

Document: Colo. RPC 3.3

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CO - Colorado Court Rules PAW ETTOC **Colorado Rules of Civil Procedure** **Appendix to Chapters 18 to 20** **The Colorado Rules of Professional Conduct** **Advocate**

Rule 3.3. Candor Toward the Tribunal.

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

History

Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; comment [1] amended and effective February 6, 2025.

▼ Annotations

Commentary

COMMENT

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer

of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperates in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take

reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

State Notes

ANNOTATION

Law reviews. For article, "The Attorney, the Client and the Criminal History: A Dangerous Trio", see 23 Colo. Law. 569 (1994). For article, "Exculpatory Evidence and Grand Juries", see 28 Colo. Law. 47 (Apr. 1999). For article, "Ethical Considerations and Client Identity", see 30 Colo. Law. 51 (Apr. 2001). For article, "Policing the Legal System: The Duty to Report Misconduct", see 30 Colo. Law. 85 (Sept. 2001). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (Nov. 2005). For article, "The Ethical Preparation of Witnesses", see 42 Colo. Law. 51 (May 2013). For article, "Out of Bounds: Boundary Issues in the Practice of Law", see 43 Colo. Law. 57 (Dec. 2014). For article, "Handling Electronic Documents Purloined by a Client", see 48 Colo. Law.

22 (Jan. 2019). For article, "Persuasion through Candor: An Appellate Lawyer's Duty and Opportunity", see 48 Colo. Law. 20 (Feb. 2019). For article, "Is the Doctrine of Laches Still Alive in Colorado?", see 52 Colo. Law. 26 (June 2023). For article, "The Legal Ethics of Generative AI -- Part 3", see 52 Colo. Law. 30 (Oct. 2023). For article, "Artificial Intelligence and Professional Conduct Considering the Ethical Implications of Using Electronic Legal Assistants", see 53 Colo. Law. 20 (Jan.-Feb. 2024).

Annotator's note. Rule 3.3 is similar to Rule 3.3 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.

It was inappropriate for counsel to file a motion and not mention contrary legal authority that was decided by the chief judge when the existence of the authority was readily available to counsel. *United States v. Crumpton*, 23 F. Supp. 2d 1218 (D. Colo. 1998).

An attorney will not be held responsible for failing to inform the court of material information of which the attorney is unaware. *Waters v. District Ct.*, 935 P.2d 981 (Colo. 1997).

A lawyer representing his own interests and not those of any clients cannot be found to have violated section (a)(1). *People v. Head*, 332 P.3d 117 (Colo. O.P.D.J. 2013).

An attorney cannot close her eyes to obvious facts, however, the duty to inform the court concerning her client's financial status does not obligate the attorney to undertake an affirmative investigation of her client's financial status. *Waters v. District Ct.*, 935 P.2d 981 (Colo. 1997).

An attorney is not responsible for informing the court of every known change in a client's financial circumstances but she must inform the court of material changes that not disclosing to the court would work a fraud on the court. For the purpose of determining eligibility for court appointed counsel, material changes are those which clearly render the client capable, on a practical basis, of securing competent representation or reimbursing some or all of the expenses of court-appointed counsel and costs. *Waters v. District Ct.*, 935 P.2d 981 (Colo. 1997).

Public censure is appropriate discipline for attorney who submitted falsified response to grievance committee's request for investigation, violated prohibition against engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and revealed client confidences to district attorney without client's consent. *People v. Lopez*, 845 P.2d 1153 (Colo. 1993).

Public censure is appropriate discipline where attorney falsely testified that he had automobile insurance at the time of an accident, but outcome of case was not thereby affected. *People v. Small*,

962 P.2d 258 (Colo. 1998).

Attorney signing substitute counsel's name to pleadings in a style different from his own signature, without authority to sign in a representative capacity and without any indication that he was signing in a representative capacity, violated this rule and warranted a six-month suspension. *People v. Reed*, 955 P.2d 65 (Colo. 1998).

Attorney attaching co-counsel's electronic signature to complaint, when co-counsel had not seen the complaint before it was filed, violated this rule and warranted a seven-month suspension. *People v. Wollrab*, 458 P.3d 908 (Colo. O.P.D.J. 2019).

Thirty-day suspension appropriate where attorney failed to inform U.S. bankruptcy court in Colorado, in a hearing on a motion to remand the matter to U.S. bankruptcy court in Massachusetts, that an order of dismissal of the bankruptcy proceeding between the same parties had been entered in California. *People v. Farry*, 927 P.2d 841 (Colo. 1996).

Attorney conduct violating this rule, in conjunction with other rules, sufficient to justify suspension when violation did not arise from neglect or willingness to take advantage of client's vulnerability and is mitigated by her inexperience in the practice of law, her lack of any prior disciplinary record, the fact that she had already been held in contempt and punished by the district court, and the fact that there is no suggestion of selfish motivation. Attorney's failure to appreciate the serious nature of conduct and the jurisdiction of the hearing board to discipline her is a serious matter meriting a period of suspension and a redetermination of her fitness before being permitted to practice law again. *In re Roose*, 69 P.3d 43 (Colo. 2003).

Suspension for three years appropriate when attorney circumvented proper channels for the adoption of a child by falsely listing her own husband as the birth father on the baby's birth certificate, counseled her husband to engage in fraudulent conduct, and provided false information on a petition for stepparent adoption. *People v. Ritland*, 327 P.3d 914 (Colo. O.P.D.J. 2014).

Aiding client to violate custody order sufficient to justify disbarment. *People v. Chappell*, 927 P.2d 829 (Colo. 1996).

Attorney who knowingly violated rule but without intent to deceive court is justifiably sanctioned. *People v. Trogani*, 203 P.3d 643 (Colo. O.P.D.J. 2008).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. *People v. Rolfe*, 962 P.2d 981 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Mason, 938 P.2d 133 (Colo. 1997); People v. Trogani, 203 P.3d 643 (Colo. O.P.D.J. 2008); People v. Maynard, 219 P.3d 430 (Colo. O.P.D.J. 2008); People v. Romero, 452 P.3d 275 (Colo. O.P.D.J. 2019); People v. Braham, 470 P.3d 1031 (Colo. O.P.D.J. 2017); People v. Fry, 501 P.3d 846 (Colo. O.P.D.J. 2021).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Goodman, 334 P.3d 241 (Colo. O.P.D.J. 2014); People v. Pruit, 452 P.3d 259 (Colo. O.P.D.J. 2019); People v. Breuer, 470 P.3d 706 (Colo. O.P.D.J. 2017); People v. Kazazian, 531 P.3d 1 (Colo. O.P.D.J. 2023).

Cases Decided Under Former DR 7-106.

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Use of Subpoenas in Civil Proceedings, see 19 Colo. Law. 1556 (1990).

Lawyers, as officers of the court, must maintain the respect due to courts and judicial officers. Losavio v. District Court, 182 Colo. 180, 512 P.2d 266 (1973).

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 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).

Actions taken by attorney contrary to court order violate this rule and justify suspension. People v. Awenius, 653 P.2d 740 (Colo. 1982); People v. Belina, 765 P.2d 121 (Colo. 1988).

Willful nonpayment of child support and failure to pay arrearages after ordered by court to do so is a violation of subsection (A). People v. Tucker, 837 P.2d 1225 (Colo. 1992).

Threatening to invoke disciplinary proceedings against judge in anticipation of adverse ruling warrants public censure. People v. Tatum, 814 P.2d 388 (Colo. 1991).

Prosecutor engaged in professional misconduct where references to the defense theory as "insulting" or a "lie" and to the defense's challenge to the credibility of a prosecution witness as

"cheap innuendos" were made for the obvious purpose of denigrating defense counsel. *People v. Jones*, 832 P.2d 1036 (Colo. App. 1991).

Prosecutor made argument of a highly improper nature by implying to jurors that opposing counsel did not have a good faith belief in the innocence of her client and such an argument served no legitimate purpose but had the function only of erroneously diverting the attention of the jurors from the factual issues concerning defendant's guilt. *People v. Jones*, 832 P.2d 1036 (Colo. App. 1991).

An attorney's personal belief in the veracity of a witness's testimony is not a proper subject of closing argument. Consequently, the law requires that the prosecutor's personal opinion as to the truth or falsity of any testimony or as to guilt shall not be outwardly indicated nor presented to the jury as an interpretation based upon legitimate inferences which might be drawn from the evidence adduced at trial. *People v. Jones*, 832 P.2d 1036 (Colo. App. 1991).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. *People v. Dalton*, 840 P.2d 351 (Colo. 1992).

Conduct violating this rule sufficient to justify public censure. *People v. Fieman*, 788 P.2d 830 (Colo. 1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. *People v. Creasey*, 793 P.2d 1159 (Colo. 1990); *People v. Taylor*, 799 P.2d 930 (Colo. 1990); *People v. Hyland*, 830 P.2d 1000 (Colo. 1992); *People v. Cohan*, 913 P.2d 523 (Colo. 1996); *People v. Wotan*, 944 P.2d 1257 (Colo. 1997); *People v. Porter*, 980 P.2d 536 (Colo. 1999); *In re Bobbitt*, 980 P.2d 538 (Colo. 1999).

Conduct violating this rule sufficient to justify suspension. *People v. Kane*, 655 P.2d 390 (Colo. 1982); *People v. Barnthouse*, 775 P.2d 545 (Colo. 1989).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. *People v. Schaefer*, 944 P.2d 78 (Colo. 1997).

Applied in *People ex rel. Aisenberg v. Young*, 198 Colo. 26, 599 P.2d 257 (1979); *People v. Kane*, 638 P.2d 253 (Colo. 1981); *People v. Harfmann*, 638 P.2d 745 (Colo. 1981); *Wilson v. People*, 743 P.2d 415 (Colo. 1987).

Cases Decided Under Former DR 7-107.

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990).

Trial judge has power to punish summarily for contempt any lawyer who in his presence wilfully contributes to disorder or disruption in the courtroom. *Losavio v. District Court*, 182 Colo. 180, 512 P.2d 266 (1973).

News releases by counsel held contrary to good practice. *Sergent v. People*, 177 Colo. 354, 497 P.2d 983 (1972).

The participation of the district attorney and his deputy in an ill-timed radio interview which suggested a connection between the condominium fires and organized crime is not condoned. *People v. Mulligan*, 193 Colo. 509, 568 P.2d 449 (1977).

Colorado Court Rules

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