

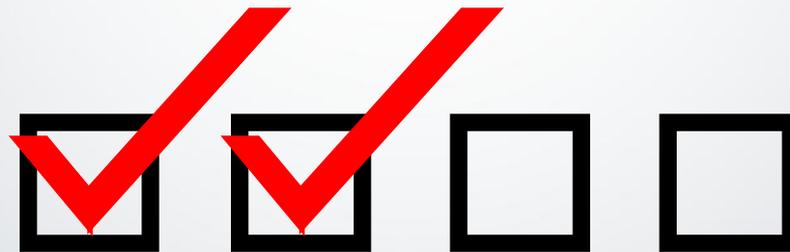


**Build a Stronger Firm Through Better Risk
Management
Kid's Chance**

- Christian A. Stiegemeyer | Director of Risk Management
- Whitney A. Dunn | Risk Manager



THE QUIZ



1. Attorney is going to join your firm as Of Counsel. He will maintain his own mediation practice and other than paying rent to the firm for use of office space will have no substantive involvement with the firm. Designating Attorney as Of Counsel to the firm is:

A. Impermissible

B. Permissible because Of Counsel's role may be created ad hoc.

C. Permissible because the title Of Counsel is defined by the law firm and Attorney.

D. Permissible because the Attorney is also a Senior Attorney.

2. A former client posts a comment on your social media site saying, “What a great lawyer! Her ads said ‘Bankruptcy, but keep house & car.’ She was right!”
You:

A. Have no duty to remove the post because you did not ask the former client to comment.

B. Have no duty to remove the post because the former client actually kept his house and car in the bankruptcy.

C. Have no duty to remove the post because the advertising language is not false or misleading.

D. Have to remove the post.

3. You include Attorney from Question #1 as Of Counsel on your letterhead and website. This:

A. Violates Rule 4-7.1 because it is false and misleading.

B. Complies with Rule 4-7.1 because Of Counsel role's may be created ad hoc.

C. Complies with Rule 4-7.1 because the title Of Counsel is defined by the law firm and Attorney.

D. Complies with Rule 4-7.1 because the Attorney is also a Senior Attorney.

4. A former client posts a comment on the client's Facebook page saying, "What a great lawyer! Her ads said 'Bankruptcy, but keep house & car.' She was right!" You:

A. May like the post because you did not ask the former client to comment.

B. May like the post because the former client actually kept his house and car in the bankruptcy.

C. May like the post because the advertising language is not false or misleading.

D. May not like the post.

5. Your firm has an attorney Of Counsel whose association is accurately characterized. Regarding fees on matters he works on with the firm:

A. Must meet all provisions of Rule 4-1.5: Fees except paragraph (e) (division of fee between lawyers not in the same firm).

B. Must meet all provisions of Rule 4-1.5

C. Must be paid by the client directly to Of Counsel under a separate fee arrangement.

D. Shall be in writing and signed by the client.

6. You post on your social media site, “What a great day! Jury came back with a great verdict for my client!!” You go on to mention the client’s name, adverse party’s name and the dollar amount of the verdict. You:

A. May post the adverse party’s name because it is public record but not the verdict amount or client name.

B. May post the verdict amount because it is public record but not the client’s or adverse party’s name.

C. May post the client’s name, adverse party name and the verdict amount because they are all public record.

D. Although all are public record may not post the client’s name, adverse party name or the verdict amount.

**7. Your firm has Of Counsel.
The firm would like to accept a new client in a contract dispute matter. Of Counsel drafted the disputed contract 12 years ago while representing the adverse party. The firm:**

A. May not accept the new client because of the 4-1.9 conflict of Of Counsel.

B. May accept the new client if Of Counsel is apportioned none of the fee.

C. May accept the new client if Of Counsel is timely screened from the representation.

D. May accept the new client because there is no significant risk of materially limiting the representation of the client by the lawyers in the firm.

8. A former client posts a comment on your social media site saying, “What a great lawyer! Not only is she a specialist in divorce law, she’s a specialist in great client service too!”
You:

A. Have no duty to remove the post because you did not ask the former client to comment.

B. Have no duty to remove the post because the former client actually got a great result in the divorce.

C. Have no duty to remove the post because the former client actually received great service.

D. Have to remove the post.

9. Your firm has Of Counsel.
The Of Counsel attorney is also
Of Counsel to Law Firm Other.
Regarding the material in
which Of Counsel is held out to
the public:

A. Your firm and Other Firm shall indicate that Of Counsel is associated with each other's firms.

B. Your firm only has to indicate Of Counsel is associated with your firm.

C. Other Firm does not have to indicate Of Counsel is associated with your firm.

D. Neither your firm or Other Firm have to indicate the association with your respective firms.

10. You receive an email from adverse counsel containing settlement discussions on issues of child custody and property distribution. Adverse counsel has cc'd her client. You choose "Reply All", respond and hit "Send". Your response:

A. Is unethical if made in a matter in Illinois, Alaska, South Carolina, Kentucky or North Carolina.

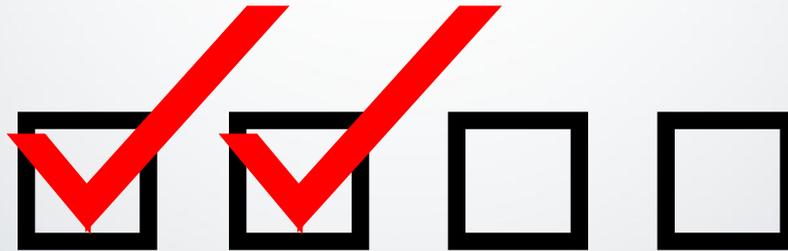
B. Is ethical if made in a matter in New Jersey.

C. Is ethical if made in a matter in Missouri.

D. Is unethical if made in a matter in Missouri.



THE QUIZ ANSWERS



1. Attorney is going to join your firm as Of Counsel. He will maintain his own mediation practice and other than paying rent to the firm for use of office space will have no substantive involvement with the firm. Designating Attorney as Of Counsel to the firm is:

A. Impermissible

B. Permissible because Of Counsel's role may be created ad hoc.

C. Permissible because the title Of Counsel is defined by the law firm and Attorney.

D. Permissible because the Attorney is also a Senior Attorney.

1. Attorney is going to join your firm as Of Counsel. He will maintain his own mediation practice and other than paying rent to the firm for use of office space will have no substantive involvement with the firm. Designating Attorney as Of Counsel to the firm is:

ANSWER: A. Impermissible.

Missouri Informal Opinion 2020-11.

Attorney's association with the firm is accurately characterized as an Of Counsel relationship if Attorney's relationship with the firm is:

- 1) Close, regular, and personal;
- 2) Attorney is not a partner, associate, or shareholder in the firm;
- 3) Attorney's involvement with the firm is not limited to forwarding or receiving business, acting in only a single case, providing only occasional collaboration, or acting as an outside consultant; and
- 4) Attorney's Of Counsel relationship with the firm is disclosed in all materials in which the firm and Attorney hold themselves out to the public.

2. A former client posts a comment on your social media site saying, “What a great lawyer! Her ads said ‘Bankruptcy, but keep house & car.’ She was right!”
You:

A. Have no duty to remove the post because you did not ask the former client to comment.

B. Have no duty to remove the post because the former client actually kept his house and car in the bankruptcy.

C. Have no duty to remove the post because the advertising language is not false or misleading.

D. Have to remove the post.

2. A former client posts a comment on your social media site saying, “What a great lawyer! Her ads said ‘Bankruptcy, but keep house & car.’ She was right!”

You:

Indiana Supreme Court Disciplinary Commission
Advisory Opinion 1-20, Third Party Comments or
Tags on a Lawyer’s Social Media, 7/13/2020.

Summary: An excellent rule of thumb for social media is if the attorney cannot do it in person, he/she cannot do it online. When it comes to third party comments, tags and endorsements, the same rule applies. If the rules prohibit the attorney from saying it, tagging it or endorsing it, then a third party, including the lawyer’s staff, create ethical problems for the attorney by posting such content on the attorney’s social media. Lawyers must prevent or remove content which would violate the professional rules.

ANSWER: D. Have to remove the post.

In re Anonymous, 775 N.E.2d 1094 (Ind. 2002).

“Upon reading the respondent's ad, an ordinary prudent person, perhaps knowing nothing about the debt reaffirmation provisions of Chapters 7 and 13, would likely believe that during and after bankruptcy proceedings his house and car would be secure in his possession, no matter what.”

Missouri RPC 4-7.1. Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

3. You include Attorney from Question #1 as Of Counsel on your letterhead and website. This:

A. Violates Rule 4-7.1 because it is false and misleading.

B. Complies with Rule 4-7.1 because Of Counsel role's may be created ad hoc.

C. Complies with Rule 4-7.1 because the title Of Counsel is defined by the law firm and Attorney.

D. Complies with Rule 4-7.1 because the Attorney is also a Senior Attorney.

3. You include Attorney from Question #1 as Of Counsel on your letterhead and website. This:

ANSWER: A. Violates Rule 4-7.1 because it is false and misleading.

Rule 4-7.1: COMMUNICATION CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

A communication is false if it contains a material misrepresentation of fact or law.

A communication is misleading if it:

(a) omits a fact as a result of which the statement considered as a whole is materially misleading;

4. A former client posts a comment on the client's Facebook page saying, "What a great lawyer! Her ads said 'Bankruptcy, but keep house & car.' She was right!" You:

A. May like the post because you did not ask the former client to comment.

B. May like the post because the former client actually kept his house and car in the bankruptcy.

C. May like the post because the advertising language is not false or misleading.

D. May not like the post.

4. A former client posts a comment on the client's Facebook page saying, "What a great lawyer! Her ads said 'Bankruptcy, but keep house & car.' She was right!" You:

Indiana Supreme Court Disciplinary Commission
Advisory Opinion 1-20, Third Party Comments or
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Minefield #4: Adoption of a third-party comment. An attorney who responds to or "likes" a third party's comment that contains prohibited content could be deemed to have adopted the third-party comment. Such action could subject the attorney to a rule violation. The failure by the attorney to delete prohibited content could be considered acquiescence and expose the lawyer to discipline. A lawyer should also be careful to adjust privacy settings to avoid being "tagged" to improper content which could show up on the lawyer's page and thereby be deemed adopted by the lawyer.

ANSWER: D. May not like the post.

In re Anonymous, 775 N.E.2d 1094 (Ind. 2002).

"Upon reading the respondent's ad, an ordinary prudent person, perhaps knowing nothing about the debt reaffirmation provisions of Chapters 7 and 13, would likely believe that during and after bankruptcy proceedings his house and car would be secure in his possession, no matter what."

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A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

5. Your firm has an attorney Of Counsel whose association is accurately characterized. Regarding fees on matters he works on with the firm:

A. Must meet all provisions of Rule 4-1.5 except paragraph (e) (division of fee between lawyers not in the same firm).

B. Must meet all provisions of Rule 4-1.5

C. Must be paid by the client directly to Of Counsel under a separate fee arrangement.

D. Shall be in writing and signed by the client.

5. Your firm has an attorney Of Counsel whose association is accurately characterized. Regarding fees on matters he works on with the firm:

ANSWER A. Must meet all provisions of Rule 4-1.5 except paragraph (e) (division of fee between lawyers not in the same firm).

Missouri Informal Opinion 2020-12

If Attorney's association with the firm is accurately characterized as an Of Counsel relationship (see Informal Opinion 2020-11), Rule 4-1.5(e) does not regulate the division of a fee between the firm and Attorney. Instead, the fee must comply with the remaining provisions of Rule 4-1.5, as must any fee charged by any other lawyer associated with the firm.

6. You post on your social media site, “What a great day! Jury came back with a great verdict for my client!!” You go on to mention the client’s name, adverse party’s name and the dollar amount of the verdict. You:

A. May post the adverse party’s name because it is public record but not the verdict amount or client name.

B. May post the verdict amount because it is public record but not the client’s or adverse party’s name.

C. May post the client’s name, adverse party name and the verdict amount because they are all public record.

D. Although all are public record may not post the client’s name, adverse party name or the verdict amount.

6. You post on your social media site, “What a great day! Jury came back with a great verdict for my client!!” You go on to mention the client’s name, adverse party’s name and the dollar amount of the verdict. You:

Indiana Supreme Court Disciplinary Commission
Advisory Opinion 1-20, Third Party Comments or
Tags on a Lawyer’s Social Media, 7/13/2020.

Minefield #3: Non-consensual disclosure of client confidences. Tempting though it may be for legal staff to brag on social media about a court victory or the signing of a famous new client, a lawyer may not reveal attorney confidences without client consent. Indiana Professional Conduct Rule 1.6.

ANSWER: D. Although all are public record may not post the client’s name, adverse party name or the verdict amount.

E.g., In re Anonymous, 932 N.E.2d 671 (Ind. 2010). “The Rules contain no exception allowing revelation of information relating to a representation even if a diligent researcher could unearth it through public sources.”

MRPC 4-1.6 COMMENT [3] – “...all information relating to the representation, whatever its source.”

MRPC 4-1.9 COMMENT [8] However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. See ABA Formal Opinion 479, 12/15/2017, **The “Generally Known” Exception to Former-Client Confidentiality** - *Information is not “generally known” simply because it has been discussed in open court, or is available in court records, in libraries, or in other public repositories of information.*

**7. Your firm has Of Counsel.
The firm would like to accept a
new client in a contract dispute
matter. Of Counsel drafted the
disputed contract 12 years ago
while representing the adverse
party. The firm:**

**A. May not accept the new client
because of the 4-1.9 conflict of Of
Counsel.**

**B. May accept the new client if Of
Counsel is apportioned none of
the fee.**

**C. May accept the new client if
Of Counsel is timely screened
from the representation.**

**D. May accept the new client
because there is no significant
risk of materially limiting the
representation of the client by
the lawyers in the firm.**

**7. Your firm has Of Counsel.
The firm would like to accept a
new client in a contract dispute
matter. Of Counsel drafted the
disputed contract 12 years ago
while representing the adverse
party. The firm:**

**ANSWER May not accept the new
client because of the 4-1.9 Former
Client conflict of Of Counsel.**

Missouri Informal Opinion 2020-20

In an Of Counsel relationship, Attorney is associated with the firm for purposes of mutual imputation of conflicts of interest per Rule 4-1.10. Informal Opinion 2019-07. Rule 4-1.10 does not provide for screening to eliminate imputation of a lawyer's disqualification. Informal Opinion 2017-07.

8. A former client posts a comment on your social media site saying, “What a great lawyer! Not only is she a specialist in divorce law, she’s a specialist in great client service too!”
You:

A. Have no duty to remove the post because you did not ask the former client to comment.

B. Have no duty to remove the post because the former client actually got a great result in the divorce.

C. Have no duty to remove the post because the former client actually received great service.

D. Have to remove the post.

8. A former client posts a comment on your social media site saying, “What a great lawyer! Not only is she a specialist in divorce law, she’s a specialist in great client service too!”
You:

Indiana Supreme Court Disciplinary Commission Advisory Opinion 1-20, Third Party Comments or Tags on a Lawyer’s Social Media, 7/13/2020.

Minfield #2: Claiming a non-authorized specialty.

Lawyers may not claim a specialty with limited exceptions enumerated in the Rule. Indiana Rule of Professional Conduct 7.4. An endorsement on LinkedIn from a fellow lawyer claiming a non-authorized “specialty” or a comment by a client that the attorney is a specialist in a non-listed field could subject the lawyer who maintains that page to discipline. The lawyer must act proactively to cure violations through clarification or deletion.

ANSWER: D. Have to remove the post.

**Missouri RPC RULE 4-7.4:
COMMUNICATION OF FIELDS OF
PRACTICE AND SPECIALIZATION**

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. Any such communication shall conform to the requirements of Rule 4-7.1. Except as provided in Rule 4-7.4(a) and (b), a lawyer shall not state or imply that the lawyer is a specialist unless the communication contains a disclaimer that neither the Supreme Court of Missouri nor The Missouri Bar reviews or approves certifying organizations or specialist designations.

- (a) "patent attorney" exception.
- (b) "admiralty," "proctor in admiralty" or a substantially similar designation exception.

9. Your firm has Of Counsel.
The Of Counsel attorney is also
Of Counsel to Law Firm Other.
Regarding the material in
which Of Counsel is held out to
the public:

A. Your firm and Other Firm shall indicate that Of Counsel is associated with each other's firms.

B. Your firm only has to indicate Of Counsel is associated with your firm.

C. Other Firm does not have to indicate Of Counsel is associated with your firm.

D. Neither your firm or Other Firm have to indicate the association with your respective firms.

**9. Your firm has Of Counsel.
The Of Counsel attorney is also
Of Counsel to Law Firm Other.
Regarding the material in
which Of Counsel is held out to
the public:**

Similarly, in all of Firm Two's advertisements, letterhead, website listings, and other materials in which Firm Two lists its attorneys or in which Firm Two holds Attorney out to the public, Firm Two must disclose clearly that Attorney is associated with Firm Two in an Of Counsel relationship. All such materials also must disclose that Attorney is associated in an Of Counsel relationship with Firm One. Attorney's business cards, online profiles, and other materials must disclose that Attorney is associated with both firms in Of Counsel relationships. Informal Opinion 980143; see Informal Opinion 2019-07.

**ANSWER: A. Your firm and
Other Firm shall indicate that
Of Counsel is associated
with each other's firms.**

Missouri Informal Opinion 2020-21

In all advertising materials, websites, letterhead, business cards, and other materials in which Attorney is held out to the public, or in which the firms list their attorneys, the Of Counsel relationship of Attorney with both firms must be disclosed. See Rules 4-7.1 and 4-7.5. For example, in all of Firm One's advertisements, letterhead, website listings, and other materials in which Firm One lists its attorneys or in which Firm One holds Attorney out to the public, Firm One must disclose clearly that Attorney is associated with Firm One in an Of Counsel relationship. All such materials also must disclose that Attorney is associated in an Of Counsel relationship with Firm Two.

10. You receive an email from adverse counsel containing settlement discussions on issues of child custody and property distribution. Adverse counsel has cc'd her client. You choose "Reply All", respond and hit "Send". Your response:

A. Is unethical if made in a matter in Illinois, Alaska, South Carolina, Kentucky or North Carolina.

B. Is ethical if made in a matter in New Jersey.

C. Is ethical if made in a matter in Missouri.

D. Is unethical if made in a matter in Missouri.

10. You receive an email from adverse counsel containing settlement discussions on issues of child custody and property distribution. Adverse counsel has cc'd her client. You choose "Reply All", respond and hit "Send". Your response:

NJ Op. - If opposing counsel replies only to the other lawyer's client, or if the substance of the lawyer's group reply is directed to the other lawyer's client and not to the other lawyer, the replying lawyer violates Rule of Professional Conduct 4.2. Further, the sending lawyer who includes the client on a group email can advise the client not to reply to any group communication when the group includes opposing counsel.

ANSWER: All are correct... mostly.

New Jersey Ethics Opinion 739, 3/10/2021 – See Missouri RPC 4-4.2 - In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

NJ Op. - If Lawyer cc's Client in a letter to Adverse Counsel, Adverse Counsel shall not cc Client in reply to Lawyer.

NJ Op. - If Lawyer includes Client in a conference call, Lawyer has impliedly consented to Adverse Counsel speaking both to Lawyer and Client.

NJ Op. - Email is an informal mode of communication. Group emails often have a conversational element with frequent back-and-forth responses. They are more similar to conference calls than to written letters.



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