

# ***Conflicts of Interest Update 2026***

February 2026

# Connectivity/Technical Issues

**Audio Issues** – If you have audio issues on computer, please try accessing by phone at

**(701) 801-6121**

**\*\*No Access Code Required\*\***

If problems persist, contact Paige Tungate at [ptungate@DowneyLawGroup.com](mailto:ptungate@DowneyLawGroup.com)

**Watch** the slides at <https://join.freeconferencecall.com/downeycle>

**Download** the slides at <http://www.downeyethicscle.com/>

**Questions** – Please submit questions during the program through CHAT or during or after the program by emailing Paige Tungate at [ptungate@DowneyLawGroup.com](mailto:ptungate@DowneyLawGroup.com)

# CLE Information

- *Kansas Credit* – If you are seeking Kansas credit, you will need to enter the **two Attendance Verification Words** and your Kansas Bar information into the Program Survey
  - Please complete the Survey **this week**, so we can ensure you receive proper credit
- *Certificate of Completion* – Available also through the Program Survey
- Three ways to access Program Survey:
  1. Link available in the **CHAT** (right now)
  2. Link at the **end of the slides** (here or at [www.DowneyEthicsCLE.com](http://www.DowneyEthicsCLE.com))
  3. Link sent to you in an **email within 30 minutes** of program ending



<https://www.surveymonkey.com/r/conflicts0226>

# Recent Ethics Opinions

# Missouri Informal Opinion 2025-09 (August 2025)

# Facts and Question

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.

# 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.

# 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).

# Missouri Informal Opinion 2025-07 (August 2025)

# Facts and Question

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?

# 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.

# Rule 4-1.7

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.

# ISBA Opinion 25-03 (October 2025)

# ISBA Opinion 25-03 (October 2025)

A lawyer was retained by a client in an uninsured motorist claim arising from a motor vehicle collision. The lawyer learned that the client was a debtor in a Chapter 13 bankruptcy proceeding.

With client consent, the lawyer contacted the bankruptcy trustee and the client's bankruptcy lawyer to notify them of the uninsured motorist claim as part of the debtor's duty to disclose all assets.

The lawyer was then appointed as special counsel to the bankruptcy estate to pursue the uninsured motorist claim.

The lawyer then notified the client of the appointment and the client refused to cooperate with the efforts to prosecute the claim on behalf of the bankruptcy estate and fired the lawyer.

# Questions

Must the lawyer withdraw as special counsel now that the client has terminated the lawyer?

Are the client's interests in the proceeds of any potential recovery in the uninsured motorist claim materially adverse to the bankruptcy estate under Rule 1.9?

What is the lawyer's duty of confidentiality to the former client regarding information the lawyer learned during the prior representation of the client as special counsel to the bankruptcy proceeding under Rule 1.6(b)(6)?

# Rule 4-1.9(a) & (b)

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by Rules 4-1.6 and 4-1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

# Opinions

Proceedings under the Bankruptcy Code are governed by the Code and caselaw specific to bankruptcy proceedings. The analysis of ethical considerations in this area must account for the unique nature of bankruptcy proceedings and practice as well as the rules specific to bankruptcy proceedings that do not apply to other legal matters and rules of professional conduct. The answers to the specific questions posed in this inquiry requires an examination of the relationships of the client to the bankruptcy matter as well as the relationship of the lawyer to both the client and the bankruptcy estate.

## The Uninsured Motorist Claim is the Property of the Estate

Under 11 U.S.C. § 541(a), the client's interest in the uninsured motorist claim is the property of the estate. . . . As the debtor in the Chapter 13 bankruptcy proceeding, the client has a duty to cooperate with trustee. Under 11 U.S.C. §1307(c)(1), any unreasonable delay by the debtor that is prejudicial to creditors may result in the conversion of the Chapter 13 bankruptcy to a Chapter 7 bankruptcy or to a dismissal of the bankruptcy case.

# Adversity in Bankruptcy

The Lawyer is not Required to Withdraw

The lawyer was employed as special counsel under 11 U.S.C. § 327(e) which provides that the “trustee, with the court’s approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and **if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.**”

The term “adverse interest” is not defined under the Bankruptcy Code and is determined on a case-by-case basis. . . . One court stated that “if it is plausible that the representation of another’s interest may cause the debtor’s attorneys to act any differently than they would without the other representation, then they have a conflict of interest and an interest adverse to the estate. To the extent that a personal injury claim is the property of the estate, the trustee could seek court approval for the employment of special counsel.

Section 327(c) provides that disqualification of a professional employed by the trustee is not automatic unless there is an “actual conflict of interest.” . . . There are two facts which demonstrate that the employment of the inquiring lawyer was permissible under these standards: 1) the bankruptcy court approved employment; and 2) the lawyer was attempting to obtain a recovery on behalf of the estate that would benefit both the estate and the debtor. The lawyer’s duty is to maximize recovery and the interests are not adverse. Where the goal is to maximize the recovery on behalf of the differing parties, no conflict arises. . . .

# Court Analysis

Where the interest of the special counsel (and its client) and the interest of the estate are identical with respect to the matter for which the special counsel is retained, there is no conflict of interest. . . .

In this case, the lawyer is no longer representing the debtor as she terminated the representation, relieving the lawyer of taking any action directly on her behalf. Even if the debtor continued the lawyer's employment, the conclusion remains the same. . . .

As one court noted, "there is an overwhelming body of [bankruptcy] caselaw in which courts deny disqualification motions in the face of what appear to be obvious conflicts." *Century Indem. Co. v. BSA (In re BSA)*, 630 B.R. 122, 135 (Bankr. Del. 2021). The benefit of retaining previous counsel outweighs any potential prejudice as the previous counsel is already familiar with the case and would require the estate to compensate new counsel for work already completed. The bankruptcy courts have been allowed to exercise discretion in this area. *Id.*

# Client Confidences

While Ill. R. Prof'l Conduct 1.6(a) would normally prohibit the lawyer from revealing information relating to the representation of the debtor, without informed consent, the unique nature of the proceedings leads to a different conclusion.

In *In re Klein*, 2013 Bankr. LEXIS 5096 (C.D. Cal. 2013), a debtor moved to disqualify the trustee's lawyer alleging that the debtor had met with the trustee's lawyer about retaining the lawyer prior to the bankruptcy and that he had shared confidences with the lawyer. **The court denied the motion based on the premise that the debtor was required to disclose everything about his business as part of the bankruptcy filing.** As a result, there was nothing confidential left to disclose.

Similarly, the debtor here is required to disclose information to the special counsel in order to prosecute the claim on behalf of the bankruptcy estate. The lawyer, as special counsel, would be able to utilize the confidential information received from the debtor in the uninsured motorist claim, including any information that is related to the bankruptcy estate beyond the scope of the lawyer's representation in the uninsured motorist claim. However, **it should be noted that if the lawyer obtained confidential information from the debtor in the previous representation, which is unrelated to the uninsured motorist claim, the lawyer would not be authorized to disclose that information.** See Ill. R. Prof'l Conduct 1.9(c).

# *In re Samys OC, LLC*

## (D. Kan. 3/2025)

- One firm sought to represent three entities in bankruptcy proceedings
- The entities had transferred funds and had unsecured claims against each other
- Court found the law firm would be representing adverse interests
- Court also found that “conflicts counsel” was not appropriate due to extensive transfers

# Law Clerk Conflict

- College student working for firm helped prepare for mediation in litigation matter
  - Court says fact student was not a lawyer at the time is “immaterial”
  - Also, that person “does not remember any confidential information is immaterial”

# Rule 4-1.10 cmt [4]

Rule 4-1.10(a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary.

Nor does Rule 4-1.10(a) prohibit representation if the lawyer is prohibited from acting **because of events before the person became a lawyer, for example, work that the person did while a law student.**

Such persons, however, **ordinarily must be screened** from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect.

# Cases on Conflicts of Interest

*In re McDowell* (Kan. 8/2025)

# Facts

- Lawyer represented Mother in divorce proceedings and prepared will
- Mother died
- Lawyer represented Son in probate proceedings
- Lawyer failed to file Mother's will as required by law
- Upon learning of error, Lawyer blamed Son and forced son to file false affidavit taking responsibility
- Son lost over \$100K of inheritance
- Court sanctioned Lawyer \$60K
- Lawyer received indefinite suspension

# Court Analysis of Conflict

A lawyer has a concurrent conflict of interest if there is a substantial 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. KRPC 1.7(a).

In this case, the conflict of interest arose when the respondent realized the severity of his failure to timely file A.L.'s will with the district court.

The respondent became more concerned with protecting his own interests and reputation than advancing K.L.'s interests. This conflict is evident in the fact that the respondent encouraged K.L. to take responsibility for withholding the will even though, under K.S.A. 59-618, K.L. could be held liable for attorney fees and damages. By the time K.L. emailed the respondent in January 2021 about being blamed for the respondent's conduct, the respondent should have recognized the severity of this conflict. He did not, and he continued to protect his interests to the detriment of his client.

# Failure to Remedy

The district court observed the respondent's failure to recognize or ameliorate this conflict in its September 2022 order. There, the district court also observed: '[I]t became confusing whether [the respondent] was representing his client's interests or attempting to cover for his own mistakes.'

The respondent stipulated to this confusion, but at the formal hearing, still failed to appreciate the way in which his personal interests limited his representation of K.L. As such, the hearing panel concludes that the respondent violated KRPC 1.7(a).

*Schramm v. Peregrine  
Transportation Co.  
(SD Ill. 7/2025)*

# Facts

- Husband severely injured when vehicle collided with truck
- Lawyer represented Husband and Wife in trucking accident
  - Wife has loss of consortium claim only
- Husband and Wife divorce
- Husband discharged Lawyer – Lawyer filed lien on Husband's recovery
- Husband sought to disqualify Lawyer
- Case settled and Lawyer sought to withdraw from representing Wife

# Dealing with Conflict

- Lawyer reportedly asked “a hundred times” if Husband and Wife could be peaceful and deal with each other
- Lawyer never told Husband he could get a new attorney
- Lawyer believed conflict only arose once there was a settlement
- Wife believed no conflict existed prior to settlement – shared goal was to maximize recovery

# Rule 4-1.8(g)

A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include

- the existence and nature of all the claims or pleas involved and
- of the participation of each person in the settlement.

# Aggregate Settlement

An aggregate settlement occurs when an attorney, while representing two or more clients in a joined action, settles the entire action on behalf of all clients, without negotiating an individual, fact-specific settlement for each client.

# Court's Analysis

- No conflict when seeking to maximize recovery
- Conflict arose when Husband wanted Wife to stipulate about how much she would receive from global settlement, and Wife refused

*In re Wagle (KS 11/2025)*

# Facts

- Lawyer represented two clients in criminal cases
  - Boyfriend, charged with sex crimes against minor
  - Girlfriend, charged with identity theft
- Both clients also charged with violating no-contact orders

# Rule 4-1.7

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.

# Waiving Conflicts – Rule 4-1.7(b)

Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer **reasonably believes** that the lawyer will be able to provide **competent** and **diligent** representation to each affected client;
- (2) the representation is not **prohibited by law**;
- (3) the representation does not involve the assertion of a **claim by one client against another client** represented by the lawyer in the same litigation or other proceeding **before a tribunal**; and
- (4) each affected client gives **informed consent confirmed in writing**.

# Conflict Waivers

- Circumstances
- Risk (and benefits)
- Alternatives

# Boyfriend's Waiver in *Wagle*

I [Boyfriend] having discussed all my potential conflicts with his representation of my girl friend . . . in an identity theft case in which I am a co-defendant or potential witness, hereby waive all conflicts with Mr. Wagle's representation of my girl friend . . . either past or future in the present case.

# Girlfriend's Waiver in *Wagle*

I [Girlfriend] having discussed all my potential conflicts with Mr. Wagle's prior representation of my boyfriend . . . in an identity theft case in which I am a co-defendant or potential witness, hereby waive all conflicts with Mr. Wagle's prior representation of my boyfriend either past or future in the above mentioned case.

*Did not mention all cases where lawyer was representing Boyfriend.*

# *Wagle* Plea Deal

- Girlfriend was offered plea deal that would require her to testify against Boyfriend
- Subsequently Lawyer withdrew from representation of Girlfriend

# Court's Analysis of Conflicts

50. Respondent represented [Boyfriend] and [Girlfriend] in multiple intertwined cases. In many of these cases, [Girlfriend] was designated as a witness for the State against [Boyfriend], and vice versa. . . .

"52. Respondent's representation of [Girlfriend] was directly and materially adverse to [Boyfriend], and vice versa. See KRPC 1.7, Comment [6] ('[A] directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit.');

Comment [8] ('Even when there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.')

# Court's Analysis of Waivers

53. The waivers respondent obtained from his clients were insufficient to address the conflicts of interest in these matters. The hearing panel questions whether any waiver could be sufficient in these matters, but at any rate, the waivers in this case were broad and non-specific and did not serve to inform his clients of the specific risks involved. . . .

"54. The waiver from [Boyfriend] did not list every case in which a conflict existed with [Girlfriend]; rather, it only listed 2020-CR-704 and 2020-CR-1150. Moreover, the waiver was vague and did not describe the material and reasonably foreseeable ways that the conflict could have adverse effects on [Boyfriend's] interests. Specifically, it did not inform [Boyfriend] that [Girlfriend] could be required to testify against him, as indeed turned out to be the case. See KRPC 1.7, Comment [17] ('[i]nformed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client.')

"55. The waiver from [Girlfriend] suffered from a similar lack of specificity. Moreover, the waiver only listed conflicts arising from respondent's representation of [Girlfriend] in Case No. 2020-CR-1095 and [Boyfriend] Case No. 2020-CR-704 and did not list the other cases in which conflicts existed.

# *Wagle* Sanction

- Lawyer received censure (MO – reprimand)
- Case would have required remand to ODA for admonition

# Rule 4-1.7

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.

*Brophy v. 839 IAM Machinist  
Union (D. Kan. 3/2025)*

# Facts

- Union member consulted with Union's Counsel about possible employment claim
- Union Counsel declined the representation
- Union member filed suit *pro se* and sought to disqualify Union's Counsel

# Rule 1.7 Analysis

In this case, the only alleged conflict that exists is that the Plaintiff called [Union's Counsel] about his case and that [Union's Counsel] will occasionally speak to members on behalf of the Union.

Simply being a part of union membership and inquiring about potential representation does not establish an attorney-client relationship. . . . Therefore, KRPC 1.7 does not apply.

# Rule 4-1.18

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 4-1.9 would permit with respect to information of a former client.

# Prospective Client Conflicts – Rule 4-1.18(c) and (d)

(c) A lawyer subject to Rule 4-1.18(b) shall not represent a client with interests **materially adverse** to those of a prospective client in the **same or a substantially related matter** if the lawyer **received information** from the prospective client that could be **significantly harmful to that person in the matter**, except as provided in Rule 4-1.18(d).

If a lawyer is disqualified from representation under Rule 4-1.18(c), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in Rule 4-1.18(d).

# Prospective Client Conflicts – Rule 4-1.18(c) and (d)

(d) When the lawyer has received disqualifying information as defined in Rule 4-1.18(c), representation is permissible if:

(1) both the affected client and the prospective client **have given informed consent**, confirmed in writing, **or**:

(2) the lawyer who received the information **took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client** and the **disqualified lawyer is timely screened** from any participation in the matter.

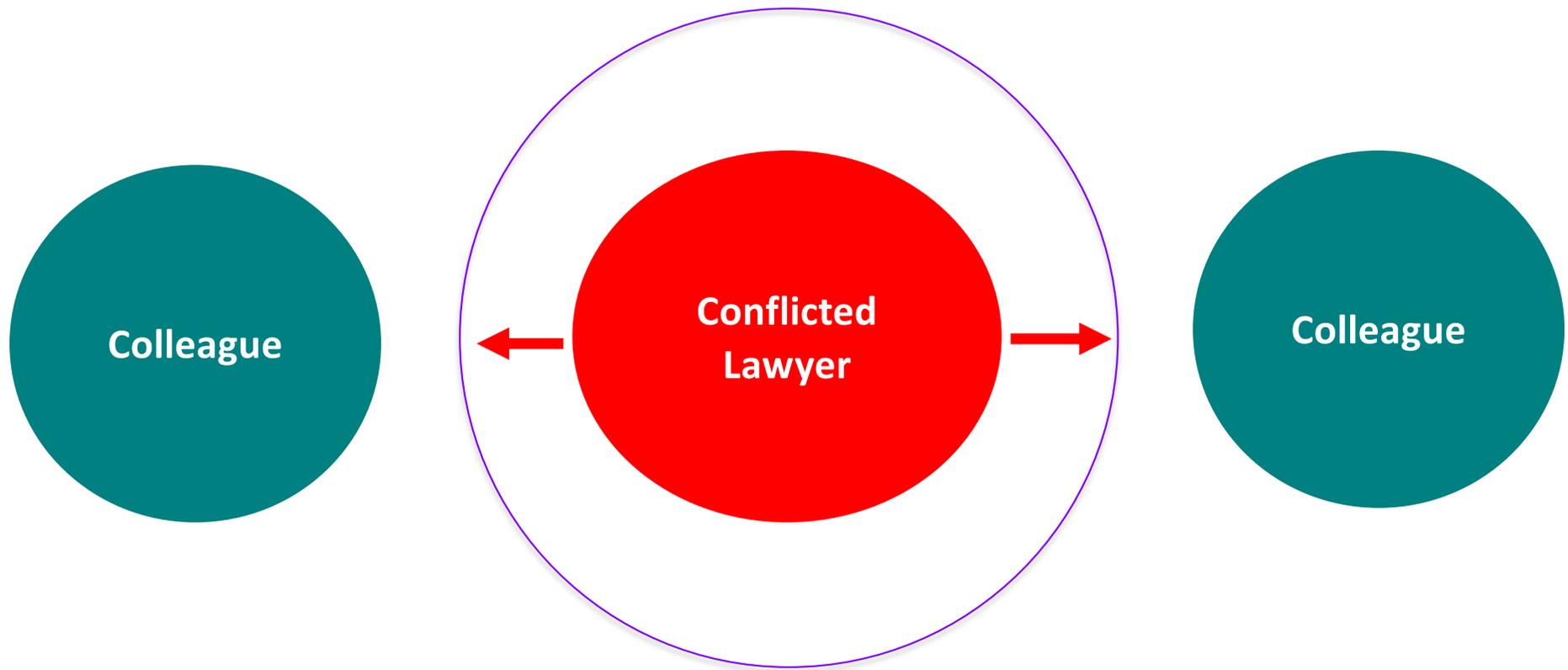
# Rule 1.18 Analysis

Under KRPC 1.18, Plaintiff must establish

- (1) he was a prospective client of [Union's Counsel];
- (2) his interests are materially adverse to the Union;
- (3) the matter Plaintiff spoke to Mr. Hammond about is the same or substantially related matter as the present case; and
- (4) during the conversation, Mr. Hammond learned significantly harmful information.

Here, Plaintiff does not elaborate on what was said during his conversation with Mr. Hammond, how the long the conversation was, or whether any confidential information was communicated. The motion only provides that Mr. Hammond informed him that he does not practice employment law. This is insufficient to establish disqualification under KRPC 1.18(c). . . . Accordingly, KRPC 1.18 does not provide a sufficient basis for disqualification.

# A Proper Screen Stops Imputation



# Ethics Screen – Common Elements

- Limit communications – to and from conflicted lawyer
  - Limit paper access
  - Limit electronic access
  - Send reminders not to discuss
- No fee-sharing
- Notice of screen (possibly)
- Education and enforcement

# Consensual and Non-Consensual Ethics Screens

- Most ethics screens are “**consensual**” – a condition for receiving a waiver
  - Consensual screens are not expressly discussed in the rules
- Sometimes the **Rules allow “nonconsensual”** or “**unilateral**” screens, where the screen can resolve a disqualifying conflict without consent

*Davis v. Palumbo*  
(ND III. 10/2025)

# Facts

- Plaintiff sued Lawyer, Lawyer's Firm, and a Financial Institution for an alleged altered or stolen contract
- Lawyer had placed *lis pendens* on Plaintiff's property
- Lawyer and his firm sought to represent all defendants in case
- Plaintiff sought to disqualify Lawyer from representing other defendants

# Court Analysis

- Plaintiff lacks standing to disqualify Defendants' counsel where Plaintiff is not client or former client
- Plaintiff would need to show “special direct adversity”
- Lawyer said his clients had provided waivers

*United States v. Ferguson*  
(ND III. 6/2025)

# Facts

- At the time of his arrest, Ferguson was asked about “shady” dealings with his lawyer
- Ferguson agreed to cooperate in investigation of his lawyer
- Ferguson then maintained his attorney-client relationship with that lawyer during the five years the case was pending

# Court Analysis

- Court said it was not aware of the potential conflict involving Ferguson's lawyer
- Court also says that Ferguson was clearly aware of the potential conflict but chose to maintain attorney-client relationship
- Court found no "actual" conflict at any point in the proceedings
- Court could not adequately inquire about conflict of which court was not aware
- Court found no prejudice from defense counsel's potential conflict

*Coleman v. Cotta* (CD III. 6/2025)

# Facts

- Plaintiff sought to sue public defender for declining representation due to conflict of interest

# Analysis

- Plaintiff cannot sue an attorney for declining representation due to a conflict of interest.
- Criminal lawyers are bound by ethical and constitutional considerations and must not engage in representation where the attorney determines that a conflict of interest exists.
- Further, in general, criminal defense lawyers are not amenable to suit for their activities as attorneys under § 1983 because "a [defense lawyer] does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding."

# Conclusory Matters

**Questions** – If you have questions after the program, please email them to Paige Tungate at [ptungate@DowneyLawGroup.com](mailto: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/conflicts0226>

**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*



<https://www.surveymonkey.com/r/conflicts0226>

# Timed Agenda

12:00-5 Introduction

12:05-55 Discussion of recent developments in conflicts of interest law

# Future Programs

**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**

[www.DowneyEthicsCLE.com](http://www.DowneyEthicsCLE.com)

# New Programs – Awaiting Kansas Approval

**May 12** – Tuesday at 3:00 PM CT – **Legal Ethics and Multijurisdictional Practice**

**May 27** – Wednesday at 12:00 Noon CT – **Legal Ethics, Client Intake, and Engagement Agreements**

**June 9** – Tuesday at 3:00 PM CT – **Neurodiversity in the Legal Profession**

**June 17** – Wednesday at 12:00 Noon CT – **Legal Ethics Update 2026 – Part II**

**June 25** – Thursday at 12:00 Noon CT – **Legal Ethics and Technology 2026**

**June 30** – Tuesday at 12:00 Noon CT – **Neurodiversity in the Legal Profession**

**June 30** – Tuesday at 3:00 PM CT – **Legal Ethics Update 2026 – Part II**

# Thank you



Downey Law Group LLC  
(314) 961-6644  
(844) 961-6644 toll free  
[info@DowneyLawGroup.com](mailto:info@DowneyLawGroup.com)



<https://www.surveymonkey.com/r/conflicts0226>