



LEGALLY SPEAKING

Kristi Paulson

Ghosts, goblins and gray areas

Communication and ethics in the legal profession

By Kristi Paulson
Special to Minnesota Lawyer

October brings out the shadows. We lean into the thrill of haunted houses, carved pumpkins, and ghost stories whispered in the dark. But in the legal profession, the things that truly make us shiver rarely come with masks and costumes. They arrive instead in the form of overlooked conversations, misunderstood texts, or ethical lines crossed in the name of zealous advocacy.

The most frightening part? These are not rare occurrences. They creep into everyday practice. And like ghosts, goblins, and zombies, they can haunt a lawyer long after the initial misstep. This Halloween, let's unmask some of the monsters that lurk in the gray areas of communication and ethics — and more importantly, look at the skills we can use to keep them at bay.

The Phantom of Assumptions: Silence isn't golden

Every lawyer knows that Rule 1.4 of the Minnesota Rules of Professional Conduct requires us to keep clients reasonably informed and to explain matters sufficiently for informed decision-making. On paper, that looks straightforward. In practice, it is one of the trickiest — and most common — sources of grievance.

Consider this: A lawyer secures a



DEPOSIT PHOTOS

settlement and gives a quick phone rundown of the numbers. The lawyer assumes the client "got it." But when the check arrives, the client is blindsided by deductions for liens and costs. From the lawyer's perspective, it was explained. From the client's perspective, it was not explained clearly — or at least not in a way they could retain.

The phantom of assumption thrives in silence. To combat it, lawyers can lean on three communication skills:

1. **Clarity:** Break complex issues into plain language.
2. **Confirmation:** Ask the client to restate the key point in their own words.
3. **Documentation:** Recap the conversation in an email or letter.

These steps may take minutes but prevent misunderstandings that

otherwise rattle around like chains in a haunted house

Tricks, treats, and truthfulness

Halloween celebrates tricks and treats. In negotiation, the ethical line between puffing and deception can feel just as thin as the string on a trick-or-treater's mask.

Lawyers often rely on "positional language": "My client won't take less than \$100,000." That may be puffery, a posture in the negotiation dance. But inventing a competing offer that doesn't exist? That's a lie — and one that can later unravel into an ethical complaint.

The best communication strategy is **framing**. A lawyer can be tough without being untruthful. Instead of inflating facts, reframe values,

priorities, or risks in persuasive terms. Think of it less as trickery and more as storytelling: shaping the narrative without crossing into fabrication.

A useful skill here is the **self-check question**: Could this statement later be objectively disproven? If yes, it belongs in the "trick" category — and not the fun kind.

The Zombie Text: Messages that never die

Texts are today's zombies — quick, informal, and nearly impossible to kill. Lawyers often treat them as throwaway communications, forgetting they are as permanent and discoverable as any letter.

A late-night frustrated text to opposing counsel — "My client is desperate; we'll probably take whatever you offer" — might feel like venting. But screenshot it, share it in mediation, and suddenly it has new life, stumbling around the room like the undead.

Communication skills matter here too:

- **Channel awareness:** Ask: Is this message better suited for email or a phone call? Texts should be for logistics, not strategy.

- **Tone Control:** Step back before hitting send. Read the text as though a judge were the audience.

- **Boundary Setting:** Tell clients upfront how text communication will be used, and when sensitive matters require a call or written memo.

The zombie text can't come back to life if it never left the graveyard in the first place.

Legally Speaking

Continued from page 4

The AI Ouija board: Spelling trouble

Artificial intelligence tools like ChatGPT can feel like consulting a Ouija board — answers appear as if guided by invisible hands. But unlike the Ouija, AI is no parlor trick.

It's powerful, useful, and potentially perilous. Uploading confidential information into a free AI tool may breach confidentiality. Relying on AI to draft a motion without checking the citations may lead to embarrassment — or worse, sanctions.

The communication skill here is **supervised delegation**. Lawyers every message, regardless of me-

already know how to oversee paralegals or clerks; the same skill applies to AI. Treat it as a junior assistant: Give clear instructions, review the work, and correct errors. Rule 5.3 makes clear that responsibility always flows back to the lawyer. AI can assist, but it cannot replace professional judgment.

diuum.

- **Competence:** Understand the tools — technological and otherwise — you use.
- **Supervision:** Treat AI and staff alike as helpers, not substitutes.

Most ethical missteps don't leap out with a scream. They creep in quietly — through a missed explanation, a late-night text, or blind trust in technology. With vigilance, lawyers can shine light into the shadows.

Warding off the ethical boogeyman

What, then, keeps the monsters at bay? Not garlic or holy water. It's the lawyer's toolbox of communication skills:

- **Clarity:** Translate legalese into plain speech.
- **Candor:** Avoid half-truths and deceptive framing.
- **Confidentiality:** Safeguard

hold the silver bullets: the Model Rules, our professional judgment, and the timeless skills of clear, candid, and careful communication. With those in hand, we can keep the boogeyman at bay and ensure that, in law as in life, we are remembered not for tricks but for the lasting treat of trust.

Kristi Paulson is the owner of PowerHouse Mediation and The Professional Education Group. Kristi earned a law degree from the University of Minnesota Law School and holds a master's degree in communication. With a diverse background as a trial lawyer, mediator, and educator, she specializes in writing about communication skills, ethics, dispute resolution and trial techniques. To learn more, visit <https://powerhousemediation.com>.

Final thought

This Halloween, while others chase ghosts and goblins, lawyers should beware the monsters that dwell in our professional gray areas. The scariest part isn't their existence — it's how ordinary they look in the moment. The good news is that we already