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Legal Ethics Update 2026 – Part 2

June 2026

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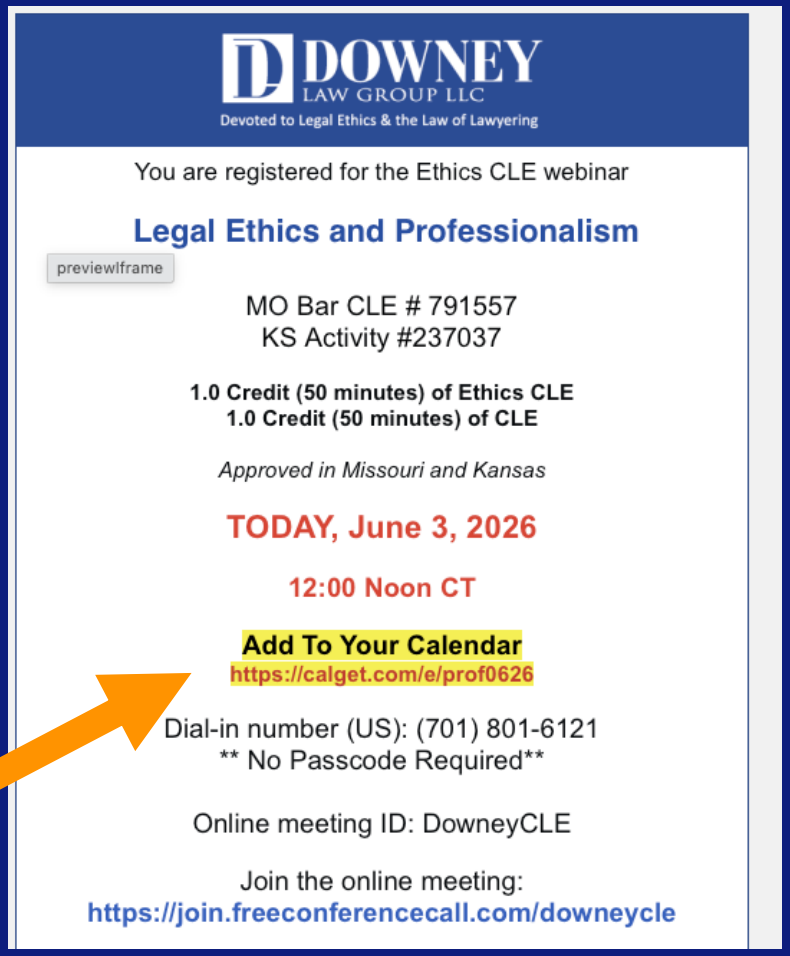
New and Improved . . .



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Note

Quotations from precedent in this webinar have sometimes been modified, including cutting text and adding line breaks.

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New Missouri Informal Opinions

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Missouri Informal Opinion 2026-01
(April 21, 2026)

Lawyer currently represents a minor, via a next-of-friend, who was a passenger in an automobile accident.

The minor was riding with a family member when the accident occurred. A semi-truck passed the center line and struck the family's car. The driver was killed in the accident and the minor suffered serious injuries.

Lawyer filed suit against the driver's estate, the truck driver, and the trucking company.

Lawyer dismissed the driver's estate from the lawsuit after the driver's liability insurance paid the policy limits to the minor.

Is it a waivable conflict of interest if Lawyer intervenes on behalf of driver's spouse asserting a wrongful death claim in the minor's lawsuit against the truck driver and the trucking company?

Lawyer expects opposing counsel to assert that the driver was partially at fault for the accident by exceeding the speed limit.

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Informal Opinion 2026-01
Answer

Rule 4-1.7(a)(1) and (2) provide that a concurrent conflict 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 will be materially limited by the lawyer's responsibilities to other clients.

Rule 4-1.7(b) allows representation of clients with concurrent conflicts if:

(1) the lawyer reasonably believes 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 in the same litigation; and

(4) each client gives informed consent, confirmed in writing.

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Informal Opinion 2026-01
Answer

In most scenarios, Rule 4-1.7(a)(1) and (2) prohibit joint representation of a driver and the driver's passengers when a third-party tortfeasor brings a valid claim of fault against the driver.

It is considered a nonconsentable conflict of interest.

This is because the lawyer would not be able to provide competent representation to the passengers without asserting a claim against the driver thereby compromising the representation. The lawyer's duty of loyalty to the driver. prevents the lawyer from making such claim. See Comment [15] to Rule 4-1.7 and Informal Opinion 950246.

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Informal Opinion 2026-01 Answer

The fact-scenario presented here is different in that the passenger has settled and dismissed passenger's claim against the driver, before the driver's spouse sought the Lawyer's representation. As a result, the spouse's interest and the minor/passenger's interests may now be materially aligned, i.e., both the spouse and minor will want to minimize the level of fault attributed to the driver.

If the driver and the next-of-friend are willing to give informed consent, confirmed in writing, to the representation, the conflict could be waived. See Informal Opinions 940053 and 950246.

However, if at any point the clients' positions diverge in a nonconsentable, material way, Lawyer will have to withdraw from representing all parties. See Rule 4-1.16, Comments [4] and [29] to Rule 4-1.7, and Informal Opinion 2021-04.

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Missouri Informal Opinion 2026-02
(April 21, 2026)

Lawyer is divorcing Spouse. Lawyer is pro se in the dissolution. Spouse is represented by counsel.

Lawyer and Spouse had reached an informal agreement about the division of property before filing the dissolution action.

Lawyer and Spouse continue to reside together while the dissolution is ongoing.

Spouse discussed with Lawyer repairs needed at the marital home and payment for the repairs. Spouse initiated the conversation.

After Lawyer spoke with Spouse regarding the repairs, Spouse's lawyer advised Lawyer that all communications concerning the dissolution should be made through Spouse's lawyer.

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Informal Opinion 2026-02 Question

As a party, Lawyer believes Lawyer has a right to communicate directly with spouse. Lawyer bases this belief upon a reading of Rule 4-4.2 and Comment [4] to the Rule. Rule 4-4.2 prohibits a lawyer who "is representing a client" from directly communicating about the subject of the representation with any other represented party. Comment [4] to the Rule provides that parties may communicate directly with each other.

Is Lawyer correct in the interpretation of the rule and its comment? Is the interpretation the same, regardless of whether Lawyer is pro se or Lawyer has engaged counsel to represent Lawyer?

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Rule 4-4.2

In representing a client, a lawyer shall not

communicate about the subject of the representation

with a person the lawyer knows to be represented by another lawyer in the matter,

unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Comment [4]: Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.

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Informal Opinion 2026-02
Answer 1

No, Lawyer's interpretation is incorrect.

Interpretation of the Rule and Comment [4] require consideration of both the Rule's plain language and the policy purposes behind the Rule. The Rule protects a represented person against overreaching by other lawyers, interference with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation. See Comment [1] to Rule 4-4.2.

Direct communications between a represented party and a pro se lawyer create the same risks that Rule 4-4.2 was designed to prevent.

So, the pro se Lawyer is considered "self-representing" or, i.e., "representing a client," and direct communication with the spouse regarding the dissolution is prohibited. See Informal Opinion 2011-03.

This is true even if Spouse initiated or consented to the communication. See Comment [3] to Rule 4-4.2.

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Informal Opinion 2026-02
Answer 2

The same risks exist with direct communications for the represented party regardless of whether Lawyer is pro se or has counsel.

Consequently, Rule 4-4.2 prohibits direct communication between the parties unless counsel for the parties consent to direct communications or the communication is authorized by law or court order.

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Missouri Informal Opinion 2026-03
(April 21, 2026)

As part of a discovery request, Client produced a copy of a letter Client received from a third party.

The letter is relevant to Client's defense in the underlying lawsuit.

Opposing counsel has requested to see the original letter. When Lawyer advised Client of opposing counsel's request, Client confided to Lawyer that Client had altered the date of the letter on the copy produced.

Client wants Lawyer to advise opposing counsel that Client no longer has the original letter.

What are Lawyer's ethical duties?

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Informal Opinion 2026-03 Answer

Lawyer cannot refuse opposing counsel's request to view the original document as this would be assisting Client in Client's fraudulent conduct. Rule 4-1.2(f) and Comment [9] to the Rule.

Because Client's actions relate to the underlying lawsuit, Lawyer must take reasonable remedial measures to assure candor to the Court. Rule 4-3.3(b); see also Informal Opinions 2020-24 and 2020-25.

First, Lawyer should speak confidentially with Client, advise Client of Lawyer's duty of candor to the Court, and seek Client's cooperation in the withdrawal or correction of the document. Comment [10] to Rule 4-3.3.

If this fails, Lawyer is required to take further action. This includes seeking leave from the Court to withdraw from the representation and disclosing to the Court Client's actions, even though such would reveal information which is otherwise protected by Rule 4-1.6. Id., Rule 4-3.3(b) and (c), and Rule 4-1.16(a).

Missouri Informal Opinion 2026-04
(April 21, 2026)

Lawyer was representing Client in a personal injury action when Client unexpectedly died from an unrelated matter. No estate has been opened for Client.

The engagement agreement between Lawyer and Client does not address the release of confidential information by the Lawyer.

May Lawyer contact Client's next-of-kin to inquire about opening an estate to preserve the personal injury claim?

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Informal Opinion 2026-04 Answer

Whether a personal injury claim survives the death of a plaintiff and whether a plaintiff's estate can be substituted for a deceased plaintiff are substantive issues of law beyond the scope of this opinion.

While the attorney-client relationship ceases upon the death of the client, the duty of confidentiality survives. See Rule 4-1.6 and Informal Opinions 20070016, 990146, 950125, 950256, and 940013.

Confidential information encompasses all information related to the representation of the client, including information regarding the client's death and client's pending legal claims. See Rule 4-1.6, Comments [1] and [3].

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Rule 4-1.6(a)

A lawyer shall not reveal information relating to the representation of a client unless

- the client gives informed consent,
- the disclosure is impliedly authorized in order to carry out the representation, or
- the disclosure is permitted by Rule 4-1.6(b).

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Informal Opinion 2026-04
Answer

Rule 4-1.6 permits disclosure of confidential information if disclosure is impliedly authorized to carry out the representation. See Rule 4-1.6(a).

Unless Client explicitly expressed otherwise to Lawyer, Lawyer may reasonably assume that Client would want the estate/heirs to recover for Client's injuries.

Thus, Lawyer may contact Client's next-of-kin and make a limited disclosure regarding Client's death and the existence of the lawsuit. This will allow the next-of-kin to consider whether to petition the court to open an estate to preserve the Client's personal injury claim.

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Missouri Informal Opinion 2026-05
(April 21, 2026)

Lawyer represents an elderly client on the sale of some real estate. Client is entitled to significant proceeds from the sale.

Client does not have any kind of formal diagnosis of dementia or other cognitive decline, but Lawyer has represented Client in the past on other unrelated matters and is now questioning Client's mental capacity.

Client does not have a guardian or conservator, and Lawyer asks if Lawyer is ethically required to provide the full proceeds to Client or if Lawyer is required to take other steps to secure the funds for Client given Client's perceived mental decline by Lawyer.

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Informal Opinion 2026-05 Answer

Lawyer should fully consider whether Client may be in need of protections pursuant to Rule 4-1.14, Client with Diminished Capacity.

Rule 4-1.14(a) requires Lawyer to maintain a normal client-lawyer relationship with Client as much as reasonably possible if Client's capacity to make adequately considered decisions in connection with the representation is diminished because Client may be suffering from a mental impairment or for some other reason. See also Informal Opinions 2020-27, 990095, and 2023-01.

Guidance is provided in Comment [1] to Rule 4-1.14 that when a client is properly advised and assisted, there is a normal client-lawyer relationship, but if a client is suffering from a diminished mental capacity such that the client may no longer be able to make legally binding decisions, that relationship can be impacted.

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Informal Opinion 2026-05 Answer

Rule 4-1.14(b) permits, but does not require, a lawyer to take protective action if the following conditions are met:

(1) the lawyer has a reasonable belief that the client has diminished capacity;

(2) the client is at risk of substantial physical, financial, or other harm unless action is taken; and

(3) the client cannot adequately act in the client's own interest. If these conditions are satisfied, "the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a next friend, guardian ad litem, conservator or guardian." Rule 4-1.14(b).

In this situation, Lawyer must make a determination as to the condition of Client and whether or not Client is suffering from diminished capacity such that Client cannot adequately act in Client's interest and is at substantial risk of financial harm as to handling the proceeds of the sale of the real estate. Lawyer should consider that there is a distinction pursuant to Rule 4-1.14 about representing a client with diminished capacity and maintaining the normal client-lawyer relationship versus dealing with a client who may have diminished capacity such that a client cannot make legal decisions and may not be competent as a matter of law, which is beyond the scope of the Rules of Professional Conduct.

Informal Opinion 2026-05 Answer

Since Client does not have a guardian or conservator, Lawyer may wish to start with the least restrictive protective measures, which could include: "consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client.

In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections." Rule 4-1.14, Comment [5].

Lawyer "should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind, and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician. Rule 4-1.14, Comment [6].

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Informal Opinion 2026-05 Answer

If Lawyer does find that there is a reasonable belief as to Client's diminished capacity, and Client cannot adequately act in Clients own interest, Lawyer must next determine if Client meets that high standard of being at substantial risk of financial harm. If all conditions are satisfied, Lawyer is permitted to take protective measures for Client if there are no other individuals or entities available to take appropriate actions on Client's behalf, which may include "in appropriate cases, seeking the appointment of a next friend, guardian ad litem, conservator or guardian." Rule 4-1.14(b). Comment [7] to Rule 4-1.14 provides guidance that "[i]n many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client."

Throughout this assessment, Lawyer must remain mindful that, pursuant to Rule 4-1.14(c), information related to Client's representation is still protected by the confidentiality provisions of Rule 4-1.6. However, Rule 4-1.14(c) recognizes that when Lawyer is taking protective measures pursuant to Rule 4-1.14(b), Lawyer is impliedly authorized to reveal a limited amount of information to the extent reasonably necessary to protect Client's interests in accordance with Rule 4-1.6(a). See also Rule 4-1.14, Comment [8].

Finally, if Lawyer does determine, in Lawyer's professional judgment, that appointment of a guardian, conservator, guardian ad litem, or next friend is reasonably necessary to protect Client, Lawyer should not seek to be appointed as Client's legal representative, nor should Lawyer represent another person in the action. See Rule 4-1.7; Informal Opinions 2020-27 and 990095.

Missouri Rule 4-1.14 Client Under Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity; is at risk of substantial physical, financial or other harm unless action is taken; and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a next friend, guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 4-1.6. When taking protective action pursuant to Rule 4-14(b), the lawyer is impliedly authorized under Rule 4-1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

ABA Model Rule 1.14 (amended 2-2026) Client With Decision-Making Limitations

(a) A lawyer shall, as far as reasonably possible, maintain an ordinary client-lawyer relationship with a client with decision-making limitations, including when the client's decision-making limitations impact the client's ability to provide direction to the lawyer or make reasoned, informed choices. A person has decision-making limitations if the person has substantial difficulty receiving and understanding information, evaluating information, or making or communicating decisions even with appropriate supports or accommodations.

(b) When the lawyer reasonably believes that the client: (1) has decision-making limitations, (2) is at risk of substantial physical, financial or other harm unless action is taken, and (3) cannot adequately act in the client's own interest to address the risk, the lawyer may take reasonably necessary protective action to address the risk.

(c) Information relating to the representation of a client with decision-making limitations is protected by Rule 1.6. However, when taking protective action pursuant to paragraph (b), the lawyer may reveal information related to the representation to the extent the lawyer reasonably believes necessary to protect the client's interests.

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Missouri Informal Opinion 2026-06
(April 21, 2026)

Lawyer formerly represented an estate planning client, Client, who is now deceased.

Lawyer has been engaged by Successor Trustees of the Trust for Client to assist Successor Trustees with handling the winding up of the Trust and making distributions to the beneficiaries.

Lawyer provided the active trust documents to Successor Trustees.

The bank is requesting prior trust documents even though the Second Amended and Restated Trust clearly state that prior amendments to the trust have been revoked and that it constitutes the current operating agreement going forward.

Lawyer has maintained Client's file in accordance with Rule 4-1.22 and still has the documents in question.

Lawyer asks if the Rules of Professional Conduct allow disclosure to the Successor Trustees and/or the bank of any of the prior revoked trust documents?

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Informal Opinion 2026-06
Answer

The analysis is the same for any possible disclosure of the prior revoked trust documents whether to the Successor Trustees or the bank.

The duty of confidentiality to a client pursuant to Rule 4-1.6(a) survives the death of the client. See Missouri Informal Advisory Opinions 20070016, 20040004, 20030016, 20010154, 990146, 980172, and 970157.

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Rule 4-1.6(a)

A lawyer shall not reveal information relating to the representation of a client unless

- the client gives informed consent,
- the disclosure is impliedly authorized in order to carry out the representation, or
- the disclosure is permitted by Rule 4-1.6(b).

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Informal Opinion 2026-06
Answer – Footnote

Rule 4-1.6 on confidentiality "not only applies to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source." Rule 4-1.6, Comment [3].

Related bodies of law address confidentiality through attorney-client privilege and the work-product doctrine, which apply in judicial and other proceedings in which a lawyer may be called as a witness or to produce evidence regarding a client, but interpretations of those principles are matters of law and beyond the scope of the Rules of Professional Conduct. See Rule 4-1.6, Comment [3].

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Informal Opinion 2026-06
Answer

As applicable in this matter, Rule 4-1.6(a) prohibits Lawyer from revealing information relating to the representation of Client unless Lawyer had the consent of Client prior to Client's death, Lawyer is impliedly authorized to disclose the information to carry out the representation, or Lawyer meets an exception pursuant to Rule 4-1.6(b). If Lawyer does not meet the criteria for disclosure in Rule 4-1.6(a), Lawyer must then comply with Rule 4-1.6(b).

Rule 4-1.6(b) provides that "[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:…(4) to comply with other law or a court order." Whether other law permits or requires disclosure of the prior trust documents or amendments is a matter of law and beyond the scope of the Rules of Professional Conduct. Lawyer should consult Comment [10] to Rule 4-1.6 for additional guidance as to any possible exception at law and use Lawyer's independent professional judgment in making such a determination.

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Informal Opinion 2026-06 Answer (Continued)

Further, Lawyer may be required by a court order to disclose the prior trust documents per Rule 4-1.6(b)(4).

Lawyer should be mindful that a subpoena is not enough to require disclosure, but there must be a court order.

Comment [11] to Rule 4-1.6 provides guidance that if Lawyer does not have now deceased Client's consent to disclosure, Lawyer should assert "all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law."[1]

Comment [11] further notes that an appeal should be considered in the event of an adverse ruling, but Lawyer is permitted by this rule to comply with the court's order. See also Missouri Informal Advisory Opinions 20060004, 20010154, and 2017-04.

In the event that disclosure is permitted by Rule 4-1.6(b), Lawyer should consult Comments [12] and [13] to Rule 4-1.6 for guidance on ensuring that the disclosure is only to the extent Lawyer reasonably believes is necessary to accomplish the specified purpose.

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Missouri Informal Opinion 2026-07
(April 21, 2026)

Lawyer is in open court representing Client before Judge.

Judge makes an adverse ruling as to a motion made by Lawyer on behalf of Client on a pre-trial matter.

Lawyer is outraged by Judge's ruling, and states, "Do whatever you are going to do. I know you are not going to be fair to me, Judge. You are never fair to me."

Does Lawyer's statement violate the Rules of Professional Conduct?

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Informal Opinion 2026-07 Answer

Lawyer's statement to Judge likely violates Rule 4-8.2: Judicial and Legal Officials, and Rule 4-8.4: Misconduct.

Rule 4-8.2(a) states:

> "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."

Further, Rule 4-8.4(d) provides that it is professional misconduct for a lawyer to "engage in conduct prejudicial to the administration of justice."

Such a statement by Lawyer is inappropriate under these Rules as it seems to question the integrity of Judge with reckless disregard as to its truth or falsity and may be prejudicial to the administration of justice as it is heard by others in the courtroom and damages faith in the impartiality and fairness of Judge.

ISBA Opinion 26-01

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Ethical duties of a lawyer when they learn co-counsel has been removed from the Master Roll of Attorneys for failure to satisfy MCLE requirements.

Conclusion

An Illinois lawyer, retained by another Illinois lawyer to perform services on a matter, who learns that the hiring lawyer is removed from the Master Roll due for MCLE violations must notify the client of the hiring lawyer's removal if the hiring lawyer does not take remedial action to be reinstated.

In addition, the lawyer must cease work on the matter unless separately retained by the client under a new lawyer-client agreement, or unless exigencies of the matter require the lawyer to continue representation so that the client is not harmed.

The lawyer should also inform the hiring lawyer that he or she cannot continue to work in the matter unless the hiring lawyer is reinstated. The lawyer, however, may continue to work on the matter if separately retained by the client. There is no duty to report the hiring lawyer to the ARDC unless the hiring lawyer continues to practice without being reinstated, nor is there a duty to report to the title company.

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ISBA Opinion 26-01 (Continued)

Opinion

. . . In ISBA Opinion No. 92-07, we have previously determined that an "outside" lawyer hired by another lawyer or law firm to handle certain tasks on a matter owes the client the same duties under the Rules of Professional Conduct as does the original lawyer. While the facts presented do not tell us whether the client gave Lawyer 2 informed consent to the hiring of Lawyer 1, or whether the client was even aware that Lawyer 1 was working on the matter, Lawyer 1 is still under the obligations of the Illinois Rules of Professional Conduct. . .. . if the client consents to Lawyer 1's representation and a lawyer-client relationship is created, separate from the relationship the client engaged with Lawyer 2. Otherwise, Lawyer 1 should cease work on the matter.

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Recent ABA Opinions

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ABA Opinion 523 (May 2026)

Engagement Agreements Allowing a Lawyer to Withdraw When the Client Fails Substantially to Fulfill an Obligation Regarding the Lawyer's Services

Rule 1.16(b)(5) of the ABA Model Rules of Professional Conduct permits a lawyer to withdraw from a representation, or to seek the tribunal's permission to do so, when "the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled."

This provision is ordinarily invoked when a client fails to fulfill an obligation regarding payment of legal fees and expenses.

The engagement agreement may memorialize additional obligations of the client, both obligations that are otherwise implicit such as the client's truthful cooperation with the representation, and further obligations insofar as they are not forbidden by the Rules, other law (including court rules), or public policy.

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ABA Opinion 523 (Continued)

Engagement Agreements Allowing a Lawyer to Withdraw When the Client Fails Substantially to Fulfill an Obligation Regarding the Lawyer's Services

. . .

A client's persistent failure to fulfill obligations regarding the lawyer's services, including obligations unrelated to payment of fees and expenses, may constitute a basis for withdrawal if the procedural requirements of Rule 1.16(b)(5) are met.

Further, the lawyer's engagement agreement may put the client on notice of permissible grounds for withdrawal under Rule 1.16(a) and (b), including the client's failure to fulfill obligations regarding the lawyer's services. However, the engagement agreement may not expand on the grounds for withdrawal set forth in Rule 1.16 or purport to alter or amend the grounds for withdrawal or the process for withdrawal required by the Rule.

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ABA Opinion 522 (April 2026)

Lawyer's Obligation to Disclose Information About Grounds for a Judge's Disqualification

ABA Model Rule of Professional Conduct 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

When a lawyer in a proceeding possesses information that the lawyer knows is reasonably likely to give rise to a judicial disqualification obligation, Rule 8.4(d) requires the lawyer, as an officer of the court, to disclose that information to the tribunal.

When the lawyer possesses the information only because it is "information relating to the representation of a client," then the lawyer's disclosure obligation is subject to the lawyer's duty of confidentiality under Model Rule of Professional Conduct 1.6.

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Rule 4-1.6(a)

A lawyer shall not reveal information relating to the representation of a client unless

- the client gives informed consent,
- the disclosure is impliedly authorized in order to carry out the representation, or
- the disclosure is permitted by Rule 4-1.6(b).

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ABA Opinion 521 (February 2026)

The Judicial Canons of Ethics Applicability to the Administrative and Supervisory Role of a Judge

This opinion examines the ethical obligations of judges under the ABA Model Code of Judicial Conduct when exercising administrative, employment, and supervisory authority.

The Canons and Rules governing impartiality, integrity, and independence - particularly Canons 1 and 2 and associated rules require judges to administer chambers and court staff with the same fairness and neutrality that guide adjudication.

The opinion explains that ethical duties extend beyond the courtroom to include merit-based appointments, the prevention of bias and harassment, and the avoidance of favoritism or the appearance of impropriety in all administrative decisions.

Judges fulfill these obligations by ensuring that their use of administrative authority promotes public confidence in the judiciary' s independence and integrity.

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ABA Opinion 520 (January 2026)

A Lawyer's Obligation to Convey Information to a Former Client or Successor Counsel

Model Rule 1.16(d) requires a lawyer to respond to requests for information from former clients or successor counsel in certain limited circumstances when doing so is necessary to protect client interests and reasonably practicable.

Ordinarily, such a request will require a response when

- *the requested information was acquired by the lawyer during the course of the representation,*
- *is unavailable from other sources, and*
- *is important to the client's interests in the matter in which the lawyer formerly represented the client.*

Rule 1.16(d) does not require a lawyer to take steps to acquire new information, generate written responses, or provide further legal services to the client in response to a request for information.

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Recent Cases

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In re Trummel (Kan. 5-2026)

- Client hired lawyer to handle child custody matter
- Lawyer placed fee in operating account, not trust
- Lawyer made one drive-by to locate opposing party without contact
- Lawyer ignored disciplinary investigators for 18+ months
- Lawyer refunded payment only during disciplinary proceedings (2.5 years after payment)
- Lawyer CENSURED for violating KS RPC 1.3, 1.4, 1.15, 8.1(b) and Rule 210 (duty to cooperate)

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Layko Properties v. M-OK Distribution (Ill. App. 3d 3-2026)

- Layko obtained a $144K default judgment against M-OK Distribution
- For 7+ years, M-OK Freight claimed it was not successor and M-OK Distribution had no assets
- M-OK admitted M-OK Distribution had assets and paid full judgment hours before sanction hearing
- Layko avoided paying most attorney fees because successor liability could/would still be contested, even if no lies about M-OK's assets
- $144K default judgment, $50K in fees awarded, $500+K in fees denied

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Handling Client Funds

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In re Goldstein (Mo. 1/2026)

- Lawyer kept retainer checks in basement safe until earned (while representing funds would be held in trust account), then deposited funds into trust account – Violated Rule 4-1.15(a)

- Lawyer used firm letterhead to obtain clients but then diverted the matter from firm but used firm resources – violated Rule 4-8.4(c)

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In re Goldstein (continued)

Goldstein argues a reprimand is the appropriate discipline for his actions, citing both the ABA Standards and this Court's published opinions.

More troubling, Goldstein also relies on an unreported order to argue the respondent in that case was reprimanded for behavior Goldstein contends was more egregious than his own.

References to unreported orders in attorney disciplinary cases are improper and need to stop. Rule 5.17(b)(3) makes it clear only "reported decisions" may be consulted. CfRule 84.16(b). This Court made it clear respondents should not cite to unreported orders in *In re Neill*, 681 S.W.3d 194, 200 (Mo. 2024) . . . .

The Court now emphasizes this point again: Unreported orders in attorney discipline cases are not precedential and should not be cited as a basis for a respondent's argument concerning the appropriate discipline.

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Client Communications

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People v. Harvey (Ill. App. 5th 5/2026)

(LexisNexis summary)

Where murder defendant signed a State-initiated proffer letter acknowledging his desire to pursue negotiations and provided a highly incriminating statement after his attorney told him cooperation could help avoid a life sentence, the proffer statement was made during plea discussions protected by Rule 402(f), even though no specific plea offer was made.

Where defense counsel testified he only explained to Harvey that the proffer statement could be used for impeachment if Harvey testified inconsistently, but failed to explain broader waiver provisions in paragraph four of the proffer letter, Harvey's waiver was limited to impeachment use only and did not extend to other trial uses of the statement.

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People v. Harvey (continued)

We hold that a defendant can waive the protections of Rule 402(f) to allow the State to impeach him at trial if he testifies contrary to statements made during plea discussions.

We make no findings with regard to whether a defendant may agree to waive Rule 402(f) protections for other purposes, and we make no findings with regard to the remainder of the waivers set forth in the proffer letter.

Accordingly, we affirm the trial court's order limiting the State's use of the proffer statement to impeachment of the defendant if he testifies at trial.[FN]

[FN] We note that the rules of professional conduct still apply, and defense counsel may not present evidence or argument on the defendant's behalf inconsistent with the defendant's proffer statement absent a good faith basis. [Illinois RPC 3.3]

Arbitration Clauses in Engagement Agreements

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Banana Stand Acquisitions v. Levenfeld Pearlstein (Ill. App. 1st 5-2026)

- Banana Stand held a perfected a security interest in a distressed debtor
- Law firm advised Banana Stand to delay foreclosure
- Banana Stand later sued, claiming advice allowed value of assets subject to security interest to decline
- Law firm sought to compel arbitation

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Banana Stand (continued)

Dispute Resolution. Any demands, claims or controversies arising out of or relating to this contract or the services provided by our firm, (including, but not limited to, fees or costs, breach of contract, tort claims or professional negligence), shall be settled by binding arbitration before ADR Systems of America in Chicago[,] Illinois and in accordance with the Arbitration Rules of ADR Systems of America, and judgment upon the award rendered by the arbitrator may be entered in any court or tribunal having jurisdiction thereof. Either party may commence the arbitration process called for in this agreement by filing a written demand for arbitration with ADR Systems of America. The arbitration will be conducted in accordance with the ADR Systems of America Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will select one arbitrator from ADR Systems of America's panel of neutrals and will share equally in the costs. The prevailing party shall be awarded attorney[] fees. The party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney[] fees, to be paid by the party against whom enforcement is ordered.

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Banana Stand (continued)

- Court finds Banana Stand was bound by agreement
- Court finds plaintiff had adequate notice of arbitration clause
  - Two-page terms of engagement
  - Bold heading of "Dispute Resolution" and conspicuous disclosure of arbitration procedures
  - Plaintiff was sophisticated, experienced business person

DOWNEY LAW GROUP LLC

Tri-Star Imports v. Jackson Lewis PC
(Mo. App. E.D. 4/2026)

- Law firm defended Tri-Star on hostile work environment claims
- Engagement agreement said parties "agree that any dispute between [them] arising out of, or relating to, this [Contract], or the breach thereof, shall be resolved by binding arbitration between the parties."
- Client sued for legal malpractice
- Law firm sought to compel arbitration
- Attempt to compel arbitration denied because engagement agreement did not satisfy Missouri Arbitration Act notice requirements

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“Retainers” and Non-Refundable Fees

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Aronovitz v. Engelland
(Ill. App. 1st 3-2026)

- Lawyer/plaintiff Aronovitz was sued
- Aronovitz met with lawyer Engelland over dinner, discussed suit, and paid $5,000
- Engelland never did work to defend suit
- Aronovitz demanded $5,000 back
- Engelland refused, arguing $5,000 payment was "classical retainer" and he would keep funds

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Illinois Rule 1.5(c)

Nonrefundable fees and nonrefundable retainers are prohibited.

Any agreement that purports to restrict a client's right to terminate the representation or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees is prohibited.

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“Retainers” in Illinois

- A classic retainer "is paid by a client to the lawyer to secure the lawyer's availability during a specified period of time or for a specified matter." That type of retainer is earned "when paid and immediately becomes property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client."
- Alternatively, a security retainer "remains the property of the client until the lawyer applies it to charges for services that are actually rendered. Any unearned funds are refunded to the client. The purpose of a security retainer is to secure payment of fees for future services that the lawyer is expected to perform."
- "The type of retainer that is appropriate will depend on the circumstances of each case." When the parties' intent is not clear from the language of their agreement, the agreement must be construed as a security retainer.

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Lawyer as Witness

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Ali v. Ali (Ill. App. 3d 3-2026)

- In dissolution action, father sought to examine the mother's lawyer about allegations the lawyer had told DCFS that father was coaching children
- Trial court denied father's request to examine opposing counsel and to disqualify counsel as a material witness
- Appellate court affirmed because father could and did examine other witnesses regarding coaching allegations

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Rule 4-3.7

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 4-1.7 or Rule 4-1.9.

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Shelton v. American Motors Test (8th Cir. 1986)

We recognize that circumstances may arise in which the court should order the taking of opposing counsel's deposition.

But those circumstances should be limited to where the party seeking to take the deposition has shown that

(1) no other means exist to obtain the information than to depose opposing counsel

(2) the information sought is relevant and nonprivileged; and

(3) the information is crucial to the preparation of the case.

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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/update061726

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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https://www.surveymonkey.com/r/update061726

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Future Programs

June 22 – Monday at 12:00 Noon CT – **Neurodiversity in the Legal Profession**

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**

www.DowneyEthicsCLE.com

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Programs After June 30, 2026

July 9 – Thursday at 12:00 Noon CT – **The "Chapter 8" Ethics Rules -- Rules 4-8.1 to 4-8.5**

July 28 – Wednesday at 12:00 Noon CT – **15 Tips to Protect & Improve Your Law Practice**

August 13 – Thursday at 12:00 Noon CT – **Addressing Bias in the Legal Profession - Cultural Competency**

August 25 – Tuesday at 3:00 PM CT – **Ethics Lessons from Lawyers Faceplants**

September 10 – Thursday at 12:00 Noon CT – **Lawyer Marketing Ethics for an AI World**

September 23 – Wednesday at 12:00 Noon CT – **Legal Ethics for Trust and Estate Lawyers**

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Timed Agenda

12:00-05 Introduction

12:05-55 Discuss recent developments in Missouri, Illinois and Kansas legal ethics, primarily those after January 2026

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Thank you

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