

Duties of Candor and Dishonest Clients

Downey Law Group

December 2025

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“First Rule” of Risk Management

“Do not let your clients’ problems
become your problems.”

A Lawyer's Duty of Candor

Four Rules Regarding Candor and Dishonesty

Rule 4-3.3 – Duty before a tribunal

Rule 4-4.1 – Duty in dealing with third persons

Rule 4-7.1 – Duty when discussing lawyer or lawyer's services

Rule 4-8.4(c) – Duty to avoid dishonesty, fraud, deceit, and misrepresentation

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.

Rule 4-3.3(b) and (c)

- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The **duties stated in Rule 4-3.3(a) and (b) continue to the conclusion of the proceeding** and apply even if compliance requires disclosure of information otherwise protected by Rule 4-1.6.

Rule 4-4.1

In the course of representing a client a lawyer shall **not** knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 4-1.6.

Rule –7.1

A lawyer shall not make a **false or misleading communication about the lawyer or the lawyer's services.**

A communication is false if it contains a material misrepresentation of fact or law.

A communication is misleading if it:

(a) omits a fact as a result of which the statement considered as a whole is materially misleading;

Rule 4-8.4(c)

It is professional misconduct for a lawyer to:

- (a) **violate or attempt to violate the Rules of Professional Conduct**, knowingly **assist** or induce another to do so, or **do so through the acts of another**;
- (b) **commit a criminal act** that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) **engage in conduct involving dishonesty, fraud, deceit, or misrepresentation**. It shall not be professional misconduct for a lawyer for a criminal law enforcement agency, regulatory agency, or state attorney general to advise others about or to supervise another in an undercover investigation if the entity is authorized by law to conduct undercover investigations, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency, regulatory agency, or state attorney general to participate in an undercover investigation, if the entity is authorized by law to conduct undercover investigations;
- (d) engage in conduct that is prejudicial to the administration of justice; . . .

Summary of Relevant Candor Obligations

Rule 4-3.3 – before “tribunal” – no “knowing” false statement or evidence; duty to correct/remedy “material” false statement or evidence

Rule 4-4.1 – representing client – no “knowing . . . material false statement”

Rule 4-8.4(c) – no “dishonesty, fraud, deceit, or misrepresentation”

“Expanded” Candor Obligations

Rule 4-1.4(a) – Communication

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.

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.

Rule 4-3.1

- A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a **basis in law and fact for doing so that is not frivolous**, which includes a good faith argument for an extension, modification, or reversal of existing law.
- A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 4-3.4(a)

A lawyer shall not:

- (a) unlawfully **obstruct** another party's access to evidence or unlawfully **alter, destroy, or conceal** a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

Rule 4-4.1

In the course of representing a client a lawyer shall **not** knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 4-1.6.

Rule 4-4.4(a)

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or **use methods of obtaining evidence that violate the legal rights of such a person.**

Dealing With Dishonest Clients

Missouri Opinion 2020-25

Based on information provided by Client, Attorney submitted to the court in a dissolution matter information in a required form stating that four children primarily reside in Client's custody.

Shortly thereafter, the Guardian Ad Litem appointed for the children told Attorney that three of the children listed on the form had not lived with Client for several months. What is Attorney's ethical obligation regarding the submission?

Missouri Opinion 2020-25

Answer

Rule 4-3.3(a)(3) prohibits a lawyer from offering evidence the lawyer knows to be false.

If Attorney has come to “know” that information submitted to the tribunal on behalf of Client is false, Rule 4-3.3(a)(3) requires Attorney to “take reasonable remedial measures, including, if necessary, disclosure to the tribunal.” “Know” denotes actual knowledge of the fact in question and may be inferred from the circumstances. Rule 4-1.0(f).

Attorney should consult with Client and may take other reasonable steps as necessary to determine the truth or falsity of the information. Attorney should resolve any doubts about the veracity of the statements in favor of Client, but Attorney cannot ignore an obvious falsehood. Rule 4-3.3, Comment [8].

Missouri Opinion 2020-25

Answer

If Attorney comes to know the evidence is false, Attorney should remonstrate with Client, advising Client of Attorney's duty of candor toward the tribunal and seeking Client's cooperation in withdrawing or correcting the false evidence. See Rule 4-3.3, Comment [10]; see also Rules 4-1.2(g) and 4-1.4.

If Client will not cooperate, and if withdrawing from the representation will not undo the effect of the false evidence, Attorney must take further remedial measures, including, if necessary, disclosure to the tribunal, even if the disclosure requires Attorney to reveal information that otherwise would be protected by Rule 4-1.6. Rule 4-3.3(c) and Comment [10].

Any disclosure to the tribunal would be limited to what is reasonably necessary to remedy the situation. Rule 4-1.6(c) and Comment [10]. Normally, Attorney's compliance with Rule 4-3.3 does not thereafter require Attorney to seek leave to withdraw from the representation. See Rule 4-3.3, Comment [15]. However, if the remedial measures result in an extreme deterioration of the client-lawyer relationship such that competent representation cannot be provided, Rule 4-1.16(a) requires Attorney to seek leave to withdraw.

Rule 4-1.2(f) and (g)

(f) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(g) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Crime-Fraud Exception – Restatement 82

The attorney-client privilege does not apply to a communication occurring when a client:

- (a) consults a lawyer for the purpose, later accomplished, of obtaining assistance to engage in a crime or fraud or aiding a third person to do so, or
- (b) regardless of the client's purpose at the time of consultation, uses the lawyer's advice or other services to engage in or assist a crime or fraud.

Rule 4-1.2 cmt [9]

[7] . . . The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

. . .

[9] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 4-1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

[10] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[11] Rule 4-1.2(f) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. . . .

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).

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

- (1) to prevent death or substantial bodily harm that is reasonably certain to occur;
- (2) to secure legal advice about the lawyer's compliance with these Rules;
- (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (4) to comply with other law or a court order; or

...

MODEL/ILLINOIS Rule 1.6(b)(2) & (3)

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

- (2) to prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

ILLINOIS Rule 1.6(b)(1) – Unique Rule

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 in circumstances other than those specified in paragraph (c);

KANSAS Rule 1.6(b)(1) – Unique Rule

A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) To prevent the client **from committing a crime**

Missouri Informal Opinion 2018-06

May Attorney report to law enforcement authorities a purported prospective client who contacted Attorney with the apparent objective of defrauding the lawyer by sending Attorney a bogus check for deposit in Attorney's trust account?

Informal Opinion 2018-06 – Answer

If Attorney has formed a client-lawyer relationship with the individual, Rule 4-1.6 prohibits disclosure of the suspected trust account scam unless the client gives informed consent, Attorney is required by law or a court order to disclose the information, or another exception to Rule 4-1.6 exists.

Missouri has no crime-fraud exception in Rule 4-1.6.

Whether a client-lawyer relationship exists is a question of fact and law outside the scope of the Rules of Professional Conduct. If the individual is a prospective client under Rule 4-1.18, Attorney may not use or disclose information gained in the consultation, except as Rule 4-1.9 would permit with respect to information of a former client.

If no client-lawyer relationship was formed and the individual does not qualify as a prospective client under Rule 4-1.18, Attorney has no duty of confidentiality regarding the information and is free to report the information to appropriate law enforcement authorities.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 515

March 5, 2025

A Lawyer's Discretion to Report When a Client Commits a Crime Against the Lawyer or Against Someone Associated with, or Related to, the Lawyer.

A lawyer who is the victim of a crime by a client or prospective client may disclose information relating to the representation to the appropriate authority in order to seek an investigation and potential prosecution of the alleged offender or other services, remedy, or redress. To the extent that the information would otherwise be subject to the lawyer's duty of confidentiality under Model Rule of Professional Conduct 1.6, the information is subject to an implicit exception to the Rule.

This implicit confidentiality exception also applies when someone associated with the lawyer or related to the lawyer is a victim of the client's crime and the lawyer is a witness to that crime.

Rule 4-1.7(a)

Except as provided in Rule 4-1.7(b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a **significant risk that the representation of one or more clients will be materially limited** by the lawyer's responsibilities to another client, a former client, or a third person or **by a personal interest of the lawyer.**

Rule 4-1.16(a) – Mandatory Withdrawal

Except as stated in Rule 4-1.16(c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

Rule 4-1.16(b) – Permissive Withdrawal

Except as stated in Rule 4-1.16(c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

Rule 4-1.16(c) – Tribunal Authorization

A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation unless the lawyer has filed a notice of termination of limited appearance. Except when such notice is filed, a lawyer shall continue representation when ordered to do so by a tribunal notwithstanding good cause for terminating the representation.

Rule 4-1.16(d) – Obligations Upon Withdrawal

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

In re Krigel (Mo. 2016)

- Lawyer represents Mother in action to terminate parental rights
- Mother (and Lawyer) know that Father intends to contest termination
- Mother does not tell Father child is born or hearing is set
- Lawyer asks Mother questions to suggest that Father agrees with termination

In re Krigel (Mo. January 2016)

- Krigel had violated Rule 4-3.3 by soliciting false testimony, in that Krigel knew the testimony omitted essential information (that father wanted to claim parental rights but was unaware of birth)
- Krigel received a one-year "stayed suspension" with two years of probation

Missouri Informal Opinion 950018

QUESTION: Attorney represented a client and withdrew when he learned that his client may be involved in fraud related to the matter. Attorney has now been subpoenaed to testify about the situation in a proceeding before an administrative law judge. May Attorney testify?

ANSWER: If the former client does not consent, Attorney may not testify unless ordered to do so by the administrative law judge after the issue of confidentiality under Rule 4-1.6 has been fully raised and Attorney has been ordered to testify. Attorney should seek to have any such order as specific and limited as possible. Attorney will not be required to appeal the ruling of the administrative law judge.

Missouri Informal Opinion 20010050

Attorney is representing Client in a suit to recover damages that were the result of a motor vehicle accident. **The accident was caused by a hit and run driver, therefore Attorney pursued Client's personal injury claim to settlement as an uninsured motorist claim against Client's insurance carrier.**

However, a subsequent police investigation **located the driver of the hit and run vehicle. Attorney sent a letter to the driver and received a response from an insurance carrier purportedly covering the other vehicle.** That letter indicates that the matter is under investigation by them under a full reservation of rights.

Attorney **has not notified Client's insurance carrier** that there is a possibility that coverage exists on the other motor vehicle involved in the accident.

Attorney is at a loss to know what Attorney's ethical obligations are in this situation.

Does Attorney have an obligation to advise the uninsured motorist carrier of the possibility of insurance coverage on the other motor vehicle?

May Attorney pursue the claim against the liability carrier to a settlement on behalf of Client, if so, if a settlement is reached with the liability carrier, does Attorney have an obligation to reimburse the uninsured motorist carrier out of such settlement if Client were to object to doing this?

Informal Opinion 20010050 – Answer

Attorney's first step should be to **review Client's legal obligations to Client's insurance company**. Attorney should then advise Client on Client's legal obligations and options. If Client chooses to proceed in a manner that Attorney believes will involve **dishonesty or fraud, Attorney should seek to withdraw**. Attorney does not have an independent obligation under Supreme Court Rule 4 to notify Client's insurance company of the claim against the other insurance company, regardless of the outcome.

Missouri Informal Opinion 2019-01

Attorney's Client in a pending dissolution sent Attorney electronic copies of email correspondence between opposing party and various third persons, including opposing party's counsel.

Client obtained access to the information through opposing party's email account, for which Client possesses login information.

What is Attorney required to do with the information?

Questions to Ask

- What information was received?
- From whom was it received?
- How was it obtained?

Informal Opinion 2019-01 – Answer

Whether Client inappropriately or wrongfully obtained opposing party's communications with others is a question of law and fact outside the scope of an informal ethics opinion.

If Attorney knows or should know the information was [inadvertently sent](#), Rule 4-4.4(b) requires Attorney to promptly notify the sender.

If the information was [inappropriately or wrongfully obtained](#), [use of the information by Attorney may violate Rule 4-4.4\(a\)](#), Respect for Rights of Third Persons, and/or Rule 4-8.4(c), which forbids engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See also Rule 4-4.4, Comment [1].

Attorney should review applicable law as to Attorney's legal duties regarding inappropriately or wrongfully obtained information, including whether to notify the sender to allow protective action to be taken, and whether to return, delete, destroy or otherwise make inaccessible any inappropriately or wrongfully obtained information. See Rule 4-1.2, Comment [2].

If Attorney has an ethical or legal duty to disclose Attorney's possession of the information, failure to do so could violate Rule 4-3.4, Fairness to Opposing Party and Counsel. But see Rules 4-1.6 and 4-1.8(b).

Attorney should consult with the client about Attorney's professional obligations related to the information and aspects of the matter that are in Attorney's professional judgment per applicable law and court rules. See Rule 4-4.4, Comment [3]; see also Rules 4-1.2 and 4-1.4.

Missouri Informal Opinion 2017-04

Question: *May Attorney comply with a court Order directing Attorney to provide to law enforcement information related to the representation of Client*, where Client declines to give informed consent for Attorney to provide the confidential information?

Answer: Rule 4-1.6(b)(4) allows Attorney to reveal confidential information to the extent reasonably necessary to comply with other law or a court order. Rule 4-3.4(c) forbids a lawyer from knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no obligation exists. Before complying with the Order, and absent informed consent from Client to do otherwise, attorney should assert on Client's behalf all nonfrivolous claims that the Order is not authorized by other law or that the information is protected by the attorney-client privilege or other applicable law. See Rule 4-1.6, Comment [11]. If Attorney's challenge is denied, Attorney must consult with Client about the possibility of appeal, to the extent required by Rule 4-1.4. See Rule 4-1.6, Comment [11]. If review is not sought, or if Client is no longer Attorney's current client at the time of the adverse ruling, Attorney is free to comply with the Order. Rule 4-1.6(b)(4). If Attorney lacks a good faith basis for an original or further challenge to the Order, Attorney is free to comply with the Order and may be required to do so pursuant to Rule 4-3.4(c).

Missouri Informal Opinion 2019-02

Attorney represents Employer in the defense of a civil employment matter related to the employment and subsequent discharge of Plaintiff. Employer believes Plaintiff engaged in criminal conduct during employment. Based on information Attorney has learned during discovery, Attorney has reason to believe evidence of Plaintiff's criminal conduct during employment, which was in the possession of Plaintiff's counsel, has been destroyed.

Question 1: Is it permissible for Attorney to inform Plaintiff's counsel that unless Plaintiff dismisses the civil matter or enters into a settlement as proposed by Employer, Attorney will refer Plaintiff's employment-related conduct to the prosecutor for possible criminal charges?

...

Informal Opinion 2019-02 – Answer 1

Attorney's threat to refer the employment-related conduct of Plaintiff for criminal prosecution would constitute conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d) unless

- Attorney has actual intent to refer the matter for prosecution if the matter is not dismissed or settled (see Rule 4-4.1);
- the conduct underlying the alleged criminal offense is related to the civil action and the use of the threat does not constitute a crime (see Rule 4-8.4(b));
- Attorney has a non-frivolous, good faith belief based in law and fact that the employment-related conduct of Plaintiff was unlawful (see Rule 4-3.1); and
- Attorney's use of the threat would not lack a substantial purpose other than to embarrass, delay, or burden the Plaintiff or another person (see Rule 4-4.4(a)). See also Informal Opinions 990042 and 20010149.

Because some jurisdictions consider the use of a threat to file criminal charges to gain leverage in civil litigation to be a violation of the Rules of Professional Conduct regardless of the circumstances, Attorney should use caution if the conduct could be judged by the rules of professional conduct of another jurisdiction. See Rule 4-8.5.

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://www.surveymonkey.com/r/candor1225>

Certificate of Completion – Available through the Post-Program Survey

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Timed Agenda

12:00-05 Introduction

12:05-55 Discussion of a lawyer's duty of candor and dealing with dishonest clients

Future Programs

December 17 – Wednesday at 12:00 Noon CT – **Legal Ethics and Criminal Law**

January 7 – Wednesday at 12:00 Noon CT - **Legal Ethics Update 2026 - Part I**

January 22 – Thursday at 12:00 Noon CT - **Neurodiversity in the Legal Profession**

February 5 – Thursday at 12:00 Noon CT - **Missouri's Lawyer Discipline System -- and How to Avoid It**

February 17 – Tuesday at 3:00 PM CT - **Conflicts of Interest Update 2026**

March 4 – Wednesday at 12:00 Noon CT - **Lawyer Professionalism and Ethics**

March 19 – Thursday at 12:00 Noon CT - **Exceptions to the Duty of Confidentiality**

Thank you



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