

Ethics 2025 – Year in Review

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RULE CHANGES

Amendment to Code of Judicial Conduct Dec 11, 2024

The CJC prohibitions on inappropriate political activity in Canon 5 did not apply to parttime judges. Noting the 500+part-time magistrate and municipal court judges plus part-time masters-in-equity and probate judges in South Carolina, this order amended the Application Section of the CJC to eliminate this exemption for part-time judges. The order calls particular attention to

1. acting as a leader or holding an office in a political organization
2. publicly endorsing or publicly opposing a candidate for public office
3. making speeches on behalf of a political organization
4. attending political gatherings
5. contributing to or soliciting funds for a political organization or candidate or purchasing tickets for political party dinners and other functions

Amendments to the Rules for Lawyer Disciplinary Enforcement June 25, 2025

Rule 12 to allow freer exchange of confidential disciplinary information with disciplinary authorities in other jurisdictions.

Rule 14 to limit the filing of a disciplinary complaint to a form delivered in person or by US Mail

Rule 19 to give ODC more discretion in deciding whether to investigate or dismiss an incoming complaint, in three ways:

1. allows ODC to do a little digging in public records and follow-up questions to the complainant before deciding
2. allows ODC to dismiss patently frivolous complaints
3. creates a 5-year statute of limitations for complaints against lawyers

DISCIPLINARY OPINIONS

In re Hanlin

Dec 18, 2024

6-month suspension

The lawyer allowed several client matters to go many months unattended, resulting in nine client complaints and interim suspension. He was away taking care of his elderly parents and then his own illness. At the time of the disciplinary order, he had refunded some but not all of the client's fees. The lawyer agreed to a restitution plan for the others and to a two-year law office management advisor program with reports to the Commission on Lawyer Conduct.

In re Spell

Feb. 19, 2025

6-month suspension

The lawyer had sex with a client whose spouse was also a client, and he failed to file income taxes for 10 years.

In re Blinkow

Feb 19, 2025

Disbarred

This lawyer's client recorded a phone call between herself and the lawyer, in which the lawyer admitted to spending her retainers on living expenses (rather than her case expenses), including his family's college tuition, loan payments, a ski trip, and a country club membership. For this, he was arrested and charged with felony breach of trust with fraudulent intent and pled guilty to misdemeanor forgery. During its investigation, ODC also discovered various other instances in which Respondent made improper IOLTA withdrawals and deposits, disbursement before collection of deposited funds, and comingling.

ETHICS ADVISORY OPINIONS

SC EAO 25-01

Allowing the VA to make ACH debits from IOLTA

Executive Order 14247 prohibits the VA from accepting paper checks from lawyer trust accounts and requires instead that lawyers pay through the pay.gov portal, which requires the lawyer to authorize the agency to debit the lawyer's trust account via ACH transactions. Lawyers may ethically comply with this procedure under Rule 1.15. The Comments to Rule 1.15 and recordkeeping requirements of Rule 417 both acknowledge that funds may be withdrawn from an IOLTA account via electronic transfer. Lawyers must keep records of these transfers just like any other.

The committee noted that lawyers may wish to set up a second trust account solely for transfers to this federal agency to reduce the risk to other client funds of any mistakes from the pay.gov portal, but multiple trust accounts each require all the same recordkeeping.

SC EAO 25-__?*

Sharing Fees with an Arizona ABS Law Firm

*decided but not yet published

ABA Formal Opinion 515

Reporting a Client's Crime when the Lawyer is the Victim

Rule 1.6(b)(5) permits a lawyer to make disclosures "to the extent the lawyer reasonably believes necessary . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client." To the extent that the lawyer initiates a civil claim . . . to seek redress for harm caused by the client's crime, such as the return of stolen property, the lawyer may make reasonably necessary disclosures under this exception. But the exception would not justify initially reporting to law enforcement authorities, since a criminal investigation or prosecution is not a controversy between the lawyer and the client.*

*Here, the ABA cites here to two prior opinions that stated that neither a negative online review nor a client's claim of ineffective assistance of counsel is a "controversy between the lawyer and the client."

[citing "rules of reason" from the Scope of the RPC] The Rules of Professional Conduct . . . should be interpreted with reference to the purposes of legal representation and of the law itself." Lawyers might readily assume that, if a client commits a crime against them or their employees or associates, they can report the crime to law enforcement authorities and appropriate others, notwithstanding the confidentiality duty under Rule 1.6(a). The Committee concludes that they

would be correct, even though, in many situations, no express exception to the confidentiality duty will apply. That is because, in this situation, the Committee believes an implicit exception applies. While rare, the Committee has in the past identified an implicit exception to the duty of confidentiality in a recurring situation, such as this one, that was not considered by the drafters of the Model Rules or of prior ethics codes.**

**Here, the ABA cites to a prior opinion that stated that a lawyer may disclose confidential client information to a neutral third-party “conflict mediator” to resolve potential conflicts of interest with a new firm when a lawyer seeks to change employment.

ABA Formal Opinion 516 Terminating the Attorney-Client Relationship

This opinion broadly deals with several aspects of terminating the attorney-client relationship. It first notes that lawyers do not need any reason to terminate a relationship as long as it will not have a materially adverse effect on the client. The opinion then identifies several scenarios where withdrawal would likely cause material adverse effects:

- In transactional matters, where delay might jeopardize a deal’s completion or value
- When no other available lawyer is capable of completing the representation within the necessary timeframe
- When timing is objectively critical
- When the withdrawing lawyer has unique abilities or knowledge that cannot be readily transferred
- When a successor lawyer would need to duplicate substantial work, significantly increasing costs

The opinion notes that lawyers may be able to remediate adverse effects by helping the client find substitute counsel, collaborating with successor counsel, or returning or foregoing fees for work that must be duplicated. The opinion then identifies circumstances where withdrawal is unlikely to have a materially adverse effect:

- Early in the representation, before substantial work has been performed
- When co-counsel can complete the remaining work without disruption
- When the representation is substantially complete, with only ministerial tasks remaining
- When there is no imminent pending deadline or urgent matter at the time of withdrawal

The opinion states that Rule 1.16 does not protect clients from disappointment and that the lawyer’s motivation is irrelevant. It specifically states that a lawyer may ethically withdraw from representing a client simply to represent another client with adverse interests. The opinion explains that the “Hot Potato Doctrine” does not come from the Rules of Professional Conduct but from the common law duty of loyalty; thus dropping a “hot potato” client might result in disqualification but should not result in discipline.

ABA Formal Opinion 520
Providing Information After Terminating Representation

Lawyers often completely fulfill their obligations under Model Rule 1.16(d) to protect client interests upon termination of the representation by surrendering the file upon request and refunding unearned advanced fees and unexpended costs. However, in some situations, a lawyer must comply with requests for information from successor counsel or a former client. Ordinarily, such a request will require a response when the requested information was acquired by the lawyer during the course of the representation, is unavailable from other sources and is important to the client's interests in the matter in which the lawyer formerly represented the client.

Rule 1.16(d) does not require a lawyer to take steps to acquire information, research and generate written responses or provide further legal services to the client in response to a request for information. The question considered by this opinion is whether the lawyer may also have an obligation to provide certain unrecorded information acquired in the course of the terminated representation. Specifically, the opinion addresses whether the former lawyer has any obligation under Rule 1.16(d) to respond to a request for information that is not memorialized in file materials, including information explaining or elaborating on the materials contained in a previously surrendered file. Neither the text nor the comment to Rule 1.16 explicitly addresses this question.

Lawyers do not have an obligation under Rule 1.16(d) to provide information that is readily accessible elsewhere or by other means. For example, if the lawyer has surrendered the file according to the law of the jurisdiction, and the former client is asking for information readily available from the court system's website, the lawyer would have no obligation to provide the information.

The opinion states that it is sometimes necessary for a lawyer who terminated, or is terminating, a representation to convey information that was not recorded and maintained in the client's file. This duty is limited, however, by the provision that complying with the request actually be necessary "to protect the client's interests" in the matter undertaken by the lawyer and that compliance be "reasonably practicable."

MISCELLANEOUS

S.C. Supreme Court Interim Policy on the Use of Generative Artificial Intelligence May 25, 2025

Prohibitions (limited to judicial officers and employees):

1. Use of any GAI tool not approved by the Court or Court Administration
2. Use of GAI on any unapproved device, including personal devices
3. Use of GAI to draft memoranda, orders, opinions or other documents without direct human oversight and approval*
4. Use of GAI for data analytics on court records

*See the Last Antecedent Rule in your favorite authority on grammar and statutory interpretation.

But also cautions lawyers on “Use of AI by Lawyers and Litigants in Matters”:

- (1) While this Interim Policy does not specifically address the use of Generative AI by lawyers and litigants, lawyers and litigants are reminded that they are responsible to ensure the accuracy of all work product and must use caution when relying on any output of Generative AI.
- (2) Lawyers in particular must ensure that the use Generative AI does not compromise client confidentiality or otherwise violate the South Carolina Rules of Professional Conduct, Rule 407, SCACR.

