Judges' Roundtable
Final Plenary 10/10 11:00 a.m. to 12:00 p.m.

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NCBJ Plenary: Judicial Roundtable
October 10, 2026 – 11:00 a.m.

I. Disclosure Generally

a. Model Rule of Professional Conduct 1.7(a): [Subject to certain exceptions], a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

b. Rule 2014 disclosures (connections, conflicts, compensation):

   i. To employ a professional, a party must disclose the need for the employment; the name of the person to be employed; the reason for selecting that person; the professional services they will render; the proposed arrangement for compensation; and whether the person has any connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants; the Office of the US Trustee; and any employee of the Office of the US Trustee.

   ii. This application must be accompanied by a verified statement of the person to be employed, setting forth any connections that person has with the debtor, creditors, any other party in interest, their respective attorneys and accountants, or anyone in the US Trustee's office.

   iii. As the case progresses, new lenders, purchasers, and litigation defendants emerge. Applicants have a continuing obligation to update their disclosures during the pendency of the case if a conflict arises. *In re West Delta Oil Co., Inc.*, 432 F.3d 347, 355 (5th Cir. 2005).

c. Incomplete or late disclosures and consequences:

   i. "[C]ounsel who fail to disclose timely and completely their connections proceed at their own risk because failure to disclose is sufficient grounds to revoke an employment order and deny compensation." *In re West Delta Oil Co., Inc.*, 432 F.3d 347, 355 (5th Cir. 2005).

   ii. If disclosures are not timely completed, courts can deny compensation and even revoke employment orders. *In re Crivello*, 134 F.3d 831, 836 (7th Cir. 1998).

II. Disclosure & Transparency with Fees

a. Model Rule of Professional Conduct 1.5(e): A division of a fee between lawyers who are not in the same firm may be made only if:

> (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
>
> (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
>
> (3) the total fee is reasonable.

b. Fee applications and billing judgment:

   i. Anyone seeking payment from the estate for services rendered must file an application showing in detail the services provided; all payments previously made or promised for services; the source of the paid or promised compensation; whether any previous compensation has been shared; whether an agreement exists to share the fees incurred in connection with the case; and the particulars of any fee sharing agreement, except agreements between an applicant and their law or accounting firm. Fed. R. Bankr. P. 2016(a)(1).

   ii. "[P]rofessionals submitting fee applications should…make a good faith effort to exclude from a fee request hours that are excessive, redundant or otherwise unnecessary," *In re Bennett Funding Group, Inc.*, 213 B.R. 234, 241 (Bankr. N.D.N.Y. 1997). This includes inefficiencies such as duplicative work and excessive conferencing.

c. Disclosure of third-party funding or fee-sharing arrangements:

   i. Subject to the exception set forth in 11 U.S.C. § 504(b)[1], § 504(a) prohibits estate-retained professionals and others holding administrative expense claims from sharing their compensation with another person. *In re GSC Group, Inc.*, 502 B.R. 673, 730 (Bankr. S.D.N.Y. 2013).

   ii. Counsel must disclose the identity of the payor, the amount and source of the compensation; and any fee-sharing arrangements related to services rendered in the case. Fed. R. Bankr. P. 2016(a)(1)(C), (b)(1).

   iii. Failure to disclose an arrangement to share fees can result in disgorgement of those fees.

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[1] Unless otherwise indicated, all statutory references refer to title 11 of the United States Code (the Bankruptcy Code).

III. Conflicts of Interest

a. Model Rule of Professional Conduct 1.7(a): [Subject to certain exceptions], a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

   (1) the representation of one client will be directly adverse to another client; or

   (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

b. Concurrent representation of related debtors, affiliates, or principals:

   i. Concurrent representation is permitted, and can be economical. *In re International Oil Co.*, 427 F.2d 186, 187 (2d Cir. 1970) (finding there was not an actual conflict between three related subsidiaries "sufficient to saddle these estates with the expense of separate trustees and trustees' attorneys").

   ii. Counsel must disclose any connections they share with the debtor; creditors; any other party in interest; the parties' respective attorneys and accountants; the Office of the U.S. Trustee; and any person employed by said Office. Fed. R. Bankr. P. 2014(a)(2)(F).

c. Representing creditors in one matter and debtors in another:

   i. Representing a creditor in one matter and a debtor in a separate matter is not inherently prohibited. This changes if the representation creates an adverse interest or impairs professional judgment.

   ii. The "question is not whether a conflict exists but whether that conflict is materially adverse to the estate, creditors, or equity security holders," *In re Guy Apple Masonry Contractor, Inc.*, 45 B.R. 160, 166 (Bankr. D. Ariz. 1984).

d. Trustee and committee counsel conflicts:

   i. The Trustee can retain an attorney, but that attorney represents the bankruptcy estate, not the trustee themselves. § 327(a).

   ii. A creditors committee can retain an attorney, but that attorney may not represent another entity with an adverse interest in the case. § 1103(b).

e. Imputed conflicts within large firms:

i. Conflicts affecting one attorney are generally imputed to the attorney's firm. Model R. Pro. Conduct 1.10(a). This is because courts presume associated attorneys share client confidences.

ii. This presumption may be rebutted if a screen is in place or the conflicted attorney is only partially associated with the firm (e.g., if the attorney has 'of counsel' status). *Pierce & Weiss LLP v. Subrogation Partners, LLC*, 701 F. Supp. 2d 245, 257 (E.D.N.Y. 2010).

f. Waivers – when they are and are not appropriate in bankruptcy:

i. Section 327's requirement that counsel be disinterested and hold no adverse interest cannot be waived by client consent. *In re Granite Partners, L.P.*, 219 B.R. 22, 34 (Bankr. S.D.N.Y. 1998).

ii. Potential conflicts may be waivable (such as dual representation when interests align; routine representations unrelated to bankruptcy; or relationships within a firm disclosed under Rule 2014).

iii. Actual conflicts are not waivable (such as representing opposing sides of estate litigation or representing the debtor while advising an adverse purchaser).

IV. Duties to the Estate vs. the Client

a. Model Rule of Professional Conduct 1.13(f): In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

b. Tension between debtor-in-possession duties and management's personal interests:

i. The DIP owes fiduciary duties to the estate and creditors, not just management and shareholders. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355-56 (1985).

ii. Practical tensions can arise when management seeks to preserve equity, but the best interests of the estate and creditors favor liquidation.

c. Counsel's role when management may have engaged in misconduct:

i. Counsel may not assist management in fraud or misconduct, nor can they ignore credible evidence of fraud, self-dealing, or breach of fiduciary duty.

ii. Counsel may need to investigate misconduct; advise corrective action; and consider withdrawal or disclosure when it becomes clear misconduct has occurred.

d. Reporting obligations and “up-the-ladder” issues:

   i. If counsel to an organization learns about employee misconduct that is likely to substantially injure the organization, the offending employee should be reported to management. Managerial misconduct should be reported to the board of directors.

   ii. Client confidentiality obligations prohibit disclosure unless counsel has actual knowledge that fraud will imminently occur. Model R. Pro. Conduct 1.6.

e. When withdrawal is required:

   i. Required when representation will result in a violation of applicable Rules of Professional Conduct, or other applicable law, including if the client uses or seeks to use the lawyer’s services to commit or further fraud. Model R. Pro. Conduct 1.16(a).

   ii. Counsel cannot certify a filing unless they are sure of its accuracy. If the client refuses to correct a document which counsel knows contains inaccuracies that will be misleading to the court, withdrawal is required.

V. Candor to the Court and Good Faith Filings

a. Model Rule of Professional Conduct 3.3(a): A lawyer shall not knowingly:

> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

b. Accuracy in schedules and statements:

   i. Accuracy is required by § 521 and Fed. R. Bankr. P. 1007.

   ii. Schedules and statements are signed under penalty of perjury and false statements may result in denial of discharge, sanctions, or criminal liability.

c. “Bare bones” filings and last-minute petitions:

   i. The rules do not prohibit bare bones filings, but they must be promptly completed. Failure to complete opening documents within 14 days can result in dismissal. Fed. R. Bankr. P. 1007(c).

   ii. A last-minute petition filed to gain a strategic delay with no intent to reorganize, is not filed in good faith and is subject to dismissal.

d. Serial filings and bad-faith petitions:

   i. Serial filings are not *per se* bad faith. Courts apply a totality of the circumstances test to examine whether a bona fide change in circumstances exists to justify the new filing. *Matter of Metz*, 820 F.2d 1495, 1498 (9th Cir. 1987).

   ii. In assessing whether a case has been filed in bad faith, a bankruptcy court should consider (1) whether the case has been an abuse of the provisions, purpose, or spirit of the chapter; (2) whether the debtor has proposed a fundamentally fair plan; and (3) whether the debtor had an opportunity to refute allegations of bad faith. *In re Standfield*, 152 B.R. 528, 536-37 (Bankr. N.D. Ill. 1993).

   iii. Sanctions for bad-faith filings can be imposed against an attorney or their client. They include monetary penalties, up to dismissal or an order permanently barring from discharge all debts in existence at the time of the bad faith conduct. *In re Oliver*, 323 B.R. 769, 774-75 (Bankr. M.D. Ala. 2005).

e. Representations in first-day motions:

   i. First-day motions (relating to cash collateral, DIP financing, or critical vendor contracts) are often heard an on expedited basis. Courts rely heavily on Debtor’s representations in these initial motions, so accuracy and completeness are essential.

   ii. Time pressure does not affect the lawyer’s duty of candor to the tribunal. Factual assertions must have evidentiary support, and financial projections must not be misleading given the available evidence.

f. Reliance on client-provided financial information:

   i. Counsel may reasonably rely on information provided by the client, but with an independent duty of inquiry under Fed. R. Bankr. P. 9011. Counsel must make a reasonable inquiry into the relevant facts and law to ensure any document filed is well grounded in both.

ii. Rule 9011 provides a continuing obligation. If Counsel later learns that a pleading filed was inaccurate, the duty of candor requires amendment, or withdrawal and re-filing.

VI. Attorney Fees and Professional Compensation

a. Model Rule of Professional Conduct 1.5(a): A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

b. Reasonableness and necessity standards:

i. Fees must be reasonable "based on the customary compensation charged by comparably skilled practitioners in cases other than" bankruptcy. § 330(a)(3)(F).

ii. Section 330 of the Code and Federal Rule of Bankruptcy Procedure 2016 detail the requisite burden of proof on a request for compensation for services rendered and reimbursement of expenses. "A professional seeking reimbursement from the estate…must furnish enough specificity for the Court to establish whether a given expense was both actual and necessary. Only fully documented, actual, out-of-pocket expenses that the applicant can substantiate as necessary will be reimbursed." *In re Fibermark*, 349 B.R. 385, 398 (Bankr. D. Vt. 2006).

c. Success fees and bonuses:

i. Even if a contingency fee is pre-approved by the court, it may later be reduced by the court if its terms and conditions prove improvident in light of developments unforeseen at the time the agreement was fixed. *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 344 (Bankr. D. Md. 2000).

ii. A party requesting to be paid a bonus from the estate must provide specific evidence showing how the results obtained via their services were exceptional such that those results are not adequately reflected in the standard hourly rate; and that the requested bonus is necessary to make an award commensurate with the professional's compensation for comparably nonbankruptcy services. *Meronk v. Arter & Hadden, LLP*, 249 B.R. 208, 213 (9th Cir. BAP 2000).

d. Billing for travel, multiple professionals, staffing levels:

i. Courts scrutinize travel time, with some requiring by local rule that travel time be billed at a discounted hourly rate.

ii. "…the Court considers the various levels of professional expertise… [and] specifically considers whether the task at hand could have been performed competently by a less experienced professional at a lower cost to the estate. Whether it is reasonable for a certain professional to complete a task is to be determined by the level and skill reasonably required for the task." *Fibermark*, 349 B.R. at 396.

e. Administrative insolvency risks:

i. Professional fees are paid as administrative claims. § 503(b)(2, 4). If the estate is administratively insolvent, professional fees may be prorated or unpaid.

ii. Administrative claims that have already been paid can be disgorged at the Court's discretion if a debtor becomes administratively insolvent. *In re Anolik*, 207 B.R. 34, 38-39 (Bankr. D. Mass. 1997).

f. Fee objections and court scrutiny:

i. Fee review in bankruptcy is more rigorous than typical civil litigation, and bankruptcy courts have an independent duty to review fees, even if no objections are filed. *In re Busy Beaver Bldg. Centers, Inc.*, 19 F.3d 833, 841 (3d Cir. 1994).

ii. Parties may object to fee applications if the services to be compensated were not necessary and beneficial to the estate, if fees incurred were excessive or unreasonable, or if time records are inadequate or unclear.

VII. Communication and Competence in the Consumer Realm

a. Model Rule of Professional Conduct 1.1 requires that a lawyer provide competent representation to a client, which includes the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

b. Model Rule of Professional Conduct 1.4(b): A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

c. Advising unsophisticated consumer debtors:

   i. Counsel should explain alternatives to bankruptcy; the different chapters available; likely consequences of filing; effects of bankruptcy on secured and unsecured debts; exemptions and asset protection; and discharge limitations.

   ii. Counsel should clearly explain debtor obligations, such as attendance at the Meeting of Creditors under § 341; document production under § 521; plan requirements under § 1322; and obligations that continue post-confirmation.

d. Explaining reaffirmation agreements and discharge implications:

   i. Reaffirmation agreements include mandatory disclosures which explain the legal effect of reaffirmation; the dischargeability of the reaffirmed debt; and the consequences of future default. § 524(k).

   ii. If the debtor is represented by counsel, their attorney must certify the agreement represents an informed and voluntary decision; it does not impose an undue hardship; and they have fully advised the debtor of its legal consequences. § 524(k)(5)(A).

   iii. Counsel should clearly explain discharged debts; nondischargeable debts (such as student loans, domestic support obligations, certain taxes, and debts arising from fraud or willful injury); reaffirmed debts; and any liens that survive discharge.

VIII. Technological Competence

a. Model Rule of Professional Conduct 1.1 requires that a lawyer provide competent representation to a client, which includes the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

b. Comment 8 provides: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” [Emphasis added.]

c. E-filing:

   i. By electronically filing any document, counsel certifies the document is accurate and has been reviewed before submission. Fed. R. Bankr. P. 9011.

   ii. Counsel has a duty to verify they have uploaded the correct document for filing, that they have filed it in the proper case, and that the requisite parties have received notice of the filing.

d. Cybersecurity and data protection:

   i. Certain sensitive data must be redacted from any filing. This includes dates of birth, names of minors, and all but the last four digits of social security numbers, bank account numbers, and credit card numbers. Fed. R. Bankr. P. 9037(a).

   ii. Most commercial AI services retain the data you input to inform future responses to other users. Counsel must avoid sharing confidential information with AI services.

e. Artificial Intelligence:

   i. ABA Formal Opinion 512 (July 29, 2024): Lawyers must have a reasonable understanding of the capabilities and limitations of the specific generative artificial intelligence the lawyer might use. They do not need to become experts but must either acquire a reasonable understanding or draw on the expertise of others who can provide guidance.

   ii. AI scours the internet to find anything responsive to the user’s prompt. Sometimes, it invents cases (or misrepresents the holdings of a case) to produce a response.

   iii. An attorney who fails to check AI-generated sources, and files a pleading including hallucinated citations, may be liable for sanctions under Rule 9011. *In re Bryant*, 2025 WL 3237890 (Bankr. M.D.N.C. 2025).

IX. Fiduciary and Trustee Specific Issues

a. Model Rule of Professional Conduct 1.13(f): In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

b. Trustee neutrality and investigations:

i. The Trustee has a duty to administer the estate impartially; maximize value; and avoid favoritism among creditors. §§ 704(a), 1106(a), 1202(b), 1302(b).

ii. Trustees must investigate prepetition transfers; insider transactions; avoidance actions; undisclosed assets; and fraudulent conduct.

c. Sales processes and insider transactions:

i. Sales should proceed in a manner that maximizes value while ensuring fairness and transparency. § 363(b).

ii. Sales involving insiders (e.g., officers, directors, family members, affiliates) receive heightened scrutiny. Trustees should ensure complete disclosure of these relationships, disclosure of any agreements relevant to the sale, adequate marketing, and competitive bidding.

d. Handling estate funds and financial controls:

i. Trustees are responsible for safeguarding estate property and maintaining accurate financial records. § 704(a)(2), (8).

ii. The Trustee's exercise of financial control should include segregating estate funds, reconciliating accounts, accurate recordkeeping, and timely disbursements.

e. Trustee and professional retention issues:

i. Trustees can employ attorneys, accountants, auctioneers, brokers, and other professionals with court approval. These professionals must be disinterested, must not hold interests adverse to the estate; and must uphold a continuing duty to disclose any connections throughout their engagement. § 327(a); Fed. R. Bankr. P. 2014(a)(2)(F).

ii. Before moving to appoint a professional, the Trustee should independently evaluate their qualifications; any conflicts they may have; the necessity of their employment; and the reasonableness of their requested compensation. Any professionals retained by the Trustee will not be compensated for Trustee duties.

X. Asset Sales and Insider Transactions

a. *See* Model Rule of Professional Conduct 3.3 and Subsection V above ("Candor").

b. Section 363 sales and "credit bidding":

i. § 363(k) permits "credit bidding," in which secured creditors can bid on collateral and offset their claim against the purchase price of the collateral. *In re Philadelphia Newspapers, LLC*, 599 F.3d 298, 314-15 (3d Cir. 2010).

ii. This may be useful for the secured lender, and even for the debtor, but it risks chilling the competitive bidding process. The Court must review the sale procedures to determine whether they will maximize the value of the estate or merely predetermine the outcome of the auction.

c. Insider bidding and stalking horse protections:

i. A "Stalking horse" bidder is a party to whom the debtor-in-possession agrees to sell assets in a court-supervised auction. This sets a floor for the sale price at auction. Common protections include breakup fees, topping fees, and lock-out arrangements. These are subject to court approval and may be disallowed.

ii. A breakup fee is a fixed amount paid by the debtor-in-possession to the stalking horse bidder in the event a different bidder prevails at auction. *In re Integrated Res., Inc.*, 147 B.R. 650, 653 (S.D.N.Y. 1992).

iii. A topping fee is a contingent amount paid by the debtor-in-possession to the stalking horse bidder in the event a different bidder prevails at auction. This fee is typically calculated as a percentage of the difference between the winning bid and the stalking horse bid. *In re APP Plus, Inc.*, 223 B.R. 870, 874 (Bankr. E.D.N.Y. 1998).

iv. A lock-out arrangement is one where the debtor-in-possession agrees not to solicit, initiate, or encourage other offers from potential bidders. *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 550, 552 (Bankr. S.D.N.Y. 1997).

d. Disclosure of side agreements:

i. All material terms of a transaction must be disclosed to the court, as undisclosed agreements may chill bidding, and could even cause the sale to be invalidated.

ii. Any related or collateral agreement that could affect consideration, or otherwise influence the sale process, must be disclosed.

e. Fairness of bidding procedures:

i. A court may reopen bidding, undoing the results of a judicial auction, if "there was fraud, unfairness or mistake in the conduct of the sale…or…the price brought at the sale was so grossly inadequate as to shock the conscious of the court." *In re Stanley Eng'g Corp.*, 164 F.2d 316, 318 (3d Cir. 1947).

ii. The court must ensure bidding procedures maximize value and are not pretextual. Factors include open access to bidders; reasonable timelines; and an absence of insider favoritism.

XI. Ex Parte Communication

a. Model Rule of Professional Conduct 3.5(b): A lawyer shall not communicate *ex parte* with [a judge, juror, prospective juror or other official] during the proceeding unless authorized to do so by law or court order."

b. Communications with chambers staff:

    i. Any frequent interaction between a judge *or judicial employee* and a lawyer who appears before the court may put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. Guide to Judiciary Policy, Vol. 2B, Ch. 2, Adv. Op. 112.

    ii. Administrative or scheduling contact may be permissible but substantive *ex parte* communications are generally prohibited. *See* Fed. R. Bankr. P. 9003.

c. Drafting proposed orders:

    i. Proposed orders must be circulated to parties-in-interest and must be consistent with the court's anticipated ruling. Counsel's duty of candor to the tribunal prohibits reframing the issues to make the decision more favorable.

    ii. Courts may revise proposed orders before they are issued, so parties should not assume their proposed order will be issued as written. Each order should be carefully reviewed after it has been signed by a judge.

d. Professional conduct in contested hearings:

    i. Counsel should respect court procedures and decorum. Issues should be argued respectfully, opposing positions should be characterized faithfully, and court orders should be obeyed and enforced.

    ii. Sanctions are warranted where a party acts in bad faith, vexatiously, wantonly, or for oppressive reasons. Sanctions are also permitted when a party delays or disrupts litigation or hampers enforcement of the court's orders. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991).

e. Social media and public commentary on active cases:

    i. "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent," Model Rule of Professional Conduct 1.6(a).

    ii. Likewise, "a lawyer who is participating or has participated in the…litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." Model Rule of Professional Conduct 3.6(a).

XII. Use of Confidential Information

a. Model Rule of Professional Conduct 1.6(a): A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

b. A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

c. Access to debtor data in distressed transactions:

i. A chapter 11 debtor must typically provide confidential information to prospective purchasers, DIP lenders and other restructuring professionals.

ii. Counsel must balance these disclosures with the need to protect confidential information.

d. Sharing information during DIP financing or asset marketing:

   i. Some information must necessarily be shared to negotiate DIP financing or to market an asset for liquidation.

   ii. Counsel should determine what information must be disclosed, and how to protect confidential information that cannot be disclosed.

e. NDAs in the bankruptcy context:

   i. NDAs are permissible in bankruptcy cases, provided they do not improperly restrict communications or disclosures required by the Bankruptcy Code; conceal material information from the court or parties-in-interest; or impede legitimate creditor participation.

   ii. Documents filed in bankruptcy court (including NDAs) are publicly accessible. § 107(a).

   iii. Sensitive information can be redacted if the information relates to "a trade secret or confidential research, development, or commercial information;" or if it contains "scandalous or defamatory matter". § 107(b); Fed. R. Bankr. P. 9018(a).

f. Protective orders:

   i. Violating a protective order may be sanctionable under Federal Rule of Civil Procedure 37(b)(2)(A), which is made applicable in bankruptcy by Fed. R. Bankr. P. 7037. Sm*ith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 488-90 (5th Cir. 2012).

   ii. Even if an attorney reasonably believes disclosure to be in the public interest, leaking information covered by a protective order is sanctionable. *In re Roman Catholic Church for Archdiocese of New Orleans*, 2022 WL 7204872 (Bankr. E.D. La. Oct. 11, 2022).