



AttPro Ally

IT'S TIME TO GO

**BACK
TO
SCHOOL**
WITH ATPRO

IN THIS
ISSUE:

♦ **SHARPEN YOUR PENCILS AND DUST OFF YOUR HIGHLIGHTERS**

Risk Management class is officially in session – We've dedicated this entire issue to our most-asked hotline questions and top tips for attorneys.

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Let's go BACK TO SCHOOL with AttPro



By: Erin McCartney, Esq. and Kate Gould, Esq.

While you may have enjoyed some leisure reading over the summer, it is time to sharpen your pencils and dust off your highlighters because risk management class is officially in session. Erin McCartney and Kate Gould, Attorney Protective's risk management attorneys, have been hard at work compiling the Cliff's Notes version of our most-asked hotline questions and top tips for attorneys. Consider this your back-to-school study guide for starting the season off right — because a bad grade may earn you a parent-teacher conference, but a malpractice claim can land you in a much tougher room!

Required Reading: Navigating Duties to Former Clients

Back-to-school season brings supply lists, syllabi, and assignments designed to keep everyone organized and on track. Lawyers may not need freshly sharpened pencils to close out a representation, but when a former client or successor counsel asks for information, it is important to know what belongs in the "required reading" pile and what falls outside the assignment.

The ABA Standing Committee on Ethics and Professional Responsibility recently released [Formal Opinion 520](#) concerning a lawyer's obligation to convey information to a former client or successor counsel. In its Opinion, the ABA examined Model Rule 1.16(d), under which a lawyer may be required to respond to a request for information from former clients or successor counsel under certain limited circumstances. This duty arises even if the lawyer has been unfairly discharged by the client.

The ABA concluded that sometimes the protection of client interests requires sharing unrecorded information that was not memorialized in the file materials. So, if a former client or successor counsel asks for information that the lawyer learned during the representation, is unavailable elsewhere, and is important to the client's ongoing matter, the lawyer may be obligated to provide it.

However, much like the space in a student's backpack on the first day of school, your duty is limited. Lawyers are not obligated to do new work or perform additional research; create memos, affidavits, or written explanations; respond to repetitive or overly burdensome requests; educate the client on the law; or provide information for a new matter.

However, your obligation to share information with your former client or successor counsel may be triggered under the rule such that you **must** provide recollections about witness interviews,

When she's not managing risk, Erin is risking what's left of her joints on the tennis court. Back-to-school season means her four kids are back to grading her serve, heckling her footwork, and reminding her during carpool that "maybe stretching is important at your age." She still considers herself #1 in the world — at least in tennis reels binged from the pickup line.

If you call AttPro's Risk Management hotline, you might talk to Kate. She provides AttPro's insured attorneys risk management guidance and offers helpful resources. For Kate, back-to-school time means doing elementary school math homework with her daughter, enjoying the best season in the Midwest, and cheering the return of NFL football.



strategic decisions made during the case, off-the-record events, impressions of witness credibility, or unrecorded communications with the client.

The ABA described the obligation to provide the requested information as a counterpart to the obligation to surrender file materials. In other words, when unrecorded information is necessary to protect the client's interest in the matter, you must convey such information if reasonably practicable to do so.

So, when a former client or successor lawyer sends a request, think of it as an open-book exam: consult the rules, stay within the assignment, and do not write extra credit you were never asked to provide. Provide information necessary to protect the former client's interests, support the administration of justice, and, of course, confirm the former client has consented to the disclosure as required by [Rule 1.9\(c\)](#) if their attorney makes the request.

Back to School, Back to Balance: Recognizing and Preventing Burnout

New calendars and clean notebooks may signal a fresh start, but they will not fix an overloaded syllabus. If your professional assignment list is already spilling over or work feels more draining than rewarding it may be time for a burnout check.

Occupational burnout is characterized by three core dimensions:

Emotional exhaustion – If you are constantly on edge or irritable at work or home you may be headed toward burnout. Evaluate whether your state of feeling emotionally drained or depleted is affecting your work.

Depersonalization – Depersonalization is a detachment from your work and colleagues. If you find yourself becoming uncharacteristically cynical about your clients and the legal system in general, you might be due for a break.

Reduced sense of accomplishment – If you consistently feel that your work is meaningless or that you're not good enough at your job, you may withdraw from challenging tasks or procrastinate on important deadlines. Experiencing a reduced sense of accomplishment increases the risk of a legal malpractice claim arising from a missed court deadline or failure to timely communicate with clients.

Dr. Kevin Coss, Community Health Network's Chief Wellness Officer in Indianapolis, Indiana, describes burnout as a silent epidemic in the legal profession, with approximately 51% of mid- or senior-level associates experiencing symptoms of burnout.

So, if burnout has already taken a front-row seat in your practice, don't wait until the bell rings on your sanity.

These practical steps can help you combat burnout and find joy and satisfaction in your job again:

Take a vacation – Time away from the office is crucial to ensuring you stay sharp and competent as [Model Rule 1.1](#) requires. If leaving town isn't an option, make plans for a well-deserved staycation to relax or tackle that home improvement project you have been putting off.

Set boundaries – Consider communicating your expected response time if you are away from the office or advise when you will be available. Turn off notifications after business hours so you can enjoy your personal time without interruption and assess your capacity to take on more work when you are already stretched thin.

Practice self-care – Prioritize your sleep, get some exercise, or spend time outdoors to recharge your body and mind. You do not need a perfect attendance record to be effective; taking care of yourself can help you return to the office refreshed and ready for the next assignment.

Seek professional help – Reach out to a mentor or consider contacting your state's Lawyers Assistance Program (LAP) for resources to support your mental health. You do not have to do it alone, so don't hesitate to seek guidance and support if you need it.

Without question, lawyers facing overwhelming workloads and self-imposed perfectionism are at greater risk for burnout. Take a minute to check your symptoms, give yourself permission to reset, and use these tips to come back sharper before missed deadlines, poor communication, or avoidable claims send your practice to the school nurse.

School's in Session: Addressing Negative Online Reviews

Receiving a negative online review can feel like getting called on in class when you were not expecting it. Whether from a former client or a disgruntled family member or friend of a client, the reviewer will likely identify you and criticize your legal work — whether warranted or not. So, what are your options? Before raising your hand to respond, consider whether the best lesson may be to pause, review the rules, and resist the urge to answer publicly.

While your first instinct might be to immediately respond and disclose what *really* happened, a quick response may not earn you a passing grade from an ethical or business perspective. ABA [Model Rule 1.6](#) prohibits a lawyer from revealing information related to the representation of a client unless the client gives informed consent. Although the Rule permits a lawyer to defend themselves under certain circumstances, various state ethics committees have determined that disclosure of confidential

information in response to a negative online review does not trigger this exception. Accordingly, based on the Rules of Professional Conduct alone, this may be one pop quiz you should not answer online.

Another reason to leave the review alongside your positive feedback is that it may not carry the weight you think it does. Ask whether a reasonable reader would find the review credible in the first place. If it is clearly irrational or disjointed, an objective reader will likely view it in context and consider the full body of reviews, much like a teacher looking at the entire report card rather than one questionable assignment.

Finally, keep in mind that acknowledging the review with a response may draw the attention to it that you are trying to avoid. If you do feel compelled to respond, [ABA Formal Opinion 496](#) suggests that you post an invitation to contact you privately to discuss the matter or simply state that professional considerations dictate you will not post a substantive response online. You might also explore whether the platform on which the review was posted will delete it.

In a world where consumers check reviews before hiring a handyman or buying a blender, you can expect a prospective client will check your online reviews. As tempting as it may be to respond to a negative online review, a measured silence may be the wiser answer. Let the full record, not a single bad mark, speak for itself.

AI 101: Loss of Privilege for AI-generated Documents

When it comes to the use of AI, don't skip class. As courts begin to tackle how to address artificial intelligence – whether regulating its use in court filings to avoid hallucinations or authenticating photographs for evidence at trial – lawyers must pay attention to ensure they comply with emerging case law and local court orders.

Presented with a question of first impression, the United States District Court for the Southern District of New York in *United States v. Heppner*, No. 25-cr-00503-JSR (S.D.N.Y. Feb. 17, 2026), held that a defendant's use of AI in connection with a pending criminal investigation was not protected by the attorney-client privilege or work product doctrine.

A grand jury indicted Bradley Heppner, an executive of several corporate entities, with securities fraud, wire fraud, and conspiracy to commit securities fraud and wire fraud, among other charges. In connection with his arrest, the FBI seized documents and electronic devices, including thirty-one documents memorializing communications that Heppner had with Claude, a generative AI platform. Without any request or suggestion from his attorney, Heppner prepared reports outlining defense strategy, including what arguments he could make in response to facts and law the government might be charging. Heppner used the AI platform after he received a grand jury subpoena and discussions with the government showed he was the target of its investigation. However, the Court held that neither attorney-client privilege nor work product doctrine protected the AI-generated documents from discovery.

What are the practical ramifications of this opinion? Attorneys should advise their clients that documents generated by an AI platform will not be protected under the attorney-client privilege by way of simply providing them to their attorney. Further, clients should be instructed not to input any information learned from their attorney about their case into an AI tool as that destroys confidentiality. Finally, protection under the work product doctrine requires attorney direction – but proceed with caution. As the law on the use of AI develops, clients and lawyers alike cannot expect that documents generated by AI, regardless of who prepares them, will be protected from discovery at this time.

To avoid waiving privilege, law firms should adopt strong internal AI policies and advise their clients concerning AI use through robust engagement letters to avoid waiving privilege.

Home Work: Protecting Against Malpractice When Working Remotely

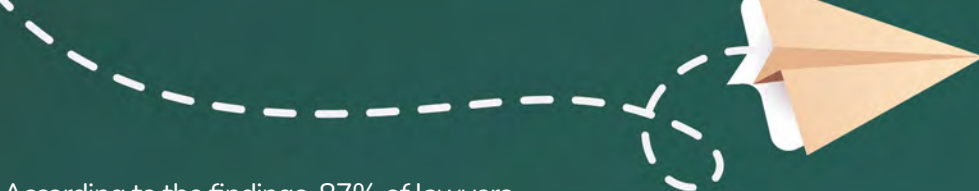
When Tom Hanks was featured on *Inside the Actors Studio*, he was asked which job he would not like to do. His immediate response was, "A lawyer. That's like doing homework for a living." If we are honest, many of our daily tasks outside of the courtroom can certainly feel like endless homework assignments.

In late 2022, the ABA conducted a [survey](#) of lawyers still weathering the post-pandemic work



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world. According to the findings, 87% of lawyers surveyed reported that their firms allowed them to work remotely, with 30% of lawyers working from home almost exclusively. While working from home can certainly help lawyers achieve some level of work-life balance, lawyers must be cognizant of the malpractice risks when working outside of a typical office setting. Avoid getting too comfortable in your home office and consider these tips as the syllabus for safer remote work:

Confidentiality – While firm offices are equipped with sophisticated Wi-Fi networks, our homes are generally less secure and vulnerable to security breaches. To comply with your duty of confidentiality under Model Rule 1.6, consider consulting with your internet provider or firm IT professional about how to better protect your network when working from home. Be sure to properly handle and dispose of confidential client documents (cover your answers!) to avoid inadvertent disclosure to family members or visitors.

Supervision – With the traditional five-day, in-person workweek now largely a thing of the past, supervising attorneys face new challenges in monitoring the work of junior lawyers. Breakdowns in communication when lawyers are working remotely can result in missed deadlines and other avoidable errors. Consider establishing bi-weekly meetings to satisfy your duties to supervise a new attorney with a hybrid schedule and make yourself available for questions. You may also consider sharing calendars or exploring how your case management software can help everyone stay organized whether working from home or in the office.

Unauthorized Practice of Law – With a laptop and a Wi-Fi connection, a lawyer can now practice virtually anywhere. However, this flexibility raises ethical considerations concerning multi-jurisdictional practice under Model Rule 5.5. Before you log in, check the laws of the state where you are licensed and where your beach house is located, as states continue to amend their versions of Rule 5.5.

Although we have traded school due dates with court deadlines, Tom was probably right – we are still doing homework. But by keeping these tips and best practices in mind, you can better safeguard against malpractice risks when working from home.

Lessons From Lincoln: How To Litigate with a Pro Se Party

“He who represents himself has a fool for a client,” is a quote which Abraham Lincoln is often credited. If I had

to guess, President Lincoln shared a similar experience many of us have encountered in our legal careers – the pro se litigant.

The reasons why someone may choose not to hire a lawyer vary widely – from the expense alone to the belief they are best-positioned to plead their case. Regardless of the merits of the pro se party’s case or the leniency being shown to them by the judge, always take the high road to protect yourself and your client. And pick up your pencil to take note of these tips for litigating with an unrepresented person:

Effectuate Good Service – Although pro se litigants are required to comply with the Federal Rules of Civil Procedure just like parties represented by counsel, you may find that the judge will be somewhat lenient in this first step. Rather than arguing over the validity of the signature on your certified mail, personally serve the self-represented party and have the process server’s affidavit ready to produce in court.

Follow The Rules – Just like school rules, it is crucial to follow the court rules and procedures to the letter. Courts may allow pro se litigants more leeway, but that flexibility will most likely not be extended to a person with a law degree. Leave no room for an argument that you were not in full compliance.

Document Everything – As the saying goes, “If it’s not in writing, it didn’t happen.” Confirm any phone conversations in writing, or better yet, only communicate with the pro se party via e-mails and letters. Keep your correspondence concise and avoid confusing legalese.

While dealing with a pro se litigant can be frustrating, be mindful of potential ethical issues, namely, confusion about who you represent. ABA Model Rule 4.3 prohibits a lawyer from stating or implying that the lawyer is disinterested. To avoid misunderstanding, identify your client and explain that their interests are opposed to those of the unrepresented person. If you know the pro se litigant misunderstands your role, make reasonable efforts to correct that misunderstanding. Avoid providing legal advice and inadvertently creating an attorney-client relationship and reiterate in writing who you represent.

If you have encountered a pro se litigant in your practice, you can understand the challenges and risks. And, as you likely experienced, Honest Abe couldn’t have said it better. However, don’t let your frustration – or failure to comply with the rules yourself – earn you a trip to the principal’s office.

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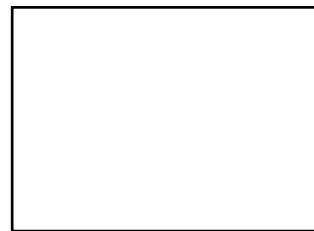
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