



# Ethical Discovery: A Family Law Perspective

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A CLE Seminar  
presented by

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# Today's Presenters

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# Discovery

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A figurative game of “Go Fish”?

Or

A collaborative investigation?

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“lawyers who represent clients in matrimonial dissolutions have a special responsibility for full and fair disclosure, for a searching dialogue, about all of the facts that materially affect the client’s rights and interests.” *Monroe v. Monroe*, 413 A.2d 819 (Conn. 1979).

# What does “Full Disclosure” Mean in Family Law?

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## Assets & Debts:

- **K.S.A. 23-2802(a):** “A decree under K.S.A. 23-2711, and amendments thereto, shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to the marriage, acquired by either spouse in the spouse’s own right after marriage or acquired by the spouse’s joint efforts[.]”
- **MO Rev. Stat. 452.330.1.** “In a proceeding for dissolution of the marriage or legal separation, [...], the court shall set apart to each spouse such spouse's nonmarital property and shall divide the marital property and marital debts in such proportions as the court deems just[.]”

# “Full Disclosure” Continued...

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## Child Support & Spousal Support:

For child support in particular, the court can consider income from all sources to determine child support income calculations.

- KS Child Support Guidelines, KS Supreme Court Administrative Order 2024-RL-073, as well as KS Supreme Court Rule 139
  - Requires each party to file a completed, signed and dated domestic relations affidavit, which should include all information on income and expenses;
  - Parents are entitled to know each other’s “financial circumstances including, income, work-related child care costs, and health insurance premiums.” 2024-RL-073, Section I.E.5.
- MO – Directions, Comments for Use & Examples for Completion of Form 14 & Assumptions, line 1, states that “gross income” includes, but is not limited to, “salaries, wages, commissions, dividends, severance pay, pensions, interest, trust income, annuities, partnership distributions, social security benefits, retirement benefits, workers’ compensation benefits, unemployment compensation benefits, disability insurance benefits, social security disability benefits (SSD) due to a parent’s disability, veterans’ disability benefits, and military allowances for subsistence and quarters.

# Most Common Ethical Pitfalls in Family Law Stem from...

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## Mishandling discovery

This could include:

- Failing to discover all assets, debts, and income in order for our clients to make an informed settlement, or to have all the facts presented to the court before making decisions affecting our clients;
- Failing to effectively assist our clients in making full disclosures or properly responding to discovery requests.

# Ethical Rules Applicable to Discovery

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- Competence
  - KRPC 1.1
  - Mo. Sup. Ct. R. 4-1.1
- Diligence
  - KRPC 1.3
  - Mo. Sup. Ct. R. 4-1.3
- Communication
  - KRPC 1.4
  - Mo. Sup. Ct. R. 4-1.4
- Scope of Representation
  - KRPC 1.2
  - Mo. Sup. Ct. R. 4-1.2



# Competence

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## **KRPC 1.1 Competence:**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

## **Mo Sup Ct R 4-1.1: Competence:**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

# Subject Matter Knowledge

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- UCCJEA Issues
- UIFSA Issues
- Military Divorce (division of military retirement)
- Patent/Trademark or Copyright Issues
- A wide array of retirement accounts (pension, railroad retirement, annuities, 401(k), IRA, etc.);
- IRS and State Tax Issues;

# Subject Matter Knowledge Cont.

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- Self-Employment and other Income related issues;
- Appellate Work
- Property and Business Valuations;
- Agricultural Law;
- Stock Option Divisions
- Many, many, more

# Thoroughness and Preparation

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[5] Competent handling of a particular matter includes inquiry and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

# Diligence KRPC 1.3 and Mo. Sup. Ct. 4-1.3

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A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment [1] to KRPC 1.3. *A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued.*

# Ethical Discovery – Starts with the Requests

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If we are seeking to competently represent our client's interests, we need to make sure we have all of the facts necessary to analyze the issues in their case.

Questions we should be asking ourselves:

- Is it cost-prohibitive?
- Is it narrowly tailored to fit the needs of the case?
- Is it unduly burdensome, or does it seek something that can be more readily produced in a more efficient way?

# K.S.A. 60-211(b)

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(b) *Representations to the court.* By presenting to the court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, **an attorney or unrepresented party certifies** that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

- 1) **It is not being presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation;**
- 2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;
- 3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- 4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

# KSA 60-226. General Provisions Governing Discovery

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(b)(1) Scope in general. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Kan. Stat. 60-226 General provisions governing discovery (Kansas Statutes (2025 Edition))



# Scope of Discovery

## Mo Sup. Ct R 56.01 (b)(1)

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- Counsel clients with costs, limitations, and resources in mind, allowing clients to partake in a cost-benefit analysis for non-standard discovery requests. Rule 56.01 (b)(1). “(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) In General. Parties may obtain discovery regarding **any matter, not privileged, that is relevant** to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter, provided the discovery is proportional to the needs of the case **considering the totality of the circumstances**, including but not limited to, the importance of the **issues at stake** in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the **importance of the discovery in resolving the issues**, and **whether the burden or expenses of the proposed discovery outweighs its likely benefit.**”
- Example: A client seeks to propound non-standard discovery requests relating to a piece of nonmarital property that has not been commingled or otherwise converted into marital property. Counseling the client as to the likelihood of the property's bearing on the issues of the case, as well as the likelihood of said property being set aside or partitioned, along with your discussion of the cost to propound such requests and the potential for objections.

# Elements of Scope of Discovery

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1. Relevant
2. Proportional to the needs of the case
3. Considers the importance of the issues at stake
4. Considers the amount in controversy
5. Each party's relative access to relevant information;
6. Each party's resources;
7. Importance of the discovery in resolving the issues
8. Whether the burden or expense of the proposed discovery outweighs its likely benefit

# Responding to Discovery

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The Kansas Supreme Court has held that discovery rules in Kansas should be interpreted broadly to accomplish their intended objectives of eliminating surprise from trial and simplifying issues and procedures.

-*Palmer v. Trotter*, 482 P. 3d 637 (Kan. Ct. App. 2021).

“The essence of discovery is a search for the truth. It is not a game but an enlightened procedure to encourage the resolution of cases based on merit and not on surprise and ambush.” *Ryan v. Kansas Power & Light Co.*, 249 Kan. 1, 11-12, 815 P.2d 528 (1991).

“All parties shall make reasonable efforts to cooperate for the purpose of minimizing the burden or expense of discovery.” Mo. Sup. Ct. R. 56.01(g).

# Discovery Objections

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- Know when to object to discovery requests. Mo. Sup. Ct. R. 56.01(b)(1)  
“Information within the scope of discovery need not be admissible in evidence to be discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The party seeking discovery shall bear the burden of establishing relevance.”
- Mo. Sup. Ct. R. 56.01(b)(2) “Upon the motion of any party or on its own, the court must limit the frequency or extent of discovery if it determines that: (A) The discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (B) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).” *See also* Rule 56.01(b)(1). *See supra* [Slide 18 with 56.01(b)(1)].

# Protective Orders

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Know when to move for a protective order. Mo. Sup. Ct. R. 56.01(c) “Upon motion by a party or by the person from whom discovery is sought, including e-discovery, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

# Protective Orders Cont.

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(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. . . .”

# Limitations as an Attorney

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Know your own ethical rules and limitations as an attorney. MRPC 4-3.4 Duties to Opposing Party and Counsel and Ethical Obligation to Follow Court Orders and Rules states, “An attorney shall **not**: (a) **unlawfully obstruct** another party's access to evidence or **unlawfully alter, destroy, or conceal** a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; (b) **falsify evidence**, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; (c) **knowingly disobey an obligation** under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; (d) **in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request** by an opposing party; (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless: (1) the person is a relative or an employee or other agent of a client; and (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.”

# Withdrawal

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- Know when to withdraw. Rule 4-1.16 Declining or Terminating Representation, “(a) Except as stated in Rule 4-1.16(c), a lawyer shall not represent a client or, where representation has commenced, **shall** withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law . . . .” (emphasis added).
- Rule 4-1.16(b) Except as stated in Rule 4-1.16(c), a lawyer **may** withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer's services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.” (emphasis added).
  - NOTE: Rule 4-1.16(c) and (d) relate to notice of withdrawal: (c) provides guidance as to notice to the Court, while (d) provides guidance as to notice to the client.



## K.S.A. 60-237(a)(5)(A)

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If a Motion to Compel discovery is granted:

“the court must [...] after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, **the party or attorney advising that conduct, or both** to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.”

*Emphasis added, and omission relates to making the fee award discretionary if disclosure occurs prior to the motion being granted.*

# Ethically Responding to Discovery

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The Kansas Rules of Civil Procedure allow for attorneys to be held liable for sanctions in the discovery process.

- We are the ones vested with the knowledge and training to understand how discovery requests should be answered.
- We are the ones that have to keep track of the deadline for providing any appropriate objections
- We are the ones that need to advise our clients on deadlines, and to help them fully and accurately respond

Missouri Supreme Court Rule 61.01 deals with various sanctions for failure to provide discovery. Attorneys may be subject to sanctions, as well as parties and law firms. (see later slide)

# Discovery Practices

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- Not providing your client's handwritten responses to interrogatories
- Taking the time to first seek if the information you are requesting from the other party can be provided by your own client
- Taking the time to work with your client to make sure they understand the questions that are being asked of them.
- Helping both you and your client by making sure you are providing written responses to requests for production of documents that actually say what is being produced, not just “see attached.”

# Sanctions Related to Discovery

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Kansas courts possess an inherent power to sanction when “reasonably necessary for the administration of justice, provided these powers in no way contravene or are inconsistent with substantive statutory law.”

-*Matter of Marriage of Leming*, 487 P.3d 769 at 4 (Kan. Ct. App. 2021) (unpublished).

The sanction power may be used when a party uses the process “to harass, delay, or achieve other improper ends.” *See Pener v. King*, 305 Kan. 1199, 1210-11, 391 P.3d 27 (2017).

# Missouri – Sanctions Related to Discovery

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Missouri has outlined sanction procedure for the following:

- Failure to Act
- Failure to Answer Interrogatories
- Failure to Answer Request for Admissions
- Failure to Produce Documents
- Failure to Appear for Physical Examination
- Failure to Attend Own Deposition
- Failure to Answer Questions on Deposition
- Objections to Approved Discovery

Mo. Sup. Ct. R. 61.01, Failure to Make Discovery: Sanctions

# Best Practice Tips

- In Missouri: Consult local rules—many counties have their own standard discovery and expectations as far as when discovery responses are to be provided (regardless of whether standard discovery requests were served). Rule 56.01(b)(8). “A circuit court by local court rule may promulgate “approved” interrogatories and requests for production for use in specified types of litigation. Each such approved interrogatory and request for production submitted to a party shall be denominated as having been approved by reference to the local court rule and paragraph number containing the interrogatory or request for production.”
- Jackson County is a prime example.

The screenshot displays the official website of the 16th Circuit Court of Jackson County, Missouri. The header features the court's name and a search bar. A navigation menu includes links to Home, About the Court, Jury Duty, Our Judges, Departments, Forms & Fees, and Court Records & Resources. The main content area is titled "DOMESTIC DOCKETING FORMS" and lists various legal forms under three categories: Dissolutions, Dissolutions With Children, and Other Family/Domestic Forms. A sidebar on the right lists additional forms like Child Support Forms, Miscellaneous Forms, and Domestic Violence Forms. The footer contains the court's address, contact information, and a copyright notice for 2012.

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OF JACKSON COUNTY, MISSOURI

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### DOMESTIC DOCKETING FORMS

**Dissolutions**

- [Form 17 – Family Court Information Sheet](#)
- [Certificate of Dissolution of Marriage](#)
- [Form 1402A – Statement of Marital and Non-Marital Assets and Debts](#)
- [Form 1402B – Income and Expense Statement](#)

**Dissolutions With Children (in addition to the forms listed above)**

- [Form 14 – Child Support Amount Calculation Worksheet](#)
- [Form 15 – Petitioner/Respondent's Response to Rule 68.12, Notification of Child Custody and Related Parenting Issues](#)

**Other Family/Domestic Forms**

- [Case Management Administrative Order](#)
- [Case Management Statement – Dissolution of Marriage](#)
- [Case Management Statement – Motion to Modify](#)
- [Case Management Statement – Paternity](#)
- [Family Access Booklet](#)
- [Family Access Motion](#)
- [Pre-Trial Statement](#)
- [Form 1402C – Standard Modification Interrogatories](#)
- [Form 1402D – Standard Dissolution Interrogatories](#)
- [Form 1402E – Modification Statement of Assets and Debts](#)
- [Form 1402F – Standard Dissolution Request for Production of Documents and Things](#)
- [Form 1402G – Standard Modification Request for Production of Documents and Things](#)
- [Form 1402H – Authorization to Release Employee Benefit Information](#)
- [Form 1402I – Authorization to Disclose Financial Records](#)
- [Form 1402J – Property Grid for Contested Dissolution Cases \(Also available in Microsoft Word\)](#)

**FORMS**

- ◇ Child Support Forms
- ◇ Miscellaneous Forms
- ◇ Domestic Docketing Forms
- ◇ Domestic Violence Forms
- ◇ Execution - Garnishment Forms
- ◇ Landlord Tenant Forms
- ◇ Small Claims Forms
- ◇ Redaction Forms
- ◇ Delinquent Land Tax Sale

16TH CIRCUIT COURT  
OF JACKSON COUNTY MISSOURI  
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# Conclusion

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Discovery, particularly various forms of formal discovery, can be incredibly useful and important in our line of work.

The reputation it has for being costly, or aggressive, is not necessarily warranted if we are willing to do the work to draft requests that consider what is actually necessary for the case. Formal discovery can be a tool to keep you organized, and to prevent you and your client from incomplete information.

The way that we respond to formal discovery is just as important as how we draft our requests. But we need to recognize that the attorney is equally responsible for the responses provided, and the quality of the responses provided. If attorneys don't help clients understand what is required and push their clients to comply (without sacrificing our duty to their interests in the attorney-client relationship).

# Thanks for Attending!

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## QUESTIONS?