

A Filthy Pack of Lies

Responding to Negative Client Reviews



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Lesson Plan

INTRODUCTION

1) There can be little disagreement that a negative review by a client on social media has the potential to adversely affect an attorney's reputation among both current and future clients. Apart from the business impact, negative reviews based upon lies, exaggerations, emotions based upon disappointment, when coupled with allegations of attorney misconduct or incompetence can be unfair, maddening and costly!

2) The problem is that the current Rules of Professional Conduct (RPC) as interpreted by the Advisory Committee on Professional Ethics (ACPE) make it extremely difficult to fight back against scurrilous attacks. Moreover, newly enacted statutory law under the Uniform Public Expression Act, N.J.S.A. 2A:53A-49 et seq. (a.k.a. the Anti-SLAPP statute) provides defendants with rapid access to the courts and enhanced protection for the speech rights of disaffected clients. The act will be triggered if a lawyer's lawsuit against a complaining client is deemed by the court to be a "Strategic Lawsuit against Public Participation" (SLAPP). The statute affords clients a rapid, potential pretrial outcome of a dismissal with prejudice and an award of legal fees, court costs and legal expenses. As announced by the governor at the time of the bill signing, the supporting public policy behind the statute is to protect residents against frivolous, ill-intentioned lawsuits and insulate them from the financial hardships these cases can produce.

3) New Jersey's Anti-SLAPP statute became effective in October 2024. There are now 32 states that have similar legislation, with New Jersey counting as the 6th state to base these enhanced speech protections on the Uniform Public Expression Protection Act. ACPE opinion 738 dealing with this issue was promulgated in 2020 and, until vacated, modified or reversed by the Supreme Court, has the force and effect of law. Finally, the recently published case law, Satz vs. Starr, 482 N.J.Super 55(App.Div.2025) provides an early pathway for defendants to recover litigation costs, expenses and attorney fees in a SLAPP case. In essence, the ethics rules, published decisions and statutory law provide a strong disincentive for lawsuits by attorneys who wish to defend their reputations against an attack from a disaffected client.

The following sections will detail these legal obstacles and provide information related to the parameters and limitations New Jersey attorneys can lawfully use to defend themselves.

PART I

COUNTERSTRIKE

THE POWER OF PUBLIC RELATIONS

One of the most effective ways of blunting a negative public review by a client is through the effective use of counter-publicity in the form of a well-designed public relations campaign.

As will be seen from the following discussion, effective counter-publicity, an immediate response, prepared and executed in an ethical manner can often be the answer to a negative client review.

PART II

RELEVANT RPC PROVISIONS

R.P.C. 1.6(a) – Client confidentiality - Rule of Professional Conduct 1.6(a) provides that “[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures of information that is generally known”

Note - It is important to remember that a lawyer’s ethical obligation to maintain confidentiality under Rule of Professional Conduct 1.6 differs from his obligation to maintain lawyer-client privilege. R.P.C. 1.6 broadly requires lawyers to maintain confidentiality of “information relating to representation of a client.” In contrast, the attorney-client privilege protects only “communications” made in confidence between a lawyer and his or her client. The privilege is part of the Rules of Evidence and applies to admissibility of information in court proceedings. The body of law concerning waiver of the evidentiary privilege is inapplicable to lawyers’ ethical obligations under Rule of Professional Conduct 1.6.

R.P.C. 1.6(a) (Information that is generally known) - Lawyers are permitted to respond to online reviews posted by clients, former clients, or prospective clients, but that response cannot reveal “information relating to representation,” except information that is “generally known,” unless the client consents to the release of such information. Hence, while lawyers may express general disagreement with the prospective client’s statements,

they may not reveal confidential “information relating to the representation” unless the information is “generally known.”

R.P.C. 1.6(d)(2) – Establishing a claim or defense – This R.P.C. permits a lawyer to reveal confidential information to the extent the lawyer reasonably believes it necessary to “establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved.” Hence, pursuant to Rule of Professional Conduct 1.6(d)(2), a lawyer may disclose certain confidential information to the extent necessary to defend a discipline charge or legal malpractice action brought by the client, to pursue an action seeking fees from the client, or similar matters when the information is relevant to the defense or the claim.

N.B. Under ACPE Opinion 738, the Committee ruled that an informal “controversy” between a lawyer and a prospective or former client, arising from the posting of a negative online review, does not fall within the safe harbor of Rule of Professional Conduct 1.6(d)(2). Lawyers may not disclose confidential information merely to protect their online reputation in response to negative comments of this type.

R.P.C. 1.18(a) – Prospective clients – A lawyer who has had discussions in consultation with a prospective client shall not use or reveal information acquired in the consultation, even when no client-lawyer relationship ensues.

PART III
ACPE SUGGESTED LANGUAGE TO
RESPOND ONLINE

Lawyers may respond to negative online reviews posted by clients, former clients, or prospective clients by stating that they disagree with the facts presented by the reviewer, but they may not disclose “information relating to representation,” except information that is “generally known.” With these limitations in mind, in Opinion 738, the ACPE sanctioned the use of the following language:

A lawyer’s duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point by point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events.

PART IV

ATTORNEY LAWSUITS SEEKING DAMAGES

AND THE N.J. ANTI-SLAPP STATUTE

a) Under the Anti-SLAPP statute, the process generally works like this:

- 1) A Superior Court judge decides whether the lawsuit targets free speech on a matter of public concern.
- 2) Typically, client complaints about a lawyer's conduct, ethics, competence or demeanor are considered to be matters of public concern.
- 3) If the motion judge finds as a matter of fact that the substance of the suit implicates a matter of public concern, the defendant can ask the court to dismiss the complaint and recover fees and costs.

b) The Anti-SLAPP law (N.J.S.A. 2A:53A-50) focuses upon three forms of speech:

- 1) Communication[s] in a legislative, executive, judicial, administrative, or other governmental proceeding;
- 2) Communication[s] on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
- 3) Speech that is guaranteed by the United States Constitution or the New Jersey Constitution, on a matter of public concern.

Presenters' commentary: In the world of attorney discipline, as soon as a complaint has been made and docketed by a local district ethics committee or the Office of Attorney Ethics, the entire matter becomes open to the public, including all filings and hearings related to the matter. The same procedures apply to matters involving judicial discipline. Given this policy, arguably, disputes between attorneys and their clients related to the legal process implicate both the integrity of the legal system and the administration of justice. Thus, these widely disseminated disputes will

almost always be viewed as a matter of public (as opposed to private) concern.

To support this position, it is important to note that the Supreme Court has decided that speech addresses a matter of public concern if it relates to any matter of political, social, or other concern to the community or is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public. See Lane vs. Franks, 573, U.S. 228, 241(2014).

c) Procedure - New Jersey's law permits a defendant, within sixty days of service of the lawsuit, to file a motion for expedited relief to dismiss the speech-based cause of action. The court must rule on the motion within sixty days of its filing, during which time the court has the discretion to stay all proceedings between the parties. At the hearing on the motion, the plaintiff is required to prove a prima facie case for its speech-based claim. Alternatively, the defendant can show the plaintiff has either failed to state a claim for which relief may be granted under Rule 4:6-2(e), or that there is an absence of any genuine issue of material fact, entitling the defendant to judgment under Rule 4:46-2.

d) Order to show cause - N.J.S.A. 2A:53A-55(a) provides:

a. In ruling on an order to show cause under [N.J.S.A. 2A:53A-51], the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

(1) the moving party established under [N.J.S.A. 2A:53A-50(b)] that this act applies;

(2) the responding party fails to establish under [N.J.S.A. 2A:53A-50(c)] that this act does not apply; and

(3) either:

(a) the responding party fails to establish a prima facie case as to each essential element of any cause of action in the complaint; or

(b) the moving party establishes that:

- (i) the responding party failed to state a cause of action upon which relief can be granted; or
- (ii) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

e) Judgment - In deciding an order to show cause application brought under N.J.S.A. 2A:53A-51, “the court may consider the pleadings, the order to show cause application and supporting certifications, briefs, any reply or response to the order to show cause, and any evidence that could be considered in ruling on a motion for summary judgment.” N.J.S.A. 2A:53A-54. If the party seeking an order to show cause under N.J.S.A. 2A:53A-51 prevails on that application, “the court shall award [to that party] court costs, reasonable attorney's fees, and reasonable litigation expenses related to the order to show cause.” N.J.S.A. 2A:53A-58(1). If the plaintiff prevails “and the court finds that the order to show cause was frivolous or filed solely with intent to delay the proceeding,” then the court “shall award” those fees, costs, and expenses to the plaintiff. N.J.S.A. 2A:53A-58(2).

f) Award of Sanctions - As a matter of tactical or strategic initiative, Plaintiffs cannot simply withdraw a speech-based claim to render moot a motion for expedited relief and escape the potential fee award. (e.g., see Satz vs. Starr, *infra*.) If the claim is voluntarily dismissed without prejudice, the defendant can still proceed with its motion and, if successful, will be entitled to attorney’s fees and expenses. If the voluntary dismissal is with prejudice, the defendant is treated as a successful party on the motion, also entitling it to reasonable attorney’s fees and expenses. The law also allows a person who successfully dismisses a SLAPP claim to be awarded compensatory and punitive damages, in addition to litigation costs and fee

PART V

CASE LAW REVIEW

1) In Satz vs. Starr, 482 N.J.Super 55(App.Div.2025), the plaintiff voluntarily dismissed his complaint, possibly attempting to avoid having it thrown out under the Anti-SLAPP statute. The trial court initially ruled that this dismissal ended the matter and that the defendant could not proceed with a motion for attorney's fees and costs. However, the Appellate Division reversed and held that voluntarily dismissing a SLAPP suit does not block a defendant's right to seek recovery under New Jersey's Anti-SLAPP law. To rule otherwise, the court noted, would create a "loophole" allowing plaintiffs to file abusive lawsuits, inflict financial harm, and then escape consequences by dropping the case.

2) Wunsch vs. CTE Republicans, ___ N.J.Super ___ (App.Div.2026) 2026 WL 60327

Dismissal applications are based upon the same standards as a motion for summary judgment, thus permitting some measure of discovery in support of the motion.

3) Paucek vs. Shaulis, 34 F.R.D. 498(D.N.J.2025)

The New Jersey's anti-SLAPP law affords fees, costs, and expenses to a prevailing moving party who successfully dismisses a SLAPP suit under Federal Rule 12 or Federal Rule 56; and (ii) under the choice of laws statute, New Jersey law (as opposed to Delaware or Maryland) governs the claims in this case.



ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

Appointed by the Supreme Court of New Jersey

ACPE OPINION 738

Responding to Negative Online Reviews

Several lawyers have sought guidance from the Advisory Committee on Professional Ethics and the attorney ethics research assistance hotline regarding negative online reviews. Lawyers have stated that former prospective clients or former clients have posted false, misleading, and/or inaccurate statements about the lawyer on online reviews and ask whether, consistent with Rules of Professional Conduct 1.6 and 1.18, they may publicly respond to these online reviews.

Rule of Professional Conduct 1.6(a) provides that “[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for . . . disclosures of information that is generally known” Rule of Professional Conduct 1.18(a) provides that “[a] lawyer who has had discussions in consultation with a prospective client shall not use or reveal information acquired in the consultation, even when no client-lawyer relationship ensues”

Lawyers are permitted to respond to online reviews posted by clients, former clients, or prospective clients, but that response cannot reveal “information relating to representation,”

except information that is “generally known,” unless the client consents to the release of such information.¹ See RPC 1.6(a). Hence, while lawyers may express general disagreement with the prospective client’s statements, they may not reveal confidential “information relating to the representation” unless the information is “generally known.”

Rule of Professional Conduct 1.6(d)(2) permits a lawyer to reveal confidential information to the extent the lawyer reasonably believes it necessary to “establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved.” Hence, pursuant to Rule of Professional Conduct 1.6(d)(2), a lawyer may disclose certain confidential information to the extent necessary to defend a discipline charge or legal malpractice action brought by the client, to pursue an action seeking fees from the client, or similar matters when the information is relevant to the defense or the claim.

The Committee finds that an informal “controversy” between a lawyer and a prospective or former client, arising from the posting of a negative online review, does not fall within the

¹ In the Official Comment to Rule of Professional Conduct 1.6, the Court adopted the comment in the Restatement (Third) of the Law Governing Lawyers on confidential information, which states:

Whether information is “generally known” depends on all circumstances relevant in obtaining the information. Information contained in books or records in public libraries, public-record depositories such as government offices, or in publicly accessible electronic-data storage is generally known if the particular information is obtainable through publicly available indexes and similar methods of access. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense. Special knowledge includes information about the whereabouts or identity of a person or other source from which the information can be acquired, if those facts are not themselves generally known.

safe harbor of Rule of Professional Conduct 1.6(d)(2). Lawyers may not disclose confidential information merely to protect their online reputation in response to negative comments of this type.

The Committee reviewed ethics opinions from other jurisdictions on revealing information in response to online reviews. There is general agreement that a lawyer may not disclose client information in response to a former client's negative online review, though a lawyer may respond in a "proportionate and restrained" manner and state that the lawyer disagrees with the facts presented by the reviewer. See Pennsylvania Bar Association Formal Opinion 2014-200 (2014); New York State Bar Association Opinion 1032 (October 30, 2014); Bar Association of San Francisco Opinion 2014-1 (January 2014); The Professional Ethics Committee for the State Bar of Texas Opinion No. 662 (August 2016); Los Angeles County Bar Association Professional Responsibility and Ethics Committee Opinion No. 525 (December 6, 2012); Bar Association of Nassau County Committee on Professional Ethics Opinion No. 2016-01 (November 2015); Colorado Bar Association Opinion 136 (April 15, 2019); West Virginia Legal Ethics Opinion No. 2015-02 (September 22, 2015). See also In re Skinner, 758 S.E.2d 788 (Ga. 2014) (State Bar disciplined a lawyer who responded to online negative reviews from a client, providing personal and confidential information about the client).

The Pennsylvania Bar Association suggested that lawyers respond with this language: "A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point by point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events." Pennsylvania Bar Association Formal Opinion 2014-200 (2014). The Committee agrees that this language accords with New Jersey lawyers' ethical obligations.

Lastly, the Committee notes that lawyers' ethical obligations to maintain confidentiality under Rule of Professional Conduct 1.6 differs from their obligations to maintain lawyer-client privilege. As noted above, Rule of Professional Conduct 1.6 broadly requires lawyers to maintain confidentiality of "information relating to representation of a client." In contrast, the attorney-client privilege protects only "communications" made in confidence between a lawyer and his or her client. The privilege is part of the Rules of Evidence and applies to admissibility of information in court proceedings. The body of law concerning waiver of the evidentiary privilege is inapplicable to lawyers' ethical obligations under Rule of Professional Conduct 1.6.

In sum, lawyers may respond to negative online reviews posted by clients, former clients, or prospective clients by stating that they disagree with the facts presented by the reviewer, but they may not disclose "information relating to representation," except information that is "generally known."

ASSEMBLY COMMUNITY DEVELOPMENT AND WOMEN'S
AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4857

STATE OF NEW JERSEY

DATED: JANUARY 16, 2025

The Assembly Community Development and Women's Affairs Committee reports favorably Assembly Bill No. 4857.

This bill extends the State's anti-SLAPP law, P.L.2023, c.155 (N.J.S.A.2A:53A-49 et seq.), to protect persons who make a report or complaint of sexual assault, harassment, or discrimination.

A SLAPP (strategic lawsuit against public participation) is typically a lawsuit, such as a defamation lawsuit, filed in retaliation against a victim, complainant, witness, whistleblower, advocate, or journalist in order to intimidate or silence the person from speaking out. As demonstrated by the #MeToo movement, victims of sexual assault, harassment, and discrimination may be reluctant to come forward due to fear of retaliation, including fear of SLAPP suits.

Under existing law, a person facing a SLAPP suit can file an order to show cause with the court to dismiss the SLAPP claim if it can be shown that the SLAPP claim was asserted based on the person's (1) communication in a legislative, executive, judicial, administrative, or other governmental proceeding; (2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or (3) exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United States Constitution or the New Jersey Constitution, on a matter of public concern. If the SLAPP claim is dismissed, the person can recover litigation costs and reasonable attorneys' fees.

Under the bill, anti-SLAPP protections are extended to persons who make a report or complaint, in good faith and without malice, of: a sexual offense pursuant to chapter 14 of Title 2C of the New Jersey Statutes or N.J.S.2C:24-4, or a violation of the Law Against Discrimination, N.J.S.10:5-1 et seq., or an incident of retaliation for the making of such a report or complaint, where the person has, or at any time had, a reasonable basis to make such a report or complaint, whether or not a criminal prosecution or civil or administrative action was actually initiated. The bill also allows a person who successfully dismisses a SLAPP claim to be awarded

compensatory and punitive damages, in addition to litigation costs and attorneys' fees.