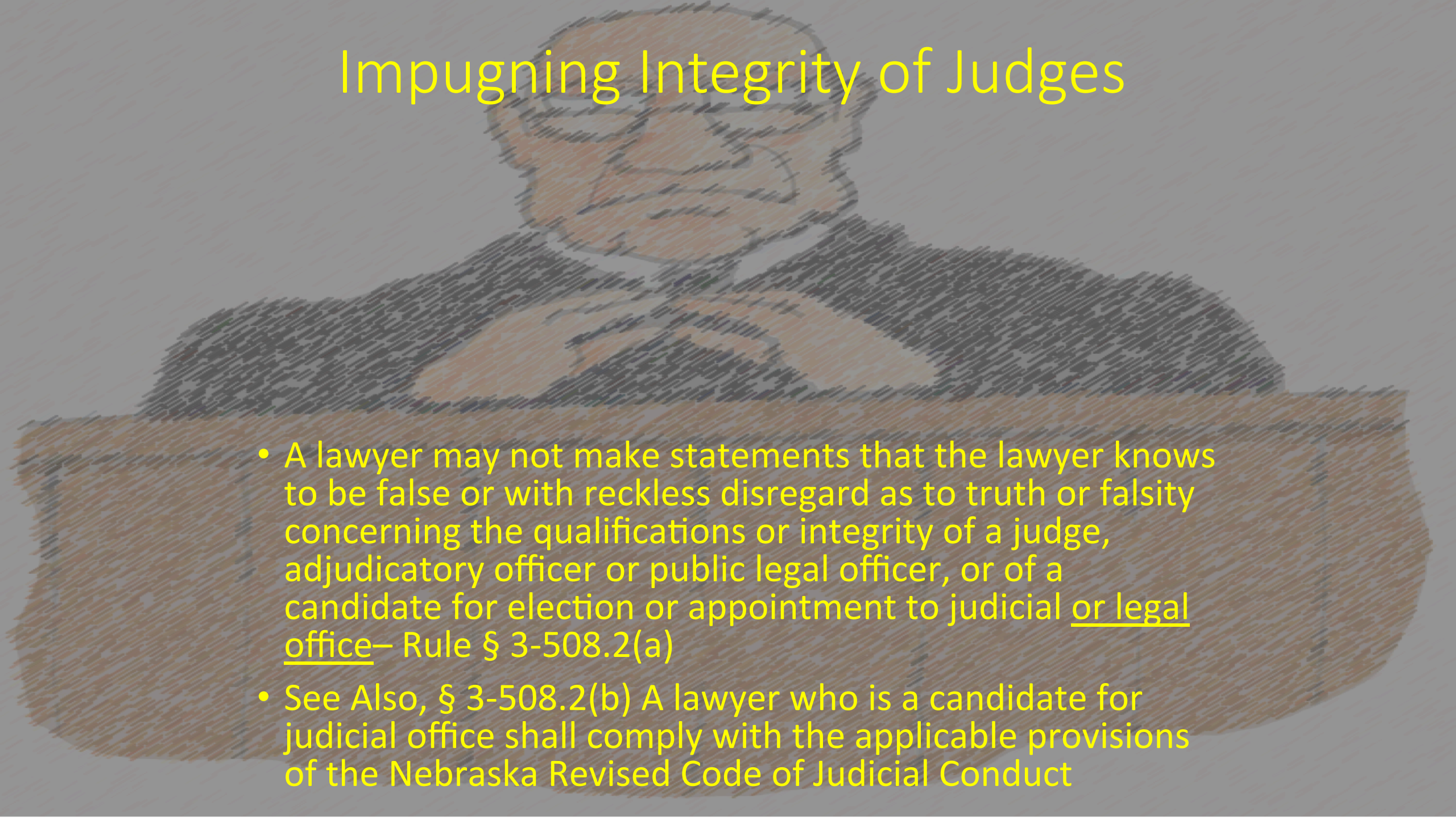
- prosecutor argued in closing that there was no credible evidence to support Defendant's testimony that he ran through some house – "no evidence of that - nothing – just his word" was misleading to the jury because it made it appear that Defendant's explanation about why he sent incriminating text messages lacked any credibility when in fact there was evidence that the Defendant had indeed committed other crimes on the date in question which were totally unrelated to the sexual assault which was the subject of trial. (reversed and remanded)

State v. McSwine - Continued

The Court of Appeals concluded that it was reversible error for the prosecutor to knowingly provide false information to the jury during closing arguments. "**Such conduct amounts to plain error requiring reversal**…"

Petition for Further Review **Granted**

Impugning Integrity of Judges

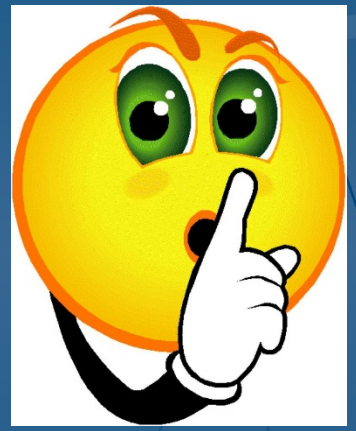


- A lawyer may not make statements that the lawyer knows to be false or with reckless disregard as to truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office– Rule § 3-508.2(a)
- See Also, § 3-508.2(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Nebraska Revised Code of Judicial Conduct

Impugning Integrity of Judges Continued

- A lawyer was publicly reprimanded for stating on a blog that a judge was: "Evil Unfair Witch; seemingly mentally ill; ugly condescending attitude; she is clearly unfit for her position and knows not what it means to be a neutral arbiter; and there is nothing honorable about that malcontent." - *The Florida Bar v. Conway,* SC08-326
- "Facebook ditty gets assistant state attorney in hot water," *SunSentinel.com,* April 22, 2010

Keep a Secret **SECRET**



§ 3-501.6. Confidentiality of information.

***

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime or to prevent reasonably certain death or substantial bodily harm;

Confidentiality - Continued

Illinois Disciplinary Board v. Peshek, No. M.R. 23794 (May 18, 2010) Complaint filed against assistant public defender for blogging about her clients' cases, which was open to the public, including providing confidential information, some of which was detrimental to clients and some of which indicated that the lawyer may have knowingly failed to prevent a client from making misrepresentation to the court.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. **A lawyer may disclose information relating to the representation necessary to prevent a client from committing a crime.** Paragraph (b)(1) also recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. **Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat** that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.

Disclosure Adverse to Client - Continued

[11] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(4) permits the lawyer to comply with the court's order.

Disclosure Adverse to Client - Continued

THE STATE BAR OF CALIFORNIA

STANDING COMMITTEE ON

PROFESSIONAL RESPONSIBILITY AND CONDUCT

FORMAL OPINION NO. 2015-192

ISSUE: What information may an attorney ethically disclose to the court to explain her need to withdraw from a representation – **particularly in the face of an order to submit to the court, in camera or otherwise, the substance of the attorney-client communications leading to the need to withdraw**?

…ordinarily it will be sufficient to say only words to the effect that ethical considerations require withdrawal or that there has been an irreconcilable breakdown in the attorney-client relationship.

***

…To the extent the court orders an attorney to disclose confidential information, the attorney faces a dilemma in that she may not be able to comply with both the duty to maintain client confidences and the duty to obey court orders.

***

Although this Committee cannot categorically opine on whether or not it is acceptable to disclose client confidences even when faced with an order compelling disclosure, this Committee does opine that, whatever choice the attorney makes, she must take reasonable steps to minimize the impact of that choice on the client.

Trial Publicity

- A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.– Rule § 3-503.6(a)

Model Rule 3.6(c)

- [A] lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.

Model Rule 3.6(c), cont'd

- A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

Transitioning to a New Firm

- Give Notice to Client
- Give Notice to Partners
- Agree on Notice/Advice re: Transition of Client File
- Notify NSBA/ASD/Supreme Court/All Courts Where You Have Cases/Local Newspapers/Daily Record!
- Check For Conflicts if File Goes With You
- If a Conflict – Make Requests for Waivers
- Make Sure It **Actually IS** a Conflict:

My Firm (“A”) and another Firm (“B”) have been fighting over the same litigation for 15 years. They HATE each other. I was never involved in the litigation – I just do probate. Can I go over to “B” while the litigation is still pending with “A”?

NEBRASKA ETHICS ADVISORY OPINION FOR LAWYERS
No. 15-01

QUESTION PRESENTED

I. Whether an attorney who transitions from a firm engaged on one side of a litigated matter (in which the attorney had no involvement) to a firm on the other side of the same matter disqualifies the attorney and firm from continuing to represent its client in such matter?

AN ATTORNEY WHO LEAVES A LAW FIRM THAT IS REPRESENTING A CLIENT IN A MATTER IS NOT PRECLUDED FROM JOINING ANOTHER LAW FIRM THAT IS REPRESENTING AN ADVERSE CLIENT IN THE SAME MATTER PROVIDED THAT THE TRANSITIONING ATTORNEY OBTAINED NO CONFIDENTIAL KNOWLEDGE OR INFORMATION CONCERNING THE MATTER OR CLIENT PRIOR TO HIS OR HER DEPARTURE. THE TRANSITIONING ATTORNEY HAS THE BURDEN OF PROOF UPON INQUIRY OR COMPLAINT AS TO THE LACK OF KNOWLEDGE OR POSSESSION OF SUCH CONFIDENTIAL INFORMATION CONCERNING THE MATTER.

The Disabled Attorney

Are other members of the firm subject to discipline if they knew that the affected attorney was not providing effective assistance of counsel, yet failed to act in the client's interests?

What should a multi-lawyer law firm do when it believes that one of its attorneys is demonstrating the following potential disabilities?

- Mental incompetency or incapacity (e.g., forgetfulness, missed deadlines, inability to organize thoughts and client work)
- Drug or alcohol abuse which is affecting client work

§ 3-508.3. Reporting professional misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

§ 3-501.6. Confidentiality of information

(c) The relationship between a member of the Nebraska State Bar Association Committee on the Nebraska Lawyers Assistance Program or an employee of the Nebraska Lawyers Assistance Program and a lawyer who seeks or receives assistance through that committee or that program shall be the same as that of lawyer and client for the purposes of the application of Rule 1.6.

§ 3-311. Disability inactive status: Incompetency or incapacity.

Option - #1 My Office (a/k/a "The Hard Way"):

(A) Upon a Grievance or other information indicating that a member is incapacitated from continuing the practice of law by reason of physical or mental illness, or because of addiction to drugs or intoxicants, the appropriate Committee on Inquiry, with the assistance of the Counsel for Discipline, may prepare and submit to the Court an application requesting that the member be placed on disability inactive status. Such application shall be signed by the Chairperson of such Committee, and shall set forth grounds clearly indicating a temporary suspension of the member is necessary and proper.

***

Option - #2 The Member (a/k/a "The Easy Way"):

(C) A member who is incapacitated from continuing the practice of law by reason of physical or mental illness, or because of addiction to drugs or intoxicants, may prepare and submit to the Court an application requesting that the member be placed on disability inactive status. Such application shall be signed by the member and shall set forth grounds clearly indicating that the member should be placed on disability inactive status. Upon the filing of such application by a member, the Court shall provide for notice to the Counsel for Discipline. The member shall have the same rights of representation as set forth in § 3-311(B).

Establishing a Succession Plan – A True Story

- Attorney had a successful ongoing practice.
- Diagnosed with treatable (at first) cancer.
- Continued to practice – cancer returned.
- Attorney always thought until the end that he's beat the cancer – he lost.
- Spouse/Widow was attorney's bookkeeper – unlike most, knew plenty.
- Called me in tears 2 days after funeral not knowing what to do with the files.
- Supreme Court appointed a Trustee.

Succession Plans

- Create a "Buddy System" with a colleague if alone
- Ask office-sharing mates to cover for each other
- Always have other attorneys within your Firm aware of your files so they could step in
- Consider another signatory on the Trust Account
- If seriously disabled, notify C4D so we can move for a Trustee while Rule 11 Disability Inactive Application is pending
- ABA Formal Opinion #92-369 & Sanctions