

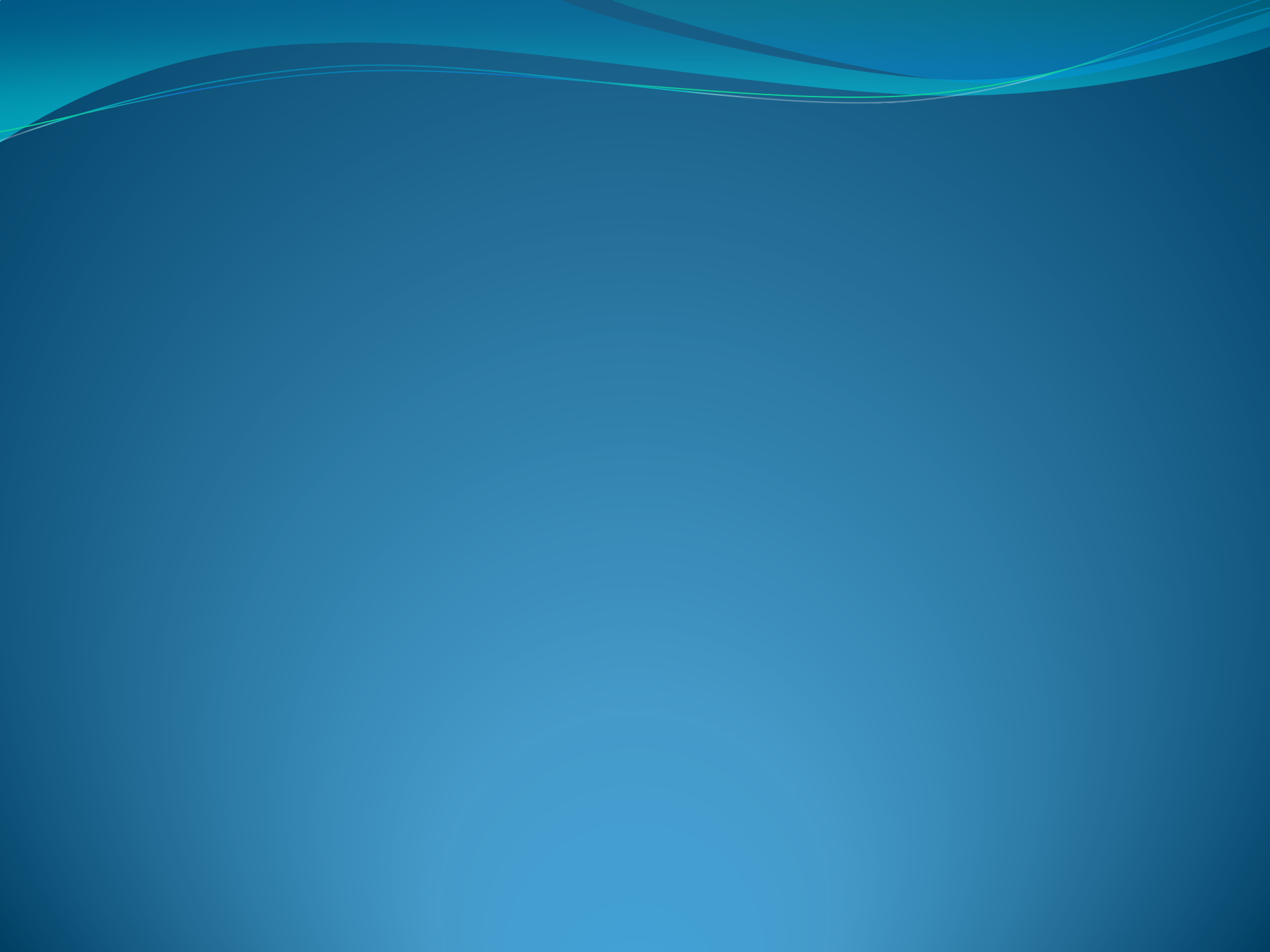
Closing Up Shop

James C. Adkins, Jr. – American Inn of Court
Groups 5 and 6 Presentation
April 24, 2014

Who Has Thought About Closing Their Firm?

The First-Hand Experience

- Hon. Monica J. Brasington
 - Circuit Judge - December, 2013 - Present
 - Partner with Miller & Brasington
 - Practicing elder and special needs law



Leaving The Practice?

- Changing Firms Or Practice Areas?
- Retiring?
- Appointed Or Elected To Public Office?
- Employment Opportunity Unconnected With Practice Of Law?
- Leaving The State?

Set The Date

- Resources:
 - LOMAS
 - “Checklist for Closing or Selling a Law Practice”
 - © Copyright Jay Foonberg, 2002, 2003, 2004, 2005

Client Interests Paramount

- Communication!!!!
 - Alternative counsel
 - File disposition instructions
 - Inactive file correspondence?

Inventory

- Identify Active matters
 - ongoing matters
 - Arrange for alternative counsel
 - File Motions to Withdraw when appropriate
- Identify depository for closed matters
 - RETENTION

Banking

- Determine closure date for accounts
 - Notify Florida Bar
- Prepare final reconciliation of Trust Account
 - Client instructions for disposition of unused funds
 - Escheat to State funds that are unable to be returned
- Other client property disposition
- Storage of official documents that must be retained

Other Business Considerations

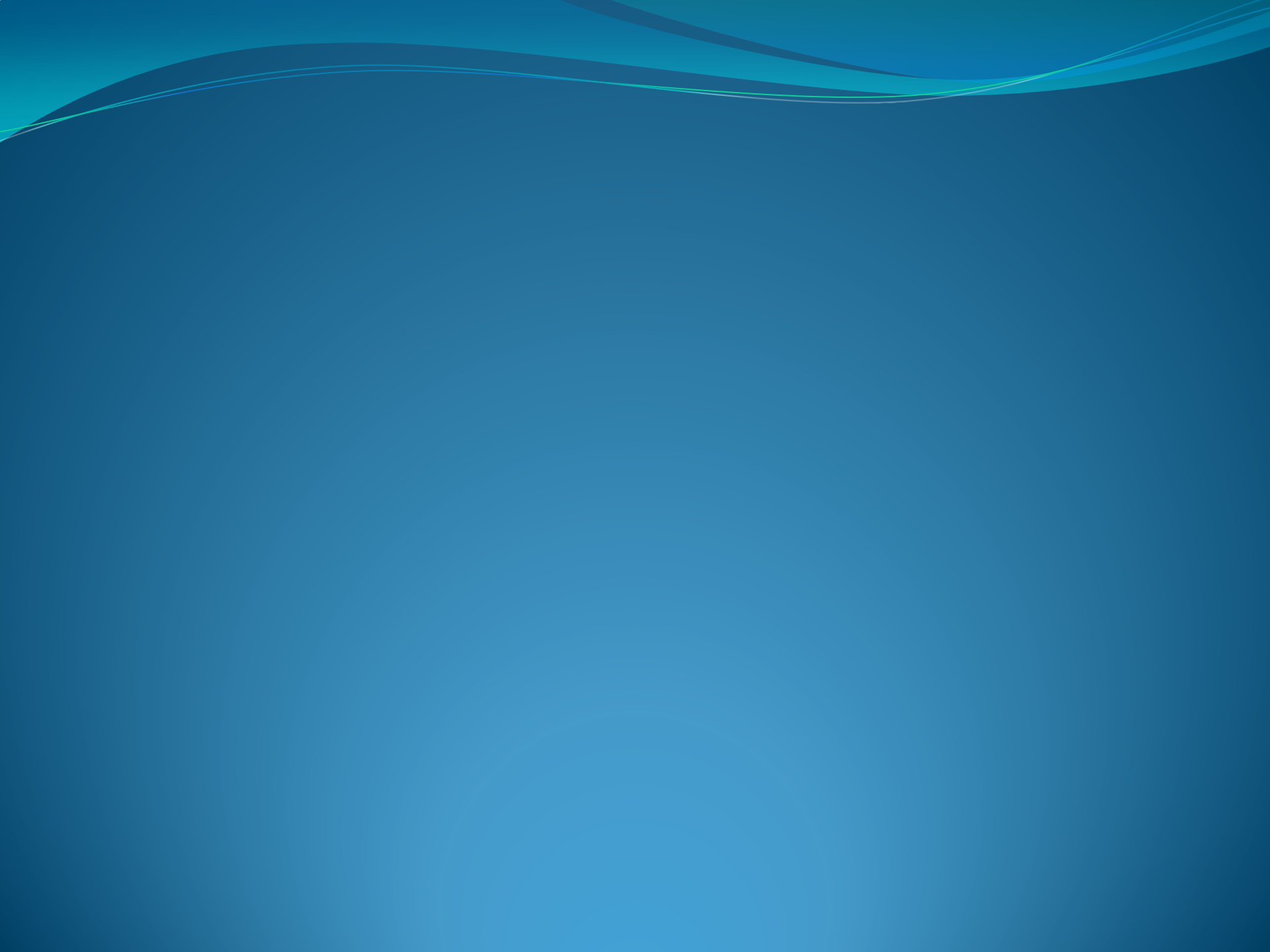
- CLOSURE OF OTHER BUSINESS BANK ACCOUNTS
- LIABILITY INSURANCE AND OTHER COVERAGE (TAIL?)
- ADVERTISING
- WEBSITE AND OTHER SUBSCRIPTIONS
- DISSOLUTION OF FIRM ENTITY

Other Business Considerations

- FINAL FINANCIAL STATEMENTS AND RECONCILIATIONS
- STATUS WITH FLORIDA BAR AND OTHER ASSOCIATIONS
- OCCUPATIONAL LICENSES
- PROPERTY DISPOSITION

Confidentiality

Client Interests Paramount



**Involuntary Closure:
aka - Didn't See That
Coming!**

Involuntary Closing

- Suspension
- Disbarment
- Incapacitation
 - Mental
 - Physical
- Death

Rule 3-5.2

- EMERGENCY SUSPENSION
 - On petition of The Florida Bar...supported by...affidavits demonstrating facts... [that establish]...clearly and convincingly that an attorney appears to be causing great public harm, the Supreme Court of Florida may issue an order suspending said attorney on an emergency basis.

Sample Orders Based on Rule

- No new clients,
- Cease representing after 30 days,
- Immediately furnish copy of suspension to:
 - All clients
 - Opposing counsel
 - Courts (counsel of record)
 - Bar Counsel

Sample Orders Based on Rule

- Stop disbursing or withdrawing any monies from trust account
- Deposit all new fees into a specified trust account
- Notify Bar of any new funds (location) received
- Immediately notify all banks

Client Confidentiality

- A lawyer should also provide for the protection of the confidences and secrets of his client following the termination of the practice of the lawyer, whether termination is due to death, disability or retirement.
 - Florida Bar OPINION 81-8

Arbitrary Date to Destroy Old Files?

- It is incumbent upon the attorney to make an attempt to contact all clients whose files are in his possession.
- It is the contents of the file, not its date, that should dictate the length of time a file is to be retained.
 - Florida Bar Opinion 81-8

“Purpose of Inventory Attorney...”

- ...to avoid prejudice to clients of the subject attorney and, as a secondary result, prevent or reduce claims against the subject attorney for such prejudice as may otherwise occur.”
 - More in moment...

Involuntary: What Will They Find?

- Emergency suspension – Mail Fraud
- Motion to Suppress evidence discovered by inventory attorney
- The fact that it is the "circuit court" that appoints the inventory attorney, and requires the inventory attorney to report to it, further substantiates that the inventory attorney is independent of The Florida Bar.

United States v. Robles

- An Inventory Attorney's duty is owed to the clients whose interests he is duty bound to protect and because of that central duty, he is independent, even from the court that appointed him.
- No grounds to suppress discoveries in Robles' files
 - *United States v. Robles*, 2007 U.S. Dist. LEXIS 61607 (S.D. Fla. Aug. 22, 2007)



The Inventory Lawyer

What is an Inventory Attorney?

- Cleans up the mess
- Rule 1.3.8(e) ... “shall designate”
 - (government lawyers are exempt)
- HOW TO:

The Florida Bar
www.floridabar.org

[Click Here To Select Inventory Attorney](#)

NEW Inventory Attorney Selection

Bar Number 223700
Name Jack J. Fine
Address 622 NE 1st Street Gainesville, Florida 32601

I am not required to comply with Rule 1-3.8. Please select one of the following.

I am an employee of a governmental agency.
 I don't practice law.
 I don't have any clients in the State of Florida.
 I am a member of the judiciary.
 I am on inactive status.

[Click Here To Save Inventory Attorney Selection](#)

[Revised: 07-01-2005]

Inventory Designation Best Practice

- See LOMAS
- “Pre-Need Inventory Attorney Agreement”
 - Especially helpful for solo practitioners
 - Works like a Letter of Engagement (You will do...I will do)
- Other things to provide inventory attorney (- Jay Foonberg)
 - Password & Login Information (master list), offsite storage loc. (codes/keys)
 - Use LOMAS’s “Emergency/Hurricane tips”

You Are Hereby Dubbed...



“Sir Mountain of Paper” (Inventory Attorney)



Being Inventory Attorney

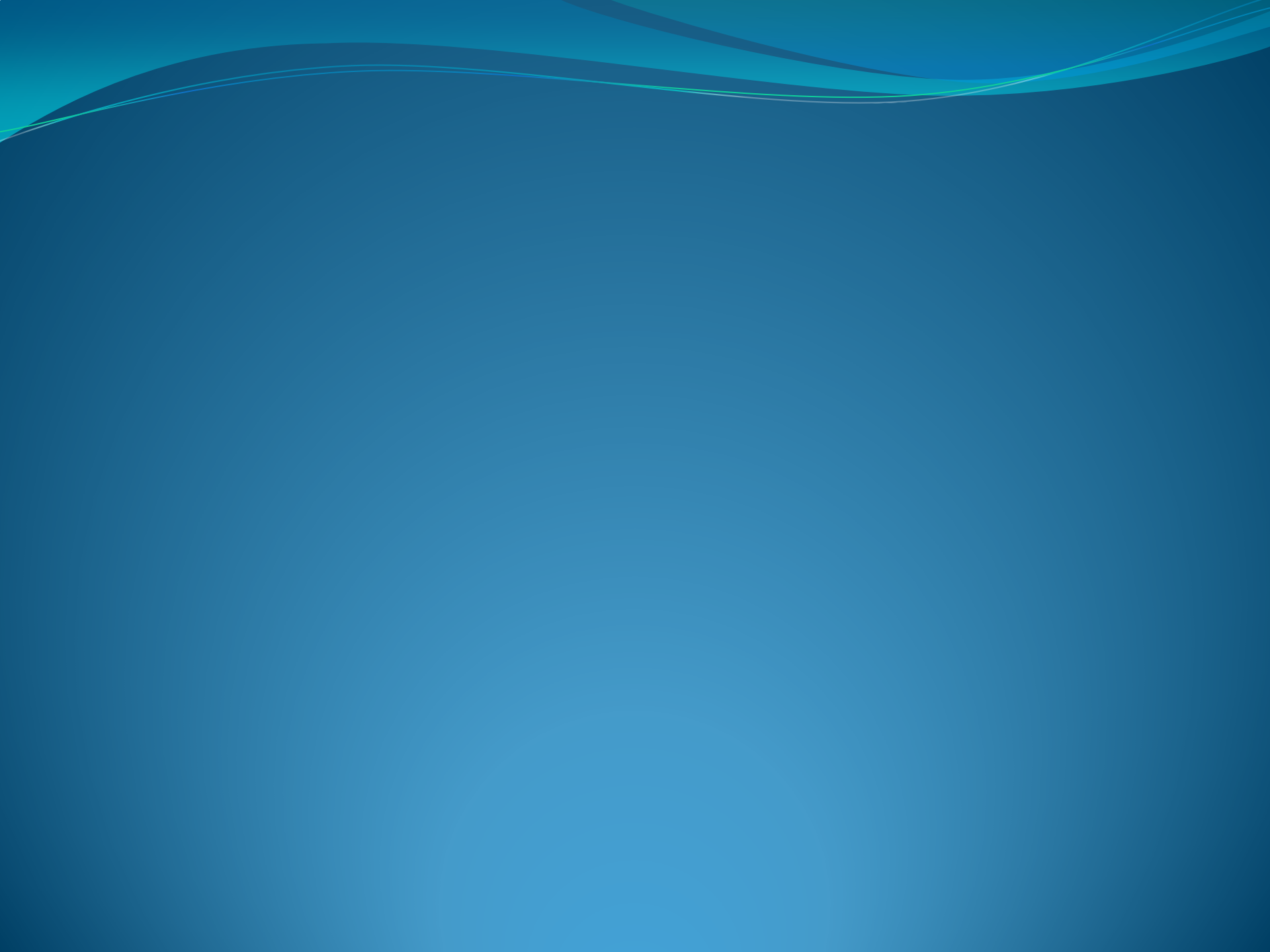
- Do I have to do it? ... No
- If you decide to, where to look...
 - Step 1: FL Bar Inventory Attorney Manual
 - Step 2: Clients, clients, clients! (sending notice)
 - Step 3: Filing “Initial Report of Inventory Attorney”
 - Step 4: “Second Report”
 - Step 5: Final Report; Petition to Discharge

Creating Inventory Manual

- What is it?
- Is there a template? YES! (LOMAS)
- What needs to be in the manual
- How is an inventory attorney paid?
 - When distributing case files, be careful how you arrange for new counsel (Ethics Opinion 77-1)

Dual Masters of an Inventory Attorney

- Christensen v. Correa, 673 SO.2d 145 (Fla. 5th DCA 1996)
- FIDUCIARY DUTY (not only to clients... but also to suspended/disbarred attorney)
 - Minimize malpractice exposure
 - What are your fiduciary duties?
 - NOT an attorney-client relationship with suspended/disbarred counsel



Pithy Closing Remarks.