THE ABSOLUTE PRIVILEGE IS NOT A LICENSE TO DEFAME

I. INTRODUCTION

Although an attorney is normally absolutely immune from civil liability for defamatory statements made in the course of a judicial proceeding, the privilege does not prevent professional discipline against the attorney for such conduct in deserving circumstances. While states may differ as to the breadth accorded such immunity, all agree that the immunity is necessary to serve the public interest. Attorneys must be given the opportunity to exercise their unencumbered judgment in advancing the interests of their clients. However, most courts agree that it is also in the public interest that attorneys be subject to professional discipline for defamatory conduct when such conduct violates an attorney's ethical obligations. Thus, even where an attorney may be immune from civil suit for defamation, this does not automatically dictate that the attorney will not go unpunished.

II. AN ATTORNEY'S ABSOLUTE PRIVILEGE TO DEFAME

All statements made in any courtroom, which are "relevant to the subject matter of the proceeding," are accorded an absolute privilege, thereby extinguishing any action against one who makes a defamatory statement in such a situation. Section 586 of the Restatement (Second) of Torts provides:

An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.

2. Id. at 287.
3. See In re Westfall, 808 S.W.2d 829 (Mo. 1991).
5. Id.
Comment d to this section includes in the definition of "judicial proceeding," any proceeding exercised before an officer or court serving in a judicial capacity.\textsuperscript{7} When the statement is made "preliminary to a proposed judicial proceeding,"\textsuperscript{8} the statement or communication must have "some relation to a proceeding that is contemplated in good faith and under serious consideration."\textsuperscript{9} However, "the bare possibility that the proceeding might be instituted is not to be used as a cloak to provide immunity for defamation when the possibility is not seriously considered."\textsuperscript{10} When an absolute privilege is invoked, it is irrelevant whether the defamatory material is true or false, and it is further irrelevant whether the individual making the defamatory statement knew such information was false.\textsuperscript{11} The determination of whether the absolute privilege applies to a particular statement or communication is a question of law for the court, which should be resolved after considering the entirety of the proceeding and the circumstances in which the alleged defamatory statement was made.\textsuperscript{12}

Courts have long recognized this absolute privilege as being grounded in public policy and essential to the need for unencumbered administration of justice. The United States Supreme Court stated:

>[s]ubject to this restriction (of relevancy), it is, on the whole, for the public interest, and best calculated to subserve the purpose of justice, to allow counsel full freedom of speech, in conducting the causes and advocating and sustaining the rights, of their constituents; and this freedom of discussion ought not to be impaired by numerous and refined distinctions.\textsuperscript{13}

Further, "[a]n attorney must seek discovery of evidence, interrogate potential witnesses, and often resort to ingenious methods to obtain evidence; thus, he must not be hobbled by the fear of reprisal by actions for defamation."\textsuperscript{14} Therefore, attorneys must be afforded this absolute privilege in order that they may wholly and sufficiently represent their cli-

\textsuperscript{7} Restatement (Second) of Torts § 586, cmt. d (1977).
\textsuperscript{8} Restatement (Second) of Torts § 586, cmt. e (1977).
\textsuperscript{9} Id.
\textsuperscript{10} Id.
\textsuperscript{11} Restatement (Second) of Torts § 586, cmt. a (1977).
\textsuperscript{12} Restatement (Second) of Torts § 586, cmt. e (1977).
\textsuperscript{13} Imbler v. Pachtman, 424 U.S. 409, 426 (1976).
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teents. Moreover, when the proceedings are strictly judicial, the formal requirements involved in such a proceeding, including the extensive control utilized by the judge, the appeal process, and the requirements of notice and hearing, assist in alleviating the possible injury that may result from such absolute privilege.

Generally, defamatory statements, made during a judicial proceeding or preliminary to a judicial proceeding, which are not relevant to the proceeding, are not privileged. The relevancy of the communication is a question of law, to be determined by the court. When the statements are not made in good faith with the expectation of litigation, the statement or publication should not be privileged, as it has no "connection or logical relation to an action and is not made to achieve the objects of any litigation . . . . No public policy supports extending a privilege to persons who attempt to profit from hollow threats of litigation." There are, however, differing views as to the breadth of this doctrine of absolute immunity. California, unlike many jurisdictions, imparts a broad interpretation of the immunity, and includes statements made in settlement negotiations within the privilege. In California, the absolute privilege, "applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved." The privilege applies to all claims except those for malicious prosecution.

Further, the Supreme Court of California has expressly overruled the "interests of justice" test, an exception that would make an attorney liable for any communication not made for the purpose of furthering the objects of litigation. The court stated that an exception would be inconsistent

15. Id.
18. Kirschstein, 788 P.2d at 951 n.23 (citing Walker v. Majors 496 So. 2d 726, 730 (Ala. 1986)).
21. Id. at 269 (citing Silberg v. Anderson, 786 P.2d 365 (Cal. 1990)).
22. AroChem, 968 F.2d at 270.
23. Silberg, 786 P.2d at 373.
with the policy for which the privilege was intended to protect. The court explained that the "[t]he requirement that the communication be in furtherance of the objects of the litigation is, in essence, simply part of the requirement that the communication be connected with, or have some logical relation to, the action, i.e., that it not be extraneous to the action." This requirement was never designed to test a party’s ethics, morals, motives, or intent. Further, the court stated that requiring a communication to be made for the purpose of promoting the “interests of justice” in order to be privileged would be entirely inconsistent with the cases in which perjured testimony or fraudulent communications have been held to be privileged.

The distinction between a broad application of the privilege and a narrow one can sometimes be determinative of the outcome of the litigation, as is seen in the case of AroChem International, Inc. v. Buirkle. In Arochem, the parties were in dispute over whether California or Connecticut law applied to the attorney’s defamatory statements. If California law applied, as the Court ultimately determined it did, an attorney’s defamatory statements regarding unlawful activity conducted by the opposing party would be absolutely protected. However, had Connecticut law applied, the statements would not have been absolutely privileged since they occurred during settlement negotiations and thus fell outside formal judicial proceedings. Under Connecticut law, the privilege is narrow in that it does not protect communications made outside of formal judicial or administrative proceedings, even when they concern such proceedings.

Iowa also recognizes a narrow application of the absolute privilege. The critical consideration in determining whether the privilege applies, is often “to whom the matter is published.” Generally, an alleged defamatory statement made to the news media is not sufficiently

24. Id.
25. Id. at 374.
26. Id.
27. Id. at 372.
29. Id. at 269.
30. Id.
31. Id.
32. Id.
33. See Asay v. Hallmark Cards, Inc., 594 F.2d 692 (8th Cir. 1979).
34. Asay, 594 F.2d at 697.
related to the judicial proceeding for the privilege to apply. 35 In Asay v. Hallmark Cards, Inc., the Eighth Circuit stated:

[t]he privilege or immunity granted to defamatory statements in judicial proceedings is a narrow one. "The scope of the privilege is restricted to communications such as those made between an attorney and client, or in the examination of witnesses by counsel, or in statements made by counsel to the court or jury." 36

The Eighth Circuit remanded the case for determination of whether the communications at issue had ""some relation (to the proceeding)."" 37 Asay, an employee of Hallmark, released a copy of the complaint to news services. The complaint included allegations of Hallmark's violation of the antitrust laws and investigation for illegal campaign contributions. 38 The court noted that these allegations did not appear pertinent or relevant to his lawsuit for improper termination of his employment, and if the district court so found, they would not be protected. 39 The court further stated, ""Asay's letters of inquiry to other employees allegedly containing defamatory statements are suspect as possibly showing champerty in encouraging litigation and a pattern of harassment of Hallmark."" 40 Thus, publications of allegedly defamatory statements made during, and with respect to, a judicial proceeding do not automatically qualify for the absolute privilege. 41 The determination must be made on a case-by-case basis. 42

Although the absolute privilege afforded attorneys in Washington appears broad in scope, the Washington courts have applied the privilege only in the most deserving of circumstances. Washington courts require that the alleged defamatory statement must be "pertinent or material to the redress or relief sought" in order to be absolutely privileged. 43 The Supreme Court of Washington stated that "[t]he absolute privilege, while broad in scope, has been applied sparingly. 'Absolute privilege is usually

35. Id.
36. Id. at 698 (quoting Kennedy v. Cannon, 182 A.2d 54, 58 (Md. 1962)).
37. Asay, 594 F.2d at 699.
38. Id. at 695-97.
39. Id.
40. Id. at 699.
41. Id. at 698.
42. Id.
confined to cases in which the public service and administration of justice require complete immunity." The Washington Court of Appeals held that an attorney’s false statement, made outside the courtroom, that the opposing party had been convicted of perjury was not sufficiently pertinent to the judicial proceeding to be absolutely privileged when the only relation was that the defamed party’s credibility was at issue. Thus, the privilege does not apply to statements or communications made in circumstances which provide no precautions against abuse of the privilege. Usually, this safeguard requirement is met when the statements are made in the courtroom where the judge is able to strike statements from the record or order perjury and contempt sanctions.

III. APPLICATION OF A QUALIFIED PRIVILEGE

If it is determined that an absolute privilege is inapplicable in a particular case, a qualified privilege may still protect an allegedly defamatory statement, unless it is shown that the individual making the statement abused such a privilege. The defamed party must show that the qualified privilege was abused by proving that the statement was made with actual malice. This entails proving that the speaker “knew the statement was false, or had a high degree of awareness of its probable falsity.” However, a qualified immunity may be established only in certain circumstances. Sections 594-598A of the Restatement (Second) of Torts set out the circumstances which warrant the qualified privilege:

(1) communication to protect the publisher’s interest; (2) communication to protect the interest of a recipient or a third person; (3) communication to one with a common interest in a particular subject matter; (4) communication to affect the well-being of a family member; (5) communication to one who may act in the public interest; and (6) certain communications by inferior state officers.

45. Demopolis, 796 P.2d at 431.
46. Id. at 430.
47. Id. at 431.
48. Id.
49. Id.
50. Id.
51. Demopolis, 796 P.2d at 431-432 (citing RESTAMENT (SECOND) OF TORTS, §§ 594-598 (1977)).
A Washington court in Demopolis v. Peoples National Bank of Washington noted that a New York court in Petrus v. Smith granted qualified immunity to an attorney who, while outside the courthouse and in the company of the opposing party and counsel, called the opposing party a liar and a thief. The Petrus court determined that a qualified privilege would apply because the statement "related to the litigation in which the parties had a common interest." However, in Demopolis, the Washington court expressly refused to follow the reasoning of the Petrus court, noting that Washington law recognizes a common interest only when the allegedly defamatory statement "is made to someone with whom the speaker is allied." Thus, in many circumstances it may be very difficult to establish a qualified privilege for defamatory communications.

IV. PROFESSIONAL DISCIPLINE FOR DEFAMATORY COMMUNICATIONS IN A JUDICIAL PROCEEDING

Some courts are of the opinion that "[a]lthough the public policy served by the absolute privilege immunizes the defamer from a civil damage action, the privilege does not protect against professional discipline for an attorney's unethical conduct." When a defamation occurs in the course of a judicial proceeding, the courts, bar associations, and the states provide remedies. As Justice Cardozo observed:

"Membership in the bar is a privilege burdened with conditions." [An attorney is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.

Thus, as officers of the court and members of the bar, attorneys must conform to standards of conduct that are "compatible with the role of

52. Id. at 432 n.10 (citing Petrus v. Smith, 459 N.Y.S.2d 173 (1983)).
54. Demopolis, 796 P.2d at 432 n.10.
courts in the administration of justice.”

58 Courts have the inherent authority to disbar or suspend attorneys whose conduct fails to meet such standards. 59 Professional discipline is often cited as the foremost procedure for averting harm where the absolute immunity applies. 60 The Eighth Circuit has stated:

Generally speaking, an attorney may be suspended or disbarred for such misconduct as shows him to be an unfit or unsafe person to enjoy the privileges and to manage the business of others in the capacity of an attorney, and it is usually held that any fault which would have been sufficient to prevent the admission of one as an attorney will justify his removal. It is not necessary that the attorney’s misconduct should be such as would render him liable to criminal prosecution . . . . If an attorney is not honest, or is not moral, or is not of good demeanor, he may be disbarred, and should be. 61

The public reprimand of an attorney and the court’s sanctioning power are also utilized to protect the public and punish attorneys for improper behavior. 62 Disciplinary proceedings, whether in the form of a sanction, a reprimand, or removal from practice, are exercised as part of a court’s responsibility to protect the public, the profession, and the administration of justice. 63

When an attorney acts as an officer of the court, he must abide by the “appropriate rules of evidence, decorum, and professional conduct [governing her speech].” 64 These rules of evidence, decorum, and professional conduct do not violate her First Amendment rights. 65 An attorney must adhere to the Rules of Professional Conduct as established by the

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58. Snyder, 472 U.S. at 644-45.
59. Id. at 643.
61. Hertz v. United States, 18 F.2d 52, 54 (8th Cir. 1927) (quoting 2 Ruling Case Law 1089 § 181)).
62. See Hertz, 18 F.2d at 54.
63. Disciplinary Action Against Graham, 453 N.W.2d 313, 320 (Minn. 1990) (citing In re Application for Discipline of Peterson, 110 N.W.2d 9, 13 (Minn. 1961)).
64. Graham, 453 N.W.2d at 321 n.5 (citing In re Williams, 414 N.W.2d 394, 396 (Minn. 1987)).
65. Id.
jurisdiction in which she is practicing. Attorneys must also comply with the oath taken upon becoming a member of the bar. For example, the oath to which an attorney subscribes in California requires him to "maintain the respect due to the courts of justice and judicial officers," to 'employ . . . such means only as are consistent with truth,' and to 'abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.' In Ramirez v. State Bar of California, the State Bar of California subjected a California attorney to disciplinary action for violating his oath and duties as an attorney when he defamed justices of the Third District Court of Appeal. In a brief filed in the Ninth Circuit, the attorney accused the justices of acting "unlawfully and illegally," and stated they had become "parties to the theft" of his clients' property. Further, the attorney's petition for certiorari to the United States Supreme Court implied that the justices had "falsified the record" and "suggest[ed] that their 'blemished' records were 'undeserved.'" In the end, the attorney was disciplined for violating the oath and duties of an attorney for these unfounded and disparaging allegations against judicial officers.

The Model Rules of Professional Conduct (Model Rules) "require an attorney to act openly and truthfully in pursuing litigation on behalf of a client." Several of these rules provide the vehicle for which an attorney may be disciplined for making defamatory statements. For example, Model Rule 4.4 provides in pertinent part that, "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person . . . ." Another rule often implicated by an attorney's defamatory conduct is Model Rule 8.4, which states that "[i]t is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct . . . (d) engage in

66. See In re Westfall, 808 S.W.2d 829, 838 (Mo. 1991).
68. Ramirez, 619 P.2d at 405 n.12 (quoting BUS. & PROF. CODE § 6068(b),(d),(f)).
69. 619 P.2d at 406.
70. Id. at 406.
71. Id.
72. Id.
73. Id. at 406.
74. Kilpatrick, supra note 60, at 1081.
conduct that is prejudicial to the administration of justice.” Citing these rules, the Supreme Court of Minnesota disciplined an attorney who falsely attacked the morality of a witness. The court found that the attorney’s continued use of improper questions amounted to a false personal attack on the witness, resulting in “inevitable objections . . . , conferences . . . , confusion, posturing before the jurors, and a record tainted with unfounded insinuations and innuendo.” The court concluded that such conduct resulted in a corruption of the trial process, was prejudicial to the administration of justice, and amounted to unprofessional conduct. For this conduct, the attorney received six months’ suspension.

Model Rule 8.2(a) may also be implicated in cases involving attorney discipline for defamatory communications. This rule requires that “[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, or public legal officer . . . .” This rule seems to discard the absolute privilege for attorneys when the statement is made under such conditions as in Disciplinary Action Against Graham. However, many critics have concluded that Model Rule 8.2 is concordant with constitutional limitations regarding defamation as determined by the United States Supreme Court. The Supreme Court of Indiana stated that,

The societal interests protected by [defamation and professional disciplinary] law are not identical. Defamation is a wrong directed against an individual and the remedy is a personal redress of this wrong. On the other hand, the Code of Professional Responsibility encompasses a much broader spectrum of protection. Professional misconduct, although it may directly affect an individual, is not punished for the benefit of the affected person; the wrong is against society as a whole, the presentation of a fair, impartial judicial system, and the

77. In re Petition for Disciplinary Action against Williams, 414 N.W.2d 394 (Minn. 1987).
78. Id. at 397.
79. Id.
80. Id. at 399.
81. MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.2(a) (1983).
82. 453 N.W.2d 313, 321 (Minn. 1990).
83. Id. at 321 (citing G. HAZARD & W. HODES, THE LAW OF LAWYERING 552-54 (1985)).
system of justice as it has evolved for generations.\textsuperscript{84}

Thus, attorneys should be held to a higher standard when voicing criticism that may have a negative effect on the administration of justice.\textsuperscript{85} Consequently, the Supreme Court of Minnesota has stated that, "[w]here an attorney makes statements 'of his certain knowledge,' with reckless disregard as to the statements' truth or falsity, impugning the integrity of those who work within the judicial system, at the very least a public reprimand is in order."\textsuperscript{86} Following Minnesota's direction, the Supreme Court of Missouri held that an attorney who made a publicly televised statement accusing a judge of lack of integrity and misconduct, without investigating such allegations, and knowing the court would not answer to such statements, exhibited a "reckless disregard for the truth or falsity of the statements made . . . ."\textsuperscript{87} Thus, the court held that this conduct was "prejudicial to the administration of justice and reflect[ed] adversely on [his] fitness to practice law."\textsuperscript{88} The court then determined that the attorney should be publicly reprimanded.\textsuperscript{89} The Supreme Court of California has taken similar action.\textsuperscript{90} The court suspended an attorney for one year for unprofessional conduct in that he falsified factual statements in the record and made false statements concerning the reputation of particular judges.\textsuperscript{91} The court then stayed the order of suspension and placed the attorney on probation, with the conditions that (1) the attorney be suspended for the first thirty days of the probationary period, (2) he complete the Professional Responsibility Examination, and (3) he follow the standards set forth in the State Bar Act and the Rules of Professional Conduct of the State Bar while on probation.\textsuperscript{92}

Many courts have concluded that holding attorneys to these standards does not offend their First Amendment rights.\textsuperscript{93} These courts have

\begin{itemize}
    \item 84. In re Terry, 394 N.E.2d 94, 95 (Ind. 1979).
    \item 85. In re Westfall, 808 S.W.2d 829, 837 (Mo. 1991) (citing In re Graham, 453 N.W.2d 313 (Minn. 1990)).
    \item 86. Graham, 453 N.W.2d at 325.
    \item 87. Westfall, 808 S.W.2d at 837-38.
    \item 88. Id. at 838.
    \item 89. Id. at 839.
    \item 90. See Ramirez v. State Bar of California, 619 P.2d 399 (Cal. 1980).
    \item 91. Ramirez, 619 P.2d at 406.
    \item 92. Id.
    \item 93. In re Westfall, 808 S.W.2d 829, 833-34 (Mo. 1991) (citing In re Raggio, 487 P.2d 499, 500 (Nev. 1971); In re Woodward, 300 S.W.2d 385, 393-94 (Mo. Banc 1957)).
\end{itemize}
usually based their decisions on the rationale that an attorney does not have the right to publicly defame the court under the right of free speech, or alternatively, that an attorney waives the right to criticize the court by his or her admittance to the bar.\textsuperscript{94} The Missouri court stated,

A layman may, perhaps, pursue his theories of free speech or political activities until he runs afoul of the penalties of libel and slander, or into some infraction of our statutory law. A member of the bar can, and will, be stopped at the point where he infringes our Canon of Ethics; and if he wishes to remain a member of the bar he will conduct himself in accordance therewith.\textsuperscript{95}

However, a minority of courts have held that attorneys are afforded full protection of the First Amendment.\textsuperscript{96}

Certain facts may play a part in mitigating or heightening the degree of discipline imposed upon an attorney for defamatory misconduct. In \textit{In re Getty}, the Supreme Court of Minnesota held that a reprimand would suffice for an attorney's violation of professional standards because the attorney had been practicing law for only a short time, whereas had he been “a veteran attorney with many years of experience,” suspension would be more appropriate.\textsuperscript{97} In \textit{Ramirez v. State Bar of California}, the Supreme Court of California stated that “[a] factor which might be considered in assessing discipline is [an attorney’s] apology to the justices he had vilified.”\textsuperscript{98} However, even after the attorney in this case became aware of the gravity of his wrongdoing and apologized, he repeated such misconduct.\textsuperscript{99} Therefore, he received suspension from the practice of law, which was lessened to probation.\textsuperscript{100} In another case, \textit{Disciplinary Action Against Graham}, the Supreme Court of Minnesota ordered a sixty-day suspension and completion of the professional responsibility examination, rather than a public reprimand, because the attorney exacerbated the incipient violation by filing numerous frivolous motions and further accusing the judge of improper behavior.\textsuperscript{101}

\textsuperscript{94} \textit{Westfall}, 808 S.W.2d at 833-34.
\textsuperscript{95} \textit{In re Woodward}, 300 S.W.2d 385, 393-94 (Mo. Banc 1957).
\textsuperscript{96} \textit{Westfall}, 808 S.W.2d at 834 (citing \textit{In re Hinds}, 449 A.2d 483, 489 (N.J. 1982)).
\textsuperscript{97} \textit{In re Getty}, 401 N.W.2d 668, 670-71 (Minn. 1987).
\textsuperscript{98} 619 P.2d 399, 405 (Cal. 1980).
\textsuperscript{99} \textit{Id.} at 407.
\textsuperscript{100} \textit{Id.} at 406.
\textsuperscript{101} 453 N.W.2d 313, 325 (Minn. 1990).
V. CONCLUSION

Attorneys are given absolute immunity for defamatory communications made in the course of or relating to a judicial proceeding.\textsuperscript{102} This privilege is based on the need for open expression crucial to the adversarial system required in American courts.\textsuperscript{103} The privilege is absolute, regardless of the attorney’s purpose in making the statement, his or her belief in the truth of the statement, or his or her knowledge of the falsity of the statement.\textsuperscript{104} Usually, the defamatory communication need only be relevant to a judicial proceeding in order to immunize the defamer from civil liability.\textsuperscript{105} However, this absolute privilege is not a “license to defame.”\textsuperscript{106} The privilege does not insulate an attorney from professional discipline for unethical conduct.\textsuperscript{107} As officers of the court, attorneys must abide by the rules of evidence, decorum, and professional conduct as set out in the particular jurisdiction in which they are practicing.\textsuperscript{108} In most states, attorneys have an obligation to refrain from making statements with reckless disregard as to their truth or falsity,\textsuperscript{109} engaging in tactics that have the sole purpose of embarrassing, delaying, or burdening a third person,\textsuperscript{110} and exhibiting conduct “prejudicial to the administration of justice.”\textsuperscript{111} When an attorney violates these ethical obligations, he or she may be punished in order for the court to fulfill its responsibility to protect the public, the profession, and the administration of justice.\textsuperscript{112}

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\textsuperscript{102} Hawkins v. Harris, 661 A.2d 284, 287 (N.J. 1995).
\textsuperscript{105} Hawkins, 661 A.2d at 288.
\textsuperscript{106} Id. at 292.
\textsuperscript{107} Id. at 288.
\textsuperscript{108} See Disciplinary Action Against Graham, 453 N.W.2d 313, 321 (Minn. 1990); In re Williams, 414 N.W.2d 394, 396 (Minn. 1987); In re Westfall, 808 S.W.2d 829, 838 (Mo. 1991).
\textsuperscript{109} MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.2(a) (1983).
\textsuperscript{110} MODEL RULES OF PROFESSIONAL CONDUCT Rule 4.4 (1983).
\textsuperscript{111} MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.4(d) (1983).
\textsuperscript{112} Graham, 453 N.W.2d at 320.