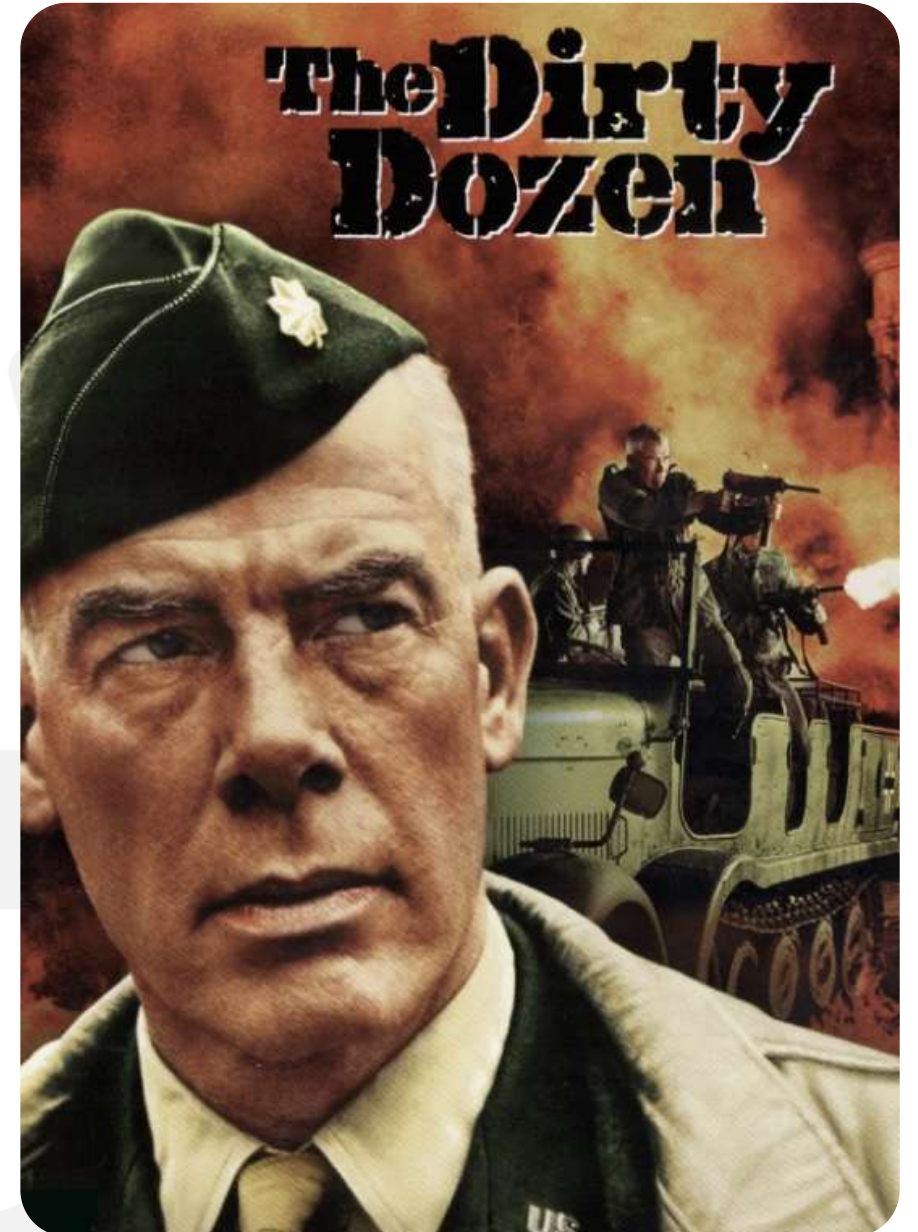


The Dirty Dozen

ETHICAL MISTAKES FOR LAWYERS

Sandy Garrett, Chief Disciplinary Counsel

*COURT OF WORKERS' COMPENSATION CLAIMS
JUNE 13, 2024*



1. Competence



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.



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

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(800) 486-5714
Website: www.tbpr.org

RELEASE OF INFORMATION
RE: WENDELL CORNELIUS DAWSON, BPR #012960
CONTACT: ANDREW B. CAMPBELL
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

January 26, 2024

DAVIDSON COUNTY LAWYER SUSPENDED

Effective January 26, 2024, the Supreme Court of Tennessee suspended Wendell Cornelius Dawson from the practice of law for three years, with three months active suspension, pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and with the remainder to be served on probation. The suspension is conditioned upon incurring no new complaints of misconduct that relate to conduct occurring during the period of suspension and probation, additional CLE, engagement of a practice monitor, and payment of Board costs in the amount of \$6,265.00.

Mr. Dawson must notify all clients being represented in pending matters, as well as co-counsel and opposing counsel, of the Supreme Court's Order suspending his law license. Mr. Dawson is required to deliver to all clients any papers or property to which they are entitled.

Mr. Dawson failed to communicate with clients adequately about the status of their cases, failed to move his clients' cases forward diligently and expeditiously, failed to respond to requests for evidence from U.S. Citizenship and Immigration Services, and failed to represent his clients competently.

Mr. Dawson executed a Conditional Guilty Plea acknowledging his conduct violated Tennessee Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), and 8.4(a) (misconduct).

Mr. Dawson must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30, regarding the obligations and responsibilities of suspended attorneys.

Dawson 3269-5 rel.doc



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RELEASE OF INFORMATION
RE: ROBERT HARRIS GOLDER, BPR #034911
CONTACT: DOUGLAS R. BERGERON
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

January 22, 2024

SHELBY COUNTY LAWYER SUSPENDED

Effective January 22, 2024, the Supreme Court of Tennessee suspended Robert Harris Golder from the practice of law for four (4) years, with one (1) year to be served as an active suspension pursuant to Tennessee Supreme Court Rule 9, Section 12.2, and the remainder to be served on probation.

A Petition for Discipline containing four (4) complaints was filed, alleging Mr. Golder failed to communicate reasonably with his clients, failed to perform work necessary to the representation, failed to provide competent representation, disclosed confidential information during withdrawal, charged an unreasonable fee, failed to comply with multiple court orders, and failed to expedite litigation. Mr. Golder's actions were prejudicial to the administration of justice.

Mr. Golder executed a conditional guilty plea acknowledging his conduct violated Tennessee Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.16 (terminating representation), 3.2 (expediting litigation), 3.4 (fairness to opposing party and counsel), and 8.4 (misconduct).

Mr. Golder must comply with the requirements of Tennessee Supreme Court Rule 9, Sections 28 and 30.4, regarding the obligations and responsibilities of suspended attorneys and the procedure for reinstatement.

Golder 3346-9 rel.doc

Tennessee's Proactive Management-Based Regulation (PMBR)

<https://www.tbpr.org/tennessees-pmbr>





My Learning

Test ▾

Courses: In Progress (1)

Courses: Completed (0)

Tennessee Consolidated Lawyer Self-Assessment

📅 Completed March 6th 2020, 3:30 pm

10 Activities

Access

Acknowledgement

This self-assessment was adopted, adapted and reprinted with permission from materials originally authored by the Colorado Office of Attorney Regulation Counsel. The Board of Professional Responsibility acknowledges and appreciates the assistance provided by the Colorado Office of Attorney Regulation, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and the Disciplinary Board of the New Mexico Supreme Court.

The ten self-assessments focus on the following ten core practice principles:

- Developing Competent Practices;
- Communicating in an Effective, Timely, Professional Manner;
- Ensuring that Confidentiality Requirements are Met;
- Avoiding Conflicts of Interest;
- Retaining and Managing Secure Files;
- Managing the Law Firm/Legal Entity and Staff;
- Charging Appropriate Fees and Making Appropriate Disbursements;
- Ensuring the Use of Reliable Trust Account Practices;
- Access to Justice and Client Development; and
- Promoting Wellness.



< Previous

Question 21 of 39 ⓘ

Next >

Assessment: Developing Competent Practices

Edit

In deciding whether to undertake the representation, do you assess whether the new clients have needs or preferences that require additional time?

Never <input type="radio"/>	Seldom <input type="radio"/>	Sometimes <input type="radio"/>	Very often <input type="radio"/>	Always <input type="radio"/>	N/A <input type="radio"/>
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You have 39 unanswered questions ([view](#))

< Previous

Next >

Ethical Implications

Sample Resources

- Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 06-441, [Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation](#) (2006).
- *In re Nunnery*, 725 N.W. 2d 613 (Wis. 2007) (suspending lawyer for two months because he did not conduct a meaningful inquiry into the veracity of documents presented by his client).
- *Omnicare v. Laborers*, 135 S.Ct. 1318 (2015) (the accuracy of "expressions of opinion [depends on] considering the foundation [an investor] would expect an issuer to have before making the statement").
- Frank T. Lockwood, [Reinventing Client Selection and Case Management](#), GP Solo, July/Aug. 2014.

A 3D rendered blue figure is shown from the back, holding a large magnifying glass. The magnifying glass's lens is positioned over the text '2. Diligence'. The entire scene is set against a plain white background.

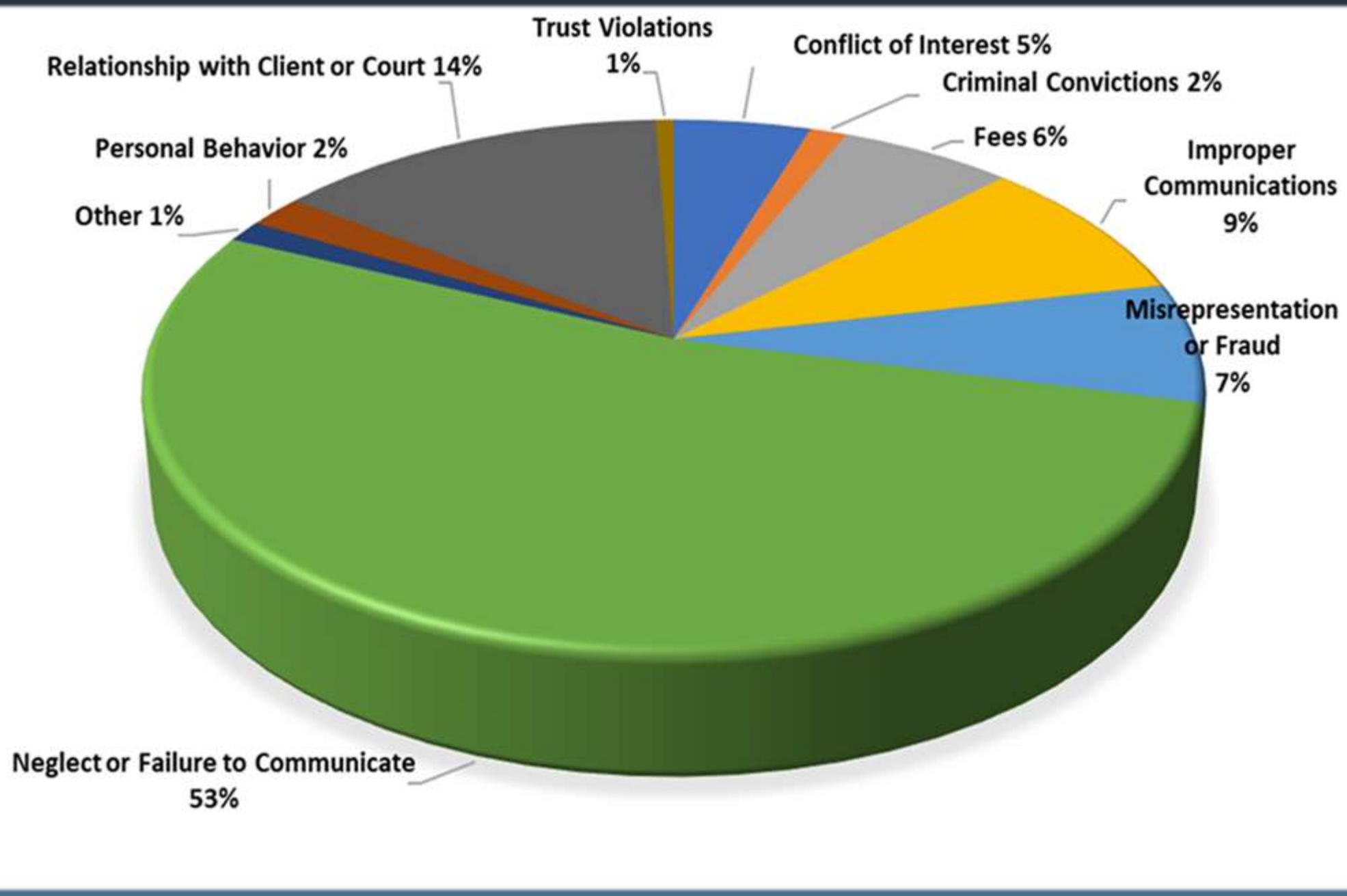
2. Diligence

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.3 Comment [3] Communicating with Client

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed.



Call

FaceTime

Contact >

iMessage

Jun 8, 2011, 5:15 PM

hey

Jun 8, 2013, 6:15 PM

Hey sorry i was busy

i sent that 2 years ago

Delivered



iMessage

Send

3. COMMUNICATIONS



Rule 1.4(a) Communication

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

Rule 1.4 Comment [4]

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation.



“The single biggest
problem in
communication is the
illusion that it has
taken place.”

-George Bernard Shaw

Communication Policy should address:

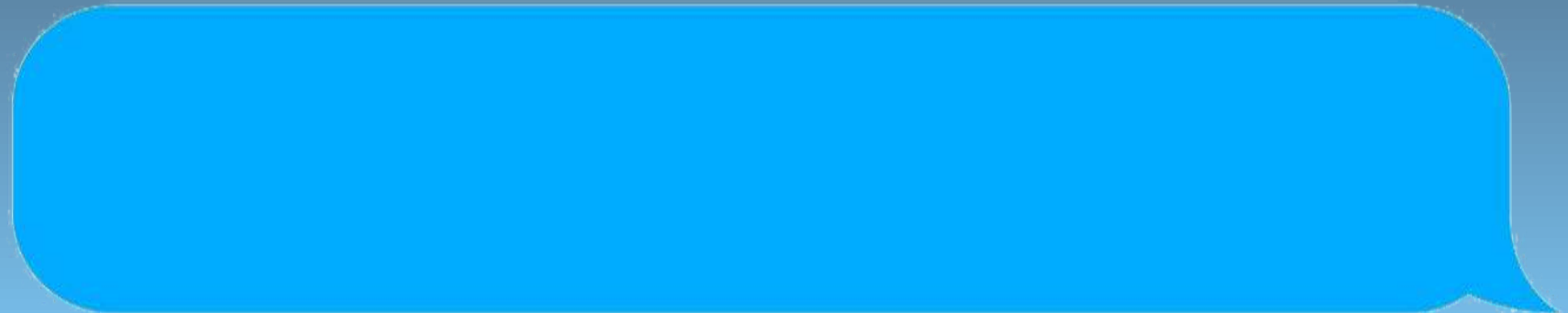
Method of communication (phone, mail, email, text)

Response time for client-initiated contact

Changes/status updates in client cases

Client copies of pleadings and correspondence

**Inadvertent
Text/Accidental
Reply to All Email**



Messages

Jimmy

Edit

I just got back from the date with Jimmy. He is 32 and has BRACES! When Claire set us up, she didnt tell me he had BRACES!

Hi this is Jimmy. I guess my parents didn't love me enough to get them for me earlier.

I am so sorry, that text was supposed to go to a friend of mine.

Let's just be friends. How about that.

RPC 4.4(b) Respect for the Rights of Third Person

A lawyer who receives information relating to the representation of the lawyer's client that the lawyer knows or reasonably should know is protected by RPC ... and has been disclosed inadvertently shall:

- (1) Immediately terminate review;
- (2) Notify the person, or the person's lawyer ... of the inadvertent disclosure;
- (3) Abide by that person's or lawyer's instructions

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 503

November 2, 2022

“Reply All” in Electronic Communications

In the absence of special circumstances, lawyers who copy their clients on an electronic communication sent to counsel representing another person in the matter impliedly consent to receiving counsel’s “reply all” to the communication. Thus, unless that result is intended, lawyers should not copy their clients on electronic communications to such counsel; instead, lawyers should separately forward these communications to their clients. Alternatively, lawyers may communicate in advance to receiving counsel that they do not consent to receiving counsel replying all, which would override the presumption of implied consent.

I. Introduction

Lawyers now commonly use electronic communications like email and text messaging in their law practice.¹ Subject to handling, security, and maintenance considerations beyond this opinion’s scope,² the Model Rules permit these forms of electronic communication. This permissible communication extends to communications with counsel representing another person in the matter.

Under Rule 4.2 of the ABA Model Rules of Professional Conduct, in representing a client, a lawyer may not “communicate” about the subject of the representation with a represented person absent the consent of that person’s lawyer, unless the law or court order authorizes the communication.³

When a lawyer (“sending lawyer”) copies the lawyer’s client on an electronic communication to counsel representing another person in the matter (“receiving counsel”), the sending lawyer creates a group communication.⁴ This group communication raises questions under the “no contact” rule because of the possibility that the receiving counsel will reply all, which of course will be delivered to the sending lawyer’s client. This opinion addresses the question of whether sending lawyers, by copying their clients on electronic communications to receiving counsel, *impliedly* consent to the receiving counsel’s “reply all” response.

¹ This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2022. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

² See, e.g., ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 498 (2021) (discussing ethical considerations in virtual law practice); ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 483 (2018) (discussing lawyers’ obligations in response to data breaches); ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 477R (2017) (discussing reasonable security precautions when communicating through email).

³ The authorized-by-law exception is not the focus of this opinion.

⁴ Throughout this opinion, the lawyer who sends the electronic communication is referred to as the “sending lawyer.” The lawyer who represents another person in the matter and who receives the communication on which the sending lawyer’s client is copied is referred to as the “receiving counsel.”



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RELEASE OF INFORMATION
RE: JOHN P. FORTUNO, BPR #25390
CONTACT: WILLIAM C. MOODY
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

March 22, 2017

BRADLEY COUNTY LAWYER CENSURED

On March 21, 2017, John P. Fortuno of Cleveland, Tennessee, was Publicly Censured by order of the Tennessee Supreme Court.

On August 22, 2016, the Board filed a Petition for Discipline against Mr. Fortuno, an assistant public defender, alleging that he committed ethical misconduct by exchanging a series of inappropriate text messages with a client he was appointed to represent creating a potential conflict of interest.

Mr. Fortuno entered into a conditional guilty plea admitting that his actions violated Rules of Professional Conduct 1.7(a)(2) (Conflicts of Interest) and 8.4(a) (Misconduct) and should be Publicly Censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

Fortuno 2621-3 rel.doc



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RELEASE OF INFORMATION
RE: JUSTIN GREY WOODWARD. BPR #26709
CONTACT: STEVEN J. CHRISTOPHER
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

April 11, 2019

HAMILTON COUNTY LAWYER CENSURED

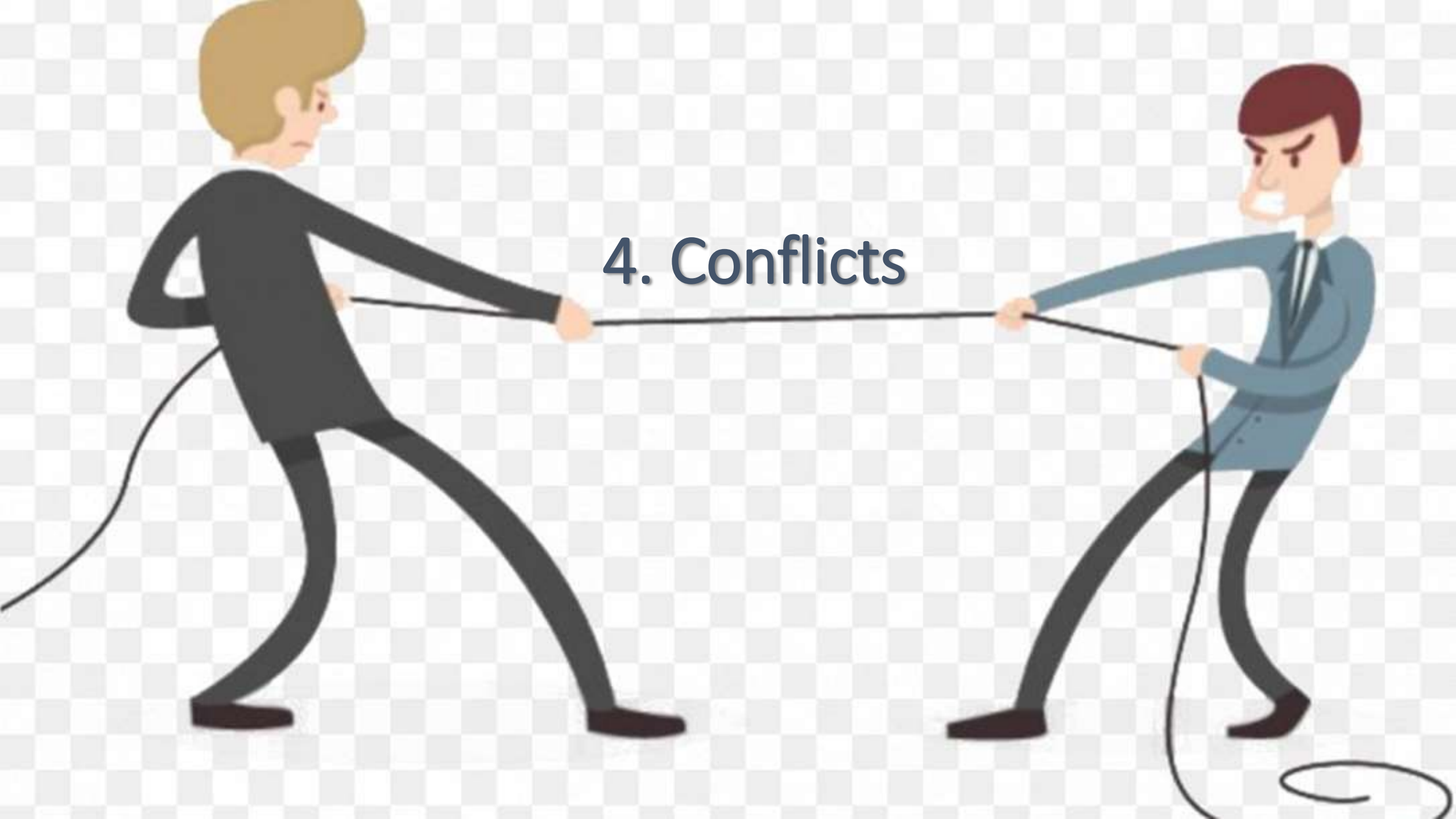
On April 11, 2019, Justin Grey Woodward, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Mr. Woodward represented a client in a domestic relations matter. During the representation, Mr. Woodward created a conflict of interest by exchanging sexually explicit text messages and emails with his client. There was a significant risk that Mr. Woodward's personal interests materially limited his representation of the client.

By these acts, Justin Grey Woodward created a concurrent conflict of interest in his representation of this client in violation of Rule 1.7(a)(2) (conflict of interest) and is hereby publicly censured for this violation.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

4. Conflicts



RPC 1.7(a)(2)

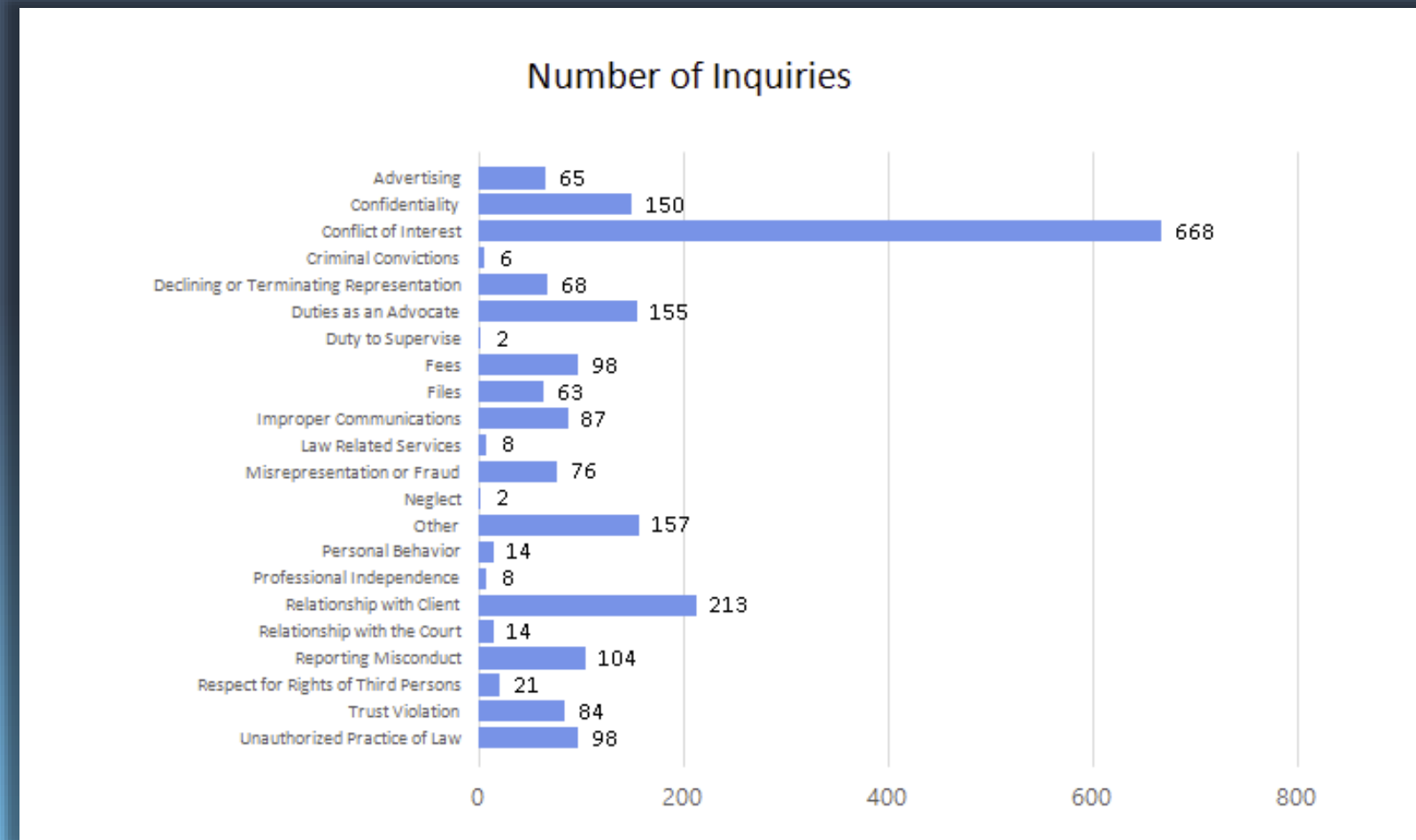
Conflict of Interest: Current Clients

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

(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, former client or a third client or by a personal interest of the lawyer.

Informal Ethics Questions

July 1, 2022 – June 30, 2023



IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Assigned on Briefs April 6, 2022

FILED

06/06/2022

Clerk of the
Appellate Courts

**BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME
COURT OF TENNESSEE v. CANDES VONNIEST PREWITT**

**Direct Appeal from the Chancery Court for Davidson County
No. 21-0321-I Don R. Ash, Senior Judge**

No. M2021-01141-SC-R3-BP

This is an appeal of a trial court's judgment affirming a decision of a hearing panel of the Board of Professional Responsibility. The hearing panel found that an attorney had violated multiple Rules of Professional Conduct and imposed a thirty-day suspension from the practice of law with conditions on reinstatement. After careful review, we affirm the decision of the hearing panel and the judgment of the trial court.

**Tenn. Sup. Ct. R. 9, § 33.1(d); Judgment of the Chancery Court Affirmed; Decision
of the Hearing Panel Affirmed**

SHARON G. LEE, J., delivered the opinion of the Court, in which ROGER A. PAGE, C.J., and JEFFREY S. BIVINS, HOLLY KIRBY, and SARAH K. CAMPBELL, JJ., joined.

Benjamin K. Raybin, Nashville, Tennessee, for the appellant, Candes Vonniest Prewitt.

James W. Milam, Brentwood, Tennessee, for the appellee, Board of Professional Responsibility.

OPINION

I.

Factual Background

In 2012, Candes Vonniest Prewitt was licensed to practice law in Tennessee. In December of that year, she and Demetrius Tucker began an on-and-off romantic relationship that lasted for several years. In July 2014, while Mr. Tucker was working as a security guard for a Nashville night club, a disgruntled patron shot him. Mr. Tucker was

5. Confidentiality



Rule 1.6(a) Confidentiality of Information

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

- (1) the client gives informed consent;
- (2) the disclosure is impliedly authorized in order to carry out the representation; or
- (3) the disclosure is permitted by paragraph (b) or required by paragraph (c).

Rule 1.6(b) Confidentiality of Information

A lawyer may reveal information relating to the representation of a client ...:

- (1) to prevent the client or another person from committing a crime...;
- (2) to prevent the client from committing a fraud.;
- (3) to prevent, mitigate, or rectify substantial injury to the financial interests...of another that is reasonably certain to result or has resulted from the client's commission of a fraud;
- (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..., or to respond to allegations in any proceeding ...; or
- (6) to detect and resolve conflicts of interest from the lawyer's change of employment

Rule 1.6(c) Confidentiality of Information

A lawyer shall reveal information relating to the representation of a client ...:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to comply with an order of a tribunal requiring disclosure, ... after the lawyer has asserted...all non-frivolous claims that the information sought...is protected ...;
- (3) to comply with RPC 3.3, 4.1, or other law.



Mark H.

Bend, OR

0 19 11



May 27, 2024

Twice now the Oregon Bar Association has referred me to Benjamin Ybarra for a consult. Both times his advice has been useless. During the consults, he was never proactive in offering any advice that might help. He just waits for the client to ask a question and answers it in a curt manner. If I couldn't think of what to ask next there was just dead silence. So much of good legal advice involves an attorney asking relevant questions of the client and thinking of important things that the client doesn't even know to ask, but with Benjamin Ybarra it seems you have to ask just the right question to get any information and even then it's just the bare minimum that qualifies as a response. I feel like an AI app would've given better advice.

I'm not sure why he continues to accept referrals from the OS Bar Association as both times I've felt like a big bother and inconvenience and like he can't wait for me to stop asking stupid questions so he can get on with his day. Perhaps he needs that \$35 because all the bad reviews are making him hungry for any income even if it's just at a \$70/hr rate. Both times after I spoke with Benjamin Ybarra I requested another attorney referral from the OS Bar Association and the second one I spoke with told me at least several useful things that Benjamin Ybarra never mentioned...probably because I didn't ask a direct question about it. If you know the law well and want to get curt answers to confirm what you already know perhaps he would be adequate, but if you are looking for someone who genuinely wants to be of help, look elsewhere.

Edit: The fact that Benjamin Ybarra gets so snarky and insulting when an honest review of his poor service is posted says a lot. I keep getting emails when he edits his comment and I think to myself if he cared as much about his clients as he cared about insulting them he would not have all the bad reviews he does.



Benjamin Y.

Business Owner

May 27, 2024

Sorry you had a bad time, Mark. Let me know when you're ready to schedule a third one of those useless consultations. Who knows, maybe your claims will even have merit this time.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 496

January 13, 2021

Responding to Online Criticism

Lawyers are regularly targets of online criticism and negative reviews. Model Rule of Professional Conduct 1.6(a) prohibits lawyers from disclosing information relating to any client's representation or information that could reasonably lead to the discovery of confidential information by another. A negative online review, alone, does not meet the requirements of permissible disclosure in self-defense under Model Rule 1.6(b)(5) and, even if it did, an online response that discloses information relating to a client's representation or that would lead to discovery of confidential information would exceed any disclosure permitted under the Rule. As a best practice, lawyers should consider not responding to a negative post or review, because doing so may draw more attention to it and invite further response from an already unhappy critic. Lawyers may request that the website or search engine host remove the information. Lawyers who choose to respond online must not disclose information that relates to a client matter, or that could reasonably lead to the discovery of confidential information by another, in the response. Lawyers may post an invitation to contact the lawyer privately to resolve the matter. Another permissible online response would be to indicate that professional considerations preclude a response.¹

I. Introduction

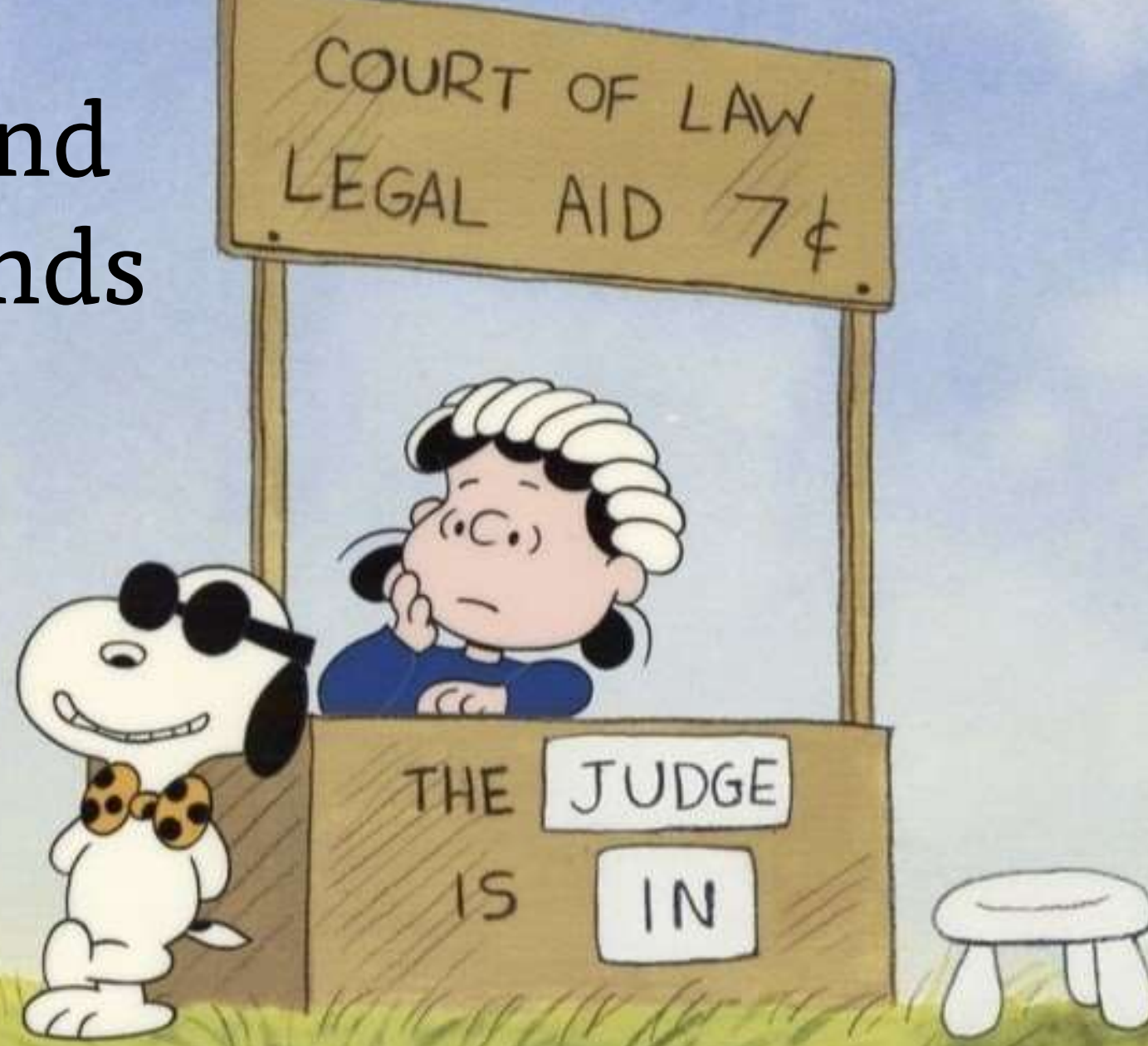
Lawyers regularly are the target of online (and offline) criticism. Clients, opposing parties, and others are increasingly taking to the internet to express their opinions of lawyers they have encountered. Lawyers are left in the quandary of determining whether and how they ethically may respond when the opinions posted are unflattering, and the facts presented are inaccurate or even completely untrue. This opinion addresses a lawyer's ethical obligations in responding to negative online reviews.

II. Analysis

The main ethical concern regarding any response a lawyer may make to an online review is maintaining confidentiality of client information. The scope of the attorney-client privilege, as opposed to confidentiality, is a legal question that this Committee will not address in this opinion. As this Committee itself concluded in ABA Formal Ethics Opinion 480 (2018), lawyers cannot blog about information relating to clients' representation without client consent, even if they only

¹ This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2020. The laws, court rules, regulations, rules of professional conduct, and opinions promulgated in individual jurisdictions are controlling.

6. Fees and Trust Funds



Rule 1.5 (a)

Fees

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee The factors to be considered in determining the reasonableness of a fee include:

- (1) the time and labor required of the questions involved;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment;
- (3) the fee customarily charged;
- (4) the results obtained;
- (5) the time limitations imposed;
- (6) the nature and length of the professional relationship;
- (7) the experience, reputation, and ability of the lawyer;
- (8) whether the fee is fixed or contingent;
- (9) prior advertisements or statements by the lawyer with respect to the fees; and
- (10) whether the fee agreement is in writing.

Rule 1.5

Fees continued

- (b) The scope of the representation and rate of the fee and expenses shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation Any changes in the rate of the fee or expenses shall also be communicated to the client.

- (c) A fee may be contingent on the outcome A contingent fee agreement shall be in a writing signed by the client and shall state the method the fee is determined, including percentage that shall accrue in the event of settlement, trial, or appeal; ... and whether expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of expenses Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome and the remittance to the client.

(d) A lawyer shall not enter into an arrangement, charge, or collect:

- (1) any fee in a domestic relations matter, the amount of which is contingent ... unless the matter relates solely to the collection of arrearages in alimony or child support or enforcement of an order dividing the marital estate ...;
- (2) a contingent fee for representing a defendant in a criminal case.

Rule 1.5

Fees continued

Rule 1.5(f) continued

A fee that is nonrefundable ... shall be agreed to in writing, signed by the client.

Rule 1.15

Safekeeping Property and Funds

- (a) A lawyer shall hold property and funds of clients or third persons ... separate from the lawyer's own property and funds.
- (b) Funds belonging to clients or third persons shall be deposited in a separate account ... insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA) ... and which participates in the required overdraft notification program Complete records of such funds shall be kept by the lawyer for a period of five years.

Rule 1.15 (b) Safekeeping Property and Funds

- (1) [I]nterest earned on accounts in which the funds of clients or third persons are deposited ... shall belong to the clients or third persons whose funds are deposited
- (2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time ... as an "Interest on Lawyers' Trust Account" ("IOLTA")
- (3) The determination of whether funds are required to be deposited in an IOLTA account rests in the discretion of the lawyer.

Rule 1.15

Safekeeping Property and Funds

- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn as fees are earned
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. [A] lawyer shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive and, upon request, shall promptly render a full accounting.
- (e) When a lawyer is in possession of property or funds in which two or more persons claim interests, property shall be kept separate by the lawyer until the dispute is resolved.
- (f) [I]f after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership will not succeed, the lawyer must remit the funds to the Tennessee Lawyers' Fund for Client Protection (TLFCP).



TENNESSEE ATTORNEY'S TRUST ACCOUNT HANDBOOK

ISSUED BY:

Board of Professional Responsibility
of the Supreme Court of Tennessee
10 Cadillac Drive, Suite 220
Brentwood, Tennessee 37027
(615) 361-7500
(615) 367-2480 fax
www.tbpr.org

Pointers for everyday trust account management

Do not sign blank trust account checks.

Do not allow your staff to use a signature stamp.

Receive trust account bank statements unopened or sent directly to you by electronic transmission.

Checks on the trust account should never be made payable to “cash.”

If you delegate duties, do not allow the same person to handle everything.

Use different colored checkbook covers for your trust account and your operating account.

DO NOT carry your trust account checkbook with you when you leave your office.

Include in your fee agreement information about how fees will be handled.

Use a standard procedure for notifying clients or third parties when you receive funds in which they have an interest.

If support staff helps you maintain your trust account, you **MUST** properly train and supervise them.

Do not set up overdraft protection or a credit line on your trust account.

Board of Professional Responsibility

Trust Account Workshop

**The next Trust Account Workshop
will be held**

Wednesday, September 18, 2024

3 hours of dual CLE credit, preapproved

Course includes:

- A comprehensive session on ethics and trust accounting, including tips for avoiding overdrafts
- The Rules of Professional Conduct and Tennessee Supreme Court Rules governing trust accounts
- An overview of fees regarding definitions, types, and an attorney's ethical obligations

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2023-F-170

The Board of Professional Responsibility, in response to a request from Chief Disciplinary Counsel, Sandy Garrett, issues this opinion with updated guidelines for an attorney's acceptance of credit card payments and vacates Formal Ethics Opinions 82-F-28 and 82-F-28(a).

OPINION

In light of changes in the Rules, opinions from other jurisdictions, the Tennessee Supreme Court's revision of the lawyer advertising rules, and the evolution in the use of credit cards, the Board of Professional Responsibility vacates Formal Ethics Opinions 82-F-28 and 82-F-28(a) and updates guidelines for a lawyer's acceptance of credit card payments and the use of payment processing services. A lawyer may accept credit cards or payment processing services, such as PayPal, Venmo or other like payment processing services, from a client for payment of fees, including unearned fees (commonly referred to as retainer fees), so long as the lawyer ensures compliance with the applicable Tennessee Rules of Professional Conduct regarding client confidentiality, how credit card transaction fees will be treated, and the security of client trust funds.

DISCUSSION

Tennessee Formal Ethics Opinions 82-F-28 and 82-F-28(a) on credit card payments for legal services and expenses were based on ABA Formal Opinion 338. On July 7, 2000, the American Bar Association withdrew ABA Formal Opinion 338 because it "carried forward from another earlier opinion, Formal Opinion 320 (Legal Fee Finance Plan), series of requirements that are not justified by the present-day Model Rules of Professional Conduct."¹

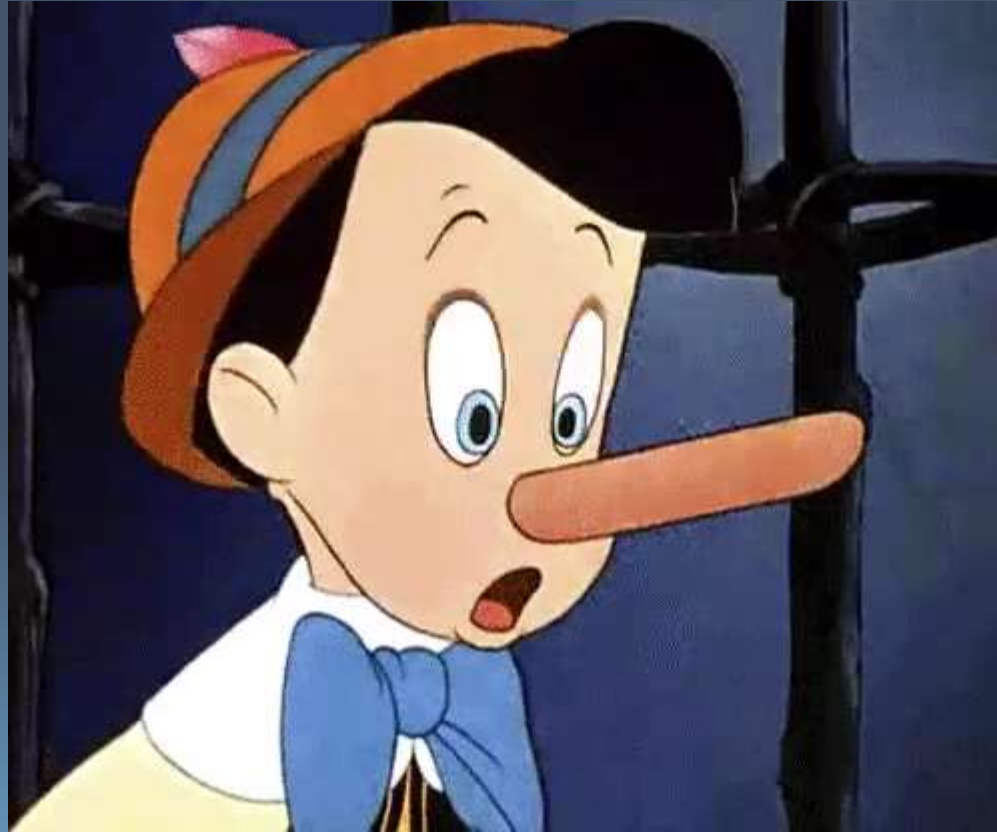
Previous ABA Formal Opinion 320 and Informal Opinions 1120 and 1176 were also withdrawn. They required advance approval of advertisements by bar associations regarding the use of credit cards for payment of legal services. "Because the Model Rules require only that any advertising materials used by a lawyer not be false, fraudulent, or misleading, and because they do not require any advance approval by a bar association for a lawyer's participation in a credit-card plan, the Committee hereby withdraws each of the four opinions referred to above."²

Credit cards are recognized as useful in facilitating the ability of many persons to obtain legal services at the time the services are needed and to pay for those services on a schedule that

¹ Standing Committee on Ethics and Professional Responsibility of the American Bar Association, Formal Opinion 00-419, July 7, 2000.

² *Id.* at p.1.

7. False Statements



IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
October 1, 2015 Session

FILED

DEC 28 2015

Clerk of the Courts

BOARD OF PROFESSIONAL RESPONSIBILITY v. CONNIE REGULI

Direct Appeal from the Circuit Court for Williamson County
Nos. 20149 and 201430 Robert L. Jones, Judge

No. M2015-00406-SC-R3-BP

JUDGMENT

This case was heard upon the record on appeal from the Circuit Court for Williamson County, briefs, and argument of counsel; and upon consideration thereof, this Court is of the opinion that the trial court properly affirmed the hearing panel's findings that Connie Reguli violated Tennessee Rules of Professional Conduct 1.4(a)(4) and (b), 1.5(f), 1.16(d)(4) and (6), 7.4(b), 8.1(b), and 8.4(a) and (d). This Court is also of the opinion that the trial court erred in modifying the hearing panel's sanction, with the exception of the trial court's holding that Ms. Reguli be required, as a condition of her probation, to make restitution to Robert Castleman.

In accordance with the opinion filed herein, it is therefore ordered and adjudged that the judgment of the Williamson County Circuit Court is affirmed in part and reversed in part. The hearing panel's original sanction is reinstated with the additional requirement that Ms. Reguli pay restitution to Robert Castleman in the amount of \$7,800 as a condition of her probation. Accordingly, Ms. Reguli is suspended from the practice of law in Tennessee for eleven months and twenty-nine days, all of which Ms. Reguli may serve on probation subject to the conditions that Ms. Reguli (1) pay restitution to Mr. Castleman in the amount of \$7,800, (2) submit to a probation monitor in accordance with the Panel's judgment, and (3) submit to an evaluation by TLAP and comply with any monitoring requirement TLAP deems necessary. It is further ordered that, pursuant to Tennessee Supreme Court Rule 9, section 24.3, Ms. Reguli shall pay to the Board of Professional Responsibility the expenses and costs of this matter and, in addition, shall pay to the Clerk of this Court the costs herein, for which execution may issue if necessary.



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

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BRENTWOOD, TENNESSEE 37027
TELEPHONE: (615) 361-7500
(800) 486-6714
Website: www.tbpr.org

RELEASE OF INFORMATION
RE: REBECCA CAROLE GRIFFEY, #020711
CONTACT: ERIC A. FULLER
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

January 22, 2024

HENRY COUNTY LAWYER CENSURED

On January 9, 2024, Rebecca Carole Griffey, an attorney licensed to practice law in Tennessee, received a Public Censure from the Board of Professional Responsibility of the Tennessee Supreme Court.

Ms. Griffey filed an application for a Chancellor position on May 29, 2019, with the Tennessee Trial Court Vacancy Commission. Ms. Griffey knowingly failed to disclose information responsive to questions on the application.

By these acts, Ms. Griffey has violated Rules of Professional Conduct 8.2(a)(3) (knowingly making a false statement concerning the qualifications of a judicial candidate), 8.2(b) (violation of the Code of Judicial Conduct by a candidate for judicial office), and 8.4(c) (and (d) (misconduct)). Ms. Griffey is hereby Publicly Censured for these violations.

A Public Censure is a rebuke and warning to the attorney, but it does not affect the attorney's ability to practice law.

Griffey 68214c-7 rel.doc

8. Unacceptable Litigation Conduct



RPC 8.4(d) Misconduct

It is professional misconduct for a lawyer to:

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

RPC 4.4(a)(1)

Respect for the Rights of Third Persons

(a)(1) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person

RPC 8.2

Judicial and Legal Officials

(a)(1) A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of the following persons:

- A judge

FILED

02/16/2024

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 21, 2022

**BRIAN PHILIP MANOOKIAN v. BOARD OF PROFESSIONAL
RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE**

Direct Appeal from the Chancery Court for Davidson County
No. 20-0833-1 William B. Acree, Senior Judge

No. M2022-00075-SC-R3-BP

In this lawyer disciplinary case, the lawyer's conduct compels disbarment. The lawyer sent a series of intimidating, demeaning, embarrassing, and harassing communications to opposing counsel and others. Some targeted family members of opposing counsel, including one family member who was also a former client, and caused well-founded concern for their well-being and safety. In the ensuing disciplinary proceedings, a Board of Professional Responsibility hearing panel found that the purpose of the communications was to intimidate opposing counsel in order to gain unfair advantage in pending litigation. It concluded *inter alia* that the lawyer's conduct was prejudicial to the administration of justice, that he failed to respect the rights of third persons, and that he violated his duty to a former client, in violation of Tennessee's Rules of Professional Conduct. The hearing panel said the presumptive sanction was disbarment, found four aggravating factors, and found no mitigating circumstances. Without explanation, the hearing panel recommended a two-year suspension instead of disbarment. The attorney appealed to the trial court. The trial court indicated that, had the Board of Professional Responsibility filed a separate petition for review, the trial court would have recommended disbarment, but because the Board did not, the trial court affirmed the sanction of suspension. Both parties appeal. Here, the lawyer's conduct was egregious. Victimized the families of opposing counsel and causing concern for their well-being and safety is an especially grave offense and a profound dishonor as a lawyer. The hearing panel's decision to deviate downward from the presumptive sanction of disbarment was arbitrary and capricious, and the lawyer must be disbarred. Accordingly, we modify the judgment of the hearing panel and impose the sanction of disbarment.

**Tenn. Sup. Ct. R. 9, § 33.1(d); Judgment of the Chancery Court Affirmed in Part,
Reversed in Part; Decision of the Hearing Panel Affirmed in Part, Reversed in Part**

9. Withdrawal



Rule 1.16 (a) Declining or Terminating Representation

A lawyer shall not represent a client or, ... shall withdraw if:

- (1) the representation will result in a violation of the Rules of Professional Conduct ...;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

Rule 1.16 (b) Declining or Terminating Representation

A lawyer may withdraw if:

- (1) the withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in...an action...that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or imprudent;
- (5) the client fails substantially to fulfill an obligation to the lawyer...and has been given reasonable warning that the lawyer will withdraw...;
- (6) the representation will result in an unanticipated and substantial financial burden on the lawyer...;
- (7) other good cause...; or
- (8) the client gives informed consent confirmed in writing to the withdrawal

Rule 1.16 (c) Declining or Terminating Representation

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

Rule 1.16 (d) Declining or Terminating Representation

- (d) A lawyer who is discharged by a client, or withdraws..., shall, to the extent reasonably practicable, ... protect the client's interests. Protecting the client's interests may include:
- (1) giving reasonable notice to the client;
 - (2) allowing time for the employment of other counsel;
 - (3) cooperating with any successor counsel...;
 - (4) promptly surrendering papers and property... and any work product...for which the lawyer has been compensated;
 - (5) promptly surrendering any other work product..., however, the lawyer may retain such work product...permitted by law but only if the retention of the work product will not have a materially adverse affect on the client [...]; and
 - (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.



**BOARD OF PROFESSIONAL RESPONSIBILITY
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SUPREME COURT OF TENNESSEE**

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RELEASE OF INFORMATION
RE: ROBERT LOUIS BOOKER, BPR #024887
CONTACT: ANDREW B. CAMPBELL
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

October 2, 2023

MONTGOMERY COUNTY LAWYER DISBARRED

Effective October 2, 2023, the Supreme Court of Tennessee permanently disbarred Robert Louis Booker from the practice of law and ordered him to pay all costs incurred to the Board of Professional Responsibility.

After a default hearing upon the disciplinary petition, the Hearing Panel found that Mr. Booker, in representing a client in a contested divorce, charged, in two installments, a \$3,200.00 non-refundable fee without a written agreement, or alternatively failed to deposit the fee into an IOLTA account as a retainer and bill against it. In addition, the Hearing Panel found that Mr. Booker failed to explain the scope of his representation to his client, and because Mr. Booker did not have a written fee agreement, failed to have proper grounds to withdraw based upon the assertion that the client failed to make payments of attorney's fees and costs, as agreed. Finally, the Hearing Panel found that Mr. Booker impermissibly disclosed confidential information pertaining to the client in his motion to withdraw and failed to respond to letters from Disciplinary Counsel seeking a response to the complaint.

Upon this evidence, the Hearing Panel found that Mr. Booker violated Tennessee Rules of Professional Conduct 1.5(b)(f) (fees), 1.15 (safekeeping property and funds), 1.16(b)(5) (declining or terminating representation), 1.6 (confidentiality of information), 8.1(b) (disciplinary matters), and 8.4(a)(d) (misconduct).

Booker 3169-6 rel.doc



**BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

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Website: www.tbpr.org

RELEASE OF INFORMATION
RE: KEVIN WILLIAM TEETS, JR. BPR #029981
CONTACT: JAMES W. MILAM
BOARD OF PROFESSIONAL RESPONSIBILITY
615-361-7500

January 3, 2024

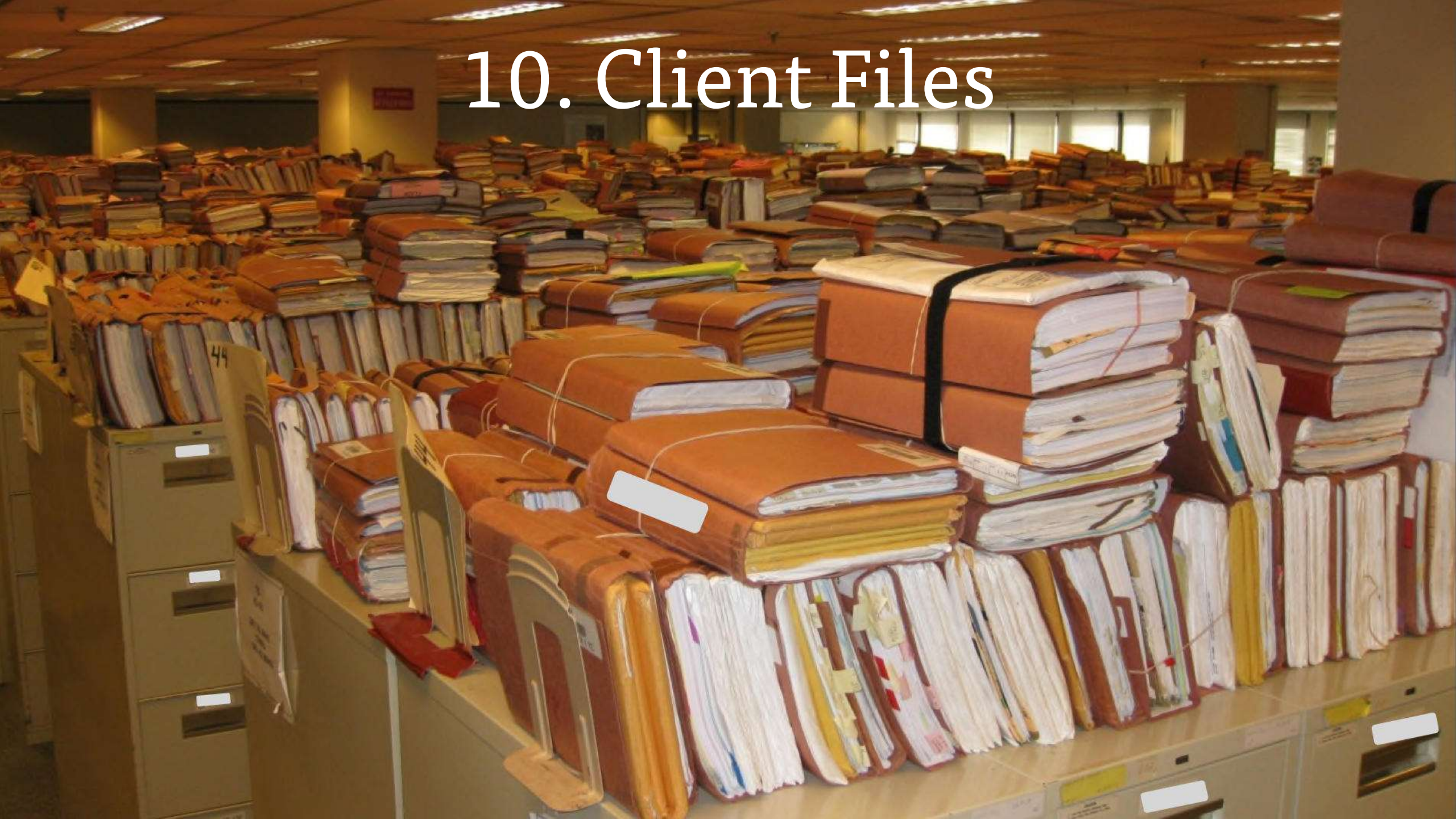
DAVIDSON COUNTY LAWYER SUSPENDED

Effective January 3, 2024, the Supreme Court of Tennessee suspended Kevin William Teets, Jr., from the practice of law for four (4) years, with fifteen (15) months being an active suspension and the remaining thirty-three (33) months served on probation, pursuant to Tennessee Supreme Court Rule 9, Section 12.2, with his probation conditioned upon continued participation in his treatment and recovery plan under a TLAP monitoring agreement for the full period of his probation, practicing only in a group setting under the supervision of a practice monitor for a minimum of twelve (12) months upon the commencement of his probation, payment of the Board's costs of \$5,089.00, and developing a payment plan for payment of \$55,157.50 in restitution while on probation to the eight (8) victims listed in Exhibit A to the Hearing Panel's judgment in accordance with the amounts specified therein.

The disciplinary action involved nine (9) matters in which Mr. Teets committed ethical violations by failing to provide competent representation; by failing to act with reasonable diligence; by failing to communicate with client(s) or keep them informed of significant events and developments in their cases; by charging unreasonable fees and failing to refund unearned fees; by failing to withdraw from representation after the suspension of his law license and by withdrawing or terminating representation without taking steps to protect his client(s)'s interest; by engaging in the unauthorized practice of law; by listing his bar registration number inaccurately on a pleading filed in court; by knowingly failing to respond to demands for information from the Board of Professional Responsibility; by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; by engaging in conduct prejudicial to the administration of justice; and by knowingly failing to comply with a court order in a proceeding in which he was a party.

The Hearing Panel found the conduct of Mr. Teets violated Tennessee Rules of Professional Conduct 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.5(a) (fees), 1.16(a)(1) (terminating representation), 5.5(a)

10. Client Files



BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2015-F-160

The Board of Professional Responsibility has been requested to issue a Formal Ethics Opinion as guidance for lawyers regarding the lawyer's responsibility with regard to client files.

OPINION

Lawyers have ethical obligations to preserve client files and to return them or permit access to them by the client if requested. There is no Rule of Professional Conduct in Tennessee that requires a lawyer to retain client files for more than five (5) years following termination of representation; however, the type of representation and file contents may require a longer retention time. *See discussion.*

The entire client file, for which the lawyer has been compensated, belongs to the client. If the lawyer wants a copy, the lawyer should bear that expense. If the lawyer has not been compensated, the lawyer may retain work product, but only if retention of the work product will not have a materially adverse effect on the client with respect to the subject matter of the representation.

When a lawyer retires from the practice of law, his or her responsibility for client files does not end with retirement. If the lawyer has been practicing in a law firm, those responsibilities are shared by the firm. A retiring lawyer does not necessarily have to notify former clients of the lawyer's retirement advising such clients of various safekeeping options, provided the lawyer has made arrangements for the safekeeping of files for an appropriate period of time. A lawyer retiring from a firm may satisfy the safekeeping requirement by the firm's keeping the files. Assuming a retiring solo practitioner has not changed his or her residence and can reasonably be contacted by former clients, such retiring solo practitioner may satisfy the safekeeping requirement by simply keeping the files in a location readily accessible to the retiring lawyer and/or client. This further assumes that confidentiality of the files can be maintained. The retiring lawyer may choose to notify the clients, and, if an agreement has not already been reached with regard to the client files, the lawyer may propose some alternatives: placing the files with a named attorney who will assist the retiring lawyer in closing out his or her law practice, or assist the client in transferring the files to an attorney chosen by the client, or return the files to the client.

Tennessee Formal Ethics Opinion 2015-F-160

Tennessee Formal Ethics Opinion 2015-F-160(a)

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2015-F-160(a)

The Board of Professional Responsibility issues this amended Formal Ethics Opinion to clarify a lawyer's responsibility with regard to client files.

OPINION

The Board of Professional Responsibility recommends a lawyer retain client files for five (5) years after termination of representation; however, this is merely a guideline and may be altered by client agreement or the type of representation and contents of the file.

DISCUSSION

Tennessee Rule of Professional Conduct 1.15(b) provides:

Funds belonging to clients or third persons shall be deposited in a separate account maintained in an FDIC member depository institution having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 35.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.¹

RPC 1.15(b) requires complete records of funds belonging to clients or third persons or other property be kept five (5) years after termination of representation.

11. Artificial Intelligence

The background of the slide is a dark green, almost black, field filled with a complex, glowing circuit board pattern. The circuit lines are thin and light green, with some thicker, more prominent lines. Scattered throughout the circuit are numerous small, bright green circular points, some of which appear to be glowing or pulsing. The overall effect is a futuristic, high-tech aesthetic.

Rule 1.1

Comment [8]

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.

**FLORIDA BAR ETHICS OPINION
OPINION 24-1
January 19, 2024**

Advisory ethics opinions are not binding.

Lawyers may use generative artificial intelligence (“AI”) in the practice of law but must protect the confidentiality of client information, provide accurate and competent services, avoid improper billing practices, and comply with applicable restrictions on lawyer advertising. Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning. Lawyers remain responsible for their work product and professional judgment and must develop policies and practices to verify that the use of generative AI is consistent with the lawyer’s ethical obligations. Use of generative AI does not permit a lawyer to engage in improper billing practices such as double-billing. Generative AI chatbots that communicate with clients or third parties must comply with restrictions on lawyer advertising and must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm. Lawyers should be mindful of the duty to maintain technological competence and educate themselves regarding the risks and benefits of new technology.

- RPC:** 4-1.1; 4-1.1 Comment; 4-1.5(a); 4-1.5(e); 4-1.5(f)(2); 4-1.5(h); 4-1.6; 4-1.6 Comment; 4-1.6(c)(1); 4-1.6(c); 4-1.18 Comment; 4-3.1; 4-3.3; 4-4.1; 4-4.4(b); Subchapter 4-7; 4-7.13; 4-7.13(b)(3); 4-7.13(b)(5); 4-5.3(a)
- OPINIONS:** 76-33 & 76-38, Consolidated; 88-6; 06-2; 07-2; 10-2; 12-3; ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 498 (2021); ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 93-379 (1993); Iowa Ethics Opinion 11-01; New York State Bar Ethics Opinion 842
- CASES:** *Mata v. Avianca*, 22-cv-1461, 2023 WL 4114965, at 17 (S.D.N.Y. June 22, 2023); *Bartholomew v. Bartholomew*, 611 So. 2d 85, 86 (Fla. 2d DCA 1992); *The Florida Bar v. Carlton*, 820 So. 2d 891, 899 (Fla. 2002); *Att’y Grievance Comm’n of Maryland v. Manger*, 913 A.2d 1 (Md. 2006)

The Florida Bar Board of Governors has directed the Board Review Committee on Professional Ethics to issue an opinion regarding lawyers’ use of generative artificial intelligence (“AI”). The release of ChatGPT-3 in November 2022 prompted wide-ranging debates regarding lawyers’ use of generative AI in the practice of law. While it is impossible to determine the impact generative AI will have on the legal profession, this opinion is intended to provide guidance to Florida Bar members regarding some of the ethical implications of these new programs.

Generative AI are “deep-learning models” that compile data “to generate statistically probable outputs when prompted.” IBM, [What is generative AI?](https://research.ibm.com/blog/what-is-generative-ai), (April 20, 2023), <https://research.ibm.com/blog/what-is-generative-ai> (last visited 11/09/2023). Generative AI can create original images, analyze documents, and draft briefs based on written prompts. Often, these programs rely on large language models. The datasets utilized by generative AI large language models can include billions of parameters making it virtually impossible to determine

Florida Bar Ethics Opinion 24-1 (2024)

People v. Zachariah C. Crabill, 23PDJ067, November 22, 2023.

The Presiding Disciplinary Judge approved the parties' stipulation to discipline and suspended Zachariah C. Crabill (attorney registration number 56783) for one year and one day, with ninety days to be served and the remainder to be stayed upon Crabill's successful completion of a two-year period of probation, with conditions. The suspension took effect November 22, 2023.

In April 2023, a client hired Crabill to prepare a motion to set aside judgment in the client's civil case. Crabill, who had never drafted such a motion before working on his client's matter, cited case law that he found through the artificial intelligence platform, ChatGPT. Crabill did not read the cases he found through ChatGPT or otherwise attempt to verify that the citations were accurate. In May 2023, Crabill filed the motion with the presiding court. Before a hearing on the motion, Crabill discovered that the cases from ChatGPT were either incorrect or fictitious. But Crabill did not alert the court to the sham cases at the hearing. Nor did he withdraw the motion. When the judge expressed concerns about the accuracy of the cases, Crabill falsely attributed the mistakes to a legal intern. Six days after the hearing, Crabill filed an affidavit with the court, explaining that he used ChatGPT when he drafted the motion.

Through this conduct, Crabill violated Colo. RPC 1.1 (a lawyer must competently represent a client); Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 3.3(a)(1) (a lawyer must not knowingly make a false statement of material fact or law to a tribunal); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The case file is public per C.R.C.P. 242.41(a).

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2015-F-159

May an attorney ethically store confidential client information or material in "the cloud"?

OPINION

A lawyer may ethically allow confidential client information to be stored in "the cloud" if the lawyer takes reasonable care to assure that: (1) all such information or materials remain confidential; and (2) reasonable safeguards are employed to ensure that the information is protected from breaches, loss, and other risks. Due to rapidly changing technology, the Board doesn't attempt to establish a standard of care, but instead offers guidance from other jurisdictions.

DISCUSSION

Technological advances have changed the way lawyers and law firms may store, retrieve and access client information. An inquiry has been made regarding whether a lawyer can ethically store confidential client files and information in "the cloud".

Cloud computing is technology which allows a lawyer to store and access software or data through the cloud—a remote location which is not controlled by the lawyer but by a third party which provides the storage or other computing services. It is the use of a network of remote servers, hardware and/or software to store, manage, transmit, process and/or retrieve data off the lawyer's premises, rather than on a server or personal computer on the lawyer's premises.

The services, which may be long-term storage of confidential client information or shorter-term storage or services to enable data processing or web-based email, are typically purchased from a provider on a subscription fee basis. The service provider assumes the responsibility for new technology and software updates. The lawyer's computing device is simply a way of accessing the information stored in the cloud from any location with Internet access.⁴

Tennessee Formal Ethics Opinion 2015-F-159

A yellow diamond-shaped sign with a black border and four black dots at the corners. The sign is mounted on two metal posts. The background shows a paved road with a yellow center line and a white shoulder line, curving into the distance. The road is flanked by green grass and trees under a clear sky.

**RETIREMENT
STRAIGHT
AHEAD**

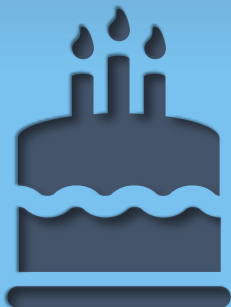
12. Shut 'er Down (Succession Planning)

Succession Planning



Dos & Don'ts

TENNESSEE LAWYER DEMOGRAPHICS



Age

28% are 60+
46% are 40-59
26% are under 40

24,280
active TN lawyers

Years Licensed in TN

35% less than 10 years
24% between 10-20 years
18% between 20-30 years
23% over 30 years





Do - Plan ahead.



Don't - wait for imminent retirement to do
succession planning.

Shock Impact of a Sudden Cessation



Atlanta attorney Page Pate Dies in
Swimming Accident Off Georgia
Coast

Alta Spells, Maria Cartaya, Martin
Savidge and Theresa Waldrop -
September 13, 2022



Skadden Rainmaker Scott
Simpson Dies Suddenly, Aged
65

Paul Hodkinson - May 30, 2022



Do -think about the Rules of Professional
Conduct and Disciplinary Enforcement



Do - review Tenn. Sup. Ct. Rule 9, Section
29



Tenn. Sup. Ct. R. 9, Section 29.2
Appointment of a Receiver Attorney

Tenn. Sup. Ct. R. 9, Section 29.2

Appointment of a Receiver Attorney

(a) For purposes of this Section, an "affected attorney" is an attorney who is licensed and engaged in the practice of law in this State and who has no partner, associate, executor, or other appropriate successor or representative capable and available to continue or wind-down the attorney's law practice.



Tenn. Sup. Ct. R. 9, Section 29.2

Appointment of a Receiver Attorney

(b) If an affected attorney has:

- (1) resigned or been suspended or disbarred from the practice of law;
- (2) disappeared or abandoned the practice of law;
- (3) become disabled or incapacitated; or
- (4) died,

the Board of Professional Responsibility, the Tennessee Bar Association or any local bar association, any attorney licensed to practice law in this State, or any other interested person, may commence a proceeding in the chancery, circuit, or probate court for the county in which the affected attorney maintained an office for the practice of law for the appointment of an attorney who is licensed to practice law in this state and in good standing with the Board of Professional Responsibility to serve as a receiver attorney to wind-down the law practice of the affected attorney.





Tenn. Sup. Ct. R. 9, Section 29.3
Duties of a Receiver Attorney

Tenn. Sup. Ct. R. 9, Section 29.3

Duties of a Receiver Attorney

(a) The receiver attorney shall:



- (1) take custody of the files, records, bank accounts ...;
- (2) review the files ... to identify any pending matters;
- (3) notify all clients ... in pending matters of the appointment of the receiver attorney and suggest ... replacement counsel;
- (4) notify all courts and counsel ... in any pending matters ... of the appointment of a receiver attorney ...;
- (5) deliver the files, money, and other property belonging to the clients ... pursuant to the client's directions ...; and
- (6) take such steps ... to protect the interests of the clients, the public, and, to the extent possible ... of the affected attorney.

Tenn. Sup. Ct. R. 9, Section 29.3

Duties of a Receiver Attorney



(b) The order appointing the receiver attorney shall ... authorize the receiver attorney to take custody of ... any bank or ... accounts ...including trust accounts, escrow accounts, payroll accounts, IOLTA accounts, operating accounts, ... and to disburse funds to clients ... or others

Tenn. Sup. Ct. R. 9, Section 29.3

Duties of a Receiver Attorney



(c) The receiver attorney shall ... safeguard all property in the offices of the affected attorney and to collect any outstanding attorney's fees, costs, and expenses ... and shall make ... arrangements for the prompt resolution of any disputes concerning outstanding attorney's fees

(d) [T]he receiver attorney shall assist ... the affected attorney and the guardian or personal representative ... in the ... sale, or winding-down of the affected attorney's law practice. The receiver attorney may purchase the law practice ... upon the trial court's approval.

Tenn. Sup. Ct. R. 9, Section 29.3

Duties of a Receiver Attorney



(e) The trial court may order the receiver attorney to submit interim and final accountings

Tenn. Sup. Ct. R. 9, Section 29.4

Protection of Client Information

The appointment of the receiver attorney shall not ... create the relationship of attorney and client However, the attorney-client privilege shall apply to all communications by ... receiver attorney and the clients of the affected attorney, and the receiver ... shall be governed by Rule 1.6



Tenn. Sup. Ct. R. 9, Section 29.5

Protection of Client Files and Property

The trial court shall have jurisdiction over all ... files, records, and property of clients of the affected attorney and may make any orders necessary ... to protect the interests of the clients ... including, but not limited to ... the delivery, storage, or destruction of the client files.



Tenn. Sup. Ct. R. 9, Section 29.7

Limitation of Liability

Any person serving as a receiver attorney under this Rule shall be immune from suit for any conduct undertaken in good faith in the course of the official duties of the receiver attorney.



An illustration of ten hands of various skin tones (light beige, tan, brown, and dark brown) raised against a blue background. The hands are positioned at different heights and angles, creating a sense of movement and diversity. A white horizontal banner with a thin black border is overlaid across the middle of the image, containing the text.

Do - make an advanced designation of a receiver

Tenn. Sup. Ct. R. 9, Section 29.9

Advanced Designation of a Receiver or Successor Attorney

An attorney may designate in advance another attorney by contract, appointment, or other arrangement to handle or assist in the continued operation, sale, or closing of the attorney's law practice in the event of such attorney's death, incapacity or unavailability.

In the event an attorney ... has made adequate provision for the protection of his or her clients, such provision shall govern ... unless ... the Court determines, ... that ... the appointment of a receiver ... should be invoked.





Do – Follow Tenn. Sup. Ct. R. 8, RPC 1.17
for Sale of Law Practice

The Board of Professional Responsibility will be closed on Tuesday, July 4, 2023 in observance of Independence Day.

Information for legal professionals

The Board of Professional Responsibility's mission is to assist legal professionals with maintaining high standards of skill and conduct. Accordingly, the Board has compiled the following resources that may be useful for attorneys.

For the Legal Professionals

Attorney License Information

- Information for New Attorneys
- Active, Suspended & Expired Status
- Reciprocity of Law Licenses
- Letters of Good Standing

Rules

The Board is governed by the following rules:

- Board Policies and Rules
- Tennessee Supreme Court Rule 4 - Admission of Attorneys
- Tennessee Supreme Court Rule 8 - Rules of Professional Conduct
- Tennessee Supreme Court Rule 9 - Disciplinary Enforcement
- Tennessee Supreme Court Rule 11 - Ethical or Lapsing Trust Accounts

Ethics Opinions

Search below by keyword, phrase or year for Formal Ethics Opinions issued from 1980 to the present.

Keyword or Opinion Number

Search

- Formal Ethics Opinions
- Informal Ethics Opinions
- Ethics Frequently Asked Questions

State Agencies

- Tennessee Lawyers Assistance Program (TLAP)
- Tennessee Commission on Continuing Legal Education
- Tennessee Board of Law Examiners
- Tennessee Bar Foundation

Trust Accounting

- Approved Banks and Credit Unions
- With-Interest for Lawyers Trust Accounts
- Attorney Trust Account Checklist
- Affidavit Agreement
- Request to Open or Close an Attorney Trust for Tennessee Lawyers Trust for Client Protection

The Bar Web Advantage

- Who May File a Complaint
- Who May File a Search
- Who May File a Petition
- Supreme Court Rule 10 - Disciplinary Proceedings
- The Ethics of Practice - Ethics of Practice Agency and Complaints
- Tennessee Lawyers Trust Accounts

Resources

- Tennessee Commission on Continuing Legal Education
- Tennessee Board of Law Examiners
- Tennessee Bar Foundation
- Tennessee Lawyers Assistance Program (TLAP)
- Tennessee Commission on Continuing Legal Education
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- Tennessee Lawyers Assistance Program (TLAP)
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- Tennessee Bar Foundation

• Resources for When an Attorney is Unable to Practice Law

Mission Statement

To assist the State in promoting the public good from trust and fair access by administering the disciplinary process, to provide the public with a transparent process, to protect the public interest, to ensure the integrity of the legal profession, and to ensure the public's confidence in the legal profession.

**Resources
for when an
attorney becomes
unable to
continue the
practice of law**

- Complaint for appointment of receiver attorney
- Order granting complaint for appointment of receiver attorney
- Things to do to prepare for disaster, disability and death
- Checklist for lawyers planning to protect clients' interests in the event of the lawyer's disability, impairment, incapacity or death
- Checklist for closing your own office
- Checklist for closing another attorney's office
- Letter from closing or receiver attorney advising that lawyer is unable to continue to practice



Questions?

**Laura Chastain, Ethics
Counsel**

1-800-486-5714, ext. 212

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Thank you.

NEXT UP: WELCOME RECEPTION IN EXHIBIT HALL.

KIDS' CHANCE: AUCTION ENDS AT 4:15 PM

KIDS' CHANCE: GAME NIGHT AT MAIN EVENT STARTS AT 6 PM

It's not too late to
buy a game voucher

scan QR code to have fun for a good cause

