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Legal Ethics Update

Downey Law Group

November 2021

Introductory Matters

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Caution

Much of this content comes from various legal ethics opinions.

I sometimes cut, abbreviate, or rearrange content.

Please consult the original opinions if you need exact language.

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Conflicts of Interest

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Analyzing Client Conflicts

- Current, former or prospective client

- Relatedness of matters
- Adversity of clients (or former or prospective clients)
- Materiality of information received by lawyer

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	Current Client – Rule 4-1.7(a)(1)	Current Client – Rule 4-1.7(a)(2)	Former Client – Rule 4-1.9(a)	Former Client of Firm – Rule 4-1.9(b) (Declined) Prospective Client – Rule 4-1.18
Relatedness of matters	(Ignored)	Significant risk of material limitation	Same as or substantially related	Same as or substantially related
Adversity	Directly adverse	Significant risk of material limitation	Materially adverse	Materially adverse
Materiality of information received	(Ignored)	(Presumed)	(Presumed)	Confidential information material to matter

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2021 North Carolina Formal Opinion 1

- A owns a house
- A is selling house to B, and B is selling house to C on the same day
- Can Lawyer represent both B and C?

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2021 NC Opinion 1 – Answer

This scenario presents a concurrent conflict of interest under Rule 1.7(a). Lawyer's representation of C may be materially limited by Lawyer's responsibilities to B, and vice versa.

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2021 NC Opinion 1 – Answer (Continued)

Matters about which Lawyer would need to communicate with C include:

1. That B does not own the property and whether the contract entered into between B and C for the sale of the property is valid;
2. That C's money will be used by B to purchase the property from A, for which C's informed consent would need to be given (see Opinion #4 below); and
3. The price at which B is purchasing the property from A, which is a fact that may not otherwise be known by C and might bear upon the true market value of the property and/or whether C would consider it in C's best interest to proceed. . . .

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2021 NC Opinion 1 – Inquiry #2

Inquiry #2:

Is the answer to Inquiry #1 different if Lawyer maintains that Lawyer only represents B in the A to B transaction and only represents C in the B to C transaction.

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2021 NC Opinion 1 – Answer #2

Opinion #2:

No. A concurrent conflict of interest under Rule 1.7(a)(2) exists if a lawyer's representation of a client may be materially limited by the lawyer's responsibilities to another client, a former client, a third person, or by a personal interest of the lawyer. The above-identified conflicts would still exist even if Lawyer only represented B with respect to the A to B transaction and C with respect to the B to C transaction. See Opinion #1.

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Missouri Informal Opinion 2021-06

- A state agency, Governmental Entity, contracted with Private Attorney to represent the governmental entity in proceedings involving termination of parental rights.
- Private Attorney is not considered an employee of Governmental Entity.
- Once Private Attorney completes the termination of parental rights proceeding, may Private Attorney then represent Foster Parents who are seeking to adopt the minor child?

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Missouri Opinion 2021-06 – Answer

- Since Private Attorney represents Governmental Entity by contract, and not as a current or former government lawyer, Rule 4-1.11 does not apply to future conduct of Private Attorney.
- Instead, Private Attorney must determine if a former client conflict of interest exists based on the prior representation of Governmental Entity.
- Rule 4-1.9(a) prohibits Private Attorney from representing Foster Parents in the same or substantially related matter in which Foster Parents' interests are materially adverse to those of Governmental Entity unless Governmental Entity gives informed consent, confirmed in writing.
- Matters are substantially related per Rule 4-1.9 "if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." Comment [3].

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Missouri Opinion 2021-06 – Answer (Continued)

- It appears that there is such a substantial risk as to confidential factual information gained by Private Attorney while representing Governmental Entity that may materially advance Foster Parents' interests in the adoption.
- If that is the case, depending on the underlying facts, per Rule 4-1.9(a), Private Attorney may not represent Foster Parents in the adoption proceeding absent informed consent, confirmed in writing, from Governmental Entity.
- If Governmental Entity provides informed consent, confirmed in writing, to the representation of Foster Parents by Private Attorney, Rule 4-1.9(c) prohibits Private Attorney from using or revealing information relating to any prior representation except as permitted or required by the Rules.

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ISBA Opinion 21-01

- Does the lawyer have a concurrent conflict of interest if she represents the surviving spouse as the personal representative of his deceased spouse's will and concurrently assists the surviving spouse in renouncing the will and seeking a spousal award?
- If so, is the conflict waivable?

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ISBA Opinion 21-01

A concurrent conflict of interests exists if a lawyer represents the surviving spouse as the administrator of his deceased spouse's testate estate and also represents the surviving spouse in renouncing the will and in seeking a spousal award.

The conflict is waivable if:

(i) the lawyer reasonably believes she will be able to provide competent and diligent representation to each affected client, including the surviving spouse, individually and in a fiduciary capacity,

(ii) the lawyer makes clear her relationship to the parties involved, and

(iii) each affected party, including the spouse individually, the beneficiaries or, if applicable, the natural or court-appointed guardian of minor beneficiaries, or a guardian ad litem appointed to protect their interests, gives informed consent.

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Key Question

- Whom does the lawyer represent?
- To whom the lawyer owes duties of confidentiality, loyalty, accountability and independent professional judgment

- If we assume the husband, and not the estate and its beneficiaries, is the client, RPC 1.7(a)(2) recognizes that the lawyer could nonetheless have a concurrent conflict of interest if she has responsibilities to **third persons**, such as the beneficiaries of the will. The concurrent conflict arises even if she advises and assists her client in exercising rights granted to him by the Illinois Probate Code. The lawyer must be sensitive to the distinction between lawful conduct and ethical conduct; where they converge and where they diverge.

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ISBA Opinion 21-03

- Attorneys A and B are in a firm together.
- Attorney A represents an individual client (Client 1) in an employment matter against an "entity."
- Attorney B is contacted by the entity to handle immigration matters for individuals entering the United States to work for the entity. Attorney B informs the entity regarding the current employment dispute in which Attorney A is representing an individual adverse to the entity.
- Entity waives any potential conflict of interest.
- Does the fact pattern described in the inquiry create a conflict of interest? If so, can the conflict be waived by the clients to permit Attorney B's representation of the entity and/or employees in immigration matters?

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ISBA Opinion 21-03 – Answer

- Attorney B may represent the entity and/or its employees in immigration matters only if the representation of Client 1 will not be materially limited by the Attorney B's proposed representation of the entity and/or its employees.
- If the attorneys determine that the representation of Client 1 will be materially limited by the proposed representation of either the entity or its employees, then Attorney B must refrain from representing the entity and/or its employees [unless the lawyer can obtain proper consents].
- Attorney B may represent the entity or its employees in the immigration matters so long as Attorney A and Attorney B reasonably believe that they will be able to provide competent and diligent representation to each affected client and each affected client gives informed consent. Although the rules do not require a written waiver of the conflicts of interest, best practices would dictate that the attorney consider obtaining, from each affected client, a written waiver of the conflict.

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Is Conflict Waivable?

- Prior to approaching Client 1 with a written conflict waiver, the firm must examine whether a conflict exists under [Rule] 1.7(a) and, if so, whether the conflict is waivable under [Rule] 1.7(b).
- While there is no direct conflict of interest under [Rule] 1.7(a)(1), a conflict does exist under [Rule] 1.7(a)(2) as the firm is already in litigation adverse to the entity, even though it is based on an unrelated employment dispute.
- Potentially, there is a significant risk that representation of Client 1 may be materially limited by the firm's representation of the entity and/or its employees. Comment 2 of the Rule lays out the first conditions the firm must consider. The firm must

  1. Clearly identify the client or clients;
  2. Determine if a conflict exists;
  3. Decide if the conflict is consentable;
  4. Consult with all affected clients to obtain consent.

- Client 1 is a clearly identified client. Under the unique fact pattern presented, both the entity and its employees must be considered as separate clients.

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Questions to Consider

- Would information the firm obtained in its representation of Client 1 hinder its representation of the entity and/or its employees in the immigration matters?
- Would the firm obtain information from the entity and/or its employees in the immigration matters that would jeopardize its relationship with Client 1?
- Would aggressive prosecution of Client 1's case affects Attorney B's relationship with the entity and/or its employees?
- Would Attorney A be resistant to filing sanctions motions against the entity for fear of jeopardizing the relationship with the entity or its employees?

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Waiver by the Entity

- As described in the fact pattern, the entity has already waived any conflict related to Attorney A's representation of Client 1.
- As the details of the waiver have not been provided, the only comment that can be made is that the waiver must provide sufficient information to apprise the entity of the issues so that entity can provide informed consent the firm representing Client 1 as well as its employees seeking immigration counsel from Attorney B.

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Waiver by the Entity's Employees

- Each employee must give informed consent to waive any conflicts with both Client 1 and the entity.
- As in the case of the waiver to be given by the entity, each employee must be given information described in this opinion that provides the employee sufficient information so that the employee can provide informed consent to the firm representing Client 1, as well as being informed of Attorney B's relationship with the entity.

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Missouri Opinion 2021-05

- Company and Manager have been named as Defendants in a wrongful termination suit filed by Former Employee.
- Attorney represents Company in the matter through CEO as the duly authorized constituent of Company.
- Former Employee alleges misconduct by Manager, but Company denies such misconduct on the part of Manager.
- Company, through CEO, has asked Attorney also to represent Manager, and will pay Attorney's fees for both representations.
- May Attorney represent both Company and Manager in the matter?

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Opinion 2021-05: Answer

- Attorney representing Company may also represent Manager subject to Rule 4-1.7 Conflict of Interest: Current Clients. Rule 4-1.13(e).
- Given the allegations of misconduct by Manager, a concurrent client conflict of interest exists because there is a significant risk that Attorney's responsibilities to Company will be materially limited by Attorney's responsibilities to Manager. Rule 4-1.7(a)(2).
- Pursuant to Rule 4-1.7(b)(1), Attorney may only undertake representation of Manager if Attorney has a reasonable belief at the outset of the representation that Attorney will be able to provide competent and diligent representation to both Company and Manager in a common representation. Attorney must resolve consentability as to both Company and Manager. Rule 4-1.7, Comments [14] and [15].
- Because Company is paying for the representation of Manager, Attorney must comply with Rule 4-1.8(f), which prohibits Attorney from accepting compensation from someone other than the client, in this case Corporation paying for the representation of Manager, unless Manager gives informed consent to the arrangement, there is no interference with Attorney's independent professional judgment or the client-lawyer relationship, and confidential information is protect by Rule 4-1.6. See also Rule 4-1.8, Comments [11] and [12]; Rule 4-1.7, Comment [13].

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Opinion 2021-05: Answer

- To engage in the common representation, Attorney shall seek informed consent, confirmed in writing, from both Company and Manager pursuant to Rule 4-1.7(b)(4). See Rule 4-1.7, Comments [14], [15], and [20]; see also Rule 4-1.0(e) defining "informed consent," Comments [6] and [7].
- In seeking informed consent, Attorney must discuss with Company and Manager the "implications of the common representation including the possible effects on loyalty, confidentiality, the attorney-client privilege and the advantages and risks involved. Rule 4-1.7, Comment [18]; see also Comments [30], [31], and [32]."
- Attorney should advise Company and Manager that Attorney will share with both clients information relevant to representation, and that Attorney will be required to withdraw if one of the jointly represented clients decides a material matter should be kept from the other. See Rule 4-1.7, Comment [31].
- Further, Attorney should advise Company and Manager that, if the common representation fails because potentially adverse interests cannot be reconciled, Attorney will have to withdraw from representing both clients. See Rule 4-1.7, Comment [29].
- Since Company's consent to the dual representation is required by Rule 4-1.7, Rule 4-1.13(e) requires that the consent be given by an appropriate official of Company other than Manager who is seeking representation.

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Conflict Waiver – Elements

- Circumstances
- Risks (and benefits)
  - Loyalty/zeal
  - Confidentiality and privilege
- Alternatives

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”Upjohn” Warnings

- Given to “constituent” of represented entity
- Seek to avoid (a) inadvertent lawyer-client relationship and (b) confusions over confidentiality

- “I am not your lawyer – I represent the company”
- “Our communications are confidential and may be privileged – but the company controls that privilege”
- [Possible] “You can retain your own counsel, and the company will pay for that counsel”

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Confidentiality

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Missouri Rule 4-1.6(a)

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by Rule 4-1.6(b).

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ISBA Opinion 21-02

(1) What duty does the lawyer have related to releasing Client's estate planning documents and/or estate planning file to Spouse, Fiduciary, and (non-beneficiary) Children?

(2) Do these duties change if Children have filed a legal proceeding to contest the validity of Client's will and trust?

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ISBA Opinion 21-02

The Illinois Rules of Professional Conduct allow a lawyer to provide the executor and trustee named in a deceased client's estate planning documents with the final executed copies of those documents and whatever portions of the estate planning file may be helpful to the named fiduciary to carry out the deceased client's intent expressed in those documents.

The lawyer may give other family members limited information about the deceased client's estate planning documents and file if providing that limited information will allow a beneficiary to enforce her rights or if the disclosure might prevent litigation.

If a lawyer receives a subpoena issued in a will or trust contest for a deceased client's estate planning file, the lawyer should contest the subpoena and not comply until a court has ordered the lawyer to comply.

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General Obligations

- If the lawyer's file includes Client's final will, then the lawyer "shall file it with the clerk of the court of the proper county...." 755 ILCS 5/6-1(a).
- If the lawyer receives a request for a copy of the final will from any person, the lawyer should direct the person to check the clerk of court records to obtain any final will.
- The lawyer's obligations with respect to all other estate planning-related documents in her file are governed by Illinois Rule of Professional Conduct 1.6.

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Informed Consent?

- [M]any estate planning attorneys include provisions in their engagement letters stating explicitly who the lawyer may provide documents to (and which documents) after the client's death.
- Alternately, some estate planning lawyers have discussions with their clients about releasing information after their death and memorialize what the client has consented to in writing in a memo provided to the client and placed in the file.
- Consequently, if Client gave informed consent to release the estate planning documents and/or file to one or more of Spouse, Fiduciary, or Children, then the lawyer should follow those instructions.
- If Client did not give informed consent, then the lawyer should examine whether Client gave implied consent.

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Implied Consent

- In the case of implied consent, comment [5] to Rule 1.6 explains that if it is necessary to carry out a representation, consent is implied:

  > Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation.

- I.R.P.C. 1.6 cmt. 5.
- Because Fiduciary must have copies of the final executed estate planning documents in order to effectuate Client's estate plan, Client has given implied consent allowing the lawyer to provide executed copies of the final will and any operative trust documents, amendments, and restatements to Fiduciary.
- Related, Client has given implied consent allowing the lawyer to provide Fiduciary with those portions of the estate planning file that may allow Fiduciary to carry out her duties more effectively – like information about Client's assets.
- Importantly, Illinois takes a minority view that Client has not given implied consent to release Client's entire estate planning file to Fiduciary.

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Implied Consent to Communicate with Children

- Rule 1.6 prohibits the lawyer from disclosing the estate planning documents and the estate planning file to Children.
- However, if the lawyer determines that providing Children with some information about the estate planning file, for example related to the execution of the will or trust documents, would forestall litigation and save estate and trust resources, then this disclosure is impliedly authorized by Client.

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Joint Representation

- This analysis may be different if Spouse and Client were co-clients of the lawyer for estate planning purposes.
- Depending on the terms of the engagement, lawyer may have been obligated to share all information obtained in the course of the representation of Spouse and Client between them, in which case Spouse would be entitled to copies of all estate planning documents and the entire estate planning file.
- Again, this situation would best be dealt with in a joint representation estate planning letter that specifically states whether the lawyer was authorized to share information disclosed by the co-clients with each other.

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Response to Subpoena

- Once Children file a will contest or trust, they may be able to obtain the estate planning file in response to a subpoena under the testamentary exception to attorney-client privilege.
- "In general, the attorney- client privilege survives death. However, an exception to the general rule has been recognized in testamentary contexts." *Id*. The rationale is that the testator or grantor would want all parties to have access to her otherwise privileged communications to determine the testator or grantor's true intent.
- However, in general the lawyer should not reveal the information to Children until the children have filed a will or trust contest and she has received a subpoena.
- Even after the lawyer receives a subpoena, the lawyer should not automatically comply. Under Rule 1.6, "A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary ... to comply with other law or a court order. I.R.P.C. 1.6(b)(6). Because the client has passed away and is unavailable for consultation, the lawyer should object to the subpoena and only provide the documents after the court enters an order to comply with the subpoena.

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Client Communications

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Missouri Rule 4-1.4

(a) A lawyer shall:

(1) keep the client reasonably informed about the status of the matter;

(2) promptly comply with reasonable requests for information; and

(3) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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Florida Advisory Opinion 21-3

- A member of The Florida Bar has inquired about the inquirer's ethical obligation when appointed by a court to represent an alleged incapacitated person in a petition for emergency temporary guardianship.
- The inquirer states that the alleged incapacitated person has due process rights under both the state and federal constitution, including the right to testify, present evidence, call witnesses, confront and cross-examine witnesses, and have the hearing either open or closed.
- However, Florida Statutes §744.3031(2) allows the proceeding for emergency temporary guardianship to be held ex parte on a showing that it is necessary to prevent substantial harm to the alleged incapacitated person.
- The inquirer asks how to represent the client in accord with the inquirer's ethical obligations when a court has ordered that the hearing be held ex parte or when a hearing is held before the inquirer has the ability to contact or communicate with the alleged incapacitated person to whom the inquirer has been appointed to represent.

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Florida Opinion 21-3 – Answers

- [I]f the inquirer lacks time to communicate with the client because the hearing is scheduled to be held shortly after the appointment, the inquirer should seek a continuance under appropriate circumstances to allow the inquirer to communicate with the client and ascertain the client's wishes.
- If the continuance is denied, or the court orders an ex parte hearing, the inquirer may nevertheless represent the client although the inquirer is unable to communicate with the client. The inquirer, as reasonably practicable under the circumstances, must investigate the factual background leading to the guardianship as well as what evidence may be relevant to the proceedings. Investigation should include determining to the extent possible whether the client has previously expressed the client's wishes regarding guardianship or what those wishes might be. When unable to communicate with the client, the inquirer may investigate by interviewing the individuals listed on the relevant pleadings and attempting to locate and review any estate and incapacity documents previously executed, for example.
- At the actual hearing, the lawyer must competently and diligently represent the client. If the inquirer has been able to ascertain the client's wishes through investigation, those wishes will dictate the appropriate action.

ABA Formal Opinion 500 October 6, 2021
Language Access in the Client-Lawyer Relationship

- Lawyers must communicate with clients in a manner that is reasonably understandable to those clients. This is a central tenet of the duties applicable to the client-lawyer relationship under the Model Rules of Professional Conduct.
- In general, the information that must be provided when discharging the duty to explain a matter reasonably is "that appropriate for a client who is a *comprehending* and responsible adult."
- Model Rule 1.1 and 1.4 obligations do not change when a client's ability to receive information from or convey information to a lawyer is impeded because the lawyer and the client do not share a common language, or when a client is a person with a non-cognitive physical condition, such as a hearing, speech, or vision disability.

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Purpose of Lawyer-Client Communications

- [C]ommunication between a lawyer and a client is both the means by which a client is provided with the advice and explanations needed to make informed decisions and the vehicle through which the lawyer obtains information required to address the client's legal matter appropriately.

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- If communications issues are such that the client cannot adequately comprehend the lawyer's advice and other communications, and thus, cannot participate intelligently in the representation, or the lawyer is unable to ascertain the information needed to competently assist the client, the lawyer must take measures to establish a reasonably effective mode of communication.
- Ordinarily, this will require engagement of a qualified impartial interpreter or translator (or, in some situations, the use of an appropriate assistive or language-translation device) so that the lawyer and client can reasonably understand one another to a degree that is compatible with the lawyer's professional obligations.

Lawyer Must Address Deficiencies

- Ordinarily, the mode of communication to be used during a representation is a matter to be decided between the lawyer and the client, and, in the case of language-access issues, consultation with the client is appropriate if possible.
- A lawyer may not, however, passively leave the decision to the client or thrust the responsibility to make arrangements for interpretation or translation entirely upon the client.
- Once it is reasonably apparent that, without an interpreter, translator, or an appropriate assistive or language-translation device, there cannot be a reliably understandable reciprocal exchange of information between the lawyer and the client, the lawyer must take steps to help the client understand the need for and purpose of an interpreter or translator, and, when reasonably necessary, take steps to secure such services.

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- In situations where there is doubt about the efficacy of client-lawyer communication, that doubt should be resolved in favor of engagement of an interpreter, translator, or an appropriate assistive or language-translation device.
- Furthermore even in situations when an interpreter is used to facilitate spoken communication between a lawyer and a client, it may also be necessary to secure the translation of specific written documents to satisfy the duties of communication and competence in a particular case.

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Qualified Interpreter

- In general, an individual engaged to facilitate communication between a lawyer and a client must be qualified to serve as an interpreter or translator in the language or mode required, familiar with and able to explain the law and legal concepts in that language or mode, and free of any personal or other potentially conflicting interest that would create a risk of bias or prevent the individual from providing detached and impartial interpretive or translation services.
- In assessing the qualifications of a prospective interpreter or translator, a lawyer should verify that the individual is skilled in the particular language or dialect required [and] the expertise needed to comprehend the legal concepts/terminology at issue so that the legal advice being provided is communicated accurately in a language or format accessible to the client.

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Family or Friend as Interpreter

- In some instances, a client's friend or a family member may function as a viable interpreter or translator. But particular care must be taken when using a client's relatives or friends because of the substantial risk that an individual in a close relationship with the client may be biased by a personal interest in the outcome of the representation.
- In such situations, a lawyer must exercise appropriate diligence to guard against the risk that the lay-interpreter is distorting or altering communications in a way that skews the information provided to the lawyer or the advice given to the client.
- Lacking accountability to the lawyer or firm derived from an employment or other contractual relationship, relatives and friends of the client may also be less reliable in providing interpretation or translation services when needed.

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Financial Burden

- Finally, if obtaining necessary services would place an unreasonable financial burden on the lawyer or the client or if necessary services are unavailable, the lawyer should ordinarily decline or withdraw from the representation or associate with a lawyer or law firm that can appropriately address the language-access issue, such as a multilingual lawyer.

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Emergency Situation

- In an emergency situation where the need for legal action is exigent—for example, if a client or potential client is subject to an expedited removal action in an immigration proceeding—and the lawyer reasonably believes that necessary interpretive services cannot obtained expeditiously, a lawyer should take steps to prevent immediate and irreparable harm to the client.

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Lawyer Responsibility for Interpreter

- Model Rule 5.3 governs a lawyer's responsibilities for nonlawyers employed, retained by, or associated with a lawyer. In general, a lawyer is responsible to ensure that the conduct of a nonlawyer service provider is compatible with the professional obligations of the lawyer.
- This principle applies with equal force to individuals serving as interpreters or translators to facilitate communications within the client-lawyer relationship, i.e., the lawyer must make reasonable efforts to ensure that the interpretive or translation services are provided in a manner that is compatible with the lawyer's ethical obligations, particularly the Rule 1.6 duty of confidentiality.

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Possible Cultural Issues

- In addressing language access issues within the client-lawyer relationship, the duty of competence requires close attention to social and cultural differences that can affect a client's understanding of legal advice, legal concepts, and other aspects of the representation.
- When a lawyer and a client do not share a common language, there may be other significant cultural differences bearing on the representation including, but not limited to, ethnicity, religion, and national origin.
- The client may view the representation and choices it entails through the lens of cultural and social perspectives that are not shared by or familiar to the lawyer. Beyond language differences, the ability to understand, effectively communicate, gather information, and attribute meaning from behavior and expressions are all affected by cultural experiences.
- Competently mediating these differences to achieve the ends of the representation for the client requires: (i) identifying these differences; (ii) seeking to understand them and how they bear upon the representation; (iii) paying attention to implicit bias and other cognitive biases that can distort understanding; (iv) adapting the framing of questions to help elicit information relating to the representation in context-sensitive ways; (v) explaining the matter in multiple ways to promote better client insight and comprehension; (vi) "allow[ing] for additional time for client meetings and ask[ing] confirming questions to assure that information is being exchanged accurately and completely"; and (vii) conducting additional research or drawing upon the expertise of others when that is necessary to ensure effective communication and mutual understanding.46

Possible Statutory Obligations

- In addition to the ethical duties analyzed in this opinion, law firms and other legal organizations may be legally required to provide and pay for auxiliary aids and services in order to provide a client with reasonable accommodation under the ADA. Law offices are explicitly included in the definition of public accommodations under Title III of the ADA, 42 U.S.C. § 12181(7)(f), and as a general rule, ADA Title III entities cannot pass along the costs of auxiliary aids and services to the person with the disability. *See* 28 C.F.R. § 36.301(c).
- Although particulars of a lawyer's duties under the ADA are beyond the scope of this opinion, a lawyer, law firm, and legal organization should be aware of the legal risks and responsibilities related to ADA compliance. *See generally* . . . .

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Footnote on Mental Conditions

- Some mental conditions may affect the traditional client-lawyer relationship or the lawyer's customary means of delivering legal services in other ways.
- For example, a client may suffer from a diminished mental capacity or a non-sensory cognitive condition.
- The legal obligation to accommodate a client's mental disability and the ethical duties applicable to representing clients with diminished capacity are addressed in Model Rule 1.14 and beyond the scope of this opinion.

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Missouri Informal Opinion 2021-07

Attorney asks if e-mail correspondence with the client, and e-mail correspondence related to the representation of the client, are part of the client's file?

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Missouri Opinion 2021-07 – Answer

- Yes, both e-mail correspondence with the client, and email correspondence related to the representation of the client, are part of the client's file.
- Formal Opinion 115, as amended, states that it is the opinion of the Advisory Committee "that the file belongs to the client, from cover to cover, except for those items contained within the file for which the attorney has borne out-of-pocket expenses such as, but not limited to, transcripts. The attorney may retain those items until such time as he is reimbursed for the out-of-pocket expense and then they must be immediately delivered to the client. Those items which have commonly been denominated as 'work product' of the attorney actually belong to the client because those are the result of services for which the client contracted."
- Based on the Formal Opinion 115, e-mails would be part of the client's file and must be retained in accordance with Rule 4-1.22, File Retention. Similarly, text messages or other electronic communications would also be part of the client's file.

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Duty to Report Lawyer or Judge

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Missouri Rule 4-8.3

(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 4-8.3 does not require disclosure of information otherwise protected by Rule 4-1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

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Missouri Informal Opinion 2021-08

- Attorney A represents Wife in a dissolution of marriage case, and Attorney B represents Husband.
- Attorney A and Attorney B were negotiating on behalf of their respective clients, with their clients present, when Attorney A made a derogatory remark to Attorney B that was related to Attorney B's gender and national origin.
- Is Attorney B required to report Attorney A's conduct?

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Missouri Opinion 2021-08 – Answer

- Rule 4-8.3 requires Attorney B to report Attorney A to the Office of Chief Disciplinary Counsel if Attorney B knows that Attorney A's conduct is a violation of the Rules of Professional Conduct that raises a substantial question as to Attorney A's honesty, trustworthiness, or fitness as a lawyer in other respects.
- In determining if Attorney A's conduct rises to the level of misconduct that is reportable, Attorney B may consider Rule 4-8.4, Misconduct.
- Rule 4-8.4(g) provides that it is professional misconduct for a lawyer to "manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status."
- Comment [4] to Rule 4-8.4 states: "Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct.

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Missouri Opinion 2021-08 – Answer (Continued)

- For purposes of Rule 4-8.4(g), "bias or prejudice" means words or conduct that the lawyer knew or should have known discriminate against, threaten, intimidate, or denigrate any individual or group. Examples of manifestations of bias or prejudice include, but are not limited to, epithets; slurs; demeaning nicknames; negative stereotyping; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics."
- If Attorney B believes, based on the facts and circumstances, that Attorney A's conduct is a violation of Rule 4-8.4(g), Rule 4-8.3(a) would require it to be reported to the Office of Chief Disciplinary Counsel.
- However, Rule 4-8.3(c) requires informed consent of Attorney B's client if the report would require disclosure of information otherwise protected by Rule 4-1.6.

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Missouri Informal Opinion 2021-09

- Does Attorney have an obligation to report a judge to the Commission on Retirement, Removal, and Discipline, where Client tells Attorney Judge made statements regarding Client off the record prior to the hearing indicating Judge is not impartial in a matter in which Attorney represents Client.
- Attorney was not present when the statements were allegedly made.

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Missouri Opinion 2021-09 – Answer

- Rule 4-8.3(b) requires Attorney to report Judge to the appropriate authority, the Commission on Retirement, Removal and Discipline, if Attorney "knows" judge has made statements indicating lack of impartiality in a matter if that would be a violation of applicable rules of judicial conduct, the Code of Judicial Conduct under Rule 2.
- If Attorney does not have knowledge, Attorney is not obligated by Rule 4-8.3(b) to report Judge.
- If Attorney believes Attorney has knowledge of a violation of the applicable rules of judicial conduct such that a report is required, per Rule 4-8.3(c)
- Attorney must have the informed consent of Client to disclose any information related to the representation in making the report as required by Rule 4-1.6(a).

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Virtual (and Similar) Practice

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ABA Opinion 498 (March 2021)
Commonly Implicated Rules

- Competence (1.1), Diligence (1.3), and Communication (1.4)
- Confidentiality (1.6)
  - Shall not "reveal information relating to the representation"
- Supervision of non-lawyer subordinates (5.3)

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Need to Be Technologically Competent

Comment [8] to Model Rule 1.1:

"To maintain the requisite knowledge and skill [to be competent], a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."

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Supervision of Subordinates – Rule 5.3

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.

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Consideration of Technologies Used

- Confidentiality protected?
  - Installing updates
  - Using passwords and encryption
  - Periodic assessment

- Reliable access to files (and backups)

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Concerns for Virtual Practice

- Compliance with appropriate trust account rules
- Writing and depositing checks
- Receiving mail
- Appropriate signage

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ABA Opinion 495 (2020) – Remote Law Practice Prohibition Against Unauthorized Practice

"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" unless authorized by the rules or law to do so

ABA Rule 5.5(a)

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Limits on "Foreign" Practice
Rule 5.5(b)

A lawyer shall not

- "establish an office or other systematic and continuous presence in [the] jurisdiction [in which the lawyer is not licensed] for the practice of law."
- "hold out to the public or otherwise represent that the lawyer is admitted to practice law in [the] jurisdiction

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Conclusion

The Committee's opinion is that,

- in the absence of a local jurisdiction's finding that the activity constitutes the unauthorized practice of law,
- a lawyer may practice the law authorized by the lawyer's licensing jurisdiction for clients of that jurisdiction, while physically located in a jurisdiction where the lawyer is not licensed
- if the lawyer does not hold out the lawyer's presence or availability to perform legal services in the local jurisdiction or
- actually provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.

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Missouri Informal Opinion 2021-12

Missouri licensed lawyer asks if it is permissible to practice in Missouri from a virtual office, or is a physical office is required?

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Missouri Opinion 2021-12 – Answer

- A physical office, (i.e. a brick-and-mortar building), is not required for a Missouri licensed lawyer to practice law in Missouri from a virtual office.
- Rule 6.01(b)(1) requires, among other information, for a Missouri lawyer to register "[t]he lawyer's current mailing address and e-mail address."
- That mailing address may be an office, home, post office box, or similar location, so long as it is a place where the lawyer regularly receives mail.

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Missouri Opinion 2021-12 – Question #2

Missouri licensed lawyer asks if there are additional ethical considerations when practicing virtually?

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Missouri Opinion 2021-12 – Answer #2

- The Missouri Rules of Professional Conduct apply equally to lawyers whether practicing virtually or in a physical office.
- Some ethical considerations include taking steps to ensure competence in using technology as provided in Comment [6] to Rule 4-1.1, continuing to ensure diligence in accordance with Rule 4-1.3, and maintaining regular client communication as required by Rule 4-1.4.
- Missouri Lawyers are still required to maintain confidentiality of clients' information and "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client." Rule 4-1.6.
- Finally, lawyers should also pay extra attention to supervisory responsibilities over other lawyers in the firm as required by Rule 4-5.1, and nonlawyers, including vendors, as required by Rule 4-5.3. See Informal Opinion 2021-03 (supervision of vendor engaged for shredding services); Informal Opinion 2018-09 (use of cloud computing).

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Missouri Informal Opinion 2021-10

A Missouri licensed lawyer who lives out-of-state and is registered as a Category 3 Non-Resident Member of The Missouri Bar, asks if it is permissible to practice law in Missouri?

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Missouri Opinion 2021-10 – Answer

- While this office can only provide informal advisory opinions regarding Rules 4, 5, and 6, this opinion references Missouri Supreme Court Rule 9.01, Authorized Practice of Law, as it is directly related to interpretations of Rule 6.01(j) and (m) on registrations categories available to members of The Missouri Bar and fees associated therewith.
- Pursuant to Missouri Supreme Court Rule 9.01, a nonresident, active, lawyer who is a member of The Missouri Bar "may practice law or do a law business in this state" if the lawyer "is not currently suspended or disbarred and has paid or is exempt from the requisite enrollment fee pursuant to Rule 6.01."
- If the lawyer has "paid a reduced annual enrollment fee pursuant to Rule 6.01(j)(3) because they do not practice or have employment in this state [the lawyer] must pay the remainder of the full annual enrollment fee required under Rule 6.01(m)(1) before being authorized to practice law or do a law business in this state." Rule 9.01.
- The nonresident lawyer must change registration status with the Clerk of the Court from Category 3 to Category 1 and pay the proper fee to practice law or do a law business in Missouri.

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Communication with Another Lawyer's Client

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Missouri Rule 4-4.2

- In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

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Missouri Informal Opinion 2021-11

- Lawyer B has been contacted by Client regarding possible representation in a dissolution of marriage matter.
- Client is represented by Lawyer A in the dissolution of marriage but is seeking a second opinion as to the representation, as Client believes that matter should be moving faster.
- May Lawyer B meet with Client without the permission of Lawyer A?

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Missouri Informal Opinion 2021-11

- Yes, Lawyer B may meet with Client regarding possible representation in the dissolution of marriage matter without the consent of Lawyer A.
- See also Mo. Informal Opinion 980173. Comment [4] to Rule 4-4.2 provides that this Rule 4-4.2 does not "preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter."
- Client may choose to engage the services of Lawyer B or remain with Lawyer A.
- Client is a prospective client pursuant to Rule 4-1.18 when meeting with Lawyer B, and remains as such if no client-lawyer relationship ensues with Lawyer B for future conflicts of interest.
- If Client chooses to engage the services of Lawyer B, Lawyer A shall withdraw in accordance with Rule 4-1.16.
- Whether a lawyer-client relationship exists is a matter of fact and beyond the scope of the Rules of Professional Conduct. Scope [17].

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Duty of Candor

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Missouri Rule 4-3.3(a)

A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Texas Opinion 692

- Does a lawyer have a duty under the Texas Disciplinary Rules of Professional Conduct to correct false statements made by his client in response to questioning by the opposing party's counsel during a deposition?

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Texas Opinion 692 – Underlying Facts

- A key issue in the case was whether the defendant-driver was looking down at his cell phone when the crash occurred.
- In an early meeting with his lawyer, the defendant admitted that he had been looking down at his phone when the accident happened but argued that the crash was the plaintiff's fault because the plaintiff was driving erratically.
- When the plaintiff asked for the defendant's deposition, the defendant's lawyer counseled his client to testify truthfully if asked about whether he had been looking at his phone. The defendant agreed to do so.
- But during the deposition, in response to questions by the opposing lawyer, the defendant lied, testifying that he was not looking at his phone at the time of the crash.
- At the next break, the defendant's lawyer urged the client to correct the falsehood, but the client refused and instructed his lawyer to remain silent and do nothing to correct the falsehood.

Texas Opinion 692 – Answer

- Ethics opinions in other jurisdictions are divided on whether a lawyer's silence in the face of cross-examination perjury constitutes "assisting" a criminal or fraudulent act. . . .
- This Committee agrees with the latter view that "assisting" a client's criminal or fraudulent act —at least in these circumstances—requires more than mere silence or inaction.
- Unless the comments or the Rules are rewritten to make clear that a lawyer's silence after cross-examination perjury could constitute "assisting" a criminal or fraudulent act, the Committee believes that Rule 3.03(a)(2) is not violated under the facts above.

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Texas Rule 3.03 cmt [13]

- A lawyer may have introduced the testimony of a client or other witness who testified truthfully under direct examination but who offered false testimony or other evidence during examination by another party. Although the lawyer should urge that the false evidence be corrected or withdrawn, the full range of obligation imposed by paragraphs (a)(5) and (b) of this Rule do not apply to such situations. A subsequent use of that false testimony or other evidence by the lawyer in support of the client's case, however, would violate paragraph (a) (5).

- (Texas has also not adopted the comment that a "deposition" is part of a tribunal for purposes of Texas Rule 3.03)

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Indiana Opinion #1-21

- Can a lawyer be subject to discipline for their nonlawyer assistant's/notary's failure to properly notarize a document?

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Indiana Opinion #1-21 -- Answer

- A lawyer who ratifies a nonlawyer assistant's conduct and is in a position of managerial authority, or who directly supervises the nonlawyer assistant, can be subject to discipline for the nonlawyer assistant's/notary's failure to properly notarize a document.

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- “Too many lawyers have learned that cutting corners and failing to properly notarize documents can lead to serious repercussions.”

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Payment of Fact Witnesses

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Maine Opinion #224

- Can a lawyer pay a non-expert witness for time spent testifying at a deposition or a trial, preparing for such testimony, and other related costs?

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Maine Opinion #224 – Short Answer

- A lawyer may advance court costs and litigation expenses without running afoul of the Maine Rules of Professional Conduct, including paying a non–expert witness's lost wages, expenses, and other costs related to preparing and providing testimony or otherwise assisting counsel, so long as the payment is reasonable and not conditioned on the content of the witness's testimony.

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- Payments to non–expert witnesses, if any, should be objectively reasonable and should reflect the witness's time spent testifying, preparing to testify, or otherwise helping prepare the case, and can include reimbursement of expenses related to those activities.
- Reasonable payments by an attorney to a non-expert witness can include compensation for (1) actual expenses incurred, (2) actual wages lost, and/or (3) the value of time spent by the witness.

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Metadata

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Missouri Informal Opinion 2021-13

- This informal opinion replaces informal opinion 2014-02, which is now withdrawn.
- **Question 1:** Does Attorney have an ethical obligation regarding metadata in electronic documents sent by an opposing party or counsel to inform the sender that the document contains metadata of which the sender may or may not be aware?

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Missouri Informal Opinion 2021-13

Answer 1: Metadata embedded in an electronic document received by Attorney may constitute a document inadvertently sent, governed by Rule 4-4.4(b). Whether a lawyer "knows or reasonably should know" the inclusion of the metadata was inadvertent will depend on the facts and circumstances surrounding each transmission. If Attorney believes the metadata was inadvertently sent, Rule 4-4.4(b) requires Attorney to promptly notify the sender.

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Missouri Informal Opinion 2021-13

Question 2: Does Attorney have an ethical obligation regarding metadata in electronic documents sent by an opposing party or counsel to refrain from mining or reviewing and/or using the metadata?

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Missouri Informal Opinion 2021-13

- **Answer 2:** According to Comment [3] to Rule 4-4.4, effective December 1, 2021, lawyers should see Rule 56.01(b)(9)(A)(ii).
- Interpretation of Rule 56.01(b)(9)(A)(ii) is a question of law and beyond the scope of this informal opinion.

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Missouri Informal Opinion 2021-13

Question 3: Does Attorney have an ethical obligation to make good faith efforts to prevent the inadvertent electronic transmission of embedded metadata to opposing party or counsel in the context of litigation?

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Missouri Informal Opinion 2021-13

Answer 3: Pursuant to Rule 4-1.6, Attorney must use reasonable care to ensure no information related to the representation of Attorney's client is revealed without client consent, and this obligation requires Attorney to use reasonable care to ensure no confidential information is contained in embedded metadata.

This may require "scrubbing" documents before transmitting them or using alternative methods of transmission. Efforts to protect confidential information must be exercised in light of Attorney's obligation pursuant to Rule 4-3.4(a) not to unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal evidence.

Removing metadata with evidentiary value before transmitting certain documents may constitute a violation of laws governing discovery and therefore violate Rule 4-3.4(a).

This informal opinion does not render an opinion about the existence of discoverable evidence in particular metadata or about the effect on substantive legal privileges of the pre-transmission removal or lack of removal of metadata.

Lawyer Advertising

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Ohio Opinion 2021-04

- Whether a lawyer may participate in competitive keyword online advertising by purchasing a competitor lawyer's name in order to prominently display the purchasing lawyer's own advertising in online search results.

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Ohio Opinion 2021-04 – Answer

- The purchase and use of a competitor lawyer's or law firm's name as a keyword for advertising is an act that is designed to deceive an Internet user and thus contrary to [Ohio Rule] 8.4(c). The advertising lawyer is attempting to deceive the consumer into selecting the advertising lawyer or law firm's website, as opposed to the intended lawyer or law firm.
- The effect of the purchase of the competitor lawyer's or law firm's name as a keyword is that the search result will return a list of law firms or lawyer websites with similar keywords and may display the purchasing lawyer's website above that of the competitor lawyer.
- It is possible that an unsophisticated consumer will not realize that the top search result is not that of the intended lawyer or law firm. Even when the consumer is not deceived into selecting the advertising lawyer's website, that lawyer has at the very least violated [Rule] 8.4(a) by attempting to violate [Rule] 8.4(c).

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Ohio Opinion 2021-04 – Answer (Continued)

- The Board concludes the proposed conduct may also be contrary to [Rule] 8.4(h). [Rule] 8.4(h) prohibits a lawyer from engaging in any other conduct that adversely reflects on the lawyer's fitness to practice law. . . .The use of another lawyer's name, without consent, to increase traffic to one's own website and to further one's own financial and business interests displays a lack of professional integrity. It calls into question the lawyer's trustworthiness, sense of fairness to others, and respect for the rights of others, including those of fellow practitioners.

Fee Sharing

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Illinois Rule 1.5(e)

A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

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ISBA Opinion 21-04

- Do the Illinois Rules of Professional Conduct permit an Illinois lawyer to enter into a fee-sharing agreement with an out-of-state lawyer and pay that lawyer a referral fee for a personal injury matter to be litigated in Illinois?

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ISBA Opinion 21-04

An Illinois lawyer may enter into a fee-sharing agreement with an out-of-state lawyer who refers a personal injury case to the Illinois lawyer so long as the agreement complies with the applicable Illinois Rules of Professional Conduct and the corresponding rules of the foreign jurisdiction.

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Compliance with Each State's Rules

- While there is no express requirement in Rule 1.5 that the fee-sharing agreement between the lawyers comply with the rules of both jurisdictions, it only makes sense that this be the case.
- For instance, Florida Rule of Professional Conduct 4-15(f)(4)(D) limits the referral fee in personal injury cases to 25 percent.
- If the fee sharing agreement does not comply with the rules of both jurisdictions, scenarios may arise where the receiving lawyer refuses to pay the referral fee on the basis that either jurisdiction prohibits the payment of the fee.

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“New Law” -- Alternative Business Structures

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ABA Model Rule 5.4(a)

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

ABA Model Rule 5.4(d)

A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

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ABA Formal Opinion 499 – Passive Investment in Alternative Business Structures

- A lawyer may passively invest in a law firm that includes nonlawyer owners ("Alternative Business Structures" or "ABS") operating in a jurisdiction that permits ABS entities, even if the lawyer is admitted to practice law in a jurisdiction that does not authorize nonlawyer ownership of law firms.
- To avoid transgressing Model Rule 5.4 or other Model Rules and to avoid imputation of conflicts under Model Rule 1.10, a passively investing lawyer must not practice law through the ABS or be held out as a lawyer associated with the ABS and cannot have access to information protected by Model Rule 1.6 without the ABS client's informed consent or compliance with an applicable exception to Rule 1.6 adopted by the ABS jurisdiction.

Conflicts from Investments

- The fact that a conflict might arise in the future between the investing lawyer's practice and the ABS's work for its clients does not mean that the lawyer cannot make a passive investment in the ABS.
- If, however, at the time of the investment the lawyer's investment would create a personal interest conflict under Model Rule 1.7(a)(2), the lawyer must refrain from the investment or appropriately address the conflict under Model Rule 1.7(b).

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DC, Utah, Arizona and Rule 5.4

- Model Rule 5.4 or its close equivalent has been adopted in nearly every U.S. jurisdiction; to date only Arizona, the District of Columbia, and Utah have modified their jurisdiction's Rule 5.4 to permit business structures that allow nonlawyer ownership of law firms and the sharing of legal fees with nonlawyers.
- Since 1991, the District of Columbia's version of Rule 5.4 has, in circumstances defined in and limited by that rule, permitted individual nonlawyer partners in law firms, as long as such nonlawyers are providing professional services that assist the firm in delivering legal services. The District of Columbia does not permit passive investment in law firms.
- In 2020 the Utah Supreme Court launched a two-year pilot legal-regulatory "sandbox" project whereby Court-approved entities may include nonlawyer owners in firms that provide legal
- services.
- In 2021 Arizona eliminated Rule 5.4 altogether, substituting a system in which Arizona law firms that include nonlawyer owners or investors may be certified by the Arizona Supreme Court as "alternative business structures" ("ABS").

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Other Fee-Sharing With Non-Lawyers

- In 2015 the Washington State Supreme Court authorized Limited License Legal Technicians to share fees and form business structures with lawyers.
- The United States Patent and Trademark Office permits patent agents to be partners in a law firm practicing before the Office.

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Future Programs – Free Ethics CLE

December 8 (Wednesday) at 12 Noon CT – ***Ethics for Family Law Attorneys***

December 17 (Friday) at 12 Noon CT – ***Ethics for Multijurisdictional and Virtual Law Practice***

January 11 (Tuesday) at 3 PM CT – ***Legal Ethics for Corporate Practice***

January 27 (Thursday) at 12 Noon CT – ***Addressing Bias in the Legal System: Cognitive Bias***

Sign up at www.DowneyEthicsCLE.com

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Conclusory Matters

- ***Questions*** – If you have questions after the program, please email them to Paige Tungate at ptungate@DowneyLawGroup.com

- ***Post-Program Survey*** – A survey will be emailed to you about 30 minutes after this program. Also, here is the survey link:

https://bit.ly/update11-2021

- ***Certificate of Completion*** – Available through the Post-Program Survey

- *Kansas Credit* – If you are seeking Kansas credit, you need to enter the two Attendance Verification Words and your Kansas information into the Post-Program Survey. *Please complete this information in the survey **this week**, so we can ensure you receive proper credit*

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Thank you

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