

**Formal Ethics Opinion
KENTUCKY BAR ASSOCIATION**

**Ethics Opinion KBA E-448
Issued: March 14, 2019**

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at <http://www.kybar.org/237>), before relying on this opinion.

Subject: Proposed self-defense opinion

Question: May a lawyer reveal client confidential information reasonably necessary to respond to a former client's public criticism?

Answer: No

Authorities: Rule 1.6 (b)(3), Crystal, Defending Against Internet Criticism: "Silence is Golden," 26 South Carolina Lawyer 12 (2014); Fucile, Discretion in the Better Part of Valor: Rebutting Negative Online Client interviews, 83 Defense Counsel J. 84 (2016); *People v. Issac*, 2016 WL 6124510 (Col. 2016); *State ex rel Counsel for the Nebraska Supreme Court v. Tonderum*, 840 N.W. 487 (Nebraska 2013).

Question: How may a lawyer ethically respond to a former client's public criticism?

Answer: See Opinion

The self-defense exception to the duty of confidentiality (1.6(b)(3)) is triggered by claims or disciplinary complaints against a lawyer. The exception does not encompass internet criticism. In Defending Against Internet Criticism: Silence is Golden, 26 South Carolina Law Review 12(2014), Nathan Crystal uses the Betty Tsamis case to illustrate: After being fired a flight attendant hired Tsamis to seek unemployment benefits from the state. Apparently Tsamis learned after she was hired that the attendant had been fired because he beat up a female co-worker. After a hearing the claim was denied and the attendant complained about Tsamis on the internet. This eventually resulted in Tsamis being publicly reprimanded for posting the following:

This is simply false. The person did not reveal all the facts of the situation up front in our first and second meetings. . . . Despite knowing he would likely lose he chose to go forward with a hearing to try to obtain benefits. I dislike it very much when my clients lose but I cannot invent positive facts for clients when they are not there. I fell badly for him but his own actions in beating up a female coworker are what caused the consequences he is now so upset about.

In most instances the best advice is to ignore the criticism. For the lawyer who wants to respond, the Committee recommends the following:

My professional and ethical responsibilities do not allow me to reveal confidential client information in response to public criticism.

Note To Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.