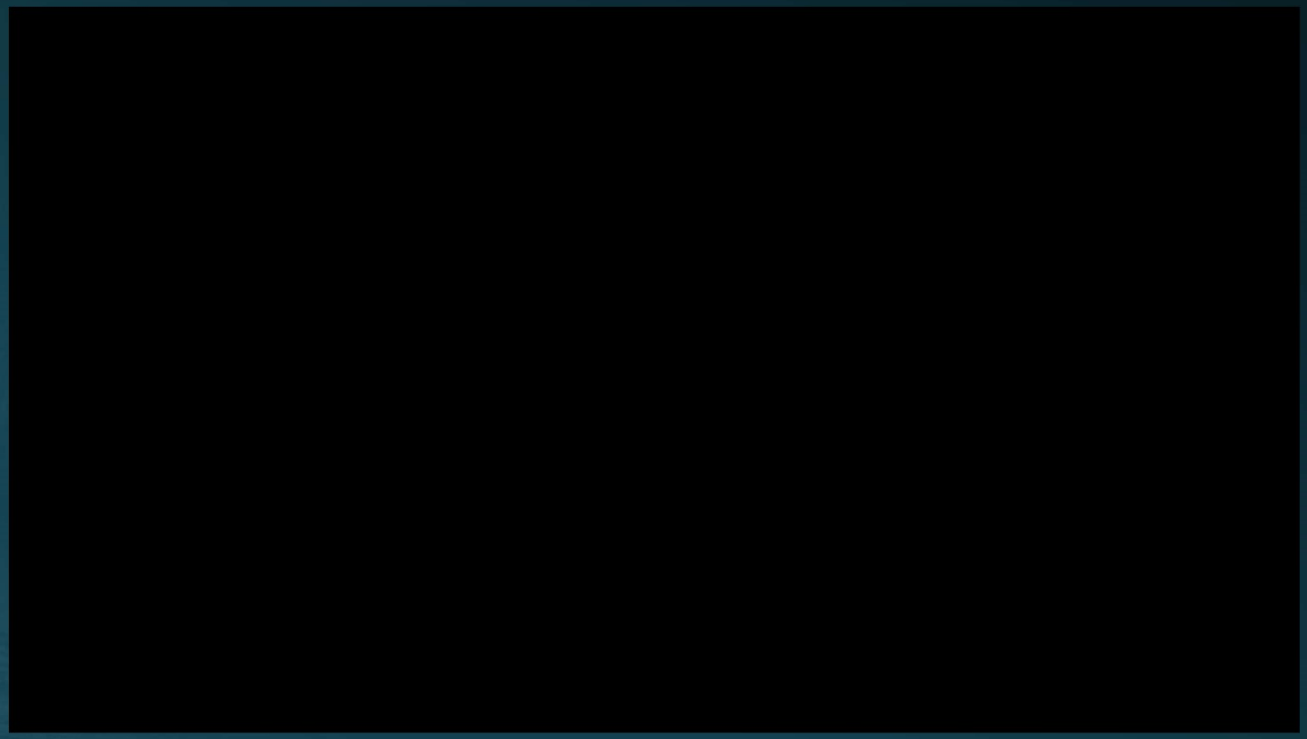
How to keep your crew from sinking the ship

Ethical Issues Involving Paralegals and other staff

Staff are often like family and we overlook a lot when it comes to family



The Rules.

Iowa Rule of Professional Responsibility § 32:5.3

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) 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; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Iowa Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Neb. Ct. R. of Prof. Cond. § 3-505.3

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) 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; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comments

A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

A cautionary tale about repeating the same mistake

Iowa Supreme Court Attorney Disciplinary Bd. v. Barnhill, 847 N.W.2d 466 (Iowa, 2014)

The law office manager had worked for the attorney for around sixteen (16) years. The office manager was authorized to sign both office and trust account checks. In 2005, the attorney discovered that the office manager had fraudulently charged over $55,000 to the firms credit account. The attorney did not report the theft but worked out a separate settlement to pay back the debt.

Later in 2005, the attorney took on a client and agreed to help manage her finances. The attorney never revoked the office manager's account access. After several discrepancies were noticed, it was determined that the office manager had again stolen a little over $50,000 from the client.

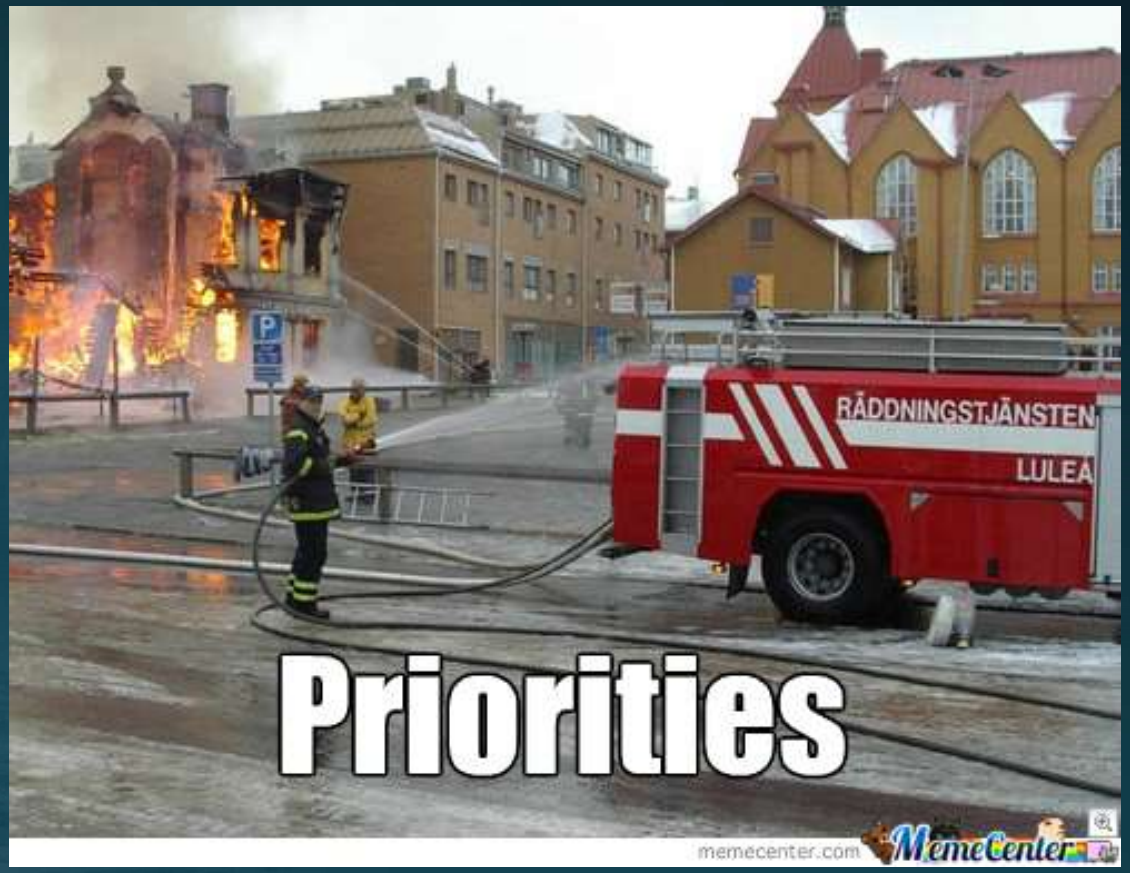
Iowa Supreme Court Attorney Disciplinary Bd. v. Barnhill, 847 N.W.2d 466 (Iowa, 2014)

"We can hardly characterize the employee's conduct as a mere mistake. It was not accidental that the employee wrote a check to herself from the trust account. Nor can we characterize Barnhill's conduct as making reasonable efforts to ensure the employee's conduct was compatible with the professional obligations of a lawyer. Barnhill knew her employee had previously embezzled money from the law firm and let her continue to handle the funds without reasonable supervision.

We note it appears Barnhill attempted to supervise her employee. Barnhill purportedly limited her employee's authority to sign Barnhill's name on business checks to only circumstances when no other authorized signer was available. However, these measures were inadequate. Barnhill knew the employee continued to sign Barnhill's name on trust account checks. Barnhill also failed to keep a separate client ledger for Williams's funds, failed to ensure there was a running balance of the trust account register, failed to reconcile the bank statements, and utterly failed to have any idea what the employee was doing with Williams's funds."

This along with other rule violations resulted in a 60 day suspension.

Other Consequences in failure to supervise



Palmer v. Hofman, 745 N.W.2d 745 (Iowa App., 2008)

This was a typical motor vehicle accident case which occurred in 2004. Just prior to the statute of limitation running, a petition was filed in district court.

The problem arose when the petition wasn't served until 274 days later. The defendant moved to dismisss as service was more than 90 days beyond the filing of the petition.

"Counsel asserted that the paralegal willfully withheld that service had not been completed on Hofman, going so far as to insist on opening mail in the office (allegedly to head off any documents in the case) and rescheduling the dismissal hearing, until after her departure from the firm, without counsel's knowledge. Counsel did not contend he actively inquired of the case and the paralegal continually deceived him as to its progress. In fact, he stated he had absolutely no knowledge that Hofman had not yet been served. "

Palmer v. Hofman, 745 N.W.2d 745 (Iowa App., 2008)

The Court of Appeals held that good cause did not exist and reversed the District Court's ruling. Citing Rule 32:5.3 stating, "While the circumstances of Palmer's attorney's paralegal are unfortunate, we do not believe they constitute good cause excusing the delay of service because counsel was ultimately responsible for the conduct and work product of his paralegal. … Not monitoring the progression of a case in one's own office until eight months have passed is not akin to the uncontrollable, rogue actions of a third party beyond the attorney or party's reach that prevents timely service of process."

"Although the paralegal may have concealed her dilatoriness on the case, the record does not reflect that counsel actively inquired of the case's development with her or with the district court."

CBE Group, Inc. v. Anderson, No. 7-485/06-1383 (Iowa App. 7/25/2007) (Iowa App., 2007)

This was a case involving medical and utility past bills that had been assigned to a collection agency. The amount was over $6000 so a petition was filed in district court. A pretrial conference was scheduled with the possibility of settlement talks to be discussed

The attorney had a conflict and requested that his paralegal call to see if she could appear for him to simply just schedule the trial date. The court attendant and the paralegal agreed that as the defendant was pro se and only the trial date was to be determined the paralegal could call on his behalf.

The hearing date arrived and the paralegal failed to call into the court.

The District Court found that the plaintiff failed to comply with Rule 1.971 and entered judgment only for the amount admitted (about $900) and dismissed the remainder. The plaintiff appealed the default judgment for failure to appear.

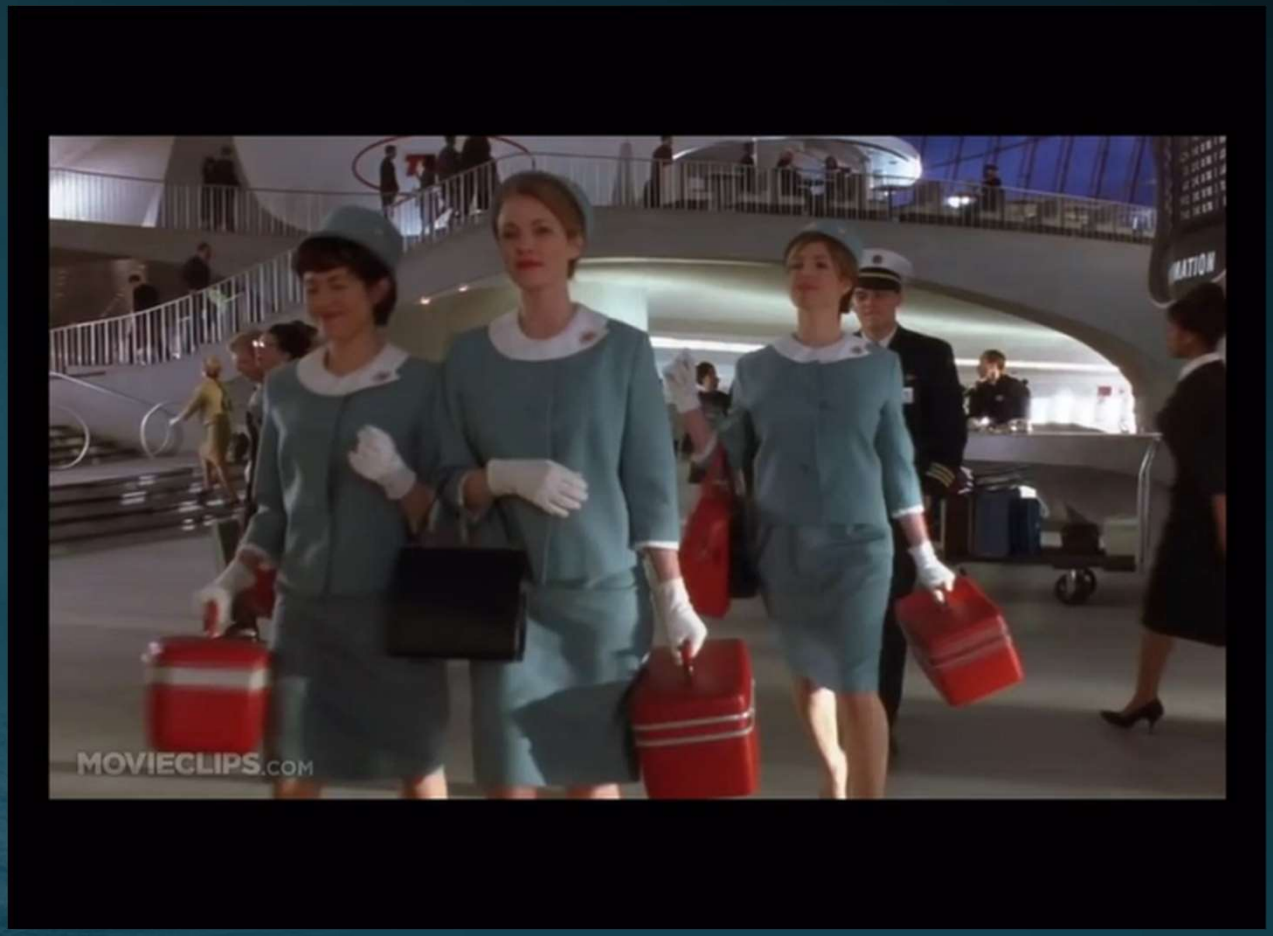
CBE Group, Inc. v. Anderson, No. 7-485/06-1383 (Iowa App. 7/25/2007) (Iowa App., 2007)

The Court of Appeals found that the default judgment was proper. The Court pointed out that the order setting the matter for hearing spelled out several areas that could be discussed including settlement. The Court pointed out the attorney was responsible for the supervision of his paralegal and despite her conversation with the court attendant needed to exercise independent judgment.

The Court of Appeals found that having even if the paralegal had called in the attorney was allowing her to participate in the unauthorized practice of law. " In this case, the order clearly referenced Iowa Rule of Civil Procedure 1.602(3), which specifically lists settlement as a subject that may be discussed at a pretrial conference, and requires "[a]t least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed." We question whether the legal assistant could have participated on an attorney's behalf at a pretrial conference."

"We are concerned, based on the facts presented in CBE's brief to this court, about the legal assistant's planned participation in the pretrial conference. We admonish Ahrenholz, and the bar generally, to refrain from conduct that may be construed as aiding in the unauthorized practice of law."

If they aren't part of the crew they can't help pilot.



The unauthorized practice of law

Iowa Rule of Professional Responsibility § 32:5. and Neb. Ct. R. of Prof. Cond. § 3-505.5

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

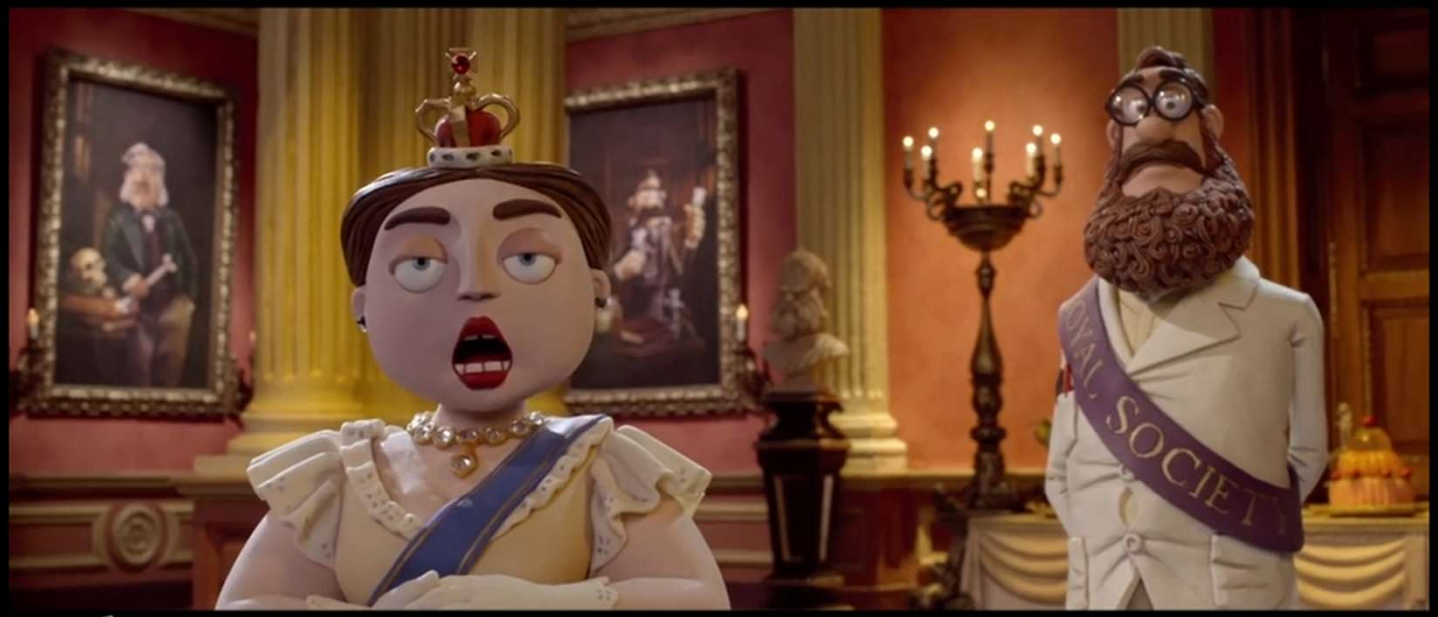
(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that: (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.


FANDANGO
MOVIECLIPS

Fraudulent Practice Iowa Code § 714.8(3)

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

State Ex Rel. Comm'n On Unauthorized Practice of Law v. Yah,796 N.W.2d 189 (Neb., 2011)

A complaint was filed with the Nebraska's Commission on the Unauthorized Practice of Law. The complaint alleged that Mr. Yah doing business as the company Parental Rights was acting as counsel in family law matters.

The Respondent claimed he only prepared the documents for a fee. The Court found that not only did he prepare the documents but on several occasions filed the documents on behalf of his "clients."

FIN

State Ex Rel. Comm'n On Unauthorized Practice of Law v. Yah,796 N.W.2d 189 (Neb., 2011)

The Court gave examples of what it considered to be practicing law.

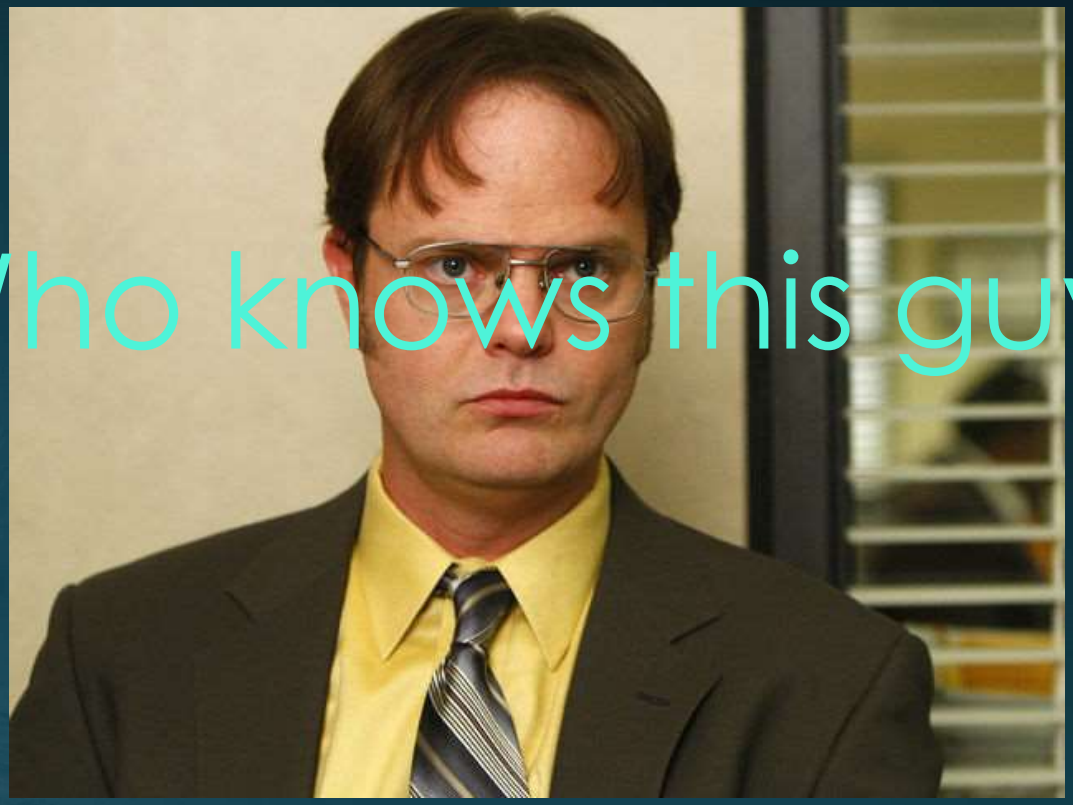
"This includes, but is not limited to, the following:

(A) Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.

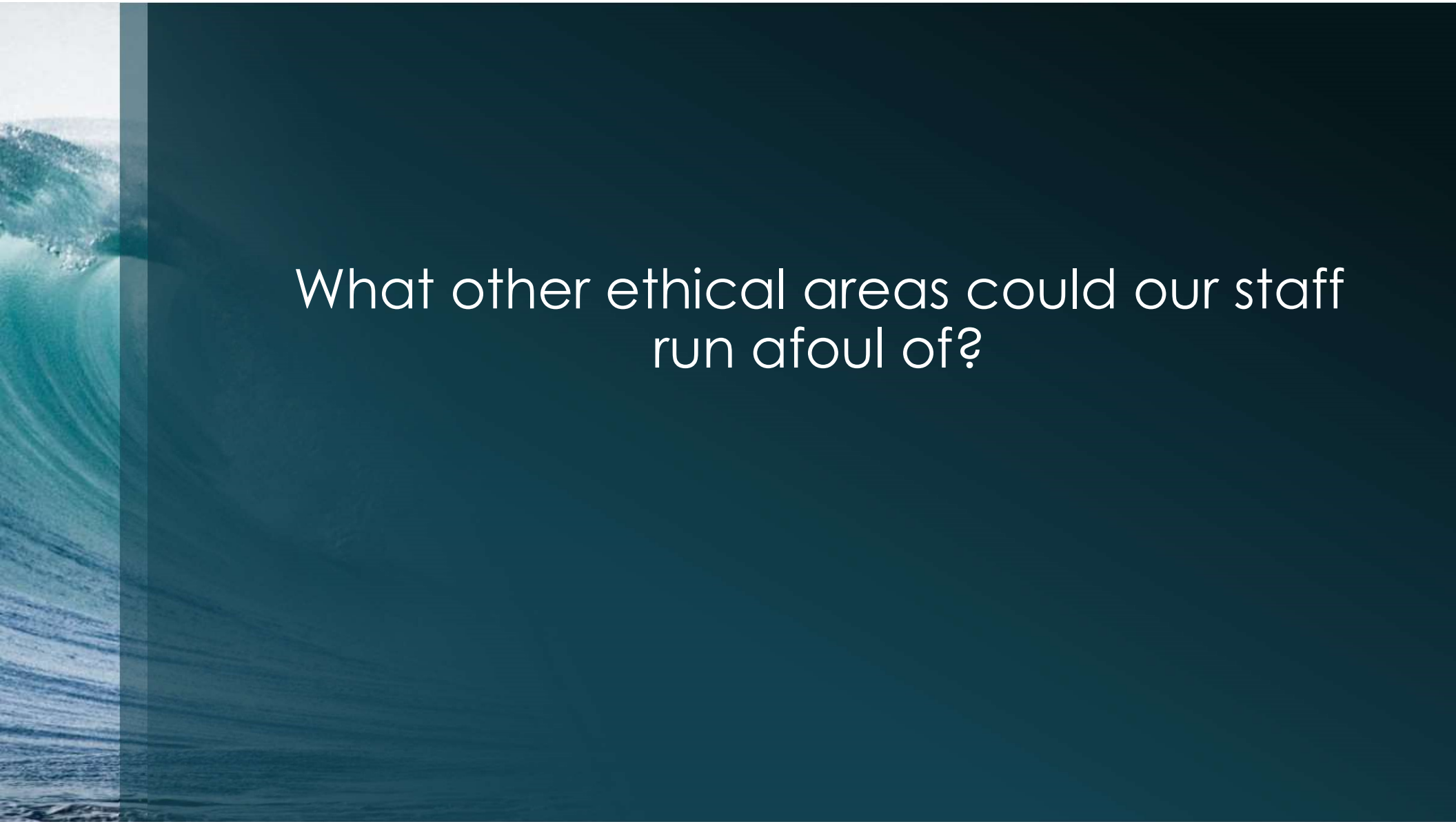
(B) Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person.

Certain types of conduct on the part of nonlawyers are not prohibited by the rules, including "[n]onlawyers selling legal forms in any format, so long as they do not advise or counsel another regarding the selection, use, or legal effect of the forms."

What can we take away from that case?



Who knows this guy?


What other ethical areas could our staff run afoul of?