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What's New in Legal Ethics 2026 – Part I

January 2026

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Marketing Issues

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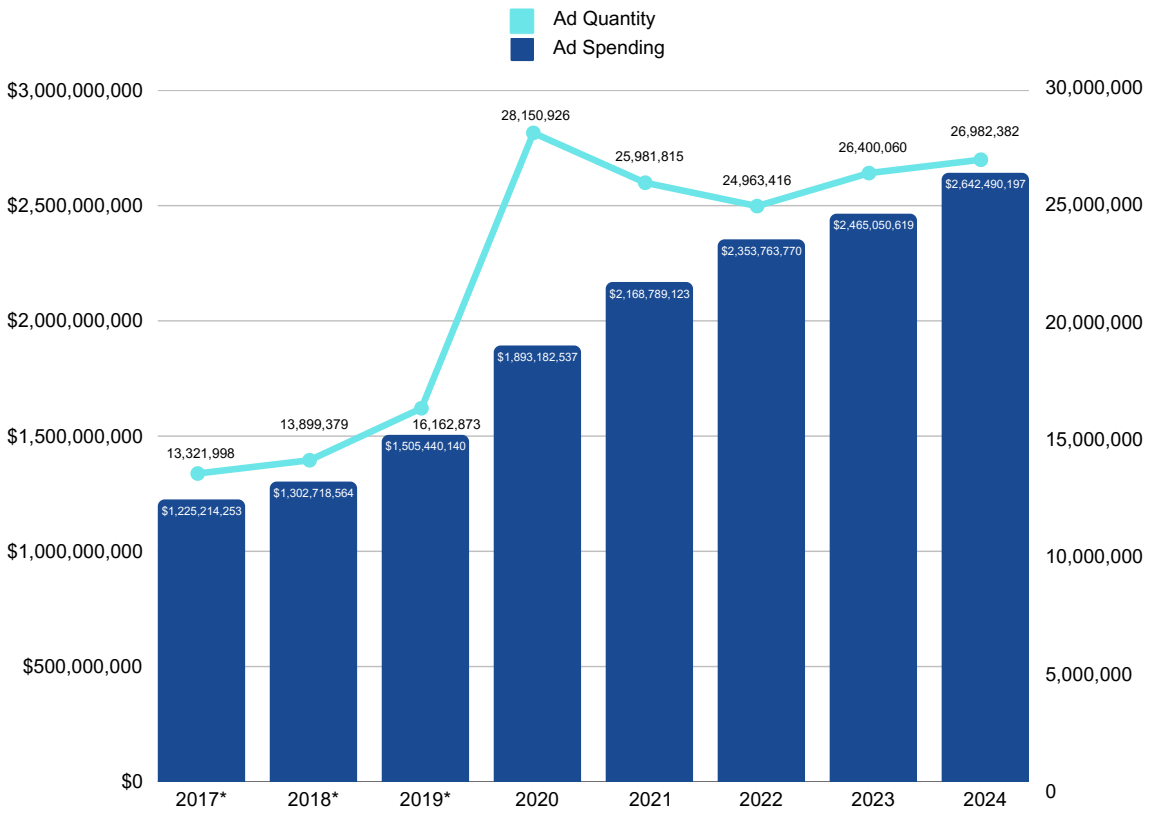
Nationwide Data



*Does not include print or digital

ATRA

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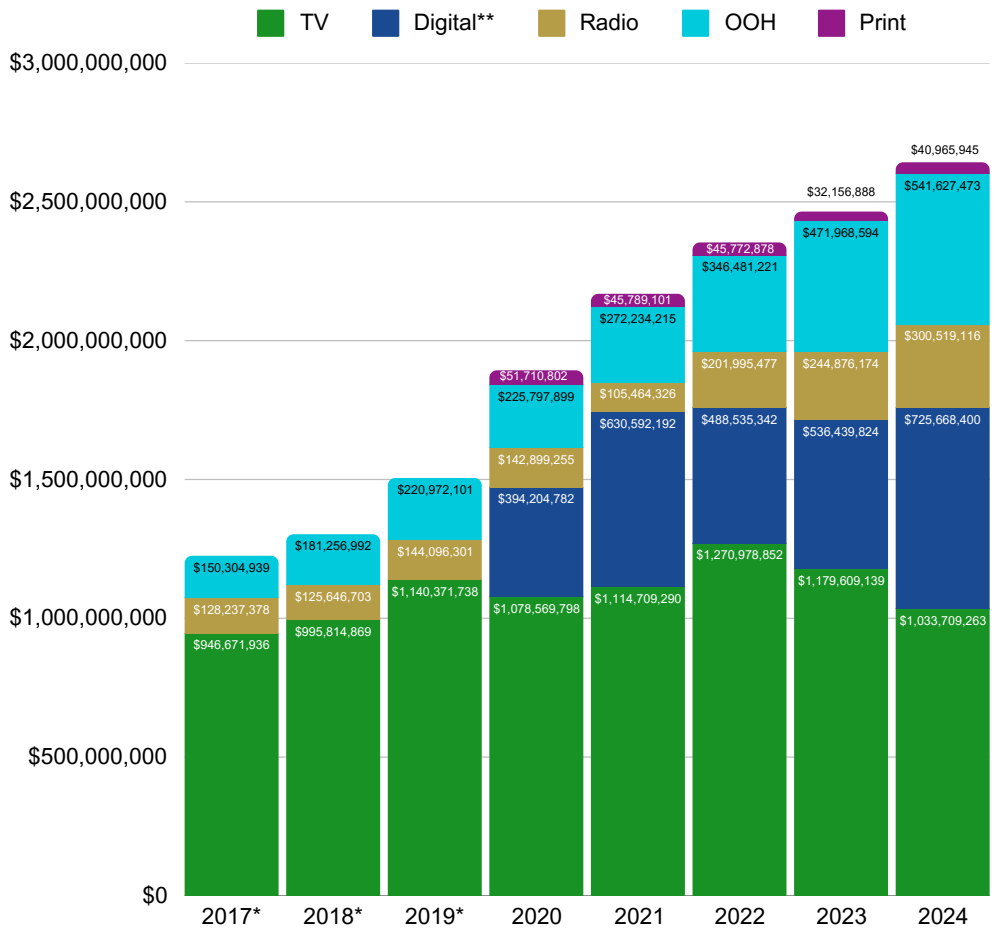
Nationwide Data
Ad Spending by Medium



*Does not include print or digital
**Digital excludes social media

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Missouri Informal Opinion 2025-05 (July 2025)

Lawyer asks whether it is permissible to pay an online marketing company for client lead generation services.

The marketing company attracts potential legal clients through internet advertisements.

The marketing company then obtains contact information for potential clients along with information regarding the potential clients' legal needs.

The company forwards a potential client's information to an attorney participating in the referral service and shows the potential client a profile of that attorney.

If the potential client wishes to hire the attorney, the potential client can contact the attorney directly by clicking on a link on the marketing company's website.

The marketing company charges the attorney a particular dollar amount for the referral, but characterizes the charge as advertising fees.

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Informal Opinion 2025-05 – Answer

Lawyer's use of the lead generation service described above is permissible only if the service complies with Rule 4-9.1 - Lawyer Referral and Information Services.

Rule 4-9.1 is applicable to all services that refer particular potential clients to particular lawyers, regardless of the name or characterization of the activities or fees used by the service. *See Rules* 4-9.1(d) and 4-7.2(c).

A lawyer's use of a referral service that fails to comply with Rule 4-9.1 violates Rule 4-9.1(b).

Any lawyer referral service used by a lawyer must be a "qualified service" in that it must conform to the requirements of Rule 4-9.1. *In re Agron*, 701 S.W.3d 623, 629 (Mo. banc 2024); *see also* Rule 4-9.1(b). This requires the service to register with the Office of Chief Disciplinary Counsel ("OCDC") and "demonstrate [to the OCDC] its compliance with the other requirements of Rule 4-9.1 before commencing to operate." Id.

Rule 4-7.2(c), which addresses referral fees, only permits Lawyer to pay the fee if the service is a "qualified service" registered with OCDC. If the marketing company is not a "qualified service" registered with OCDC, Lawyer's use of the service violates both Rules 4-7.2(c) and 4-9.1(b).

Before using the lead generation service described above, Lawyer should contact OCDC and ascertain whether the marketing company is a "qualified service" registered with OCDC pursuant to Rule 4-9.1.

Rule 4-9.1

(a) The operation of this Rule 4-9.1 and compliance with its provisions shall be supervised by the chief disciplinary counsel. The chief disciplinary counsel shall develop and promulgate regulations, procedures, and forms not inconsistent with this Rule 4-9.1, including the amount of the fee to register a qualified service, subject to approval by this Court.

(b) Lawyers eligible to practice in this state may participate in a service that refers them to prospective clients, but only if the service is a qualified service because it conforms to this Rule 4-9.1.

(c) A qualified service shall be operated in the public interest for the purpose of referring prospective clients to lawyers, pro bono and public service legal programs, and government, consumer, or other agencies that can provide the assistance the clients need in light of their financial circumstances, spoken language, any disability, geographical convenience, and the nature and complexity of their problems.

(d) Only a qualified service may call itself a lawyer referral service or operate for a direct or indirect purpose of referring potential clients to particular lawyers, whether or not the term 'referral service' is used.

(e) A qualified service must be open to all lawyers licensed to practice in this state who:

(1) maintain an office within the geographical area served,

(2) pay reasonable fees established by the service, and

(3) maintain in force a policy of errors and omissions insurance in an amount at least equal to the minimum established by the chief disciplinary counsel.

A qualified service shall establish and publish a procedure for admitting, suspending, or removing lawyers from its roll of panelists.

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(f) No fee generating referral may be made to any lawyer who has an ownership interest in, or who operates or is employed by, a qualified service or who is associated with a law firm that has an ownership interest in, or operates or is employed by, a qualified service.

(g) A qualified service shall periodically survey client satisfaction with its operations and shall investigate and take appropriate action with respect to client complaints against panelists, the service, and its employees.

(h) A qualified service may establish specific subject matter panels, including moderate and no fee panels, foreign language panels, alternative dispute resolution panels, and other special panels that respond to the referral needs of the consumer public, eligibility for which shall be determined on the basis of experience and other substantial objectively determinable criteria.

(i) A qualified service shall:

(1) register with the chief disciplinary counsel and demonstrate its compliance with this Rule 4-9.1 before commencing to operate;

(2) update the materials filed with the chief disciplinary counsel within 30 days of any material change; and

(3) on or before June 30 annually, file with the chief disciplinary counsel a report of its operations and finances during the previous twelve months demonstrating its continued compliance with this Rule 4-9.1.

(j) This Rule 4-9.1 does not apply to:

(1) a group or prepaid legal plan, whether operated by a union trust, mutual benefit or aid association, corporation, or other entity or person that provides unlimited or a specified amount of telephone advice or personal communication at no charge to the members or beneficiaries, other than a periodic membership or beneficiary fee, and that furnishes or pays for legal services to its beneficiaries;

(2) a plan of prepaid legal services insurance authorized to operate in this state;

(3) individual lawyer-to-lawyer referrals;

(4) lawyers jointly advertising their own services in a manner that discloses that such advertising is solely to solicit clients for themselves;

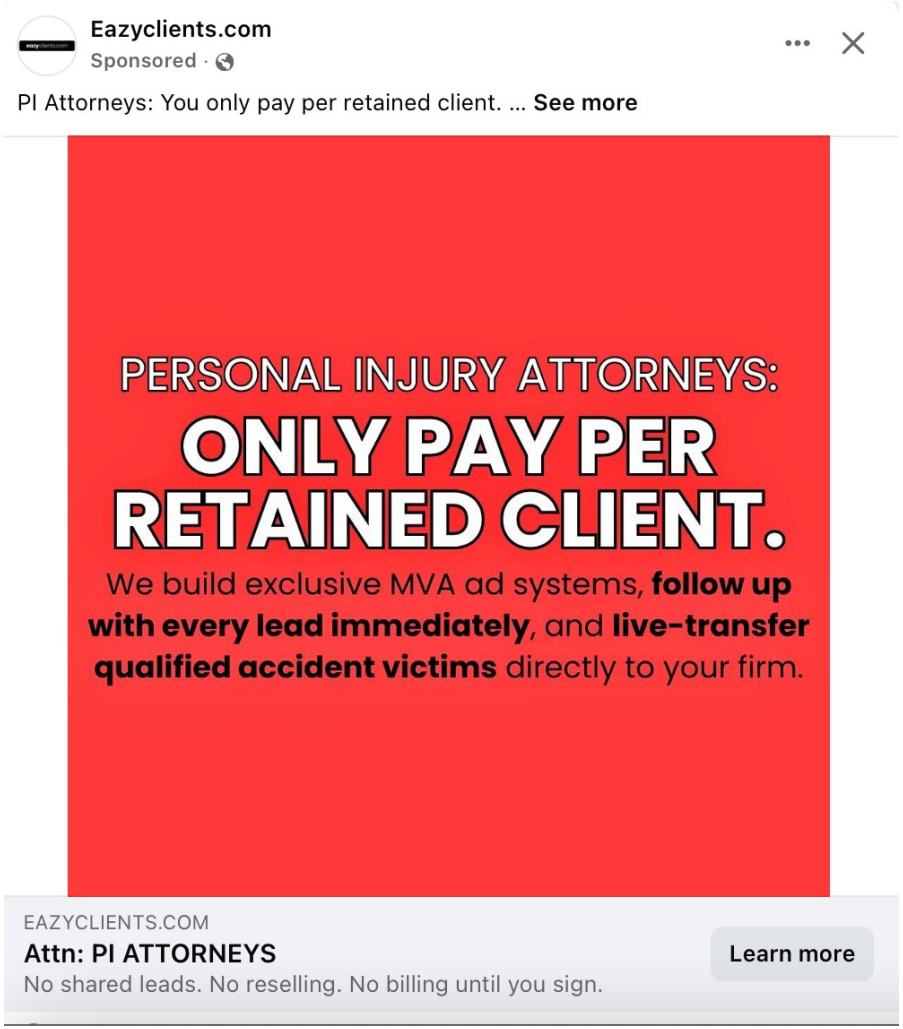
(5) any pro bono legal assistance program that does not accept any fee from clients for referrals; or

(6) any organization maintaining a 26 USC 501(c)(3) exemption that maintains a referral list only incident to its other activities.

(k) A disclosure of information to a lawyer referral service for the purpose of seeking legal assistance or for purposes of complying with the survey under Rule 4-9.1(g) shall be deemed a privileged lawyer-client communication.

(l) The chief disciplinary counsel may deny, suspend, or cancel any registration upon making a finding of a material violation of any provisions of this Rule 4-9.1. Any person who is substantially and individually aggrieved by the action of the chief disciplinary counsel may, within 30 days of receiving notice of the action, petition this Court for review of the action of the chief disciplinary counsel. This Court may direct that the issues raised in the petition be briefed and argued as though a petition for an original remedial writ has been sustained. This Court may sustain, modify, or vacate the action of the chief disciplinary counsel or dismiss the petition.

(m) Any person violating the provisions of this Rule 4-9.1 shall be deemed to be engaged in the unauthorized practice of law.



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NYSBA Opinion 1286 (9/2025)

Topic: Requesting former clients to write Google reviews

Digest: A lawyer may ask a former client to write a Google review of the lawyer's services and may offer the former client a nominal gift for doing so, provided the lawyer does not draft the Google review for the client or condition the gift on the content of the review.

The lawyer may not use the former client's confidential information to the disadvantage of the former client.

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Settlement Ethics

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Missouri Informal Opinion 2025-06 (July 2025)

Lawyer represents a client in a [marital] dissolution action.

Client has been charged with domestic assault concerning his spouse.

Lawyer would like to condition dissolution settlement upon the client's spouse requesting the dismissal of the domestic abuse charge and/or declining to cooperate in the criminal prosecution.

Lawyer asks if it is permissible to request such conditions?

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Informal Opinion 2025-06 – Answer

Lawyer's proposal would violate Rule 4-8.4(d) as conduct prejudicial to the administration of justice. See also Missouri Formal Opinion 122 and Informal Opinion 2019-02.

This is because a civil settlement that requires the dismissal of criminal charges is contrary to public policy concerns of holding criminal perpetrators accountable and deterring repeated criminal offenses.

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Missouri Informal Opinion 960010

QUESTION: Attorney represents Client A who is charged with defrauding X.

(1) May Attorney request that X consider signing an affidavit of non-prosecution in which X would formally state that X does not desire that the criminal action proceed further?

(2) May Attorney negotiate for Client A to make restitution to X in an amount that does not exceed X´s actual loss?

ANSWER: (1) Yes. (2) Yes.

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ABA Formal Opinion 518 (October 2025)

A Lawyer's Duties to Avoid Misleading Communications When Acting as a Third-Party Neutral Mediation

Rule 2.4 of the ABA Model Rules of Professional Conduct addresses a lawyer's duties when acting as a third-party neutral and defines third-party neutral as a lawyer who assists two or more persons – who are not clients of the lawyer – to reach a resolution of a dispute.

Under Rule 2.4(b), a lawyer acting as a third-party neutral must inform unrepresented parties that the lawyer-mediator does not represent them. Paragraph (b) also requires the lawyer-mediator to explain the difference between the lawyer-mediator's role as a third-party neutral and the role of a lawyer representing a client in a mediation when the lawyer knows or reasonably should know that the parties do not understand the mediation process. Therefore, in most instances, unless the parties are sophisticated consumers of mediation services, the lawyer-mediator should ensure that all persons involved in the mediation understand the role of the lawyer-mediator.

Although a lawyer is not subject to many of the Model Rules when acting as a third-party neutral mediator, a lawyer-mediator is subject to Rule 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. A lawyer-mediator may not give credence to statements the lawyer-mediator knows to be false or personally make statements that the mediator knows to be false.

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Zucker v. Johnson & Bell
(N.D. Ill. 10-2025)

- CannaBoss owed Zucker $2.2M and gave Zucker priority on this debt
- Johnson & Bell represented CannaBoss on lawsuit that settled for $500,000
- Johnson & Bell received settlement funds into IOLTA and paid itself
- Zucker sued J&B
- Court denied motion to dismiss conversion claim against J&B
- Court rejected claim for breach of Rule 1.15 and of fiduciary duty

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Conflict Issues

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Missouri Informal Opinion 2025-07 (August 2025)

Lawyer has been appointed as guardian ad litem (GAL) for a 16-year-old mother in an abuse and neglect proceeding.

Can Lawyer also serve as guardian ad litem for the infant child of the 16-year-old mother in that same proceeding?

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Informal Opinion 2025-07 – Answer

Lawyers who are appointed to act as guardians ad litem (GALs) are required to act in accordance with the Rules of Professional Conduct. *See* Standards with Comments for Guardians ad Litem in Juvenile and Family Court Division Matters, Standard 1.0, Comment.

In this situation, Lawyer needs to make a determination under Rule 4-1.7(a) whether the responsibilities of serving as guardian ad litem for the 16-year-old mother and the infant would be directly adverse to one another or materially limited by the responsibilities to each person.

Lawyer must consider the relevant legal and factual issues as to each person.

If Lawyer believes there is a conflict per Rule 4-1.7, Lawyer should decline the appointment as guardian ad litem for one or both of the individuals by following Rule 4-6.2(a), which addresses declining appointments if the appointment will result in the lawyer violating the Rules of Professional Conduct. *See also* Missouri Informal Opinions 2017-03 and 2018-14.

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Missouri Informal Opinion 2025-09 (August 2025)

Lawyer works as a city attorney. Lawyer generally works with the Mayor, but also with the City Board and its Members.

One of the Board Members is asking Lawyer to take action contrary to the action directed by the Mayor and the Board as a whole.

Lawyer asks to whom Lawyer owes a duty to follow instructions and is confused as to whom Lawyer has a lawyer-client relationship — the City, Mayor, City Board, and/or its Members.

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Informal Opinion 2025-09 Answer

Whether a client-lawyer relationship exists is a question of fact and law beyond the scope of the Rules of Professional Conduct. Scope [17]. This office is unable to provide an Informal Opinion as to who is the client of Lawyer, but the Rules of Professional Conduct do provide steps for Lawyer to follow to make that determination.

First, Rule 4-1.13(a) provides that when Lawyer is employed or retained by an organizational client, which would include a governmental entity, Lawyer represents that organization by and through its duly authorized constituents. See Rule 4-1.13, Comments [1] and [6]. In this case, Lawyer represents the City. However, Lawyer is confused as to who is the duly authorized constituent Lawyer must follow for instructions regarding the representation, or if there is more than one duly authorized constituent. Per Comment [6] to Rule 4-1.13, guidance is provided as follows:

The duty defined in this Rule 4-1.13 applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. … This Rule 4-1.13 does not limit that authority. See Scope.

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Informal Opinion 2025-09 Answer (continued)

Additionally, Scope [18] states in relevant part:

> Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships….

With this guidance in mind, Lawyer should review any substantive law defining the role of the city attorney, as well as who is the duly authorized constituent, knowing that it may be more than one person or entity, such as the Mayor or City Board. That substantive law may set the scope of representation for the Lawyer in accordance with Rule 4-1.2(a). See Missouri Informal Opinion 2023-01. While Lawyer may represent both the City as well as another party, such as a Board Member or employee, per Rule 4-1.13(e), such dual representation would be subject to Rule 4-1.7 and require the City's informed consent, confirmed in writing, by an appropriate City official other than the individual who is to be represented. See Missouri informal Opinion 2021-05.

Given the unique role of Lawyer in the role as a city attorney, it is critical that Lawyer be mindful of the obligations under Rule 4-1.13(d) to be clear to others that Lawyer represents City, not other employees, members, or constituents when Lawyer knows or reasonably should know that the City's interests are adverse to those others with whom Lawyer is dealing. If Lawyer has inadvertently formed a client-lawyer relationship with others such that a conflict of interest exists under Rules 4-1.11(d) and 4-1.7 that is not subject to waiver, Lawyer will be required to withdraw from the representation in accordance with Rule 4-1.16(a)(1).

Lawyers As Whistleblowers

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In re Valdez (Kan. 8-2025)

- Judge announced plan to hold jury trial at local fairgrounds during COVID after consultation with all stakeholders
- Prosecutor criticized plan and said not consulted
- Judge released summary of communications with prosecutor's office
- Prosecutor responded with private text and second press release (see next slide)
- Hearing panel recommended public censure but Supreme Court imposed no penalty – no violation of Rule 3.5(d): "[a] lawyer shall not . . . engage in undignified or discourteous conduct degrading to a tribunal."

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Contents of Press Release

Chief Judge McCabria did not ask for my advice or for my input regarding the April jury trial plan. To suggest that he and I met personally or consulted about the jury trial plan, or that he invited or asked for my or my office's input is simply false. It is disappointing that Chief Judge McCabria has misrepresented my communication with him about the legitimate public safety concerns I have about trying serious high level felony jury trials at the Fairgrounds. Unfortunately, this is yet another example of how an outspoken and honest woman is mischaracterized as untruthful by a male in power.

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Reason for Holding

After reviewing the panel's factual findings, the record, the relevant caselaw, and the ABA Model Rules, we conclude that Valdez' conduct, which formed the basis for the disciplinary complaint, did not violate KRPC 3.5(d). Her press release—though sharply critical of the district court's decision to hold jury trials at the local fairgrounds during the COVID-19 pandemic and of Chief Judge McCabria's characterization of her office's involvement (or lack thereof) in the development of that plan—was not made in the context of an actual legal or other adjudicative proceeding. Similarly, her Facebook post, while arguably disparaging of the chief judge both personally and professionally, was also made outside an adjudicative setting. Given these facts, we view her commentary as speech and expression that falls beyond the limited scope of KRPC 3.5(d) and reject the panel's broad reading of the rule as extending to extrajudicial commentary about courts or judges, even when the comments are unwise, inappropriate, or offensive.

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Timmins v. Plotkins (10th Cir. 11-2025)

- Timmins served as GC for Water & Sanitation District
- Timmins discovered Board was violating open meeting laws, discussing privileged matters with conflicted attorney, and destroying emails relating to litigation
- After internal complaint was ignored, Timmins spoke to reporters and residents about wrongdoing
- Timmins was discharged and sued
- Appellate court reversed dismissal of claims

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Garcetti/Pickering Test

For the public employee to prevail under this test—widely known as the *Garcetti/Pickering* test—five elements must be established:

(1) The protected speech was not made pursuant to an employee's official duties.

(2) The protected speech addressed a matter of public concern.

(3) The government's interests as an employer did not outweigh the employee's free-speech interests.

(4) The protected speech was a motivating factor in the adverse employment action.

(5) The defendant would not have made the same employment decision in the absence of the protected speech.

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Complaints Not Part of "Official Duties"

Defendants say that Timmins had a "public-facing" role and therefore could not "take off her 'attorney hat' when she spoke to residents or to the press." Aplee. Br. at 26. They note that "'it is not at all unusual for a public employee's job to require contact, communication, [*12] and coordination with public and private persons outside the employee's agency.'" Id. at 29 . . ..

We do not disagree with that general statement. For example, Timmins certainly had to communicate with opposing counsel and the courts in her role as litigation attorney. But the general statement is inapplicable here. The complaint does not indicate any reason why a general counsel or litigation attorney for the Board would have an official duty to publicly criticize the Board for rejecting her advice.

Defendants' arguments to the contrary are unpersuasive. They rely, for example, on a statement in the preamble to the Colorado RPC saying that an attorney acts as an evaluator by "'examining [her] client's legal affairs' and 'reporting about them to the client or to others.'" Id. at 26 (quoting Colo. RPC Preamble (brackets in brief)). But the duty to report to nonclients obviously depends on the particular circumstances, and the complaint does not support such circumstances here.

In re McCarty (Mo. 7/2025)

- (Former) attorney for KC Police Department sent email disclosing KCPD information
  - Handling of internal complaints
  - Approach to Sunshine Act and *Brady/Giglio* responsibilities
- Court found violation of Rules 4-1.9(c) and rejected Rule 4-1.13 and First Amendment defenses
- Court imposed a minimum one-year suspension

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Collection of Law Firm Debts

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LPB MHC LLC v. Farmers State Bank of Alto Pass (S.D. Ill. Bank. June 2025)

- Plaintiff firm received loan from bank secured by interest in accounts receivables
- Principal attorney pled guilty to felonies and firm defaulted
- Court rejected summary judgment on certain counts

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Court Criticizes Bank for Ignoring Attorney Ethics

Farmers State Bank says that, because it has a security interest in the Debtor's accounts receivable and general intangibles, it can take any and all collection actions with impunity and without regard to other laws.

In its arguments, Farmers State Bank ignores the rules of professional conduct, Illinois law on settlement agreements, and Illinois law regarding the implied covenants of good faith and fair dealing. Each of these legal issues impact the decision here and will be discussed briefly.

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Confidentiality Concerns

Farmers State Bank began its collection efforts by sending multiple letters to the Debtor quoting the commercial security agreement and demanding that the Debtor turn over "any and all documents evidencing or constituting the collateral." Compliance with the request would have required the Debtor to provide Farmers State Bank complete copies of all client files. The Debtor obviously could not comply because some of the information in the files would be confidential and subject to privilege.

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Ownership of Funds Issues

Farmers State Bank could obtain from the Debtor no more than a lien on the attorneys' rights to the payment of fees after completing all tasks required on behalf of the client. Farmers State Bank cites no authority, and this Court finds none that would have allowed defense counsel or an insurance company to direct a portion of a client's settlement funds to Farmers State Bank without written direction from the client. And as explained below, Farmers State Bank could not have obtained such a direction without giving legal advice to the client and without interfering in the provision of legal services by the Debtor to the client. Farmers State Bank can make no credible claim that the commercial security agreement transferred to it the right to step into the Debtor's position and complete its duties to its clients. Likewise, the Court does not believe that the Debtor's attorneys could have transferred their ethical obligations to Farmers State Bank. Accordingly, there was no practical way for Farmers State Bank to reach the Debtor's interest in any contingent fee until the fee was fully earned and in the Debtor's trust account, and the client had authorized disbursement.

Scams Targeting Lawyers

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Missouri Informal Opinion 2025-08 (August 2025)

Lawyer received an unsolicited email from Potential Prospective Client seeking collection of a settlement agreement. The settlement agreement was with Potential Prospective Client's former employer, a Missouri based corporation with a website. Potential Prospective Client lives in another state far away from Missouri, so Lawyer only spoke with Potential Prospective Client over the phone and they corresponded by email. An engagement agreement was signed with Lawyer and returned by email.

Potential Prospective Client, now Client, asked Lawyer to work directly with the former employer to try to collect on the settlement before filing suit. Lawyer sent a demand letter to former employer at the email address contained on the signature block of the former employer, and, within a few days, Lawyer received a cashier's check that was for more than the funds required to satisfy the settlement agreement with Client, which were supposed to pay the Lawyer's fee.

Lawyer deposited the cashier's check into the client trust account and waited a few days. Client contacted Lawyer and asked for the funds to be wired immediately so Client could close on a house purchase the next day. Believing the cashier's check to be valid, Lawyer wired the funds per Client's instructions.

Missouri Informal Opinion 2025-08 (August 2025)

. . .

A few days later, Lawyer received notice from the financial institution where the client trust account is held, that the cashier's check was fraudulent, and that and the account was now significantly overdrawn. The funds of several other clients are now gone from the trust account. Lawyer is seeking a loan to try to return the funds to the trust account for the other clients. Lawyer can no longer reach Client and has started doing more research on the alleged settlement agreement. Lawyer has found that the email address on the settlement agreement where lawyer sent the demand letter does not match the format of email addresses listed online for the employees of the former employer. Lawyer reached out to former employer by a phone number listed on the former employer's website and is told the person who signed the purported settlement agreement is not an employee, nor is Client a former employee. Lawyer asks the following questions:

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Informal Opinion 2025-08
Question 1

May Lawyer report Client to law enforcement?

Answer 1: This question was addressed in Missouri Informal Opinion 2018-06. It is debatable as to whether an actual client-lawyer relationship formed in this scenario and is a question of fact and law outside the Rules of Professional Conduct. Scope [17]. However, Lawyer may report Client to law enforcement regardless of whether an actual client-lawyer relationship was formed. Rule 4-1.6, addresses attorney confidentiality for clients and prospective clients. It implicitly permits Lawyer to disclose the crime to law enforcement. See Informal Opinion 2018-06. This is because it is unreasonable for a lawyer to maintain confidentiality when the client has abused the relationship by committing a crime against the lawyer. In the alternative, if no client-lawyer relationship existed because the relationship was based upon a scam, no confidentiality attaches to the engagement.[1]

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Informal Opinion 2025-08
Question 2

Is Lawyer required to report the overdraft to the Office of Chief Disciplinary Counsel?

Answer 2: Rule 4-8.3, which addresses reporting professional misconduct, does not require Lawyer to self-report Lawyer's own misconduct to the Office of Chief Disciplinary Counsel. See Missouri Informal Opinions 2023-05 and 2011-04. Whether Lawyer chooses to do so is a matter of Lawyer's independent professional judgment. The Office of Chief Disciplinary Counsel will receive notice of the overdraft from the financial institution where the Lawyer's trust account is held. See Rule 4-1.15(a)(2).

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Informal Opinion 2025-08
Question 3

Is Lawyer required to disclose to those impacted clients that the funds are gone?

Answer 3: The loss of client funds should be reported to the impacted clients reasonably promptly as part of the duty to communicate with the client such that the client can make informed decisions regarding the representation in accordance with Rule 4-1.4(b). See also Missouri Informal Opinions 2022-07, 2020-26, 2017-02. Lawyer may also wish to reach out to Lawyer's risk management provider or private legal counsel for guidance that is beyond the scope of an Informal Opinion.

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Informal Opinion 2025-08
Question 4

What steps could Lawyer take in the future to avoid such fraudulent representations that are really scams?

Answer 4: In the future, Lawyer should be more diligent about scams. If it sounds too good to be true, it probably is. Scams have been around in a variety of forms for years, but lawyers need to train themselves and their nonlawyer staff to be mindful of scams, including cyber scams (i.e. phishing, social engineering, etc.). These responsibilities flow from the duties of competence per Rule 4-1.1, which, per Comment [6], includes keeping abreast of relevant changes in the law and its practice, including relevant technology. See also Rule 4-5.3.

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Informal Opinion 2025-08
Question 4 (continued)

Lawyers should be aware of email solicitations that sound like easy matters — collecting a judgment or settlement, especially if one party is out-of-state or in another country, or if the request for services seems out of the ordinary.

As part of the duty of diligence per Rule 4-1.3, lawyers should seek to verify who the client is and the legitimacy of the basis for the purported services requested. Another sign can be cashier's checks from distant or foreign banks, often for more than the amount to be collected explained as fees or a bonus for the lawyer. Since cashier's checks can be fraudulent, lawyers should work with their financial institutions to seek to verify validity of checks.

Further, pursuant to Rule 4-1.15(a)(6), lawyers should not make disbursements from trust accounts if there is reasonable cause to believe the funds have not actually been collected by the financial institution, i.e. good funds, and until a reasonable period of time has passed for the funds to be collected by the financial institution. See Rule 4-1.15 Comment [5]; Missouri Informal Opinion 2020-15. Lawyers should resist claims of urgency and pressure to make disbursements from trust accounts prematurely, otherwise lawyers may face overdraft and conversion of other client or third person funds in the trust account if the cashier's check is later dishonored.

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Warning: trust account scam.

DECEMBER 30, 2025 MICHAEL LEAVE A COMMENT

Fraudsters don't take holiday breaks.

(https://vtbarcounsel.wordpress.com/wp-content/uploads/2016/11/scam-alert.jpg)

Last night, two different people associated with the Vermont legal profession forwarded me "fraud alerts" from title insurance companies. Each alert warns of the same scam, one that targets law firms and has resulted in multiple reports over the past few days. Here's how it works:

- Bad Actor contacts Law Firm.
- Bad Actor pretends to be the "fraud department" of the bank where Law Firm maintains a client trust account.
- Bad Actor reports that the bank suspects fraudulent activity in the trust account.
- Bad Actor asks Law Firm to confirm log-in credentials and/or multifactor authentication tokens.

Do not!!

Dear v. Wilson (Ill. App. 1st 9-2025)

- Dispute over division of attorney fees
- Client signed attorney/client agreement with no notary present, and then law firm employee later notarized it . . .
- (In this case, court held improper notarization did not bar *quantum meruit* recovery)

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Ethics and Discrimination

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ABA Formal Opinion 517 (July 2025)

Discrimination in the Jury Selection Process

A lawyer who knows or reasonably should know that the lawyer's exercise of peremptory challenges constitutes unlawful discrimination in the jury selection process violates Model Rule 8.4(g).

It is not “legitimate advocacy” within the meaning of Model Rule 8.4(g) for a lawyer to carry out a trial strategy that would result in unlawful juror discrimination.

A lawyer may not follow a client's directive or accept a jury consultant's advice or AI software's guidance to exercise peremptory challenges if the lawyer knows or reasonably should know that the conduct will constitute unlawful juror discrimination.

However, a lawyer does not violate Rule 8.4(g) by exercising peremptory challenges on a discriminatory basis where not forbidden by other law.

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Bar Admission Issues

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Legal Education

- 18% increase in applications in 2025 and 20% increase in 2026 (to date)
- 8% increase in first-year enrollments

- Cap of $50,000 per year in professional degree borrowing ($200,000 cumulative)
- More than 50% of ABA-approved law schools exceed $50,000 in tuition (29 exceed $70,000)

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- Texas Supreme Court is developing a way to assess who may sit for bar examination
- FTC has advised ABA is a “monopoly” with regard to legal education

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New Bar Examination

- Focus on practical lawyering skills while scaling back test of substantive material
- Nine hours over two days (6 and 3 hours)
- Question types
  - Multiple choice
  - Integrated question sets combining multiple choice and short answer based on a fact scenario (with possible documents, statutes, etc.)
  - 60-minute performance task

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Subjects on NextGen

- Civil Procedure
- Contract Law
- Evidence
- Torts
- Business Associations (including Agency and Partnership)
- Constitutional Law
- Criminal Law and Procedure
- Real Property
- Family Law (starting in July 2028)
- Legal research
- Legal writing
- Issue spotting and analysis
- Investigation and evaluation
- Client counseling and advising
- Negotiation and dispute resolution
- Client relationship management

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Missouri – July 2026

Illinois – February 2028

Kansas – July 2028

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Withdrawal

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ABA Formal Opinion 519 (December 2025)

Disclosure of Information Relating to the Representation in a Motion to Withdraw From a Representation

When moving to withdraw from a representation, a lawyer's disclosure to the tribunal is limited by the duty of confidentiality established by Rule 1.6(a) of the ABA Model Rules of Professional Conduct. Unless an explicit exception to the duty of confidentiality applies or the client provides informed consent, the lawyer may not reveal "information relating to the representation" in support of a withdrawal motion. Disclosure of information relating to the representation is not "impliedly authorized in order to carry out the representation" under Rule 1.6(a) or otherwise impliedly authorized even when Rule 1.16(a) requires the lawyer to seek to withdraw. If disclosure is permitted by an exception to the duty of confidentiality, such as when disclosure is required by a court order, it must be strictly limited to the extent reasonably necessary and, whenever possible, made through measures that protect confidentiality such as by making submissions in camera or under seal.

The Model Rules require that any disclosure in support of withdrawal be narrowly tailored, protective of the client's interests, and undertaken only within the scope of an applicable exception. When the client does not give informed consent to disclosing information relating to the representation in support of a motion to withdraw, and there is no applicable exception to the duty of confidentiality, lawyers should proceed in stages: begin with a motion citing only "professional considerations" or employing similar language to justify the motion; if the court seeks further information, assert all non-frivolous claims for maintaining confidentiality consistent with Rule 1.6(a); and, if ordered to disclose additional information relating to the representation, do so in the narrowest possible manner. Ultimately, the lawyer's paramount duty is to preserve client confidentiality, even at the risk that the tribunal may deny the motion to withdraw.

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Under Rule 1.16(c), a lawyer representing a client before a tribunal must follow applicable law requiring notice to and permission of the tribunal before terminating a representation. Rule 1.16(c) provides: “A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” If the court denies permission to withdraw and requires the lawyer to continue the representation, the lawyer must do so.

Courts Differ in How They Address Withdrawal Motions

In some situations, a court may grant a lawyer's motion to withdraw from a representation when only the barest facts are presented, particularly when the client consents to the motion or when another lawyer is available to substitute as counsel in a timely fashion. In other situations, however, the court will not grant the motion unless it is satisfied that there is a justification, or perhaps even a compelling basis, for the lawyer to withdraw. In that event, the court may expect the lawyer to explain the basis for the withdrawal motion and perhaps to do so in significant detail.

Given the breadth of the information protected by Rule 1.6(a), it is difficult, and often impossible, for a lawyer to explain the basis for seeking to withdraw without disclosing some “information relating to the representation.” As ABA Formal Ethics Opinion 511R (2024) observed, “Rule 1.6 protects 'all information relating to the representation, whatever its source' and is not limited to communications protected by attorney-client privilege.”

Rule 1.6 applies to the disclosure of confidential information to the court no less than to others outside the client-lawyer relationship. Consequently, for some matters, merely citing a relevant provision of Rule 1.16(a) may constitute an implicit disclosure of “information relating to the representation.” Providing a fuller explanation will result in an explicit and more extensive disclosure and may be harmful to the client.

A client's consent to the lawyer's withdrawal motion may obviate the need to explain the basis for the motion. Further, a client may give “informed consent” to disclosures that the lawyer deems necessary to make in support of a withdrawal motion.

A review of judicial decisions indicates that courts take differing positions with respect to how much information a lawyer must provide in a motion to withdraw. In some cases, courts appear to expect lawyers to explain the grounds for moving to withdraw. Some courts have authorized lawyers to submit information relating to the representation in camera or under seal to the extent necessary to support a withdrawal motion.

In some cases, courts have accepted lawyers' extensive disclosures without reference to the lawyer's duty of confidentiality. For example, in Whiting v. Lacara, 187 F.3d 317 (2d Cir. 1999), the plaintiff's lawyer supported a withdrawal motion, on discretionary grounds, with an affidavit asserting that his client failed to follow legal advice, was not focused on his legal rights, demanded publicity contrary to the lawyer's advice, failed to keep adequate contact with the lawyer's office, was not thinking sufficiently clearly to assist at trial, insisted that the lawyer argue collateral issues and a claim that the court had dismissed, demanded that the lawyer serve a Rule 68 Offer of Judgement on the defendants, and had entered the lawyer's office and, without permission, riffled through his inbox, and refused to leave. The lawyer offered to provide further information to the court in camera. Id. at 319. The court of appeals found the lawyer's withdrawal was justified without considering whether the lawyer's disclosure was impermissible or excessive.

In other cases, courts have disciplined lawyers for volunteering information protected by Rule 1.6 in a withdrawal motion.5 Many courts agree that, to the extent a lawyer may disclose confidential information in support of a motion to withdraw, the lawyer may not make unnecessary, or unnecessarily broad, disclosures. Disclosures violate Rule 1.6 when there is no need for them or when they are broader than needed for them. See, e.g., People v. Waters, 483 P.3d 753, 761 (Colo. 2019). Additionally, courts have found that, while a lawyer may submit information relating to the representation in camera for the court's consideration, the lawyer may not publicly file the information.

State ethics opinions that have addressed the issue have advised lawyers not to voluntarily provide information protected by Rule 1.6 for the purpose of establishing a justification for terminating a representation. Some opinions take the view that lawyers may provide only the barest facts, unless a court orders greater disclosure. Even then, lawyers must assert the lawyer's duty of confidentiality and all applicable privileges, including the attorney-client privilege, insofar as applicable. An ethics opinion of the New York State Bar Association concluded that a lawyer moving to withdraw may not disclose information protected by New York's version of Rule 1.6 unless the client consents or the court directs the lawyer to do so. NYSBA Ethics Op. 1057 (June 5, 2015). Likewise, an ethics opinion of the State Bar of California concluded that, although a lawyer may begin by reciting general language in support of a withdrawal motion and, if pressed, “provide additional background information,” a lawyer “may not disclose confidential communications or other confidential information – either in open court or even in camera.” CA Formal Op. 2015-192. 7

Neither Rule 1.6 nor Rule 1.16 Implicitly Authorizes the Disclosure of Information Relating to the Representation in Support of a Motion to Withdraw

Rule 1.6 governs the extent to which a lawyer may provide information in support of a motion to withdraw from a representation. Rule 1.6(a) provides that, absent an applicable exception, "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent [or] the disclosure is impliedly authorized in order to carry out the representation." Neither Rule 1.6 nor Rule 1.16 specifically authorizes a lawyer to provide information relating to the representation in support of the lawyer's motion to withdraw, even when withdrawal may be mandatory under Rule 1.16(a). Nor does either Rule establish an implicit exception to the duty of confidentiality.

The Committee recognizes that on some occasions when the duty of confidentiality limits the lawyer's ability to fully justify a withdrawal motion, the tribunal will not be satisfied that the motion is adequately justified and will deny the motion even when seeking to withdraw is mandatory under Rule 1.16(a). However, the drafters of the Model Rules recognized and accepted this possibility in light of the paramount importance of the duty of confidentiality. Comment [3] to Rule 1.16 alludes to this possibility:

Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Disclosure of confidential information in support of the lawyer's motion to terminate the representation is not "impliedly authorized [by the client] in order to carry out the representation" under Rule 1.6(a), since the purpose is not to carry out the representation but to end it. Nor does Model Rule 1.16 implicitly authorize lawyers to disclose confidential information to justify or explain a withdrawal motion. Implicit exceptions to the duty of confidentiality are rare. In ABA Formal Ethics Opinion 515, the Committee recently recognized one such implicit exception permitting the disclosure of some information relating to the representation when the lawyer is the victim of a crime by a client. We explained that the Model Rules are rules of reason and "[w]hat makes applying Rule 1.6(a) unreasonable here is that doing so serves no good purpose and would cause affirmative harm that seemingly was not contemplated by the Rule drafters, who, as far as we are aware, did not specifically consider the problem of clients' crimes against their lawyers."

In contrast, the drafters specifically considered the tension between the confidentiality obligation and Rule 1.16(c) and opted not to carve out an exception to the duty of confidentiality whenever lawyers seek the court's permission to withdraw.

Therefore, we conclude that the lawyer's duty to maintain the confidentiality of information relating to the representation remains paramount absent the client's informed consent or an applicable provision of the Model Rules that permits or requires disclosure of confidential information. The duty of confidentiality under Rule 1.6 limits the lawyer's ability to disclose facts about a client to the court, even ex parte.

Practically speaking, a lawyer will rarely be in a situation where the lawyer is irreparably caught between violating Rule 1.6's confidentiality requirements and Rule 1.16's mandatory withdrawal requirement. As discussed below, there are a sufficient number of intervening steps and remedies which can be taken to avoid the worst-case scenario of being required to remain in a representation that violates Rule 1.16(a). The existence of these options justifies the drafters' decision not to dilute our fundamental confidentiality requirement with an exception in this situation.

We now turn to what information the lawyer may provide and how to approach the motion to withdraw in a way designed to accomplish its goal without running afoul of Rule 1.6.

A Lawyer May Support the Motion with Personal Information that is Not Related to the Representation

In some situations, a lawyer may adequately justify a motion to withdraw from the representation by providing information that is not protected by Rule 1.6 because it is not related to the representation. For example, when a lawyer seeks to withdraw because “the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client,” the lawyer can ordinarily provide a fulsome explanation without revealing information protected by Rule 1.6. For example, a lawyer could move to withdraw, citing Rule 1.16(a)(2) and noting that the lawyer just suffered a heart attack or that the lawyer is otherwise unable to effectively represent the client.

Motions to withdraw premised on the lawyer's own material impairment can reveal whatever information the lawyer wishes so long as it pertains to the lawyer and not to the representation of the client.

A Lawyer May Secure the Client's Informed Consent to Disclosures

In other situations, a client will give “informed consent” to the lawyer's disclosure of information needed to adequately explain the lawyer's motion. For example, when a lawyer is required to withdraw under Rule 1.16(a)(3), the client will ordinarily authorize the lawyer to disclose the basis of the motion – that the client discharged the lawyer. In other situations, it will also be in the client's interest for the lawyer to disclose limited information in a careful manner to avoid the risk the court will order fuller and more prejudicial disclosure.

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In Some Circumstances, an Exception to the Duty of Confidentiality Will Apply

In some situations where the lawyer moves to withdraw, an exception to the duty of confidentiality will apply. Rule 1.6(b) is among the provisions of the Model Rules that set forth exceptions. It allows a lawyer to reveal information relating to the representation of client "to the extent the lawyer reasonably believes necessary": . . .

An exception that applies in recurring situations is set forth in Rule 1.6(b)(6), which provides that "[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." A lawyer may reveal information relating to the representation in support of a withdrawal motion if the judge, seeking more information to decide the motion, orders the lawyer to make further disclosure. If the court so orders, Rule 1.6(b)(6) expressly permits the lawyer to disclose the information, but only to the extent reasonably necessary.11 In some situations, disclosure may also be required by court rules or other applicable law.

ABA Formal Ethics Opinion 476 recognized another exception that applies in a discrete situation. When a lawyer moves to withdraw for nonpayment of the lawyer's fees as permitted by Rule 1.6(b)(5), the lawyer may disclose information relating to the representation to the extent reasonably necessary to obtain the tribunal's permission to terminate the representation based on nonpayment. Opinion 476 explained that when judges rule on motions to withdraw for nonpayment of legal fees, they sometimes expect lawyers to explain the basis for the motion.

Judicial decisions recite detailed information provided by moving lawyers about the money owed, the legal services performed, and other related facts. The decisions cited by Opinion 476 demonstrate "that these courts found such details pertinent to their assessment of the motions."

The Opinion, however, was limited to the specific circumstance in which "a judge has sought additional information in support of a motion to withdraw for failure to pay fees." The Opinion explained that "Rule 1.6(b)(5) authorizes the lawyer to disclose information regarding the representation of the client that is limited to the extent reasonably necessary to respond to the court's inquiry and in support of that motion to withdraw."

Three other Rules, Rules 3.3, 1.13 and 1.14, expressly permit or require disclosure of information relating to the representation and may conceivably permit disclosures in support of a withdrawal motion in specific circumstances. Rule 3.3(a) provides: "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." Rule 1.13(c)(2) permits a lawyer representing an organization to reveal information relating to the representation if the organization's highest authority fails to address an act, or refusal to act, that is clearly a violation of law that the lawyer reasonably believes is reasonably certain to cause substantial injury to the organization "whether or not Rule 1.6 permits such disclosure, but only if and to the extent" the lawyer reasonably believes the disclosure is necessary to prevent substantial injury to the organization. Rule 1.14(c) allows lawyers to take protective action to aid a client with decision-making limitations who is at risk of financial or other harm.15 If the requirements of these rules are otherwise satisfied, they may authorize disclosure in the context of withdrawal.

We recognize that in rare situations in which Rule 1.16(a) requires a lawyer to seek to withdraw, no applicable exception to the duty of confidentiality will enable the lawyer to explain the basis for the withdrawal motion to the court's satisfaction, and a lawyer whose barebones withdrawal motion is denied will be compelled to violate a Rule by continuing the representation. In particular, there may be occasions when the lawyer must seek to withdraw under Rule 1.16(a)(1) because "the representation will result in violation of the Rules of Professional Conduct or other law," but the lawyer cannot justify the motion to the tribunal's satisfaction. The most likely situation will be when the lawyer has a conflict of interest but the duty of confidentiality precludes identifying and explaining the basis for the conflict. In some situations, the lawyer may have a legal obligation to disclose the conflict of interest to the court, or there may be some other applicable exception to the duty of confidentiality. But if not, the duty of confidentiality is paramount. Continuing the representation in accordance with the court's ruling should not subject a lawyer to discipline or sanction for having a conflict of interest.

A Multi-Step Approach to Seeking to Withdraw

Even when a lawyer is permitted to reveal otherwise protected information, Opinion 476 cautioned that, in the Rule 1.16(b)(5) nonpayment scenario, a lawyer must limit disclosures to mitigate harm to the client, including, where practicable, by "first seek[ing] to persuade the client to take suitable action to remove the need for the lawyer's disclosure."19 If it is necessary to explain the basis of the withdrawal motion to a court, the Opinion advises that the lawyer should begin by making "a formulaic reference to 'professional considerations' or a similar term." If the court requires more information and orders the lawyer to provide it, the lawyer may then provide additional information to the extent reasonably necessary to respond to the court's inquiry, but should seek the court's permission to provide the necessary information in camera and ex parte.

The basic approach set out in Opinion 476 is equally relevant when a lawyer seeks the court's permission to withdraw on grounds other than nonpayment of legal fees. Absent informed consent from the client, an applicable Rule 1.6(b) exception, or both, a lawyer seeking the court's permission to withdraw should endeavor to avoid the disclosure of confidential information and, if ordered by the court to disclose confidential information, should minimize the extent of disclosure and avoid harm to the client. We advise that a lawyer seeking to withdraw, whether under Rule 1.16(a) or Rule 1.16(b), should proceed as follows:

(1) initially submit a motion providing no confidential client information apart from a reference to "professional considerations" or "irreconcilable differences";

(2) upon being informed by the court that further information is necessary, respond, when practicable, by seeking to persuade the court to rule on the motion without requiring the disclosure of confidential client information, asserting all non- frivolous claims for maintaining confidentiality consistent with Rule 1.6(a) and for protecting the attorney-client privilege;

(3) if that fails and the lawyer is nonetheless ordered to submit information by the court— thereby invoking Rule 1.6(b)(6)'s exception22 —do so only to the extent "reasonably necessary" to satisfy the needs of the court and preferably by whatever restricted means of submission are available, such as in camera review, under seal, or such other procedures designated to minimize disclosure as the court determines is appropriate; and

(4) if the court does not order the lawyer to disclose but states that the motion to withdraw will be denied unless the lawyer provides more information, the lawyer remains bound by the duty of confidentiality and should remind the judge that, absent an order from the court, the lawyer is obligated under Rule 1.6 to maintain the confidentiality of the information. In doing so, the lawyer should also request that, if the court does order the lawyer to disclose, the court require the lawyer to disclose only so much information protected by Rule 1.6 as is necessary and allow the lawyer to make those disclosures in camera or submitted under seal so as to minimize harm to client's interests.

Outside the context of judicial proceedings, lawyers may withdraw from a representation as required by Rule 1.16(a), or as permitted by Rule 1.16(b), without disclosing confidential information to third parties. In the context of judicial proceedings, lawyers must comply with court rules requiring them to obtain the court's permission to terminate the representation. In this situation, there may be a tension between Rule 1.16, which sometimes requires a lawyer to seek to withdraw from a representation, and Rule 1.6, which limits the lawyer's ability to explain why the court should grant permission to withdraw. Neither Rule 1.6 nor Rule 1.16 impliedly authorizes lawyers to disclose information relating to the representation to meet the court's expectations for disclosures to support a withdrawal motion.

Commentators have noted that when the court will not grant the lawyer's motion without a justification that necessitates disclosing information protected by Rule 1.6, no completely "satisfactory solution" exists.24 The court may address the problem by ordering the lawyer to make further disclosure, even over the lawyer's objection, thereby implicating the confidentiality exception of Rule 1.6(b)(6). Courts may also adopt rules requiring disclosures that would otherwise be forbidden by Rule 1.6. The duty of confidentiality is the foundation upon which the client-lawyer relationship exists. Absent an explicit exception to the broad confidentiality obligation, the Rules do not permit a lawyer to reveal Rule 1.6 material in a motion to withdraw, despite the occasional negative consequences.

Conclusion

When moving to withdraw from a representation under Rule 1.16, a lawyer's disclosure to the tribunal is limited by the broad duty of confidentiality in Rule 1.6(a). Unless an explicit exception applies or the client provides informed consent, the lawyer may not reveal “information relating to the representation” in support of a withdrawal motion. This restriction applies even when withdrawal is mandatory under Rule 1.16(a). However, to the extent a lawyer seeks to withdraw pursuant to Rule 1.16(a)(2) because “the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client,” the lawyer will not ordinarily need to reveal information protected by Rule 1.6 to provide a fulsome explanation for the basis for the motion.

When a client withholds consent, disclosure of information relating to the representation will not be “impliedly authorized in order to carry out the representation” under Rule 1.6(a). Even when disclosure is permitted under Rule 1.6(b) or another Rule, disclosure must be strictly limited to the extent reasonably necessary and, whenever possible, made through measures that protect confidentiality such as in camera or under seal submissions.

Consistent with ABA Formal Opinion 476, the Committee advises a multi-step approach: begin with a motion citing only “professional considerations” or similar language; if further information is sought, assert all non-frivolous claims of confidentiality; and, if ordered to disclose, do so in the narrowest possible manner. Ultimately, the lawyer's paramount duty is to preserve client confidentiality, even at the risk that the tribunal may deny the motion to withdraw. The Rules require that any disclosure in support of withdrawal be narrowly tailored, protective of the client's interests, and undertaken only within the scope of an applicable exception.

Perrett v. Lindenwood Univ. (E.D. Mo. 11/2025)

- Attorney with Lento Law Group filed suit for plaintiff
- Attorney sought to withdraw because Attorney was leaving Lento
- Court denies motion because no successor counsel identified
- No indication client received notice of lawyer's departure
- Court could/would not communicate with former firm

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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://www.surveymonkey.com/r/update0126

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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Timed Agenda

12:00-05 Introduction

12:05-55 Discussion of recent developments in Missouri, Illinois and Kansas legal ethics

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Future Programs

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**

April 15 - Wednesday at 12:00 Noon CT **- Neurodiversity in the Legal Profession**

April 29 - Wednesday at 12:00 Noon CT - **Trust Accounting Ethics**

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Thank you

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