

# Hot Topics in Ethics

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**Office of Lawyers Professional Responsibility**  
*Protecting the Public · Strengthening the Profession*

# AI

- Lawyer Use of Artificial Intelligence
- ABA Opinion 512 (July 29, 2024)
  - Competency
  - Confidentiality
  - Communication and client consent
  - Supervision obligations
  - Candor to the tribunal—case hallucinations
  - Reasonable fees



# Confidentiality

SEC seeking client names from Covington & Burling--cyberattacks

Concerns regarding ABA Opinion 511 on Listservs

Reminder, just because info on client might be public does not mean can discuss. Needs to fall within an exception within Rule 1.6(b), MRPC.



# Cybersecurity and Scams

- Continue to see lawyers falling victims to trust account scams or having data breaches (through phishing emails) and being asked to pay ransom
- Targeting small to midsize firms
- Duplicating trust account checks (recommend frequent check into trust account balance)



# Due Diligence on Clients

- ABA amendments to Rule 1.16
  - Duty to “inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation”

Added a mandatory withdrawal provision in 1.16(a)(4)—“the client or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud, despite the lawyer’s discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding limitations on the lawyer assisting with the proposed course of conduct.”



# Status

Board decided not to petition the Court to amend.

Many states are incorporating this rule into their rules but not always in Rule 1.16

OLPR monitoring because believe it is part of ethical duty



# Multijurisdictional Practice

ABA reviewing Rule 5.5 for last two years to see how to update to facilitate multijurisdictional practice while still maintaining state regulation.

Proposal from APRL to change the rule to allow practice in every jurisdiction if licensed in any jurisdiction – same proposal made 20 years ago that led to current Rule 5.5 (with temporary exceptions).

Some easy ideas: Expanding in-house counsel registration (different from license); allowing practice pending admission.



# Nonlawyer Practitioners

- Minnesota making permanent paraprofessional project – different approach than other states because practicing under a licensed lawyer and using the lawyer’s license.
- Access to Justice gap
- September 16, 2024, order, referring the question of fee sharing with non-lawyers – prohibited by Rule 5.4(a); cannot form partnership with nonlawyers under Rule 5.4(b)
- MSBA AI workpaper – Future request for OLPR opinion letter – organizations seeking to assist self-represented litigants with AI are not engaging in UPL under statute or rule.



# Sex and Sexting with Clients

- North Carolina's new rule (Rule 1.19)
- (b) A lawyer shall not engage in sexual communications with a client. For purposes of this Rule, "sexual communications" means:
  - (1) requesting or actively participating in sexually explicit conversation; or
  - (2) requesting or transmitting messages, images, audio, video, or other content that contain nudity or sexually explicit material.
- Communications that contain nudity or sexually explicit content but are relevant to the client's legal matter and are made in furtherance of the representation are not "sexual communications" for purposes of this Rule.
- (c) A lawyer shall not request, require, or demand sexual activity or sexual communications with a client incident to or as a condition of any professional representation.



# Comments

## Exploitation of the Lawyer's Fiduciary Position

[2] The relationship between a lawyer and client is a fiduciary relationship in which the lawyer occupies the highest position of trust and confidence. The relationship is also inherently unequal. The client comes to a lawyer with a problem and puts his or her faith in the lawyer's special knowledge, skills, and ability to solve the client's problem. The same factors that led the client to place his or her trust and reliance in the lawyer also have the potential to place the lawyer in a position of dominance and the client in a position of vulnerability.

## No Prejudice to Client

[5] The prohibition on sexual conduct with a client applies regardless of whether it prejudices the client and regardless of whether the conduct is consensual.



# Trends

- Complaints are up 9% YOY; up 17% last year
- DEC's overwhelmed (withdrawing assignments, and using neighboring DEC's to assist)
- More reactionary complaints---less likely to investigate (50% summary dismissal/41% same time last year)
- Also, more serious misconduct
  - So much dishonesty
  - Sex with clients and other poor judgment/boundary issues
  - Criminal conduct
  - Frivolous claims/failure to recognize limits of zealous advocacy.



# Trends Nationwide

- Similar to MN – dishonesty, sex with clients
- Many crimes
- More character and fitness issues on admission
- Conflict between transparency and expungement – California proposal to expunge discipline; NC as well



# Closing

- Questions?
- Thank You!



Thank you



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