

# Colo. R. Prof'l. Cond. 8.4

## Rule 8.4 - Misconduct

It is professional misconduct for a lawyer to:

- (a-1) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (a-2) knowingly assist or induce an LLP to violate the LLP Rules of Professional Conduct, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- (g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process;
- (h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law; or
- (i) engage in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities.

*RPC 8.4*

Committee comment amended October 17, 1996, effective 1/1/1997; entire Appendix repealed and readopted April 12, 2007, effective 1/1/2008; paragraph (c) amended and Adopted by the Court, En Banc, September 28, 2017, effective immediately; amended and adopted September 19, 2019, effective 9/19/2019; amended and adopted December 6, 2019, effective 12/6/2019; amended and adopted by the Court, En Banc, effective 11/16/2023.

### **COMMENT**

*[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.*

*[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be*

*construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.*

*[3] A lawyer who, in the course of representing a client, knowingly manifests by word or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (g) and also may violate paragraph (d). Legitimate advocacy respecting the foregoing factors does not violate paragraphs (d) or (g). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.*

*[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.*

*[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.*

*[5A] Sexual harassment may include, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that a reasonable person would perceive as unwelcome. The substantive law of employment discrimination, including antiharassment statutes, regulations, and case law, may guide, but does not limit, application of paragraph (i). "Professional activities" are not limited to those that occur in a client-lawyer relationship.*

*ANNOTATION Law reviews. For article, "Settlement Ethics", see 30 Colo. Law. 53 (December 2001). For article, "Improper Recording of an Attorney's Charging Lien", see 32 Colo. Law. 61 (February 2003). For article, "Discipline Against Lawyers for Conduct Outside the Practice of Law", see 32 Colo. Law. 75 (April 2003). For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (March 2004). For article, "Metadata: Hidden Information Microsoft Word Documents Its Ethical Implications", see 33 Colo. Law. 53 (October 2004). For comment, "Should a Lawyer Ever Be Allowed to Lie? People v. Pautler and a Proposed Duress Exception", see 75 U. Colo. L. Rev. 301 (2004). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Investigative Tactics: They May Be Legal, But Are They Ethical?", see 35 Colo. Law. 43 (January 2006). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "Litigating Disputes Involving the Medical Marijuana Industry", see 41 Colo. Law. 103 (August 2012). Annotator's note. Rule 8.4 is similar to Rule 8.4 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. A hearing board always has discretion in determining the appropriate sanction for attorney misconduct and may impose any of the forms of discipline listed in C.R.C.P. 251.6, which range from private admonition to disbarment. In re Attorney F, 2012 CO 57, 285 P.3d 322. Hearing board erred, therefore, in concluding that it was compelled by case law to impose a public censure instead of private admonition. In re Attorney F, 2012 CO 57, 285 P.3d 322. Attorney's refusal to return documents belonging to client's parents and assertion of a retaining lien constitute conduct which is prejudicial to the administration of justice.*

*People v. Brown*, 840 P.2d 1085 (Colo. 1992). Lawyer violated section (c) when he represented loan documents to be investment agreements to circumvent a provision in the Colorado Liquor Code that restricts the cross-ownership of businesses holding liquor licenses. *In re Lopez*, 980 P.2d 983 (Colo. 1999). Attorneys are responsible for ethical violation when their investigator surreptitiously recorded his telephone interview with employee of defendant. Even if lawyers had no prior knowledge of the investigator's recording, once they learned that the interview was done without the employee's consent, they should not have listened to or used the recording without the employee's consent.

*McClelland v. Blazin' Wings, Inc.*, 675 F. Supp. 2d 1074 (D. Colo. 2009). Attorney violated sections (a) and (c) by failing to notify a client that he never paid two medical bills that he had promised to pay, recording a false deed of trust memorializing a purported loan from two married clients to another client even though the clients had unequivocally refused to make the loan, and attempting to enter into a business transaction with clients without making disclosures required by rule 1.8. *People v. Calvert*, 280 P.3d 1269 (Colo. O.P.D.J. 2011). Lawyer violated section (c) when he failed to disclose the fact of his client's death during settlement negotiations. *People v. Rosen*, 199 P.3d 1241 (Colo. O.P.D.J. 2007). Failure of former district attorney to make ordered child support payments constitutes conduct prejudicial to the administration of justice and conduct that adversely reflects upon a lawyer's fitness to practice law. *People v. Primavera*, 904 P.2d 883 (Colo. 1995). Attorney who conditioned settlement agreement on plaintiffs not pursuing a grievance against him violated section (d) and constituted conduct prejudicial to the administration of justice. *In re Lopez*, 980 P.2d 983 (Colo. 1999). When a public defender gave his client the impression that he would provide better representation if the client hired him as private counsel, his conduct prejudiced the administration of justice under section (d), for which public censure was warranted. *People v. Casias*, 279 P.3d 667 (Colo. O.P.D.J. 2012). 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). A noble motive does not justify departure from any rule of professional conduct. A prosecutor trying to protect public safety is not immune from the code of professional conduct when he or she chooses deception as means for protecting public safety. *In re Pautler*, 47 P.3d 1175 (Colo. 2002). There is no imminent public harm, duress, or choice of evils exception or defense for a prosecutor to the rules of professional conduct. *In re Pautler*, 47 P.3d 1175 (Colo. 2002). Suspension appropriate where prosecutor engaged in intentional deception in order to secure a suspect's arrest. The prosecutor's conduct violated the public and professional trust, was intentional, created potential harm, and involved aggravating factors, thus, justifying suspension. *In re Pautler*, 47 P.3d 1175 (Colo. 2002). When considering discipline of attorneys who criticize judges, the *New York Times* standard should be applied because of the interests in protecting attorney speech critical of judges. Under the *New York Times* standard (*New York Times Co. v. Sullivan*, 376 U.S. 254(1964)), a two-part inquiry applies in determining whether an attorney may be disciplined for statements criticizing a judge: (1) Whether the disciplinary authority has proven that the statement was a false statement of fact (or a statement of opinion that necessarily implies an undisclosed false assertion of fact); and (2) assuming the statement is false, whether the attorney uttered the statement with actual malice--that is, with knowledge that it was false or with reckless disregard as to its truth. *In re Green*, 11 P.3d 1078 (Colo. 2000). Public censure was appropriate for attorney who violated this rule by simultaneously representing, as defendants in a quantum meruit and *lis pendens* suit initiated by a subcontractor, the homeowners, the general contractor, the bank holding deed of trust on homeowners property, and two other parties who had contracted with contractor. Balancing the seriousness of the misconduct with the factors in mitigation, and taking into account the respondent's mental state when he entered into the conflicts in representation, public censure is appropriate. *People v. Fritze*, 926 P.2d 574 (Colo. 1996). Public censure warranted where, although respondent did not notify his clients and opposing counsel of his suspension, he did notify the court early in proceedings, did not go forward with court proceedings while on suspension and no actual harm was demonstrated to any of his clients. *People v. Dover*, 944 P.2d 80 (Colo. 1997). Stipulated agreement and recommendation of public censure with certain conditions and monitoring based upon conditional admission of misconduct were warranted for

attorney who required that his associates sign a covenant that hindered a client's right to choose his or her own lawyer by interfering with the client's right to discharge his or her lawyer at any time, with or without cause. *People v. Wilson*, 953 P.2d 1292 (Colo. 1998). Public censure was appropriate 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). Knowingly deceiving a client by altering a settlement check generally would warrant a 30-day suspension, however, because the client was uninjured by the deception and the respondent had no previous discipline in 13 years of practice, public censure was adequate. *People v. Waitkus*, 962 P.2d 977 (Colo. 1998). One-year and one-day suspension warranted where respondent failed to serve a cross-claim, failed to respond to several motions, failed to keep client informed, advanced defense that was not warranted by the facts and existing law, and misrepresented to client the basis for the judgment in favor of the opposing party. *People v. Genchi*, 849 P.2d 28 (Colo. 1993). Six-month penalty justified for attorney pleading guilty to making and altering a false and forged prescription for a controlled substance and of criminal attempt to obtain a controlled substance by forgery and alteration, where mitigating factors included: (1) No prior disciplinary history; (2) personal or emotional problems at time of misconduct; (3) full and free disclosure by attorney to grievance committee; (4) imposition of other penalties and sanctions resulting from criminal proceeding; (5) demonstration of genuine remorse; and (6) relative inexperience in the practice of law. *People v. Moore*, 849 P.2d 40 (Colo. 1993). Six-month suspension appropriate for respondent convicted of drunken driving offense and assault. *People v. Shipman*, 943 P.2d 458 (Colo. 1997); *People v. Reaves*, 943 P.2d 460 (Colo. 1997). Multiple criminal and traffic convictions demonstrate a pattern of misconduct, and the presence of multiple offenses warrants suspension for six months with the requirement of reinstatement proceedings. *People v. Van Buskirk*, 962 P.2d 975 (Colo. 1998). Demonstration of four conditions required for attorney publicly censured after conviction of driving while ability impaired: Continue psychotherapy, remain on antabuse, submit monthly reports regarding progress on antabuse, and execute written authorization to therapist to release medical information regarding status on antabuse. *People v. Rotenberg*, 911 P.2d 642 (Colo. 1996). Thirty-day suspension warranted where lawyer, who represented an individual accused of first-degree murder, communicated with co-defendant who also was charged with first-degree murder and whose interests were adverse to the lawyer's client, without the knowledge or consent of the co-defendant's lawyers. The potential for harm was high in a first-degree murder case and the number of unauthorized contacts demonstrated more than negligence on the lawyer's part. *People v. DeLoach*, 944 P.2d 522 (Colo. 1997). Stipulated agreement and recommendation of suspension for 30 days based upon conditional admission of misconduct were warranted for attorney who committed unfair insurance claim settlement practices and tortious conduct in handling insurance investigation of fire claim that he was not competent to handle. *People v. McClung*, 953 P.2d 1282 (Colo. 1998). Forty-five-day suspension warranted for attorney's professional misconduct involving the improper collection of attorney's fees in six instances. *People v. Peters*, 849 P.2d 51 (Colo. 1993). Suspension of three months is appropriate when attorney engaged in sexual intercourse with dissolution of marriage client on one occasion, had a history of disciplinary sanctions, but cooperated with the disciplinary investigation. *People v. Barr*, 929 P.2d 1325 (Colo. 1996). Suspension for one year and one day, with conditional stay of all but 60 days, warranted for attorney's backdating of brief and certificate of service, after which attorney voluntarily reported misconduct, attempted to rectify the violation, cooperated in disciplinary proceedings, and showed genuine remorse. *People v. Maynard*, 219 P.3d 430 (Colo. O.P.D.J. 2008). Suspension for one year and one day appropriate where attorney, among other disciplinary rule violations, violated section (d) by failing to pay attorney fees until two years after a malpractice action against the attorney and section (h) by engaging in two non-sufficient funds transactions involving his "special" account, and twenty-two non-sufficient funds transactions in his personal account. *People v. Johnson*, 944 P.2d 524 (Colo. 1997). Suspension for one year and one day appropriate where attorney had a selfish or dishonest motive in retaining fees he received from clients that rightfully belonged to his law firm, but had no prior disciplinary record and made a timely good faith effort to provide restitution. *People v. Bronstein*, 964 P.2d 514 (Colo. 1998) (overruled in *In the Matter of Thompson*, 991 P.2d 820 (Colo. 1999)). Suspension for one year and one day warranted where attorney violated

section (c) by knowingly submitting a false statement to the small business administration for the purpose of obtaining a loan. *People v. Mitchell*, 969 P.2d 662 (Colo. 1998). Suspension of one year and one day appropriate where attorney committed offense of third-degree sexual assault on a client and recklessly accused a lawyer and judge of having an improper ex parte communication. *In re Egbune*, 971 P.2d 1065 (Colo. 1999). It is appropriate to condition reinstatement, after suspension for a year and a day, upon the attorney's submission to an independent medical examination by a qualified psychiatrist, where the attorney's belief in a conspiracy to remove her from the practice of law was both ingrained and illogical. The suspension is warranted because the attorney violated section (d) by threatening to sue witnesses if they testified at a hearing over an award of attorney fees and section (c) by secretly negotiating with opposing litigants for additional attorney fees when the attorney's contingency fee contract with her former clients gave them a potentially valid claim to a portion of the fees. *People v. Maynard*, 275 P.3d 780 (Colo. O.P.D.J. 2010). Two-year suspension warranted when attorney entered Alford plea to defer judgment on a charge of soliciting for child prostitution. *People v. Gritchen*, 908 P.2d 70 (Colo. 1995). Driving while under the influence of alcohol with an expired driver's license and no proof of insurance, and accepting one ounce of cocaine as payment for legal services from a person believed to be a client facing drug charges, warranted a three-year suspension. *People v. Madrid*, 967 P.2d 627 (Colo. 1998). Suspension for three years was appropriate in case involving violation of this rule and others, together with attorney's breach of his duty as client's trustee to protect his client, who was a particularly vulnerable victim that was recuperating from a serious head injury. *People v. DeRose*, 945 P.2d 412 (Colo. 1997). Suspension of three years was appropriate for attorney who drove a vehicle on at least four occasions after his driver's license was revoked and who also failed to appear in two cases involving his illegal driving. *People v. Hughes*, 966 P.2d 1055 (Colo. 1998). Suspension for one year and one day warranted where attorney failed to appear in county court on a charge of driving under the influence. *People v. Myers*, 969 P.2d 701 (Colo. 1998). A long period of suspension, rather than disbarment, is warranted when acts complained of occurred before an earlier disciplinary action against the attorney and mitigating factors exist. Attorney's actions were more properly viewed as a pattern of misconduct. *In re Van Buskirk*, 981 P.2d 607 (Colo. 1999). Thirty-day suspension appropriate where attorney overdrew his Colorado Lawyer Trust Account Foundation (COLTAF) account but shortly thereafter deposited sufficient funds to cure the deficiency, negligently failed to keep adequate trust account records, knowingly and repeatedly failed to respond to several requests for information from the office of attorney regulation counsel, eventually provided bank records that revealed no further misconduct on his part, and faced a number of challenges in his personal life at the time he knowingly failed to cooperate with the office of attorney regulation counsel. *People v. Edwards*, 201 P.3d 555 (Colo. 2008). Behavior toward client that precipitated conflict on day of client's criminal trial, forcing client's newly appointed public defender to seek a continuance to have adequate time to prepare violates this rule. *People v. Brenner*, 852 P.2d 456 (Colo. 1993). Pushing another attorney in the courtroom, resulting in a conviction for third-degree assault, warranted a 30-day suspension. *People v. Nelson*, 941 P.2d 922 (Colo. 1997). Lawyer who imposed unauthorized charging lien and subsequently failed to release such lien, and who testified at grievance proceedings that he kept documents belonging to third parties in order to protect his client's financial interests, which was the first instance at which such a theory was raised, violated this rule. Although the attorney's motives were dishonest and selfish, the grievance against the attorney involved in multiple offenses, the attorney violated a disciplinary rule at the grievance proceedings, and the attorney failed to acknowledge wrongful nature of his conduct, the mitigating factors included the fact that the attorney had not been subject to prior grievances and the attorney was relatively inexperienced. Thus, the appropriate sanction is public censure. *People v. Brown*, 840 P.2d 1085 (Colo. 1992). In determining appropriate sanction, it is not important whether injured party was attorney's client, when attorney-respondent was appointed conservator. *People v. Vigil*, 929 P.2d 1311 (Colo. 1996). Conduct warranted one-year extension of attorney's suspension. *People v. Silvola*, 933 P.2d 1308 (Colo. 1997). Disbarment warranted for respondent who continued to practice law while under suspension. Respondent was suspended based upon conviction for possession of cocaine, a class 3 felony, and upon release from prison represented to several persons that he was a

licensed attorney and provided legal services to those persons. Board's finding that respondent had a history of prior discipline, a dishonest or selfish motive, displayed a pattern of misconduct, had committed multiple offenses, had engaged in a bad faith obstruction of the disciplinary process, had refused to acknowledge any wrongful conduct on his part, had substantial experience in law, and could offer no mitigating factors warranted disbarment. *People v. Stauffer*, 858 P.2d 694 (Colo. 1993). Disbarment appropriate remedy where attorney neglected a legal matter, misappropriated funds and property, abandoned client, engaged in fraud, evaded process, and failed to cooperate in disciplinary investigation. *People v. Hindman*, 958 P.2d 463 (Colo. 1998). Disbarment is the presumed sanction for knowing misappropriation of funds from clients or one's law firm, barring significant mitigating circumstances. *People v. Guyerson*, 898 P.2d 1062 (Colo. 1995); *People v. Varallo*, 913 P.2d 1 (Colo. 1996); *In the Matter of Thompson*, 991 P.2d 820 (Colo. 1999) (overruling *People v. Bronstein*, 964 P.2d 514 (Colo. 1998)); *People v. Sweetman*, 218 P.3d 1123 (Colo. O.P.D.J. 2008). Disbarment appropriate when attorney accepted legal fees, performed limited services, abandoned the client, and then misappropriated the unearned fees. *People v. Kuntz*, 942 P.2d 1206 (Colo. 1997). Aiding client to violate custody order sufficient to justify disbarment. *People v. Chappell*, 927 P.2d 829 (Colo. 1996). Structuring financial transaction to enable client to avoid reporting requirements, a felony under federal law, warranted disbarment. *In re DeRose*, 55 P.3d 126 (Colo. 2002). 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). One-year and one-day suspension plus payment of restitution and costs proper for attorney who induced a loan through misrepresentations, assigned a promissory note obtained with proceeds of such loan without lender's knowledge or consent, and misrepresented that sufficient funds were in trust account to cover check. *People v. Kearns*, 843 P.2d 1 (Colo. 1992). False statements by attorney in connection with an accident in which the attorney was at fault adversely reflects on attorney's fitness to practice law. *People v. Dieters*, 935 P.2d 1 (Colo. 1997). Pleading guilty to a single count of bank fraud evidences serious criminal conduct warranting disbarment. *People v. Terborg*, 848 P.2d 346 (Colo. 1993). Attorney's repeated assurances to client that he would file a motion for reconsideration, his failure to do so, and his neglect of a legal matter entrusted to him constitute disciplinary violations warranting suspension for 30 days where there are mitigating factors. *People v. LaSalle*, 848 P.2d 348 (Colo. 1993). Attorney's neglect resulting in an untimely filing of an inadequate certificate of review and dismissal of his client's case, combined with fact that certificate contained false statements of material fact that attorney later repeated to an investigative counsel with the office of disciplinary counsel, constituted disciplinary violations warranting a 45-day suspension, despite mitigating factors. *People v. Porter*, 980 P.2d 536 (Colo. 1999). Ninety-day suspension justified where attorney's failure to respond to discovery requests resulted in default and entry of judgment against client for \$816,613. *People v. Clark*, 927 P.2d 838 (Colo. 1996). Ninety-day suspension and order of restitution as a condition of reinstatement was justified where attorney failed to pay court-ordered award of attorney's fees resulting from his filing of a frivolous motion and then failed to appear at a deposition. *People v. Huntzinger*, 967 P.2d 160 (Colo. 1998). 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). Suspension stayed, in view of respondent's cooperation and remorse, conditioned upon successful completion of six-month probationary period and ethics refresher course. *People v. Rosen*, 199 P.3d 1241 (Colo. O.P.D.J. 2007). Lawyer advertisement containing false, misleading, deceptive, or unfair statements violates this rule and warrants public censure where respondent terminated referral service being advertised after the initial request for investigation was filed and cooperated in disciplinary proceedings but had received a past letter of admonition and had substantial experience in the practice of law. *People v. Carpenter*, 893 P.2d 777 (Colo. 1995). Public censure appropriate where attorney misrepresented the status of a dismissed case to his client, the resultant actual harm to the client was only the cost of hiring a new lawyer to pursue an appeal of the dismissal, the attorney's law firm reimbursed the client for all fees it had collected, the attorney reimbursed the firm for such fees, the only aggravating factor was a 1994 letter of



admonition given to the attorney for improperly communicating with a represented person, and mitigating factors included the absence of a dishonest or selfish motive, remorse, and full and free disclosure in the disciplinary proceedings. *People v. Johnston*, 955 P.2d 1051 (Colo. 1998). Public censure appropriate where harm suffered by attorney's client was speculative, attorney retracted his misrepresentations and admitted to his client before the institution of disciplinary proceedings that he had done nothing on the client's appeal, attorney had no prior discipline, he made full and free disclosure of his misconduct to the grievance committee, and he expressed remorse for his misconduct. *People v. Nelson*, 848 P.2d 351 (Colo. 1993). Public censure appropriate where attorney neglected and made misrepresentations in two separate legal matters. *People v. Eagan*, 902 P.2d 841 (Colo. 1995). Public censure appropriate in light of mitigating circumstances for possession of cocaine in violation of state and federal controlled substance laws. *People v. Gould*, 912 P.2d 556 (Colo. 1996). Public censure appropriate where respondent was convicted of driving while ability impaired and had also appeared in court while intoxicated on two consecutive days. *People v. Coulter*, 950 P.2d 176 (Colo. 1998). Public censure appropriate for attorney who had been reprimanded in Connecticut for failure to file federal income tax return and attorney had not been disciplined before in Colorado. *People v. Perkell*, 969 P.2d 703 (Colo. 1998). Public censure was warranted where attorney twice requested arresting officers in driving under the influence cases not to appear at license revocation hearings before the department of motor vehicles. *People v. Carey*, 938 P.2d 1166 (Colo. 1997). Public censure was appropriate where significant mitigating factors were present. Attorney was convicted of vehicular assault, a class 4 felony, and two counts of driving under the influence of alcohol. The crimes are strict liability offenses for which attorney must serve three years in the custody of the department of corrections, followed by a two-year mandatory period of parole. Section 18-1-105(3) provides that, while he is serving his sentence, attorney is disqualified from practicing as an attorney in any state courts. The sentence and disqualification from practicing law are a significant "other penalty[]" or sanction[]" and therefore a mitigating factor in determining the level of discipline. *In re Kearns*, 991 P.2d 824 (Colo. 1999) (decided under former C.R.C.P. 241.6(5)). Public censure was warranted for attorney who prepared motions to dismiss for his client's wife to sign when proceedings had been brought by the client's wife against the client and the client's wife was represented by counsel and was not advised that she should contact her own lawyer before signing the motions, nor asked if she wished to discuss the motions with her lawyer before signing. Three letters of admonition for unrelated misconduct also were an aggravating factor for purposes of determining the appropriate level of discipline. *People v. McCray*, 926 P.2d 578 (Colo. 1996). Public censure warranted for attorney's solicitation of prostitution during telephone call with wife of client whom he was representing in a dissolution of marriage proceeding. *People v. Bauder*, 941 P.2d 282 (Colo. 1997). Public censure was warranted where attorney made inappropriate, harmful, offensive, harassing, and sexually abusive comments to potential client. The mitigating factors found by the hearing board do not compel a different result. *People v. Meier*, 954 P.2d 1068 (Colo. 1998). Chief deputy district attorney's theft of less than \$50 constitutes conduct warranting public censure where significant mitigating factors exist. *People v. Buckley*, 848 P.2d 353 (Colo. 1993). Two-year suspension was an adequate sanction where attorney neglected client matters by representing that he would file a lawsuit and neglected to do so, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by agreeing to represent client and thereafter failing to advise the client of attorney's suspension, and where attorney further engaged in misrepresentation by collecting legal fees and costs from client while attorney was under suspension. *People v. de Baca*, 948 P.2d 1 (Colo. 1997). Transferring various ownership interests to lawyer employees of firm who did not receive profits and were not managers warranted suspension of one year and a day. Suspension appropriate because attorney made misrepresentations and was dishonest in such transfers. *People v. Reed*, 942 P.2d 1204 (Colo. 1997). Thirty-day suspension was appropriate discipline where attorney advised client to take action in violation of child custody order but failed to warn her of criminal consequences of such action. *People v. Aron*, 962 P.2d 261 (Colo. 1998). Depositing personal funds into a COLTAF account to hide personal assets from creditors supports a 90-day suspension with conditions of reinstatement. *People v. Alster*, 221 P.3d 1088 (Colo. O.P.D.J. 2009). Suspension of one year and one day was appropriate based on evidence

*of three separate incidents in which the attorney physically assaulted his girlfriend. It was immaterial that no charges had been filed in any of the incidents, because the acts alone reflected adversely on the attorney's fitness to practice law. The fact that the attorney's behavior was not directly related to his practice of law was a factor to be considered, but was not conclusive. The attorney had failed to take any steps toward rehabilitation following the incidents, and the three separate assaults showed a pattern of misconduct. Therefore, it was appropriate to suspend the attorney and require him to demonstrate rehabilitation and completion of a certified domestic violence treatment program as a condition of reinstatement. People v. Musick, 960 P.2d 89 (Colo. 1998). 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.), cert. denied, 540 U.S. 1053, 124 S. Ct. 815, 157 L. Ed. 2d 705 (2003). Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. People v. Henderson, 967 P.2d 1038 (Colo. 1998). Conduct violating this rule in conjunction with other disciplinary rules, where mitigating factors were present, warrants public censure. People v. Davis, 950 P.2d 586 (Colo. 1998). Pleading guilty to one count of bribery evidences conduct warranting disbarment. People v. Viar, 848 P.2d 934 (Colo. 1993). Disbarment is warranted where attorney was convicted of felony offense of forging a federal bankruptcy judge's signature and had engaged in multiple types of other dishonest conduct and where there was an insufficient showing of mental disability. People v. Goldstein, 887 P.2d 634 (Colo. 1994). Disbarment is warranted where attorney was convicted in Hawaii of second-degree murder. People v. Draizen, 941 P.2d 280 (Colo. 1997). Disbarment appropriate sanction for attorney who intentionally killed another person. Despite a lack of prior discipline in this state, giving full faith and credit to another state's law and its jury finding that attorney intentionally took her husband's life by shooting him 10 times with a firearm, disbarment is an appropriate sanction. People v. Sims, 190 P.3d 188 (Colo. O.P.D.J. 2008). Disbarment is warranted for attorney convicted of one count of sexual assault on a child, notwithstanding lack of a prior record of discipline. People v. Espe, 967 P.2d 159 (Colo. 1998). Disbarment was appropriate, despite existence of mitigating factors, where attorney violated section (c) of this rule by misappropriating bar association funds for his personal use and where such misappropriation was knowing. People v. Motsenbocker, 926 P.2d 576 (Colo. 1996). Disbarment was appropriate for knowing misappropriation of funds despite fact respondent had not been previously disciplined. People v. Dice, 947 P.2d 339 (Colo. 1997). Disbarment is appropriate when a lawyer knowingly misappropriates client funds in the absence of extraordinary mitigating factors. Mitigating factors such as stress due to prolonged divorce, personal financial losses, a serious motor vehicle accident, filing for bankruptcy, a deteriorating law practice, and alcohol abuse were insufficient to deviate from the rule that a clear and convincing showing of a knowing misappropriation of client funds warrants disbarment. People v. Torpy, 966 P.2d 1040 (Colo. 1998). Disbarment is warranted where attorney knowingly converted funds belonging to law firm and where attorney knowingly acted dishonestly toward the firm and the disciplinary board investigator. People v. Bardulis, 203 P.3d 632 (Colo. O.P.D.J. 2009). Disbarment is only appropriate remedy for knowingly misappropriating client funds, unless significant extenuating circumstances are present. In re Cleland, 2 P.3d 700 (Colo. 2000). Disbarment warranted for knowingly abandoning clients, converting their funds, and causing actual financial and emotional harm to them. Attorney violated duty to preserve clients' property, to diligently perform services on their behalf, to be candid with them during the course of the professional relationship, and to abide by the legal rules of substance and procedure that affect the administration of justice. People v. Martin, 223 P.3d 728 (Colo. O.P.D.J. 2009). Disbarment warranted for attorney convicted of conspiracy to commit*



*tax fraud, tax evasion, and aiding and assisting in the preparation of a false income tax return. People v. Evanson, 223 P.3d 735 (Colo. O.P.D.J. 2009). Attorney conduct violating this rule, in conjunction with other rules, sufficient to justify disbarment when attorney knowingly commingled and misappropriated clients' funds for his personal use, neglected filing a complaint in a case until it was barred by the statute of limitations, failed to comply with court orders applicable to his child support payments, and neglected two other cases causing default judgments to be entered against his client, despite fact that one of the judgments was subsequently set aside. People v. Gonzalez, 967 P.2d 156 (Colo. 1998). Attorney who was the trustee of client's trust violated section (h) by utilizing the trust's funds to loan money to his daughter and to purchase his son-in-law's parents' former residence for the purpose of leasing it back to them, and by then failing to take any legal action against them when they did not make lease payments. People v. DeRose, 945 P.2d 412 (Colo. 1997). Previously disbarred attorney who violated this rule would be forced to pay restitution to clients as a condition of readmission. People v. Vigil, 945 P.2d 1385 (Colo. 1997). Prior discipline for conduct violating this rule is an important factor in determining the proper level of discipline, therefore disbarment is merited where attorney continues to engage in misconduct. In re C de Baca, 11 P.3d 426 (Colo. 2000). Court erred when it ordered special advocate to refund fees without determining whether conduct violated section (c). In re Redmond, 131 P.3d 1167 (Colo. App. 2005). 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 found to violate disciplinary rules. People v. Brenner, 852 P.2d 452 (Colo. 1993). 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. Doherty, 908 P.2d 1120 (Colo. 1996); People v. Woodrum, 911 P.2d 640 (Colo. 1996); People v. Pooley, 917 P.2d 712 (Colo. 1996); People v. Newman, 925 P.2d 783 (Colo. 1996); People v. Yates, 952 P.2d 340 (Colo. 1998); People v. Barr, 957 P.2d 1379 (Colo. 1998); People v. Rolfe, 962 P.2d 981 (Colo. 1998). Conduct violating this rule sufficient to justify public censure. People v. Gonzalez, 933 P.2d 1306 (Colo. 1997); People v. Meier, 954 P.2d 1068 (Colo. 1998); In re Wilson, 982 P.2d 840 (Colo. 1999). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Barr, 855 P.2d 1386 (Colo. 1993); People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Kuntz, 908 P.2d 1110 (Colo. 1996); People v. Sigley, 917 P.2d 1253 (Colo. 1996); People v. McCaffrey, 925 P.2d 269 (Colo. 1996); People v. Fager, 925 P.2d 280 (Colo. 1996); People v. Hohertz, 926 P.2d 560 (Colo. 1996); People v. Bates, 930 P.2d 600 (Colo. 1997); People v. Reynolds, 933 P.2d 1295 (Colo. 1997); People v. White, 935 P.2d 20 (Colo. 1997); People v. McGuire, 935 P.2d 22 (Colo. 1997); People v. Mason, 938 P.2d 133 (Colo. 1997); People v. Kotarek, 941 P.2d 925 (Colo. 1997); People v. Primavera, 942 P.2d 496 (Colo. 1997); People v. Field, 944 P.2d 1252 (Colo. 1997); People v. Wotan, 944 P.2d 1257 (Colo. 1997); People v. Johnson, 946 P.2d 469 (Colo. 1997); People v. Barnhouse, 948 P.2d 534 (Colo. 1997); People v. Blunt, 952 P.2d 356 (Colo. 1998); People v. Easley, 956 P.2d 1257 (Colo. 1998); People v. Hanks, 967 P.2d 144 (Colo. 1998); People v. Harding, 967 P.2d 153 (Colo. 1998); In re Nangle, 973 P.2d 1271 (Colo. 1999); In re Corbin, 973 P.2d 1273 (Colo. 1999); In re Bobbitt, 980 P.2d 538 (Colo. 1999); In re Meyers, 981 P.2d 143 (Colo. 1999); In re Demaray, 8 P.3d 427 (Colo. 1999); In re Hickox, 57 P.3d 403 (Colo. 2002); In re Fischer, 89 P.3d 817 (Colo. 2004); People v. Rosen, 199 P.3d 1241 (Colo. O.P.D.J. 2007); People v. Beecher, 224 P.3d 442 (Colo. O.P.D.J. 2009); People v. Maynard, 238 P.3d 672 (Colo. O.P.D.J. 2009); People v. Brennan, 240 P.3d 887 (Colo. O.P.D.J. 2009); People v. Albani, 276 P.3d 64 (Colo. O.P.D.J. 2011); People v. Culter, 277 P.3d 954 (Colo. O.P.D.J. 2011); People v. Duggan, 282 P.3d 534 (Colo. O.P.D.J. 2012); People v. Staab, 287 P.3d 122 (Colo. O.P.D.J. 2012). Conduct violating this rule sufficient to justify suspension. People v. Farrant, 852 P.2d 452 (Colo. 1993); People v. Graham, 933 P.2d 1321 (Colo. 1997); People v. Dieters, 935 P.2d 1 (Colo. 1997); People v. Rudman, 948 P.2d 1022 (Colo. 1997); In re Van Buskirk, 981 P.2d 607 (Colo. 1999); In re Sather, 3 P.3d 403 (Colo. 2000); 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 disbarment. People v. Kelley, 840 P.2d 1068 (Colo.*

1992); *People v. Walsh*, 880 P.2d 766 (Colo. 1994); *People v. Marsh*, 908 P.2d 1115 (Colo. 1996); *People v. Jenks*, 910 P.2d 688 (Colo. 1996); *People v. Jamrozek*, 921 P.2d 725 (Colo. 1996); *People v. Ebbert*, 925 P.2d 274 (Colo. 1996); *People v. Steinman*, 930 P.2d 596 (Colo. 1997); *People v. Wallace*, 936 P.2d 1282 (Colo. 1997); *People v. Mannix*, 936 P.2d 1285 (Colo. 1997); *People v. Madigan*, 938 P.2d 1162 (Colo. 1997); *People v. Odom*, 941 P.2d 919 (Colo. 1997); *People v. McDowell*, 942 P.2d 486 (Colo. 1997); *People v. Sousa*, 943 P.2d 448 (Colo. 1997); *People v. Jackson*, 943 P.2d 450 (Colo. 1997); *People v. Schaefer*, 944 P.2d 78 (Colo. 1997); *People v. Clyne*, 945 P.2d 1386 (Colo. 1997); *People v. Crist*, 948 P.2d 1020 (Colo. 1997); *People v. Roybal*, 949 P.2d 993 (Colo. 1997); *People v. Holmes*, 951 P.2d 477 (Colo. 1998); *People v. Singer*, 955 P.2d 1005 (Colo. 1998); *People v. Holmes*, 955 P.2d 1012 (Colo. 1998); *People v. Valley*, 960 P.2d 141 (Colo. 1998); *People v. Skaalerud*, 963 P.2d 341 (Colo. 1998); *In re Bilderback*, 971 P.2d 1061 (Colo. 1999); *In re Hugen*, 973 P.2d 1267 (Colo. 1999); *In re Tolley*, 975 P.2d 1115 (Colo. 1999); *In re Lopez*, 980 P.2d 983 (Colo. 1999); *In re Haines*, 177 P.3d 1239 (Colo. 2008); *People v. Rasure*, 212 P.3d 973 (Colo. O.P.D.J. 2009); *People v. Sweetman*, 218 P.3d 1123 (Colo. O.P.D.J. 2008); *People v. Gallegos*, 229 P.3d 306 (Colo. O.P.D.J. 2010); *People v. Edwards*, 240 P.3d 1287 (Colo. O.P.D.J. 2010); *People v. Zodrow*, 276 P.3d 113 (Colo. O.P.D.J. 2011); *People v. Rozan*, 277 P.3d 942 (Colo. O.P.D.J. 2011); *People v. Calvert*, 280 P.3d 1269 (Colo. O.P.D.J. 2011); *People v. Alexander*, 281 P.3d 496 (Colo. O.P.D.J. 2012); *People v. Tolentino*, 285 P.3d 340 (Colo. O.P.D.J. 2012). Conduct violating this rule sufficient to justify disbarment. *People v. Kelly*, 840 P.2d 1068 (Colo. 1992); *People v. Townshend*, 933 P.2d 1327 (Colo. 1997); *People v. Sichta*, 948 P.2d 1018 (Colo. 1997); *People v. Nearen*, 952 P.2d 371 (Colo. 1998).

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