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The "Chapter 8" Rules – Rules 4-8.1 to 4-8.5

July 9, 2026

MO Bar CLE # 792376   KS Activity #237439

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MO Bar CLE # 791557
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Note

Line breaks have been added to some content.

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“Chapter 8” Rules

RULE 04 | RULES OF PROFESSIONAL CONDUCT

4 | Preamble

4-1 | Client-Lawyer Relationship

4-2 | Counselor

4-3 | Advocate

4-4 | Transactions with Persons Other Than Clients

4-5 | Law Firms and Associations

4-6 | Public Service

4-7 | Information about Legal Services

4-8.1 to 4-9.1 | Maintaining the Integrity of the Profession

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Rule 4-8.1

An applicant for admission to the bar or a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter; or

(c) knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule 4-8.1 does not require disclosure of information otherwise protected by Rule 4-1.6.

Rule 4-8.1

An applicant for admission to the bar or a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter; or

(c) knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule 4-8.1 does not require disclosure of information otherwise protected by Rule 4-1.6.

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Five Prohibitions on Lying

Rule 4-3.3 (overrides Rule 4-1.6 duty)

Rule 4-4.1

Rule 4-7.1

Rule 4-8.1

Rule 4-8.4(c)

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Comment to Rule 4-8.1 cmt [1]

The duty imposed by this Rule 4-8.1 extends to persons seeking admission to the bar as well as to lawyers.

Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application.

Comment to Rule 4-8.1 cmt [1] (Continued)

The duty imposed by this Rule 4-8.1 applies to a lawyer's own admission or discipline as well as that of others.

Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct.

Rule 4-8.1(b) also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

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Comment to Rule 4-8.1 cmt [2]

Rule 4-8.1 is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions.

A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with Rule 4-8.1.

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Comment to Rule 4-8.1 cmt [3]

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 4-1.6 and, in some cases, Rule 4-3.3.

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Rule 4-8.2

(a) 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.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

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Rule 4-8.2(a)

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.

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Rule 4-8.2(b)

A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

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Missouri Judicial Canon 2-4.2(a)

Campaign Conduct of Judges and Judicial Candidates

A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of the non-partisan court plan:

(1) shall maintain the dignity appropriate to judicial office and shall encourage members of the candidate's family to adhere to the same standards of political conduct that apply to the candidate;

(2) shall comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;

(3) shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(4) shall review and approve the content of all campaign statements and materials produced by the candidate before their dissemination;

(5) shall not knowingly or with reckless disregard for the truth make any false or misleading statement or misrepresent the candidate's identity, qualifications, present position, or other fact; and

(6) shall prohibit public officials or employees subject to the candidate's direction or control from doing for the candidate what the candidate is prohibited from doing under this Canon 4; and except to the extent authorized under Rule 2-4.2(B) or Rule 2-4.2(C), such candidate shall not allow any other person to do for the candidate what the candidate is prohibited from doing under this Canon 4.

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Comment to Rule 4-8.2

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney, and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

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Rule 4-8.3

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

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

Rule 4-8.3(a)

A lawyer who knows

that another lawyer has committed a violation of the Rules of Professional Conduct

that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects

shall inform the appropriate professional authority.

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Rule 4-8.3(b)

A lawyer who knows that a judge

has committed a violation of applicable rules of judicial conduct

that raises a substantial question as to the judge's fitness for office

shall inform the appropriate authority.

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Rule 4-8.3(c)

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

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Comment to Rule 4-8.3 cmt [1]

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct.

Lawyers have a similar obligation with respect to judicial misconduct.

An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover.

Reporting a violation is especially important where the victim is unlikely to discover the offense.

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Comment to Rule 4-8.3 cmt [2]

A report about misconduct is not required where it would involve violation of Rule 4-1.6.

However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

Comment to Rule 4-8.3 cmt [3]

If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable.

This Rule 4-8.3 limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent.

A measure of judgment is, therefore, required in complying with the provisions of this Rule 4-8.3.

The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

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Comment to Rule 4-8.3 cmt [4]

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question.

Such a situation is governed by the Rules applicable to the client-lawyer relationship.

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Comment to Rule 4-8.3 cmt [5]

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program.

In that circumstance, providing for an exception to the reporting requirements of Rule 4-8.3(a) and (b) encourages lawyers and judges to seek treatment through such a program.

Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

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Illinois Rule 8.3

(a) A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by the attorney client privilege or by law or information gained by a lawyer or judge while participating in an approved lawyers' assistance program or an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred.

(d) A lawyer who has been disciplined (including resignation in lieu of discipline or the equivalent) or transferred to disability inactive status as a result of an action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission.

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Rule 4-8.4

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. It shall not be professional misconduct for a lawyer for a criminal law enforcement agency, regulatory agency, or state attorney general to advise others about or to supervise another in an undercover investigation if the entity is authorized by law to conduct undercover investigations, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency, regulatory agency, or state attorney general to participate in an undercover investigation, if the entity is authorized by law to conduct undercover investigations;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or other similar factors, are issues. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 4-1.16.

Rule 4-8.4(a)

It is professional misconduct for a lawyer to: . . .

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

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Rule 4-8.4(b)

It is professional misconduct for a lawyer to: . . .

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

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Rule 4-8.4(c)

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

It shall not be professional misconduct for a lawyer for a criminal law enforcement agency, regulatory agency, or state attorney general to advise others about or to supervise another in an undercover investigation if the entity is authorized by law to conduct undercover investigations, and

it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency, regulatory agency, or state attorney general to participate in an undercover investigation, if the entity is authorized by law to conduct undercover investigations;

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Rule 4-8.4(d)

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice;

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Rule 4-8.4(e)

It is professional misconduct for a lawyer to:

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

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Rule 4-8.4(f)

It is professional misconduct for a lawyer to:

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

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Rule 4-8.4(g)

It is professional misconduct for a lawyer to:

(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status.

This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or other similar factors, are issues.

This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 4-1.16.

Comment to Rule 4-8.4 cmt [1]

Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf Rule 4-8.4(a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

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Comment to Rule 4-8.4 cmt [2]

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return.

However, some kinds of offenses carry no such implication.

Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law.

Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category.

A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

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Comment to Rule 4-8.4 cmt [3]

Rule 4-8.4(c) recognizes instances where lawyers for criminal law enforcement agencies, regulatory agencies, or the state attorney general advise others about or supervise others in undercover investigations and provides an exception to allow the activity without the lawyer engaging in professional misconduct. The exception acknowledges current, acceptable practice of these entities.

This exception is not intended to state or imply that an entity has the authority to conduct undercover investigations unless that authority is separately granted to the entity by law.

Although the exception appears in this rule, it is also applicable to Rules 4-4.1 and 4-4.3. This exception does not authorize conduct otherwise prohibited by Rule 4-4.2.

Nothing in the rule allows the lawyer to advise others about or supervise others in undercover investigations unless the criminal law enforcement agency, regulatory agency, or state attorney general is authorized by law to engage in such conduct.

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Comment to Rule 4-8.4 cmt [4]

Rule 4-8.4(g) identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest bias or prejudice or constitute harassment against others based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status.

Rule 4-8.4(g) excludes those instances in which a lawyer engages in legitimate advocacy with respect to these factors.

A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice or the engagement in harassment by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

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Comment to Rule 4-8.4 cmt [4] (Continued)

Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct.

For purposes of Rule 4-8.4(g), "bias or prejudice" means words or conduct that the lawyer knew or should have known discriminate against, threaten, intimidate, or denigrate any individual or group.

Examples of manifestations of bias or prejudice include, but are not limited to, epithets; slurs; demeaning nicknames; negative stereotyping; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics.

Comment to Rule 4-8.4 cmt [4] (Continued)

For purposes of Rule 4-8.4(g), "harassment" is verbal or physical conduct that shows hostility or aversion toward a person based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. "Harassment" includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) submission to that conduct is made, either explicitly or implicitly, a term or condition of the individual's employment;

(b) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or

(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive environment.

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ABA Model Rule 8.4(g)

It is professional misconduct for a lawyer to:

Missouri

(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. . . .

ABA Model Rule

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. . . .

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Illinois Rule 8.4(j)

It is professional misconduct for a lawyer to:

(g) engage in conduct in the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, ancestry, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, gender expression, marital status, military or veteran status, pregnancy, or socioeconomic status. . . .

Kansas Rule 8.4(g)

It is professional misconduct for a lawyer to:

. . .

(g) engage in any other conduct that adversely reflects on the lawyer’s fitness to practice law.

Rule 4-8.5

(a) A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and other jurisdictions for the same conduct.

(b) In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer’s conduct occurred or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction.

A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.

Rule 4-8.5(a)

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs.

A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.

A lawyer may be subject to the disciplinary authority of both this jurisdiction and other jurisdictions for the same conduct.

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Rule 4-8.5(b)

In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction.

A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment to Rule 4-8.5 cmt [1]

It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction.

Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction.

Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule 4. See Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement.

The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Comment to Rule 4-8.5 cmt [2] & [3]

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct that impose different obligations.

The lawyer may be licensed to practice in more than one jurisdiction with differing rules or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice.

Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Rule 4-8.5(b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of:

(a) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct;

(b) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions; and

(c) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

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Comment to Rule 4-8.5 cmt [4]

Rule 4-8.5(b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise.

As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, Rule 4-8.5(b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits, or in another jurisdiction.

Comment to Rule 4-8.5 cmt [5]

When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred.

So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule 4-8.5.

Comment to Rule 4-8.5 cmt [6] & [7]

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule 4-8.5, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct and, in all events, should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties, or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

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Kansas Rule 8.5

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

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Select Informal Ethics Opinions on Chapter 8 Rules

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Missouri Informal Opinions

Rule 4-8.1 – 2 opinions

Rule 4-8.2 – 1 opinion

Rule 4-8.3 – 22 opinions

Rule 4-8.4 – 49 opinions

Rule 4-8.5 – 5 opinions

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Missouri Informal Opinion 2023-06

Client filed a complaint against Lawyer with the Office of Chief Disciplinary Counsel (OCDC) alleging misconduct that is being investigated by a Regional Disciplinary Committee (RDC).

Lawyer has been asked by the Regional Disciplinary Committee to provide evidence related to financial records for the client trust account that includes information of numerous represented clients other than just Client who filed the complaint with the Office of Chief Disciplinary Counsel.

May Lawyer provide evidence and a statement to the Regional Disciplinary Committee without receiving a waiver of confidentiality from the other clients who did not file the complaint?

Informal Opinion 2023-06 Answer

The Legal Ethics Counsel cannot give Lawyer legal advice regarding any matter, specifically, in this inquiry, regarding a disciplinary investigation. Lawyer may choose to seek private legal counsel for legal advice regarding this matter. The Legal Ethics Counsel is limited to providing an informal advisory opinion pursuant to Rule 5.30(c) and cannot interfere with a pending proceeding, in this case an investigation by OCDC or a Regional Disciplinary Committee or division thereof.

With those considerations in mind, the Legal Ethics Counsel provides the following informal ethics opinion regarding the application of the Rules of Professional Conduct to the facts presented.

Pursuant to Rule 5.08(a), the Chief Disciplinary Counsel is authorized, with or without complaint, to investigate professional misconduct alleged to have been committed by a lawyer licensed to practice in this jurisdiction. Each regional disciplinary committee or division thereof may conduct an investigation upon request of the Chief Disciplinary Counsel. Rule 5.08(a); see also Rule 5.02.

Informal Opinion 2023-06 Answer (Continued)

Rule 4-8.1 states in relevant part that a lawyer in connection with a disciplinary matter shall not “knowingly fail to respond to a lawful demand for information from …[a] disciplinary authority, except that this Rule 4–8.1 does not require disclosure of information otherwise protected by Rule 4–1.6.”

In Missouri, the disciplinary authority is the Office of Chief Disciplinary Counsel or a regional disciplinary committee.

Failure to cooperate with the Chief Disciplinary Counsel or a regional disciplinary committee with regard to a disciplinary matter constitutes conduct prejudicial to the administration of justice and conduct that reflects adversely on a lawyer’s fitness to practice law. See Formal Opinion 117; Rule 4–8.4(d). . . .

Missouri Informal Opinion 20030089

Attorney is a prosecuting attorney and has information that another attorney has committed criminal acts.

The other attorney has not pleaded guilty or been convicted.

Is Attorney obligated to report the other attorney's acts?

Would Attorney's obligation change if the other attorney pleads guilty or is convicted?

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Informal Opinion 20030089 – Answer

Attorney has an obligation under Rule 4-8.3(a) to report the information to the Office of the Chief Disciplinary Counsel.

Under Rule 4-8.1(b), Attorney has an obligation to report the ultimate outcome to OCDC, if requested by that office.

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Missouri Informal Opinion 2026-07

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.

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Missouri Informal Opinion 2025-02

Lawyer has determined that Lawyer must report the misconduct of another lawyer to the Office of Chief Disciplinary Counsel pursuant to Rule 4-8.3.

However, Lawyer is concerned about the timing of that report, as Lawyer is representing client in litigation that is near to trial, and the report pertains to the lawyer on the opposing side.

Settlement negotiations are underway.

May Lawyer wait to inform the Office of Chief Disciplinary Counsel as to the misconduct of opposing counsel pursuant to Rule 4-8.3?

Informal Opinion 2025-02 – Answer

If Lawyer determines that Lawyer is required to report pursuant to Rule 4-8.3, that obligation exists regardless of the timing.

While Rule 4-8.3 does not address the timing of the report, it is generally presumed that the report should be done as promptly as possible. This requirement derives from the need to safeguard the public and the profession from future misconduct by the offending attorney.

As stated in Scope [14], "[t]he Rules of Professional Conduct are rules of reason." Comment [2] to Rule 4-8.3 references potential prejudice to a client's interests in the context of seeking informed consent to disclose confidential information. This reference suggests that Lawyer may consider the adverse impact on the client when determining the timing of the report.

While Lawyer may consider the interests of the client in the timing of filing a report, and prejudice to the client in the middle of settlement negotiations with a trial nearing may be such a factor, if an obligation to report exists pursuant to Rule 4-8.3, a report should be made reasonably promptly to the Office of Chief Disciplinary Counsel. See also Missouri Informal Opinion 2019-02 (threat of criminal prosecution or disciplinary complaint; duty to report).

Missouri Informal Opinion 2023-05 Question 1

Lawyer is found guilty of felony driving while intoxicated (DWI) and asks if there is an obligation to self-report this to the Chief Disciplinary Counsel.

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Informal Opinion 2023-05
Answer 1

While Lawyer is not required by Rule 4-8.3 to self-report an alleged or actual violation of the Rules of Professional Conduct to the Office of Chief Disciplinary Counsel, a criminal conviction or discipline in another jurisdiction is different. See Informal Opinion 2011-04.

In this matter, Lawyer is required to report the felony conviction for driving while intoxicated to the Chief Disciplinary Counsel within 10 days. Rule 5.21(a) requires a lawyer licensed in Missouri to report to the Chief Disciplinary Counsel within 10 days a guilty or nolo contendere plea, or a finding of guilt of a crime in this state, any other state, or the United States, whether a sentence is imposed or not.

Informal Opinion 2023-05 Answer 1 (Continued)

A crime for the purposes of Rule 5.21 is defined by Rule 5.21(c) to include:

(1) Any felony of this state, any other state, or the United States;

(2) Any misdemeanor of this state, any other state, or the United States involving interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or moral turpitude; or

(3) Any misdemeanor involving attempt, conspiracy, or solicitation of another to commit any misdemeanor of this state, any other state, or the United States as described in this Rule 5.21(c)(2).

Whether a misdemeanor plea or finding of guilt for driving while intoxicated is subject to required reporting pursuant to Rule 5.21(c)(2) or (3) is a question of law and should be considered by each lawyer on a case-by-case basis.

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Informal Opinion 2023-05 Answer 1 (Continued)

Additionally, Lawyer may wish to consider if the resources of the Missouri Lawyers' Assistance Program of The Missouri Bar, or those available pursuant to Rule 16 on substance abuse intervention, may be helpful to Lawyer's overall well-being.

Missouri Informal Opinion 2023-05 Question 2

Lawyer is also licensed to practice law in another U.S. jurisdiction, State A, and is disciplined by State A.

Does Lawyer have an obligation to report the discipline by State A to the Chief Disciplinary Counsel?

Missouri Informal Opinion 2023-05 Answer 2

While Lawyer is not required by Rule 4-8.3 to self-report an alleged or actual violation of the Rules of Professional Conduct to the Office of Chief Disciplinary Counsel, discipline of Lawyer by another jurisdiction is different. See Informal Opinion 2011-04.

Rule 5.20(a) requires a lawyer licensed in Missouri to report being disciplined by another jurisdiction to the Chief Disciplinary Counsel within 10 days.

In this matter, Lawyer is required to report the discipline by State A to the Chief Disciplinary Counsel within 10 days.

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Missouri Informal Opinion 2021-09

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

Attorney was not present when the statements were allegedly made.

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Informal Opinion 2021-09 – Answer

Rule 4-8.3(b) requires Attorney to report Judge to the appropriate authority, the Commission on Retirement, Removal and Discipline, if Attorney "knows" judge has made statements indicating lack of impartiality in a matter if that would be a violation of applicable rules of judicial conduct, the Code of Judicial Conduct under Rule 2.

Rule 4-1.0(f) defines "knows" as "actual knowledge of the fact in question," and actual knowledge may be inferred from circumstances.

If Attorney does not have knowledge, Attorney is not obligated by Rule 4-8.3(b) to report Judge.

If Attorney believes Attorney has knowledge of a violation of the applicable rules of judicial conduct such that a report is required, per Rule 4-8.3(c) Attorney must have the informed consent of Client to disclose any information related to the representation in making the report as required by Rule 4-1.6(a).

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Missouri Informal Opinion 2018-07

Does Attorney have an obligation to report opposing counsel to the Office of Chief Disciplinary Counsel (OCDC),

- where Attorney and opposing counsel had phone conversations about the representation during which opposing counsel had slurred speech and exhibited significant memory problems,
- where opposing counsel made a court appearance a few hours later smelling strongly of alcohol, and
- where Attorney knows another person has reported opposing counsel's conduct to OCDC?

Informal Opinion 2018-07 – Answer

Rule 4-8.3 requires Attorney to report opposing counsel to OCDC if Attorney “knows” opposing counsel was under the influence of alcohol while representing a client and if Attorney has the informed consent of his or her own client to disclose information related to the representation as required by Rule 4-1.6.

Rule 4-1.0(f) defines “knows” as “actual knowledge of the fact in question,” and actual knowledge may be inferred from circumstances.

An attorney’s duty per Rule 4-1.1 to provide competent representation to a client is impaired if attorney is intoxicated while engaging in activities related to the representation. The violation raises a substantial question as to the attorney’s honesty, trustworthiness, or fitness as a lawyer in other respects.

If Attorney’s suspicions do not rise to the level of actual knowledge, including if Attorney reasonably believes the behavior of opposing counsel may have an alternative explanation, then Attorney is not obligated by Rule 4-8.3 to report opposing counsel.

If the report is mandatory under the circumstances, a similar report to OCDC by another attorney or judge does not eliminate Attorney’s duty to report under Rule 4-8.3.

Missouri Informal Opinion 2018-13

Attorney plans to present educational seminars about estate planning.

At the end of the seminar, a non-lawyer presenter will give information about costs of estate planning and offer audience members a discount certificate for Attorney's estate planning services.

Alternatively, Attorney is considering sending attendees a follow-up letter describing Attorney's services and enclosing a discount certificate.

May Attorney participate in the program?

Informal Opinion 2018-13 – Answer

Attorney may give educational seminars.

It is permissible for information about Attorney's legal services to be available at the seminar for inquirers, but Attorney may not initiate the in-person solicitation of legal business.

The promotion of Attorney's services or offering of a discount certificate at the seminar would constitute in-person solicitation prohibited by Rule 4-7.3.

Attorney may not violate Rule 4-7.3 through the actions of another, including a non-lawyer co-presenter at the seminar. See Rule 4-8.4(a).

Attorney may mail attendees a solicitation letter after the seminar if the written solicitation complies in all respects with Rule 4-7.3, Direct Contact with Prospective Clients.

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/chap8-0726

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 (if possible), so we can ensure you receive proper credit*

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https://www.surveymonkey.com/r/chap8-0726

Future Programs

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 Missouri Rules 4-8.1 through 4-8.5

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Thank you

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