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Legal Ethics for Trust and Estate Lawyers

September 23, 2026

MO Bar CLE #792381 KS Activity #237444

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https://www.surveymonkey.com/r/trust0926

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Protecting Your Practice

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News Release

LAW FIRMS FACE UNRELENTING CHALLENGES OF LATERAL MOVEMENT, CYBER THREATS, AI RISKS AND FRAUD

New Survey Finds Legal Malpractice Claim Severity at All-Time High

WASHINGTON, DC, May 15, 2024 – In their efforts to sustain and grow their business

Notably, 11 of the 13 insurers polled have participated in a claim payout in excess of $100 million in the past two years and the same number has paid two claims of that size. Meanwhile, five insurers surveyed paid a claim between $150 million and $300 million and four paid a claim over $300 million.

Conflicts of interest remain the single largest cause of legal malpractice claims with nine of the insurers polled ranking it first or second most common error. Next was scrivener or clerical errors, which ranked first or second by four of the insurers.

For multiple years, the survey has found the same three practice areas generating the largest number of legal malpractice claims. Among insurers polled this year, 62 percent identified Trust & Estate, while Business Transactions was identified by the same percentage, followed by Corporate & Securities (46 percent). In the current survey, however, two additional practice areas – Insurance Defense and Personal Injury Plaintiff's work – saw continued growth in claims activity.

Who Can Bring Claims

- Clients
- (Alleged) clients
- Beneficiaries – *Donahue v. Shugart Thompson & Kilroy PC* (Mo. 1995)

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Nature of Claims

- Legal malpractice
- Breach of fiduciary duty – potential separate cause of action – *Klemme v. Best* (Mo. 1997)
- Cyber-related claims

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Most Common Claims

- Conflicts of Interest
- Case management errors
  - Failure to gather sufficient information
  - Believing client without verification
  - Neglecting communications with clients
  - Undue influence by potential beneficiaries

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Drafting Errors

- Over-reliance on standard forms
- Using/intermingling imprecise terms
- Not discussing contingencies
- Omitting provision desired from former plan
- Not addressing changes in law that may result from client moves
- Unmarried couples, etc.
- Failing to coordinate/conform documents
- Failing to properly effect testator's intent

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Other Errors

- Problems in will execution
  - Lack of/problems with execution “ceremony”
  - Capacity issues
- Errors of/change in law
- Fraud, overreach, self-dealing

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Managing Risk – Engagement Letters

- Who is the client
- What will be done for the client
- Joint representation – conflict waivers
  - "Zeal"
  - Confidences
- Implementation of estate plan

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Documenting of File

- What are main purposes of the plan
- What strategies has the client rejected – and why
- Why has client chosen unusual strategies
- *“Memo to file” may never reach client*

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Continuation of Representation

What are lawyers' duties after plan is executed?

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Malpractice Insurance

- "Claims-made" policies

- Most insurance is "occurrence" insurance

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Have Insurance – and Report Claims

- Malpractice insurance can be purchased for about $100 per month

- "Claims made" policies – when claim is made, not when malpractice occurs
  - "Claim" is very broad
    - Demand letter
    - Lawsuit
  - "Pre-claim" coverage varies greatly by policy
    - Many policies $0
    - Some policies $25,000 or more

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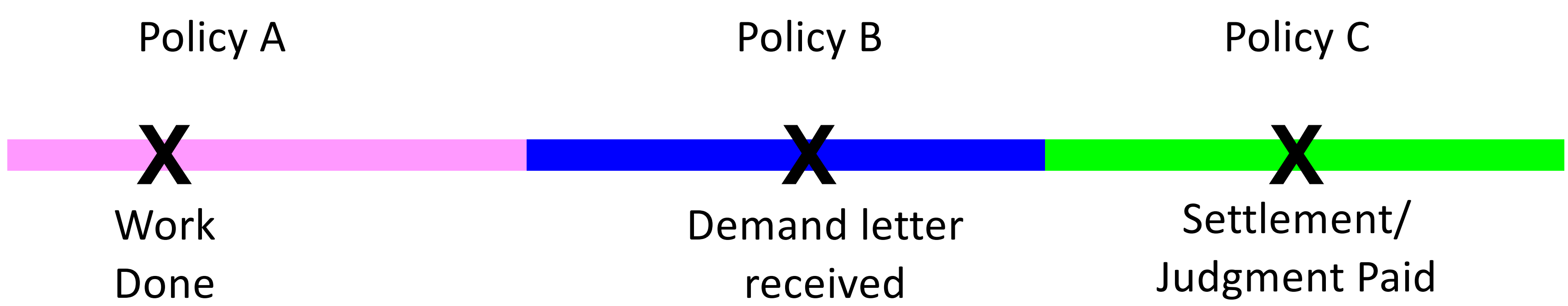
"Claims"-Made Policies



- If you leave your firm (coverage source), you may lose coverage for subsequent claims
- A "tail" policy may be available

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Money Issues

Estate Planning – Hourly Fee

- Pat asks you to prepare estate plan
- You tell Pat you will charge hourly and want a $1500 advance
- Pat advances the $1500

- *Where do you put the money?*

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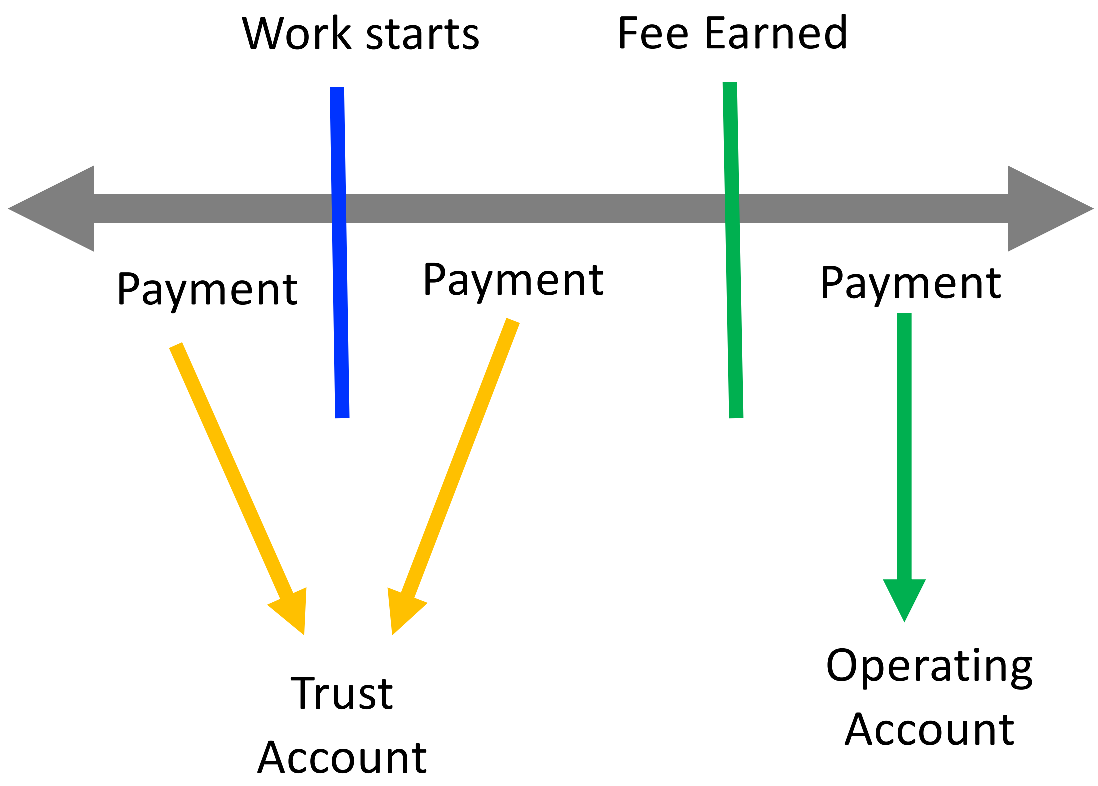
Basic Rule on Handling Funds Paid for Legal Services



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How Long Must Funds Be Held?

- Until the funds are actually received by the bank – they are “good funds”
  - Presumption – 10 days
  - “Available” is not “good”

Estate Planning – Fixed Fee

- Pat asks you to prepare estate plan
- You tell Pat you will charge a $2500 flat fee
- Pat advances the $2500

- *Where do you put the money?*

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Exception to "Basic" Trust Account Rule

A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except that *an advanced flat fee which does not exceed $2,000 is exempted from this requirement and may be deposited into another account.*

Rule 4-1.15(c) (effective January 1, 2019)

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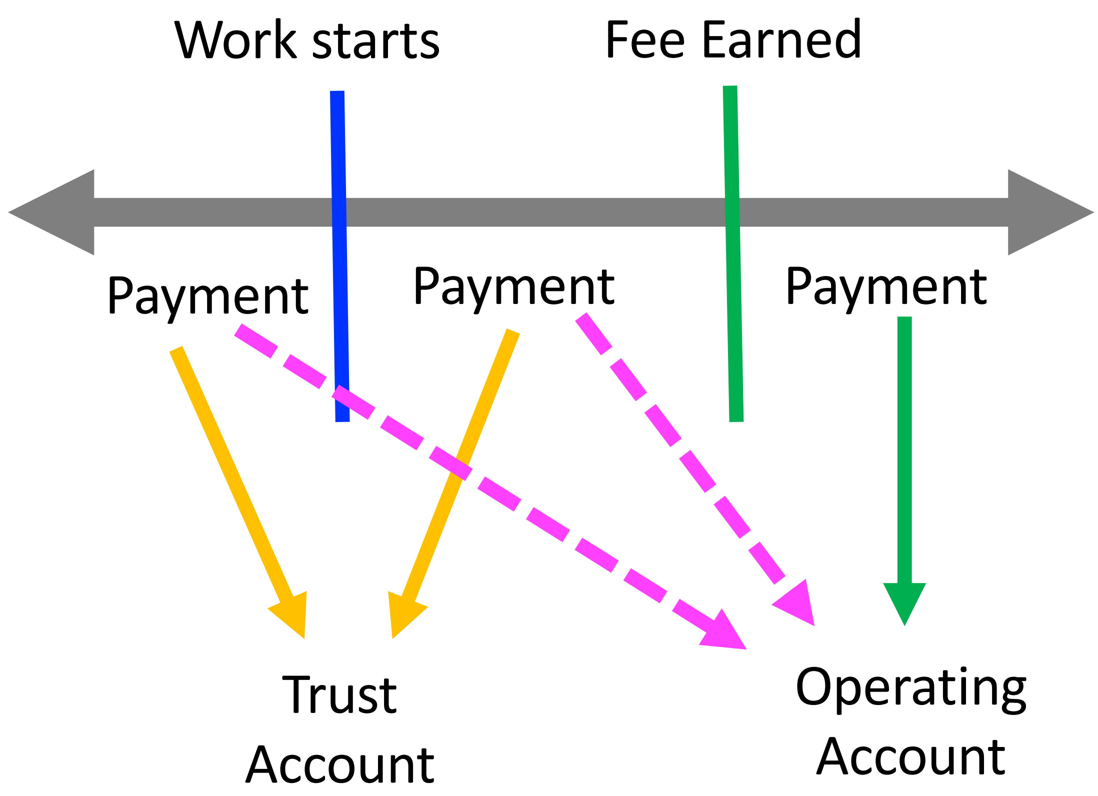
$2,000 or less FLAT/FIXED FEE exception



Reconciliations Required – Rule 4-1.15(a)(7)

A reconciliation of the account shall be performed reasonably promptly each time an official statement from the financial institution is provided or available.

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(Three-Way) Reconciliation

Reconcile

1. Bank statement (activity) with
2. Account ledger with
3. (All) client ledgers

- Monthly reconciliation required by rule upon receipt/ availability of monthly statements
- Must maintain records of reconciliations

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Estate Planning – Fixed Fee

- Pat asks you to prepare estate plan
- You charge Pat a $1500 fixed fee
- Pat advances the $1500 and $500 for expenses by a single check
- You spend five hours on the work
- Pat discharges you before you incur the other fees

- *What do you do with Pat's money? Does it matter whether you gave Pat a draft of the documents?*

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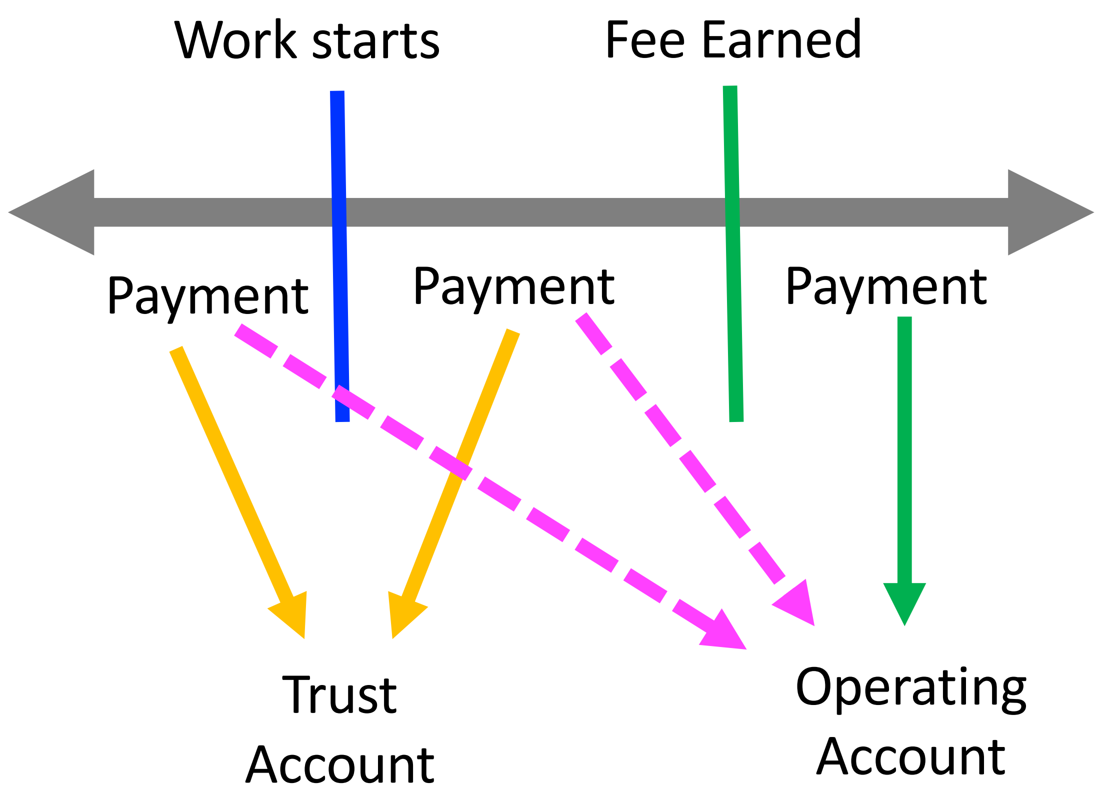
$2,000 or less FLAT/FIXED FEE exception



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Pat's Funds

- $1500 for legal fees
- $500 for advanced expenses

= $2000 flat fee exception does <u>not</u> apply

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Prospective Client

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Prospective Client

- Pat contacts you about preparing an estate plan
- Pat meets with you for an hour and shares information about assets and desires
- Pat leaves, and you never hear from Pat again
- Chris contacts you about challenging Pat's estate

- *Can you represent Chris? What can you tell Chris about your meetings with Pat?*

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Rule 4-1.9

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

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

(1) whose interests are materially adverse to that person; and

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

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Conflict Issues

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Marital Planning

- Pat and Chris are married
- Pat and Chris ask you to prepare estate plan
- Do you need a conflict waiver?

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Rule 4-1.7(a)

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

(1) the representation of one client will be directly adverse to another client; or

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

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Notice of an Error

- You realize that Pat's estate plan has an error
- Do you need to notify
  - Pat if still a client
  - Pat if a former client
  - Others if Pat has died

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Rule 4-1.4

(a) A lawyer shall:

(1) keep the client reasonably informed about the status of the matter;

(2) promptly comply with reasonable requests for information; and

(3) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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Rule 4-1.7(a)

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

(1) the representation of one client will be directly adverse to another client; or

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

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Confidentiality

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Deceased Client

- Pat was your estate-planning client
- Pat dies
- Chris asks for information concerning Pat’s estate plan

- *What can you tell Chris? What documents can you provide to Chris?*

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Rule 4-1.9(c)

A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

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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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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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Informal Opinion 2026-04
Answer (Continued)

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.

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?

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.

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).

Informal Opinion 2026-06 Answer (Continued)

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.

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).

Informal Opinion 2026-06 Answer

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.

Informal Opinion 2026-06 Answer (Continued)

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.

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

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Informal Opinion 2026-06
Footnote 1

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].

Informal Opinion 2026-06 Answer (Continued)

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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Deceased Client (continued)

- Pat was your estate-planning client
- Pat dies
- You receive a subpoena for Pat's file

- *What do you do to respond to the subpoena?*

Rule 4-1.6(b)

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

(1) to prevent death or substantial bodily harm that is reasonably certain to occur;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(4) to comply with other law or a court order;

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Missouri Informal Opinion 2026-11 (August 3, 2026)

Ten years ago, Lawyer A created a declaration of trust for property for a client, Grantor, and named one of Grantor's children, Child 1, as trustee. Lawyer A also did additional estate planning for Grantor.

Five years ago, Lawyer B amended the declaration of trust to add another child of Grantor, Child 2, as a co-trustee with Child 1.

Two years ago, Grantor passed away.

A dispute arose between the co-trustees as to the property in the declaration of trust, and Child 1 sued Child 2.

Lawyer A has been subpoenaed to testify as to Grantor's intent as to the property in trust, as well as the rest of the estate plan. Would Lawyer A violate any Rules of Professional Conduct if Lawyer A sat for a deposition or testified pursuant to a subpoena at trial in the underlying litigation between Child 1 and Child 2?

Informal Opinion 2026-11 Answer

The Rules of Professional Conduct do not prohibit Lawyer A, per se, from testifying during a deposition or at trial pursuant to subpoena in the underlying litigation, however, Rules 4–1.9(c) and 4–1.6 may severely restrict Lawyer A's ability to testify to relevant issues in the underlying lawsuit.

Rule 4–1.9 addresses a lawyer's duty to former clients. Subsection (c)(2) provides that a lawyer who has formerly represented a client in a matter shall not reveal information relating to the representation except as permitted by the Rules of Professional Conduct.

Rule 4–1.6(a), in turn, provides that a lawyer may not reveal information relating to the representation of a client unless the client gives the lawyer informed consent, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by Rule 4–1.6(b).

Rule 4–1.6 survives the death of a client. *See* Comment [17] to Rule 4–1.6 and Missouri Informal Opinion 990146. The confidentiality provisions of Rule 4–1.6 are much broader than the substantive law issues of attorney-client and work product privileges. Confidentiality covers all information related to the representation, no matter its source."[1] *See* Rule 4–1.6, Comment [3].

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Informal Opinion 2026-11 n. 1

Related bodies of law address confidentiality through attorney-client privilege and the work-product doctrine, 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].

Informal Opinion 2026-11 Answer (Continued)

Informed consent as used in Rule 4–1.6 is defined as the "agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Rule 4–1.0(e).

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Informal Opinion 2026-11 Answer (Continued)

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." Determining if there is "other law" that permits disclosure of the Grantor's confidences is a matter of law and beyond the scope of the Rules of Professional Conduct. Lawyer A should consult Comment [10] to Rule 4–1.6 for additional guidance as to any possible exception at law and use independent professional judgment on this issue.

A subpoena is not enough to require disclosure of client confidences. Rather it must be a court order and Lawyer A must 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." Comment [11] to Rule 4–1.6. If the court orders the disclosure of client confidences and an appeal is not sought, Lawyer A may comply with the court's order. *See* Comment [11] to Rule 4–1.6; *See also* Missouri Informal Advisory Opinions 20060004, 20010154, 2017–04, 2026–04, and 2026–06.

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Informal Opinion 2026-11
Answer (Continued)

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

Undue Influence Concerns

Estate Plan for Another

- Pat brings Chris to your office and asks you to prepare an estate plan for Chris

- *How do you deal with Chris? With Pat?*
- *Does it matter who is paying for work?*

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Rule 4-5.4(c)

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

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Power of Attorney

- You are contacted and asked to send Pat a financial power of attorney for Chris to execute, naming Pat as POA

- *What concerns should you have?*

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Rule 4-5.4(c)

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

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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.

Informal Opinion 2025-06 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 2025-06 Answer (Continued)

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).

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Informal Opinion 2025-06 Answer (Continued)

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.

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Informal Opinion 2025-06 Answer (Continued)

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 2025-06 Answer (Continued)

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."

Informal Opinion 2025-06 Answer (Continued)

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.

Trustee Misconduct

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Trustee Misconduct

- You create a Trust for Pat
- Chris becomes the trustee of the Trust
- You advise Chris on matters relating to the Trust

- *You become concerned with Chris's conduct. What can/should you do?*

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Rule 4-1.6(b)

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

(1) to prevent death or substantial bodily harm that is reasonably certain to occur;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(4) to comply with other law or a court order;

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Rule 4-1.2(f)

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

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Rule 4-1.16(a)

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

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

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“Hacked” Information

- You learn someone has gained unauthorized access to your client work files, including files for current client Pat and former client Chris

- *What do you do?*

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Rule 4-1.6(c)

A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client.

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Rule 4-1.4

(a) A lawyer shall:

(1) keep the client reasonably informed about the status of the matter;

(2) promptly comply with reasonable requests for information; and

(3) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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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/trust0926

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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Future Programs

October 5, 2026 – Tuesday at 3:00 PM CT - **Litigation Ethics and Sanction Law**

October 21, 2026 – Wednesday at 12:00 Noon CT - **Encouraging Inclusivity Through Firm Management and Mentoring**

November 4, 2026 – Wednesday at 12:00 Noon CT - **Ending Client Relationships — Risks and Rules**

November 17, 2026 – Tuesday at 12:00 Noon CT - **Legal Ethics and New Firm Business Models (including MSOs)**

December 2, 2026 – Wednesday at 12:00 Noon CT - **Managing Your Lawyer Trust Account**

December 17, 2026 – Thursday at 12:00 Noon CT - **Legal Ethics and Dealing with Non-Clients - the "Chapter 4" Rules**

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www.DowneyEthicsCLE.com

Timed Agenda

12:00-05 Introduction

12:05-55 Discuss ethical issues that trust and estate lawyers face

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Thank you

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