

# Current Developments in Legal Ethics



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## 1) The Lawyer who switches law firms

The Park Apartments at Fayetteville, LP v. Plants, 2018 Ark. 612 (lawyer in office representing plaintiff moves to in house department of defendant; presumption #1 is rebuttable; presumption #2 is irrebuttable).

### Rule 1.9. Duties To Former Clients

- (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 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent confirmed in writing.
- (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.

### Rule 1.10. Imputation Of Conflicts Of Interest: General Rule

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9 or 3.7, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a

significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
  - (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
  - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.
- (c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.
- (d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

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## **2) Chinese walls (or screens)**

A “screen” is defined in the terminology section of the Arkansas Rules of Professional Conduct as: “the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.”

Chinese walls are not permitted when a lawyer is disqualified because of a concurrent conflict with a current client (Rule 1.7), because of a conflict with a former client (Rule 1.7), because of the likelihood of being a necessary witness (Rule 3.7), and because the lawyer is the grantee in a deed or other instrument (Rule 1.8(c); Rule 1.8(k); Comment 20. If the lawyer is disqualified, the entire law firm is disqualified. Rule 1.10

However, Chinese walls are permitted when a government lawyer moves to a private law firm (Rule 1.11); when a non-lawyer or law student moves to a different firm (Herron v. Jones, 276 Ark. 493, 637 S.W. 2d 569 (1982); Comment 4 to Rule 1.10); when a judge or law clerk joins a firm (Rule 1.12); when a lawyer has a personal interest (Comment 10 to Rule 1.7; Rule 1.10(a); when a lawyer has

sexual relations with a client (Rule 1.8(k) Comment 20); when a lawyer is related to opposing counsel (Rule 1.8(l)).

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**3) Does a lawyer have a duty to confess? To the client? To Stark Ligon (and the Committee on Professional Conduct)? To a court?**

**Rule 1.4. Communication.**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules.

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

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

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

(5) consult when the lawyer knows that 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.

(c) A lawyer shall promptly notify a client in writing of the actual or constructive receipt by the attorney of a check or other payment received from an insurance company, an opposing party, or from any other source which constitutes the payment of a settlement, judgment, or other monies to which the client is entitled.

**Rule 8.3. Reporting Professional Misconduct.**

(a) A lawyer having knowledge 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 having knowledge 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 Rule 1.6.

(d) This rule shall not apply to a member or employee of the Lawyer Assistance Committee ("the Committee") of the Arkansas Judges and Lawyers Assistance Program ("JLAP") or a volunteer serving pursuant to Rule 4 of the Rules of JLAP regarding information received in one's capacity as a Committee member, employee, or volunteer. However, the "duty to report" outlined in paragraphs (a) and (b) above is reinstated if, in good faith, the JLAP committee member, employee, or volunteer, has: reason to believe that an attorney participating in the JLAP program is failing to cooperate with said program; is engaged in criminal behavior or the threat thereof; or, is otherwise in violation of paragraphs (a) and (b) of this rule which is beyond or succeeds the behavior upon which the attorney's participation in JLAP was initially based.

**American Bar Association Formal Opinion 481  
April 17, 2018**

**A Lawyer's Duty to Inform a Current or Former Client of the Lawyer's  
Material Error**

*Model Rule of Professional Conduct 1.4 requires a lawyer to inform a current client if the lawyer believes that he or she may have materially erred in the client's representation. Recognizing that errors occur along a continuum, an error is material if a disinterested lawyer would conclude that it is (a) reasonably likely to harm or prejudice a client; or (b) of such a nature that it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice. No similar obligation exists under the Model Rules to a former client where the lawyer discovers after the attorney-client relationship has ended that the lawyer made a material error in the former client's representation.*

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**4) May a lawyer pay (or participate in paying) "hush money"?**

**Rule 8.4. Misconduct.**

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

**American Bar Association Formal Opinion 92-363  
July 6, 1992**

**Use of Threats of Prosecution in Connection with a Civil Matter**

*The Model Rules do not prohibit a lawyer from using the possibility of presenting criminal charges against the opposing party in a private civil matter to gain relief for a client, provided that the criminal matter is related to the client's civil claim, the lawyer has a well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process.*

*The Model Rules do not prohibit a lawyer from agreeing, or having the lawyer's client agree, in return for satisfaction of the client's civil claim, to refrain from presenting criminal charges against the opposing party as part of a settlement agreement, provided that such agreement does not violate applicable law.*

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**5) Advertising and Solicitation Rules changes**

**Rules 7.1 – 7.5** were adopted in 1986. After the “grand compromise” of 1998, they were revised. Although there have been a few small changes since then, most of the major changes from the American Bar Association have not been adopted in Arkansas.

- Rule 7.1 - Communication Concerning a Lawyer’s Services
- 7.2 - Advertising
- 7.3 - Solicitation of Clients
- 7.4 - Communication of Fields of Practice and Specialization
- 7.5 - Firm Names and Letterheads

In August 2018 the American Bar Association modified, changed and rewrote the rules, combining them into Rules 7.1 – 7.3. Many of the former provisions in Rule 7.4-7.5 have been moved into the comments.

The Professional Ethics Committee of the Arkansas Bar reviewed the new rules and recommended adopting most of the changes, retaining a few Arkansas distinctions. The Board of Governors has approved the changes; they will go before the Civil Practice Committee of the Arkansas Supreme Court on April 13. The basic standard has not changed: a prohibition on false and misleading statements.

What are the major changes?

- a) Written solicitation letter, but fewer restrictions
- b) Advertisement/Solicitation by email permitted
- c) Elimination of references to “testimonial” and “endorsement”
- d) Names of former clients in ads
- e) Names of current clients only in written communications
- f) Prior success in ads, but with disclaimer/disclosure

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**6) May a lawyer secretly tape a conversation? With his client?**

**American Bar Association Formal Opinion 01-422**

**June 24, 2001**

**Electronic Recordings by Lawyers Without the Knowledge of All Participants**

*A lawyer who electronically records a conversation without the knowledge of the other party or parties to the conversation does not necessarily violate*

*the Model Rules. Formal Opinion 337 (1974) accordingly is withdrawn. A lawyer may not, however, record conversations in violation of the law in a jurisdiction that forbids such conduct without the consent of all parties, nor falsely represent that a conversation is not being recorded. The Committee is divided as to whether a lawyer may record a client-lawyer conversation without the knowledge of the client, but agrees that it is inadvisable to do so.*

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### **7) The lawyer who is deceased, incapacitated or missing (DIM)**

To guard against the unexpected, to deal with deadlines, and to prevent claims against the estate of the deceased attorney or the attorney, a proper succession plan should identify a specific attorney (or attorneys) to take over the practice.

The written plan should contain any and all elements that the successor attorney might need (or find helpful). They include:

- 1) contents of practice;
- 2) persons to receive the contents of practice;
- 3) successor assisting attorneys;
- 4) compensation of assisting attorney;
- 5) liability of assisting attorney;
- 6) documents to maintain; including
  - Draft of letter to client
  - Will; letter to personal representative
  - Passwords for computer systems
  - List of contacts
  - IOLTA documents
  - Bank information
  - Information for personal representative

The Rules of Professional Conduct may give guidance or suggestions:

Rule 1.17: Sale of Law Practice

Rule 1.19: Client Files – Definition, Retention & Destruction

**American Bar Association Opinion 92-369**  
**December 7, 1992**



## **Disposition of Deceased Sole Practitioners' Client Files and Property**

*To fulfill the obligation to protect client files and property, a lawyer should prepare a future plan providing for the maintenance and protection of those client interests in the event of the lawyer's death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify the clients of their lawyer's death.*

*A lawyer who assumes responsibility for the client files and property of a deceased lawyer must review the files carefully to determine which need immediate attention. Because the reviewing lawyer does not represent the client, only as much of the file as is needed to identify the client and to make a determination as to which files need immediate attention should be reviewed. Reasonable efforts must be made to contact all clients of the deceased lawyer to notify them of the death and to request instructions in accordance with Rule 1.15.*

### **American Bar Association**

#### **Model Rules for Disciplinary Enforcement (2002)**

#### **Rule 28: APPOINTMENT OF COUNSEL TO PROTECT CLIENTS' INTERESTS WHEN RESPONDENT IS TRANSFERRED TO DISABILITY INACTIVE STATUS, SUSPENDED, DISBARRED, DISAPPEARS, OR DIES**

**A. Inventory of Lawyer Files.** If a respondent has been transferred to disability inactive status, or has disappeared or died, or has been suspended or disbarred and there is evidence that he or she has not complied with Rule 27, and no partner, executor or other responsible party capable of conducting the respondent's affairs is known to exist, the presiding judge in the judicial district in which the respondent maintained a practice, upon proper proof of the fact, shall appoint a lawyer or lawyers to inventory the files of the respondent, and to take such action as seems indicated to protect the interests of the respondent and his or her clients.

**B. Protection for Records Subject to Inventory.** Any lawyer so appointed shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom the file relates, except as necessary to carry out the order of the court which appointed the lawyer to make the inventory.

## Commentary

In any situation in which the lawyer is not available to protect clients, the agency has an obligation to protect them. When such information comes to the attention of the agency, it need not await the determination that misconduct has occurred before acting.

The cost of the inventory may be paid from the fees owing to the lawyer whose files are inventoried. The cost may also be paid by funds made available for that purpose by state and local bar associations. Often the lawyer appointed as trustee will waive all or part of his or her fee as a public service.

The trustee is appointed to inventory the files of the lawyer's clients, not to represent them. The trustee should review each file and recommend to the judge who appointed him or her a proposed disposition. The trustee may take only such action with respect to each client's file as is authorized by the judge who appointed him or her.

The lawyer-client privilege must be extended so that review of the file by the trustee is not deemed to be disclosure to a third party, which would waive the privilege.

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### **8) Rule 3.7. Lawyer As Witness.**

- (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) Reserved.

Helena Country Club v. Brocato, 2018 Ark. 16 (trial court disqualified attorney Charles Halbert, from representing the defendant Country Club; interlocutory appeal under Arkansas Rule of Appellate Procedure - Civil 2(a)(8); abuse of discretion by trial court; disqualification reversed).

Weigel v. Farmers Insurance Co., 356 Ark. 612 (2004) (three part test when opposing party seeks to call counsel as a witness, and thus seeks disqualification).

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**9) May an attorney-client contract include mandatory arbitration?**

**American Bar Association Formal Opinion 02-425  
February 20, 2002**

**Retainer Agreement Requiring the Arbitration of Fee Disputes and Malpractice Claims**

*It is permissible under the Model Rules to include in a retainer agreement with a client a provision that requires the binding arbitration of disputes concerning fees and malpractice claims, provided that the client has been fully apprised of the advantages and disadvantages of arbitration and has given her informed consent to the inclusion of the arbitration provision in the retainer agreement.*

**Arkansas Rule of Professional Conduct 1.8(h):** A lawyer shall not: (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is represented by independent legal counsel, or (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

**Limiting Liability and Settling Malpractice Claims  
Comment [14]:**

Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. **This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement.** Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law,

provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

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#### **10) What is the attorney's obligation when the client wants the file?**

##### **Arkansas Rule of Professional Conduct 1.16: Declining or terminating representation:**

- (a) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, **surrendering papers and property to which the client is entitled** and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Travis v. Committee on Professional Conduct, 2009 Ark. 188, 306 S.W. 3d 3 (attorney disciplined for not surrendering file to client).

#### **American Bar Association Formal Opinion 471 July 1, 2015**

##### **Ethical Obligations of Lawyer to Surrender Papers and Property to which Former Client is Entitled**

*Upon the termination of a representation, a lawyer is required under Model Rules 1.15 and 1.16(d) to take steps to the extent reasonably practicable to protect a client's interest, and such steps include surrendering to the former client papers and property to which the former client is entitled. A client is not entitled to papers and property that the lawyer generated for the lawyer's own purpose in working on the client's matter. However, when the lawyer's representation of the client in a matter is terminated before the matter is completed, protection of the former*

*client's interest may require that certain materials the lawyer generated for the lawyer's own purpose be provided to the client.*

## **Arkansas Rule of Professional Conduct 1.19 (adopted December 2016)**

### **Client Files: Definition, Retention & Destruction**

(a) Client file - Definition and duty to provide copies of client-file documents to the client. The use of the term "client" refers to both current and former clients.

(1) For purposes of these rules, the client file shall consist of any writings or property provided by the client to the lawyer and any documents, in paper or electronic format, that are the product of the lawyer's representation, including pleadings, correspondence, and other documents prepared or received by the lawyer in furtherance of the representation. Documents that have not been filed with a tribunal, delivered or served, or other documents drafted but unexecuted or undelivered that the client has explicitly paid for the drafting, creation, or obtaining thereof, including such items as transcripts, depositions, medical records, and reports of experts, shall be provided to the client as part of the file.

(2) The following records are not included in the client file, even if they are maintained by the lawyer in association with the representation and the client file, and such records are not ones to which the client is entitled to review or receive a copy:

(A) The lawyer's work product, which includes the documents the lawyer used to reach an end product of the lawyer's representation, the lawyer's notes, and preliminary drafts of pleadings and legal instruments;

(B) Internal memoranda prepared by or for the lawyer;

(C) Legal research materials prepared by or for the lawyer and factual research materials, including investigative reports prepared by or for the lawyer for use in the representation, unless the material has been specifically paid for by the client or procured by the lawyer for the client's use;

(D) Documents such as internal conflict checks, firm assignments, notes regarding any ethics consultation, or records that might reveal the confidences of other clients.

(E) Items not included in the list of excluded items shall be considered to be part of the client file to which the client is entitled.

(3) Upon the client's written request in any format, the lawyer shall surrender the client's original file or a copy of the file, in paper or electronic format, to the client. Upon written authorization of the client, the lawyer shall surrender such file to the client's new lawyer. The lawyer may deliver a statement for costs of production to the client but may not withhold delivery of the client file pending payment.

(4) The cost of copying the file shall be the responsibility of the client. If the lawyer has in his or her possession client funds to be reimbursed for such copying cost, the lawyer may be reimbursed for such cost from the client funds held by the lawyer. A lawyer who has previously provided the client a copy of any part of the client file may charge the client for additional copies of the same documents. The client shall be responsible for the reasonable costs incurred in delivery, by mail or commercial-delivery service, of the client-file materials outside the lawyer's office. After delivery of the client file to the client or the client's new lawyer, the lawyer may deliver a statement of costs of copying of the file to the client but may not withhold delivery of the client file pending payment.

(5) If the lawyer provides the original client file to the client, the lawyer may, at no cost to the client, retain copies of all documents within the lawyer's file for the lawyer's purposes.

(6) The terms and conditions of the allocation of copying and delivery costs involved in the client file may be fixed by a written agreement between the client and the lawyer at the inception of the representation.

(b) Client file retention and destruction.

(1) A lawyer shall take reasonable steps to maintain the client's file in paper or electronic format for five (5) years after the conclusion of the representation in a matter.

(2) At any time following the expiration of five (5) years following the conclusion of the representation in a matter, a lawyer may destroy the client's files related to the matter.

(3) The providing to the client of the lawyer's file-retention-and-destruction policy in any writing, including an engagement letter or agreement or termination of representation letter, shall satisfy the notice requirement of this rule.

(4) Notwithstanding subparagraphs (1), (2), and (3), a lawyer in a criminal matter shall maintain the client's file for the life of the client if the matter resulted in a conviction, by plea or trial, and sentence of death, natural life, or life without parole, unless the client's file is turned over to some appropriate, permanent central-file repository that maintains such criminal case files in compliance with this rule.

(5) This rule does not supersede or limit a lawyer's obligations to retain or destroy contents of a client's file as otherwise imposed by law, court order, or rules of a tribunal.

Geatches v. State of Arkansas, 2016 Ark. 452, 505 S.W. 3d 691 (inmate seeks files from public defender and private attorney in civil case).

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**11) What are the guidelines on “ghost-writing” a complaint, motion, or brief for a self-represented person?**

**American Bar Association Formal Opinion 07-446  
May 5, 2007**

### **Undisclosed Legal Assistance to Pro Se Litigants**

*A lawyer may provide legal assistance to litigants appearing before tribunals “pro se” and help them prepare written submissions without disclosing or ensuring the disclosure of the nature or extent of such assistance.*

**Arkansas Rule of Civil Procedure 87 (adopted December 2017)**  
**Limited Scope Representation**

- (a) *Permitted.* In accordance with Rule 1.2(c) of the Arkansas Rules of Professional Conduct, an attorney may provide limited scope representation to a person involved in a court proceeding.
- (b) *Notice.* An attorney’s role may be limited as set forth in a notice of limited scope representation filed and served prior to or simultaneously with the initiation of a proceeding or initiation of representation, as applicable. Such notice shall not be required in matters where an attorney’s representation consists solely of the drafting of pleadings, motions, or other papers for an otherwise self-represented person as provided in subdivision (c) of this rule.
- (c) *Drafting of Pleadings, Motions, and Other Papers.*
  - (1) An attorney may draft or help to draft a pleading, motion, or other paper filed by an otherwise self-represented person. The attorney shall include a notation at the end of the prepared document stating: “This document was prepared with the assistance of [insert name of attorney], a licensed Arkansas lawyer, pursuant to Arkansas Rule of Professional Conduct 1.2(c).” The attorney need not sign that pleading, motion, or other paper.
  - (2) An attorney who provides drafting assistance to an otherwise self-represented person may rely on the self-represented person’s representation of facts, unless the attorney has reason to believe that such a representation is false or materially insufficient.
- (d) *Termination.* The attorney’s role terminates without the necessity of leave of court upon the attorney’s filing a notice of completion of limited scope representation with a certification of service on the client.
- (e) *Service.* Service on an attorney providing limited scope representation is required only for matters within the scope of the representation as set forth in the notice.

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## 12) How does the lawyer maintain confidentiality?

### Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

#### **Comment:** Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

### Rule 1.6. Confidentiality Of Information.

- (a) A lawyer shall not reveal information relating to 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 paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
  - (1) to prevent the commission of a criminal act;
  - (2) to prevent the client from committing a fraud that is reasonably certain to result in injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
  - (3) to prevent, mitigate or rectify injury to the financial interest or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
  - (4) to secure legal advice about the lawyer's compliance with these Rules;
  - (5) 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 or,

- (6) to comply with other law or a court order; or
- (7) to detect and resolve conflicts of interest between lawyers in different firms, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (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 a client.
- (d) Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation or the like.

**American Bar Association Formal Opinion 11-459**  
**August 4, 2011**

**Duty to Protect the Confidentiality of E-mail Communications with One's Client**

*A lawyer sending or receiving substantive communications with a client via e-mail or other electronic means ordinarily must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or e-mail account, where there is a significant risk that a third party may gain access. In the context of representing an employee, this obligation arises, at the very least, when the lawyer knows or reasonably should know that the client is likely to send or receive substantive client-lawyer communications via e-mail or other electronic means, using a business device or system under circumstances where there is a significant risk that the communications will be read by the employer or another third party.*

**American Bar Association Formal Opinion 477**  
**May 11, 2017**

**Securing Communication of Protected Client Information**

*A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct*

*where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security.*

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**13) American Bar Association Formal Opinion 483  
October 17, 2018**

**Lawyers' Obligations After an Electronic Data Breach or Cyberattack**

*Model Rule 1.4 requires lawyers to keep clients “reasonably informed” about the status of a matter and to explain matters “to the extent reasonably necessary to permit a client to make an informed decision regarding the representation.” Model Rules 1.1, 1.6, 5.1 and 5.3, as amended in 2012, address the risks that accompany the benefits of the use of technology by lawyers. When a data breach occurs involving, or having a substantial likelihood of involving, material client information, lawyers have a duty to notify clients of the breach and to take other reasonable steps consistent with their obligations under these Model Rules.*

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**14) American Bar Association Formal Opinion 480  
March 6, 2018**

**Confidentiality Obligations for Lawyer Blogging and Other Public Commentary**

*Lawyers who blog or engage in other public commentary may not reveal information relating to a representation, including information contained in a public record, unless authorized by a provision of the Model Rules.*

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**15) American Bar Association Formal Opinion 482  
September 19, 2018**

**Ethical Obligations Related to Disasters**

*The Rules of Professional Conduct apply to lawyers affected by disasters. Model Rule 1.4 (communication) requires lawyers to take reasonable steps to*

*communicate with clients after a disaster. Model Rule 1.1 (competence) requires lawyers to develop sufficient competence in technology to meet their obligations under the Rules after a disaster. Model Rule 1.15 (safekeeping property) requires lawyers to protect trust accounts, documents and property the lawyer is holding for clients or third parties. Model Rule 5.5 (multijurisdictional practice) limits practice by lawyers displaced by a disaster. Model Rules 7.1 through 7.3 limit lawyers' advertising directed to and solicitation of disaster victims. By proper advance preparation and planning and taking advantage of available technology during recovery efforts, lawyers can reduce their risk of violating the Rules of Professional Conduct after a disaster.*

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**16) American Bar Association Formal Opinion 484  
November 27, 2018**

**A Lawyer's Obligations When Clients Use Companies or Brokers to Finance the Lawyer's Fee**

*Lawyers may refer clients to fee financing companies or brokers in which the lawyers have no ownership or other financial interests provided they comply with Model Rules 1.2(c), 1.4(b), 1.5(a) and (b), 1.6, 1.7(a)(2), and 1.9(a). If a lawyer were to acquire an ownership or other financial interest in a finance company or brokerage and thereafter refer clients to that entity to finance the lawyer's fees, the lawyer would be entering into a business transaction with a client, or obtaining a security or pecuniary interest adverse to the client, or both. In that instance, the lawyer would also be required to comply with Model Rule 1.8(a).*