

PREVENTING LEGAL MALPRACTICE CLAIMS: POTENTIAL PITFALLS AND HOW TO AVOID THEM

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I. Background

A. What is legal malpractice?

1. A relationship of attorney and client must exist before any claim for legal malpractice may lie. In general, an attorney cannot be liable to a non-client. This rule is founded upon three public policy bases: (1) the nature of the adversarial relationship between a client's attorney and other parties; (2) protection of the attorney's duty of loyalty and effective advocacy for the client; and (3) protecting attorneys from potential liability to an unlimited number of third parties.
2. "Legal malpractice" typically refers to an attorney's breach of two related, but distinct duties: (1) a duty of reasonable care, i.e., a duty not to be negligent, and (2) a fiduciary duty generally premised on notions of undivided loyalty.
3. A breach of the first duty gives rise to a claim of professional negligence. A breach of the second duty gives rise to a claim of breach of fiduciary duty.

B. This presentation is not intended to (and does not) set forth the standard of care. Rather, it is intended to provide guidance in avoiding even an allegation—however unfounded—that a standard of care has been breached.

C. How likely is a legal malpractice claim?

1. The average lawyer will have three legal malpractice claims made against him or her during the course of a career. Source: Mallen and Smith, Legal Malpractice.
2. According to the Profile of Legal Malpractice Claims (2004-2007) prepared by the ABA Standing Committee on Lawyers' Professional Liability, the following areas of law had the highest percentage of claims:
 - a. Personal Injury—Plaintiff: 21.6%
 - b. Real Estate: 20.1%
 - c. Family Law: 10.3%

- d. Estate, Trust & Probate: 9.7%
 - e. Collection and Bankruptcy: 7.3%
3. According to Willis Insurance Services' February 2009 Market Forecast, underwriters currently are expressing concern over:
- a. Intellectual property law
 - i. The potential damages can be quite large. One law firm in particular paid \$30 million to resolve a case involving a missed patent filing.
 - ii. These cases are expert-driven and expensive to defend.
 - b. Entertainment Law
 - c. Real Estate
 - d. Financial Institutions Work
 - i. The S&L crisis from the 1980s cost lawyers' professional liability insurers over \$1 billion in claims settlement.
 - ii. Attorneys may be vulnerable in the current financial climate.
 - iii. 17 banks actually failed in 2008, and many more are troubled.
 - iv. Surprisingly, the subprime crisis has not yet spawned any notable claims.
4. Since it began collecting data in 1985, the ABA Standing Committee on Lawyers' Professional Liability has observed the following trends:
- a. Percentage of distribution of claims has been remarkably consistent for the last twelve years.
 - b. Plaintiff's personal injury lawyers have won the "most claims" award every year that the Committee has been tracking statistics, and real estate practice has consistently been the first runner-up.
 - c. Real estate claims are increasing, however, and the gap is closing. The number of real estate-related claims has jumped nearly by half in the last three years. Given the current state of the real estate market, these claims are expected to continue to increase.

- d. The recent surge in bankruptcies may also result in an increase in claims in that area.
 - e. The risks associated with personal injury defense work appear to have dramatically decreased over the past few years, falling 7 percentage points just in the last three years.
 - f. Small firms account for the most claims by far. In the past three years, claims against large firms have decreased by 2.84%.
 - g. The number of severe claims (i.e., claims in which more than \$2 million is paid in indemnity or settlement) has continued to increase. Although large firms are under-represented with respect to claims generally, they have been the focus of some very large claims.
 - i. According to Willis Insurance Services' February 2009 Market Forecast, up until 2001, the largest amount paid to settle or resolve a lawyer's professional liability claim was \$60 million. Since 2001, at least five matters have settled or resolved for more than \$100 million, and two are predicted to be resolved for \$200 million.
 - h. Fewer claims are being abandoned or are resulting in no payment, and 42% of claims pursued take a year or more to resolve.
5. According to a 2008 Colorado Bar Association presentation by CNA Financial Corporation, CNA has observed that, in Colorado, the following areas of law had the highest percentage of claims:
- a. Civil Litigation: 20%
 - b. Personal Injury—Plaintiff: 16%
 - c. Family Law: 14%
 - d. Real Estate: 11%
 - e. Estate, Trust & Probate: 5%
6. Compared with the ABA's nationwide data, the trend in Colorado (at least among CNA policyholders) appears to be that Colorado has significantly more claims relating to non-personal injury civil litigation.
7. According to CNA, in Colorado, errors involving statutes of limitations make up 23% of reported claims.

8. Lawyers are increasingly being sued by non-clients. Colorado courts have recognized some exceptions to the general rule that an attorney has no liability to a non-client:
 - a. The attorney may be liable to the non-client if the attorney has acted fraudulently or maliciously. *See, e.g., Turman v. Castle Law Firm, LLC*, 129 P.3d 1103, 1105 (Colo. App. 2006).
 - b. The attorney may be liable for negligent misrepresentation if the attorney provided an opinion letter for the benefit of third parties and the opinion letter contained factual misrepresentations. *Mehaffy, Rider, Windholz & Wilson v. Central Bank Denver, N.A.*, 892 P.2d 230 (Colo. 1995); *Zimmerman v. Dan Kamphausen Co.*, 971 P.2d 236, 240 (Colo. App. 1998).
 - c. The Colorado Court of Appeals case of *Steele v. Allen*, 2009 WL 399992 (Colo. App. Feb. 19, 2009) held that an attorney can be liable for negligent misrepresentation outside of the opinion letter context, if the statements were made during an initial consultation for legal services. *Cf.* Rule 1.18 (setting forth duties owed to prospective clients. These duties include maintaining confidentiality and avoiding conflicts of interest).
 - d. An attorney may also be held liable for aiding and abetting a client's tortious conduct. For example, in *Anstine v. Alexander*, 128 P.3d 249, 256 (Colo. App. 2005), *rev'd on other gnds, Alexander v. Anstine*, 152 P.3d 497 (Colo. 2007), the Colorado Court of Appeals held that an attorney can be liable to a non-client for aiding and abetting a client's breach of fiduciary duty. The Colorado Supreme Court reversed the Court of Appeals' decision in *Anstine* on other grounds. It expressly noted, however, that it was not reaching the issue of whether an attorney can be held liable under such an aiding and abetting theory.
 - e. In some states, insurance companies are bringing suit against lawyers who were retained by the insurance company to represent an insured. It may be more difficult for insurers to bring such claims in Colorado, where an attorney represents the insured only and not the insurer. *See* Colorado Bar Association's Ethics Opinion 91.
9. According to the Office of Attorney Regulation Counsel ("OARC"), 4169 requests for investigation were filed in 2009. During the last few years, the number of requests for investigation ranged from approximately 4000 to 4500. The four most common allegations are:
 - a. Action on the case: 32%

- b. Fee matters: 12%
- c. Neglect: 9%
- d. Communications: 8%

10. The areas of practice that generate the most requests are:

- a. Domestic Relations: 17%
- b. General Civil: 10%
- c. Criminal: 9%
- d. Trust Account Notification: 8%

D. Preventative Maintenance

1. Purchase malpractice insurance.

- a. Know your limits of liability.
- b. Know what is excluded.
- c. Realize that your clients can look online to determine if you carry malpractice insurance.

2. Know the rules governing your conduct.

a. The Colorado Rules of Professional Conduct govern the actions of all attorneys in Colorado and have been adopted by the Colorado Supreme Court.

b. The Colorado Rules of Professional Conduct also have been adopted by the U.S. District Court for the District of Colorado for the conduct of attorneys. D.C.COLO.LCivR 83.4.

i. However, pursuant to Administrative Order 2007-6, the U.S. District Court for the District of Colorado has not adopted the following rules regarding limited representation, as the court has determined that limited representation is inconsistent with Fed. R. Civ. P. 11 and “also inconsistent with the view of the judges of this court concerning the ethical responsibility of members of the bar of this court”:

(a) Rule 1.2(c) (limiting scope of representation)

- (b) Rule 4.2, comment 9A (communication with person to whom counsel is providing limited representation)
 - (c) Rule 4.3, comment 2A (dealing with person to whom counsel is providing limited representation)
 - (d) Rule 6.5 (nonprofit and court-annexed limited legal services)
- ii. The U.S. District Court for the District of Colorado has not adopted Rule 1.16(b)(1) (permissive withdrawal), as the rule is consistent with D.C.COLO.LCivR 83.3D and 57.5D.
- iii. The U.S. District Court for the District of Colorado also has not adopted Rule 4.4(b) (inadvertent disclosure), as “Rule 26 of the Federal Rules of Civil Procedure and interpretive case law provide comprehensive procedures regarding the issue of inadvertent production of privileged and protected information.”
- c. The full text of the Rules, in searchable form, is available in the Opinions/Rules/Statutes section of the CBA website at: www.cobar.org.
- d. Previously, the preamble to the Rules provided: “Violation of a Rule should not in and of itself give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The rules are designed to provide guidance to lawyers and provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability.”
 - i. As a consequence, courts held that violation of the Rules does not give rise to an independent cause of action and does not provide grounds for civil malpractice liability per se. *See, e.g., Bryant v Hand*, 404 P.2d 521, 522 (Colo. 1965); *Taylor v. Grogan*, 900 P.2d 60, 63 (Colo. 1995); *Olsen and Brown v. City of Englewood*, 889 P.2d 673, 676 (Colo. 1995).
- e. Effective January 1, 2008, the Preamble was amended (consistent with amendments adopted in the ABA Ethics 2000 Model Rules of Professional Conduct), to state that: “Nevertheless, since the Rules do establish standards of conduct by lawyers, in appropriate cases, a lawyer’s violation of a Rule may be evidence of breach of the applicable standard of conduct.”

II. The Potential Client—Screening

- A. Establish criteria by which clients, cases and transactions will be evaluated and accepted. One way to avoid legal malpractice claims is to identify potential clients who are likely to become problem clients down the road.
1. Client has already gone through one or more lawyers on the same matter.
 2. Client expresses unrealistic expectations.
 3. Client is unwilling to agree to your fee.
 4. Client has a personal vendetta.
 5. Client wants a hired gun.
- B. Be wary of practicing in a new area.
1. *See Colorado Rule of Professional Conduct 1.1, which states that “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”*
 2. The comments to Rule 1.1 state that “A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation . . . The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence.”
- C. Even if you have the expertise, do you have the time necessary to devote to the matter?
- D. Advertising—Beyond Billboards and Television.
1. A lawyer’s services or fees can be advertised through any “public media.” Rule 7.2. This includes legal directories, websites, and other marketing materials.
 2. Advertisements cannot contain false or misleading communications about a lawyer’s services. A communication is false or misleading if it:
(1) “contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading”; (2) “compares the lawyer’s services with other lawyer’s services, unless the comparison can be factually substantiated”; or (3) “is likely to create an unjustified expectation about results the lawyer can achieve.” Colorado Rule of Professional Conduct 7.1.

3. A lawyer may be held liable under the Colorado Consumer Protection Act for deceptive trade practices. *Crowe v. Tull*, 126 P.3d 196, 205 (Colo. 2006). However, “mere advertising by an attorney lacking the intent to defraud will not convert a malpractice claim into a CCPA claim.” *Id.* at 204.
 4. Trade names are now permitted so long as they comply with Rule 7.1 and do not imply a connection to a government agency or charitable organization.
 5. Websites are a form of advertisements. What representations are you making? The statements cannot contain materially factual misrepresentations. Colorado Rule of Professional Conduct 7.1.
- E. Don’t hesitate to turn down a potential client.
- F. Send non-engagement letter.
1. Advise the recipient that you have decided not to accept the representation.
 2. Advise the recipient of any statutes of limitations applicable to his or her claims.
 3. Advise the recipient that he or she should seek other counsel.
- III. You’ve agreed to take on the representation—now what?
- A. Perform conflicts check.
1. Establish a system for clearing conflicts.
 2. The Colorado Rules of Professional Conduct set forth three provisions pertaining directly to conflicts of interest issues: Rule 1.7, Rule 1.8, and Rule 1.9. Rule 1.7 sets out the general rules concerning conflicts of interest; Rule 1.8 discusses transactions prohibited between client and lawyer and other types of specific conflicts; and Rule 1.9 discusses conflict issues involving former clients.
 3. Rules 1.10, 1.11, 1.12, and 1.13 indirectly discuss conflict of interest issues pertaining to lawyers who change law firms, leave government service, or represent organizations.
 4. Check the opposing lawyer’s name and all entity names as part of the conflicts check.
 5. Update the conflicts check if changes occur in the case, e.g., new parties are added to a lawsuit or third parties are designated.

B. Send engagement letter.

1. Make sure the engagement letter complies with the Rules of Professional Conduct.
 - a. Rule 1.5(b) states that “When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.”
 - b. Rule 1.5(b) also treats a material change to the basis or rate of the lawyer’s fees or expenses any time after the initial fee arrangement as a business transaction with a client, which requires the lawyer to comply with Rule 1.8(a). Rule 1.5(b) (“Except as provided in a written fee agreement, any material changes to the basis or rate of the fee or expenses are subject to the provisions of Rule 1.8(a).”).
 - c. Rule 1.8(a) requires that (1) the terms must be fair and reasonable to the client and fully disclosed in writing in a manner that can be reasonably understood by the client; (2) the client must be advised in writing of the desirability of seeking, and must be given a reasonable opportunity to seek, the advice of independent legal counsel; and (3) the client must give informed consent, in a writing signed by the client. Rule 1.8(a). Informed consent is defined by the Rules as an agreement to a proposed course of action after the lawyer has adequately communicated information about the material risks and alternatives.
 - d. If you modify the fee arrangement mid-stream, you must comply with Rule 1.8(a). *See In re Fisher*, 06PDJ038, in which the Hearing Board determined the respondent violated the Colorado Rules of Professional Conduct by failing to provide competent representation, neglecting a legal matter, obtaining a proprietary interest in the subject matter of the representation, and obtaining an interest adverse to his client’s without securing consent or advising the client to seek independent counsel. The respondent received a sanction of six months stayed suspension during a two-year probation. The Supreme Court affirmed. *In re Fisher*, 202 P.3d 1186 (Colo. 2009), *reh'g denied* (Mar. 2, 2009), *cert. denied*, 130 S. Ct. 125, 175 L. Ed. 2d 34 (U.S. 2009).
 - e. The “except as provided in a written fee agreement” language of Rule 1.5(b) suggests that a lawyer can include language in its engagement letters that will satisfy the Rule in the event that the attorney increases rates during the course of representing the client. To comply with the Rule, however, the engagement letter must be

signed by the client, even if the client is “regularly represented” by the lawyer.

- f. Put unearned fees and flat fees in the trust account. Use milestones to determine when to withdraw flat fees that have been earned.
- g. Since 12% of the requests for investigation involve fees, understand your fee agreement and the limits of what you can charge. *See, e.g. People v. Feather*, 180 P.3d 437 (Colo. O.P.D.J. 2007) (affirming the Hearing Board’s sanction of a public censure, where the respondent and his client entered into a written contingent fee agreement “to collect back child support,” the respondent reduced the child support arrearages to two judgments and collected \$4,000 from one judgment to purchase an oil/gas royalty for his client, and the respondent then claimed a perpetual one-third interest in the monthly payment from the oil/gas royalty).

2. Clearly identify your client.

- a. Multiple clients? Send a joint representation letter outlining the potential conflicts and obtaining each client’s informed consent in writing to the joint representation.
- b. Do you represent an entity, or its constituents?
 - i. A lawyer retained by an organization represents the organization. “Although the organization acts through its authorized constituents such as stockholders, directors, officers, agents, and employees, the lawyer representing the organization does not automatically represent these individual constituents merely by virtue of representing the organization.” Colorado Bar Association’s Ethics Opinion 120.
 - ii. “In general, it is improper for a lawyer who represents an organization to assert that he or she represents some or all of the constituents of the organization unless the lawyer reasonably believes he or she has in fact been engaged by the constituent or constituents. Knowingly making such an assertion without having a reasonable belief that he or she has in fact been engaged by the constituent or constituents would violate Rule 4.1 on truthfulness in statements to others and Rule 8.4(c). Further, such an assertion may violate Rule 3.4(a), which prohibits unlawfully obstructing another party’s access to evidence.” *Id.*
 - iii. “In dealing with an organization’s directors, officers, employees, members, shareholders and 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." Rule 1.13(f).

3. Clarify the fees and costs that the client will be expected to pay.
 - a. *See* Rules 1.5 and 1.8.
 - b. The comments to Rule 1.4 state that "Information provided to the client . . . should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. . . . It is strongly recommended that all these communications be in writing. As to the basis or rate of the fee, see Rule 1.5(b)."
 - c. A contingent fee must also meet all of the requirements of Chapter 23.3 of the Colorado Rules of Civil Procedure, "Rules Governing Contingent Fees." For example, all contingent fee arrangements must be in writing, regardless of whether the client-lawyer relationship is new or established.
4. Clarify the scope of the representation.
 - a. State accurately and specifically the work that will be done.
 - i. *See* Rule 1.2(c), which provides that "A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable and the client gives informed consent."
 - b. State any matters that you will not be handling, and advise the client to immediately seek other counsel to represent him or her in that matter.
5. Tell the client what his or her duties are, e.g., to cooperate and timely pay your bills, and that you will withdraw if the client does not fulfill his or her responsibilities.
 - a. *See* Rule 1.16 regarding withdrawal.
6. Obtain the client's signature indicating his or her consent.
 - a. *See* comments to Rule 1.5 ("A written statement concerning the fee reduces the possibility of misunderstanding. Lawyers are well-advised to use written disclosures even when they are not required. Moreover, it is preferable, although not mandatory, to

obtain the client's signature acknowledging the basis or rate of the fee.”).

7. Note that you are prohibited from asking the client to agree prospectively to limit your liability for malpractice unless permitted by law and the client is independently represented in making the agreement. Rule 1.8(h); *see also People v. Ginsberg*, 967 P.2d 151 (Colo. 1998) (90-day suspension was appropriate sanction for attorney who, among other things, included in an extension agreement drafted for a client a release of claims against the attorney, in violation of Rule 1.8(h)).
- C. Understand the client's goals—e.g., quick resolution? Principle?
- D. Educate the client
1. Explain the process and what to expect.
 2. Discuss the anticipated fees and expenses.
 3. Pay court reporters, experts and other service providers. *See, e.g., People v. Eamick*, 168 P.3d 519 (Colo. O.P.D.J. 2007) (attorney violated Rule 8.4(d) by ordering a transcript when he knew neither he nor his client could afford to pay for it).
- E. Create a paper trail.
1. Take detailed notes.
 2. Document important discussions had with the client.
 3. Document decisions made by a client.
 - a. Settlement demands and settlement offers.
 - b. Decisions to not pursue matters.
 4. Include detail on your billing records.
- F. Communicate with your client
1. Rule 1.4 obligates you to, among other things, (a) keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and (b) explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
 2. Return all phone calls and e-mails promptly, preferably within 24 hours.

3. If you do not have time to return a call or respond to an e-mail, have a colleague or assistant contact the client. Alternatively, let the client know that you have received their inquiry, and will respond by a date certain (of course, be sure to respond by that date).
4. Have copies of all correspondence and pleadings sent to the client as a matter of course, and send periodic status reports.
5. *See People v. Wright*, 947 P.2d 941 (Colo. 1997) (attorney failed to communicate adequately with client, where he returned only one of her numerous calls). Approximately 8% of the complaints the OARC receives involve communication issues. It is a rare circumstance where you provide too much information to a client.

G. Identify problems

1. Is the client a “slow pay” or “no pay”? This may be a sign that the client is unhappy with your work.
2. A proactive approach can keep the problem from getting worse.

H. Be realistic in your communications with the client.

1. Don’t promise results.
2. If you aren’t sure of an answer, inform the client of that fact.
3. Perform adequate legal research and know the substantive law.

I. Don’t have inappropriate involvement with the client.

1. Avoid romantic or inappropriately personal relationships with clients during the time of the representation.
 - a. Sexual relations are prohibited unless the sexual relationship preexisted the attorney-client relationship. Rule 1.8(j).
 - b. Token gifts are permitted, but substantial gifts from non-relatives are presumptively fraudulent. Rule 1.8, comment 6.
2. Avoid business relationships during the time of the representation.
 - a. Business relationships to avoid include:
 - i. Acting as director or officer of for-profit client company.
 - ii. Investing in client securities.
 - iii. Becoming involved in business deal with client.

- b. Why should these relationships be avoided?
 - i. Conflict of interest issues.
 - ii. Typically excluded from coverage under lawyer's professional liability policy, and directors' and officers' insurance may be inadequate or nonexistent.
 - iii. Law firm may be vicariously liable for the lawyer's business activities.
 - iv. Law may impose a higher standard of care on a director or officer who also acts as the company's lawyer.
 - v. Lawyers typically fail to comply with Rule 1.8(a), which can result in a diversion or discipline.

J. Establish a calendaring or docketing system.

- 1. Have all correspondence and pleadings checked for deadlines and calendared immediately.
- 2. Double-check the dates calendared for accuracy.
- 3. Calendar reminders leading up to the due date.
- 4. Build redundancy into your system.

IV. The End of the Engagement

- A. Send disengagement letter confirming that the matter is closed, or that you are no longer representing the client on the matter.
 - 1. See comments to Rule 1.3 (“Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client’s affairs when the lawyer has ceased to do so.”); Rule 1.16(d) (lawyer must give reasonable notice to client upon termination of representation).
 - 2. The potential pitfalls of failing to send an end of engagement letter are illustrated in *Brown v. Silvern*, 45 P.3d 749 (Colo. App. 2001). In *Brown*, the plaintiff filed a legal malpractice action against his former attorney, alleging that the attorney was negligent in, among other things, failing to file a timely claim and failing to advise the plaintiff of the applicable statute of limitations. *Id.* at 752. It was undisputed that the plaintiff had obtained his case file from the attorney and, two months later, the plaintiff retained a second attorney. *Id.* Nevertheless, the Colorado Court of

Appeals held that there were disputed issues of material fact regarding whether an attorney-client relationship remained once the plaintiff took his case file and retained a second attorney. *Id.*

3. Had the defendant attorney in *Brown* sent the client a disengagement letter, he may have been able to prevent this malpractice lawsuit.
- B. If the matter is still pending, apprise the client of any deadlines of which new counsel should be aware, and of the need to immediately obtain new counsel.
- C. Be wary of suing clients for fees.
1. In over 40% of fees lawsuits, the client brings a counterclaim for legal malpractice. In fact, a legal malpractice claim is a compulsory counterclaim in a suit for fees. *Allen v. Martin*, 203 P.3d 546 (Colo. App. 2008), *cert. denied*, 2009 WL 501890 (Colo. March 2, 2009).
 2. These claims can make it more difficult to obtain legal malpractice insurance.
 3. The client is more likely to file a grievance.
- V. Problems?
- A. Tell the client.
1. A lawyer has a duty to inform the client of adverse developments—including those resulting from the lawyer’s own error—if the error is material, that is, the error likely will result in prejudice to the client’s right or claim. Colorado Bar Association’s Ethics Opinion 113.
 2. A lawyer also may need to advise the client to consult with independent counsel regarding the error, and may be precluded from continuing to represent the client. *Id.*
 3. But, a “lawyer need not and should not inform the client of the existence or merit of a legal malpractice claim against the lawyer, or of the desirability of terminating the lawyer’s representation.” *Id.*
- B. Promptly report actual or potential claims to your insurer.
1. Know and comply with your insurance policy’s notice requirements.
 2. Do not attempt to settle the matter yourself.
- VI. Top 10 Ways to Avoid a Malpractice Claim
- A. Put your agreement with the client in writing—preferably, before entering an appearance or doing any work.

- B. Return all of the client's calls and correspondence—promptly.
- C. Copy the client on all documents you receive, and all documents you generate—again, promptly. Send the client periodic status reports, and advise the client of all important events and decisions.
- D. Know your limitations, both in terms of competence and time.
- E. Never get involved in a business dealing with a client.
- F. Never get romantically involved with a client.
- G. Look out for conflicts of interest.
- H. Have a good calendaring system.
- I. Once the matter is concluded, send a letter to the client confirming that you no longer represent the client.
- J. Don't sue the client (unless you really, really need to).

VII. Top 10 Ways to Avoid a Grievance

- A. Communicate, communicate, communicate.
- B. Once you accept the case, do the work.
- C. Put unearned fees and flat fees into the trust account, and avoid commingling.
- D. Bill regularly.
- E. Avoid conflicts of interest.
- F. Return client files.
- G. Don't engage in unprofessional conduct.
- H. Never lie to the court, opposing counsel or the client.
- I. Don't practice Colorado law if you are not admitted in Colorado. Let clients, opposing counsel, and the world know that you are not yet a Colorado lawyer.
- J. Be aware of representations made on websites and social media issues.