



### **Confidentiality Applies Even When a Client Complains About You**

Attorneys must exercise caution when responding to negative client reviews, particularly online complaints. Even when clients leave a critical review, including incorrect factual allegations or outright untruths, RPC 1.6 still governs the use of confidential information. In most states, “confidential information” is defined to be “information relating to the representation.” Unless one of the enumerated exceptions applies, attorneys who respond to a negative review by revealing information related to the representation run the risk of discipline.

Multiple states and the ABA Standing Committee on Ethics and Professional Responsibility have considered this issue, including the question of when and if certain exceptions apply: [ABA Formal Op. 496](#); [LA County Bar Op. 525](#); [Missouri Op. 2018-08](#); [New Jersey ACPE Op. 738](#); [New York State Bar Op. 1032](#); [NC 2020 FEO 1](#); [Texas Op. 662](#); [Wisconsin Op. 23-01](#); and many, many more.

Some jurisdictions differ, so check your jurisdiction’s case law, ethics opinions, and rules. The District of Columbia, for example, permits disclosure of confidential information in responding to online criticism, but is based on a rule that differs significantly from the Model Rule. See, e.g., [DC Ethics Op. 370](#).

Although not directly addressed in the above opinions, the analysis seems to hold up in other, related circumstances, such as when a client writes a letter to a judge complaining about errors or actions by the client’s lawyer. Often, such complaints are emotional, factually baseless and outright false. The duty of confidentiality also applies in the context of a motion to withdraw. The client may oppose the motion and impliedly waive confidentiality in the process. However, the attorney still must maintain confidentiality unless and until there has been an express waiver by the client or a court has determined that there has been a waiver, and the scope of that waiver. Care must be taken to preserve client confidentiality even in such trying circumstances.

If you have questions about this or any other risk management or loss control issues, get in touch with our senior risk management counsel at [Attorneys Risk Management](#), and click on the “Request a Risk Management Consultation” button.



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