

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2021(10), May 20, 2021, effective July 1, 2021

Unauthorized Practice of Law; Multijurisdictional Practice of Law

Colo. R. Prof'l. Cond. 5.5

Rule 5.5 - Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not:

- (1)** practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by C.R.C.P. 204, *et seq.* or federal or tribal law;
- (2)** practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction;
- (3)** assist a person who is not authorized to practice law pursuant to subpart (a) of this Rule in the performance of any activity that constitutes the unauthorized practice of law; or
- (4)** allow the name of a disbarred lawyer or a suspended lawyer who must petition for reinstatement to remain in the firm name.

(b) A lawyer shall not employ, associate professionally with, allow or aid a person the lawyer knows or reasonably should know is a disbarred, suspended, or on disability inactive status to perform the following on behalf of the lawyer's client:

- (1)** render legal consultation or advice to the client;
- (2)** appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3)** appear on behalf of a client at a deposition or other discovery matter;
- (4)** negotiate or transact any matter for or on behalf of the client with third parties;

(5) otherwise engage in activities that constitute the practice of law; or

(6) receive, disburse or otherwise handle client funds.

(c) Subject to the limitation set forth below in paragraph (d), a lawyer may employ, associate professionally with, allow or aid a lawyer who is disbarred, suspended (whose suspension is partially or fully served), or on disability inactive status to perform research, drafting or clerical activities, including but not limited to:

(1) legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; and

- (3) accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing assistance to the lawyer who will appear as the representative of the client.
- (d) A lawyer shall not allow a person the lawyer knows or reasonably should know is disbarred, suspended, or on disability inactive status to have any professional contact with clients of the lawyer or of the lawyer's firm unless the lawyer:
- (1) prior to the commencement of the work, gives written notice to the client for whom the work will be performed that the disbarred or suspended lawyer, or the lawyer on disability inactive status, may not practice law; and
- (2) retains written notification for no less than two years following completion of the work.
- (e) Once notice is given pursuant to C.R.C.P. 242.32 or this Rule, then no additional notice is required.

RPC 5.5

Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Rule 5.5(a) amended effective April 6, 2016; amended and adopted by the Court, En Banc, May 20, 2021, effective 7/1/2021.

COMMENT

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. In order to protect the public, persons not admitted to practice law in Colorado cannot hold themselves out as lawyers in Colorado or as authorized to practice law in Colorado. Rule 5.5(a)(1) recognizes that C.R.C.P. 204, et seq. permit lawyers to practice law in accordance with their terms in Colorado without a license from the Colorado Supreme Court. Lawyers may also be permitted to practice law within the physical boundaries of the State, without such a license, where they do so pursuant to Federal or tribal law. Such practice does not constitute a violation of the general proscription of Rule 5.5(a)(1).

[2] Paragraph (a)(3) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in governmental agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[3] A lawyer may employ or contract with a disbarred, suspended lawyer or a lawyer on disability inactive status, to perform services that a law clerk, paralegal or other administrative staff may perform so long as the lawyer directly supervises the work. Lawyers who are suspended but whose entire suspension has been stayed may engage in the practice of law, and the portion of the Rule limiting what suspended lawyers may do does not apply.

[4] The name of a disbarred lawyer or a suspended lawyer who must petition for reinstatement must be removed from the firm name. A lawyer will be assisting in the unauthorized practice of law if the lawyer fails to remove such name.

[5] *Disbarred, suspended lawyers or lawyers on disability inactive status may have contact with clients of the licensed lawyer so long as such lawyer and the licensed lawyer provide written notice to the client that the lawyer may not practice law. Written notice to the client shall include an advisement that the person may not give advice or engage in any other conduct considered the practice of law. Proof of service shall be maintained in the licensed lawyer's file for a minimum of two years.*

[6] *Separate and apart from the disbarred, suspended or disabled lawyer's obligation not to practice law, the licensed lawyer who employs or hires such person has an obligation to directly supervise that individual.*

ANNOTATION Law reviews. For article, "Negotiations and the Unauthorized Practice of Law", see 23 Colo. Law. 361 (1994). For comment, "Increasing Access to Justice: Expanding the Role of Nonlawyers in the Delivery of Legal Services to Low-Income Coloradans", see 72 U. Colo. L. Rev. 459 (2001). For article, "Avoiding the Unauthorized Practice of Law by Non-lawyer Assistants", see 32 Colo. Law. 27 (March 2003). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). Annotator's note. Rule 5.5 is similar to Rule 5.5 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule. An attorney's appearance as counsel of record in numerous court proceedings following an order of suspension constituted conduct involving the unauthorized practice of law. *People v. Kargol*, 854 P.2d 1267 (Colo. 1993). An attorney who is suspended for failure to comply with CLE requirements is barred from practicing law under this rule and C.R.C.P. 241.21 (d), the same as if the attorney had been suspended following a disciplinary proceeding. Continuing to practice law after such an administrative suspension warranted an additional 18-month suspension. *People v. Johnson*, 946 P.2d 469 (Colo. 1997). Public censure justified where, although the attorney failed to notify opposing counsel and appeared in one hearing after imposition of the suspension, the attorney's involvement was minimal, it occurred only upon request by the client, it did not result in any harm to the client, and the attorney did not receive any benefit from the appearance. *People v. Pittam*, 917 P.2d 710 (Colo. 1996). Public censure appropriate for practicing law while suspended where 90-day suspension ended four years before the unauthorized practice and where the attorney never applied for reinstatement. *People v. Cain*, 957 P.2d 346 (Colo. 1998). Suspension of one year and one day warranted in light of the seriousness of attorney's misconduct in conjunction with his noncooperation in the disciplinary proceedings and his substantial experience in the practice of law. *People v. Clark*, 900 P.2d 129 (Colo. 1995). Conduct violating this rule, in conjunction with other disciplinary rules, sufficient to justify disbarment where the attorney continued to practice law while on suspension, repeatedly neglecting his clients and failing to take reasonable steps to protect clients' interests. *People v. Fager*, 938 P.2d 138 (Colo. 1997). Conduct violating this rule in conjunction with other rules of professional conduct is sufficient to justify public censure. *People v. Newman*, 925 P.2d 783 (Colo. 1996). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. *People v. Johnson*, 946 P.2d 469 (Colo. 1997); *People v. Swarts*, 239 P.3d 441 (Colo. O.P.D.J. 2010). Conduct violating this rule sufficient to justify disbarment where attorney continued to practice law when under suspension. *People v. Redman*, 902 P.2d 839 (Colo. 1995); *People v. Ebbert*, 925 P.2d 274 (Colo. 1996). Counsel violated this rule by allowing his non-lawyer wife to conduct initial client interviews and to counsel clients concerning appropriate actions to take while in bankruptcy proceedings. This in conjunction with violation of other disciplinary rules was sufficient to justify disbarment. *People v. Steinman*, 930 P.2d 596 (Colo. 1997). Conduct violating this rule in conjunction with other disciplinary rules sufficient to justify disbarment. *People v. Steinman*, 930 P.2d 596 (Colo. 1997); *People v. Holmes*, 955 P.2d 1012 (Colo. 1998); *In re Hugen*, 973 P.2d 1267 (Colo. 1999); *People v. Mason*, 212 P.3d 141 (Colo. O.P.D.J. 2009); *People v. Zodrow*, 276 P.3d 113 (Colo. O.P.D.J. 2011); *People v. Calvert*, 280 P.3d 1269 (Colo. O.P.D.J. 2011). Cases Decided Under Former DR 3-101. Law reviews. For article, "Potential Liability for Lawyers Employing Law Clerks", see 12 Colo. Law. 1243 (1983). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning

Documents, see 19 Colo. Law. 1793 (1990). License to practice law assures public that the lawyer who holds the license will perform basic legal tasks honestly and without undue delay, in accordance with the highest standards of professional conduct. People v. Dixon, 621 P.2d 322 (Colo. 1981). Public expects appropriate discipline for professional misconduct. The public has a right to expect that one who engages in professional misconduct will be disciplined appropriately. People v. Dixon, 621 P.2d 322 (Colo. 1981). Services of an attorney not licensed in Colorado are compensable as attorney fees where no court appearances made and the work performed consisted of obtaining a variance from a municipal zoning code. Catoe v. Knox, 709 P.2d 964 (Colo. App. 1985). Consulting services performed by an out-of-state lawyer do not constitute unauthorized practice of law and therefore may be compensated as attorney fees. Dietrich Corp. v. King Res. Co., 596 F.2d 422 (10th Cir. 1979). Evidence sufficient to justify one-year suspension. People ex rel. MacFarlane v. Boyls, 197 Colo. 242, 591 P.2d 1315 (1979). Suspended attorney must demonstrate rehabilitation. The actions of a suspended attorney who took part in a complex real estate transaction and engaged in the practice of law by representing, counseling, advising, and assisting a former client warranted suspension until he demonstrates by clear and convincing evidence that (1) he has been rehabilitated; (2) he has complied with and will continue to comply with all applicable disciplinary orders and rules; and (3) he is competent and fit to practice law. People v. Belfor, 200 Colo. 44, 611 P.2d 979 (1980). Permitting law clerk to render legal advice to clients constitutes aiding a nonlawyer in the unauthorized practice of law. People v. Felker, 770 P.2d 402 (Colo. 1989). Lawyer's review of living trusts which were sold by nonlawyers constituted aiding a nonlawyer in the unauthorized practice of law. Although suspension is generally prescribed for this type of conduct, weighing factors in mitigation against the seriousness of the conduct, public censure is an appropriate sanction in this case. People v. Volk, 805 P.2d 1116 (Colo. 1991); People v. Laden, 893 P.2d 771 (Colo. 1995). The counseling and sale of living trusts by nonlawyers constitutes the unauthorized practice of law. Lawyer's review of living trusts that were sold by nonlawyers constituted aiding a nonlawyer in the unauthorized practice of law. Six-month suspension held justified in this case because of aggravating factors including selfish motive, multiple offenses, and refusal to acknowledge the wrongful nature of such conduct. People v. Cassidy, 884 P.2d 309 (Colo. 1994). Attorney's practice of law while on inactive status constituted unauthorized practice of law. People v. Cassidy, 884 P.2d 309 (Colo. 1994). Attorney's continued practice of law while under an order of suspension, with no efforts to wind up the legal practice, and the failure to take action to protect the legal interests of the attorney's clients, warrants disbarment. People v. Wilson, 832 P.2d 943 (Colo. 1992). Public censure justified where attorney failed to attend to bankruptcy proceeding and scheduled meetings, failed to timely file pleadings and responses, and allowed his paralegal to engage in unauthorized practice of law. People v. Fry, 875 P.2d 222 (Colo. 1994). Attorney who continued to practice law while under suspension but did not harm any client was suspended. Attorney had been suspended from practice for three years when the court imposed an additional three-year suspension. People v. Ross, 873 P.2d 728 (Colo. 1994). Conduct violating this rule sufficient to justify suspension. People v. Macy, 789 P.2d 188 (Colo. 1990). Continuing to practice law while suspended is conduct justifying disbarment. People v. James, 731 P.2d 698 (Colo. 1987). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Pilgrim, 802 P.2d 1084 (Colo. 1990); People v. Mannix, 936 P.2d 1285 (Colo. 1997); People v. Madigan, 938 P.2d 1162 (Colo. 1997). Conduct violating this rule sufficient to justify disbarment. People v. Bealmear, 655 P.2d 402 (Colo. 1982); People v. Rice, 728 P.2d 714 (Colo. 1986).