

COLORADO – WE HAVE A PROBLEM

WHERE HAS PROFESSIONALISM GONE

Attorney Oath of Admission

I will employ such means as are consistent with truth and honor;
I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect, and honesty;
I will use my knowledge of the law for the betterment of society and the improvement of the legal system;

Colorado Rules of Professional Conduct

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation. In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

COMMENT

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. In a matter involving the allocation of parental rights and responsibilities, a lawyer should consider advising the client that parental conflict can have a significant adverse effect on minor children. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

Rule 4.4. Respect for Rights of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.
- (c) Unless otherwise permitted by court order, a lawyer who receives a document relating to the representation of the lawyer's client and who, before reviewing the document, receives notice from the sender that the document was inadvertently sent, shall not examine the document and shall abide by the sender's instructions as to its disposition.

COMMENT

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

Colorado Principles of Professionalism

I. Principle: As licensed professionals, we understand that the law is more than a business; it is also a calling. We will keep our Lawyer's Oath in mind in our daily practice. We understand and accept our role in the American justice system, and freely accept our responsibility to support and defend the Constitutions of the United States of America and the State of Colorado.¹

II. Principle: Professionalism is fundamental to the effective and efficient representation of clients in the legal system and the even-handed administration of justice. It is also indispensable to building respect for the rule of law and to preserving the integrity of the legal system.²

III. Principle: Integrity, honesty, candor, diligence, fairness, trust, respect, dignity, courtesy, cooperation, and competence are guiding principles of our conduct generally and in our dealings with judges, clients, opposing counsel, co-counsel, partners, associates, employees, and the public.³

Practical Considerations:

3.1 We will work together toward resolution of our cases by being reasonable.⁴

3.2 We will be cooperative to the extent it does not prejudice our clients' legitimate interests.⁵

3.3 We will treat others, but especially our clients, opponents, fellow attorneys, the courts and other legal professionals, with courtesy and respect. We will always endeavor to retain our objectivity and will try not to take personally disagreements that arise in the proper representation of our clients.⁶

3.4 We will refrain from unseemly or discourteous references to opposing parties, counsel, courts, legal systems or other civil and criminal justice professionals.⁷

3.5 We will respond to all communications in a timely manner and allow for reasonable time for opposing counsel to respond.⁸

3.6 We will communicate promptly with opposing counsel to discuss any disputes, ambiguities or other issues that arise in client representations. We recognize that, in most instances, genuine, personal interaction serves our clients better than perfunctory communication. Although electronic means are appropriate methods to communicate, we will not use electronic communication,

including but not limited to facsimile transmission, email, text messaging, or telephone contact, as a means of gaining unfair advantage or as a substitute for effective interpersonal dialogue.⁹

3.7 We will allow ourselves and each other sufficient time to resolve any dispute or disagreement by communicating with one another in a timely and professional manner and by agreeing to reasonable deadlines in light of the nature and status of the matter.¹⁰

3.8 We will work to reduce the level of anger or animosity among or between parties to a conflict or transaction wherever and whenever we can, and we will strive whenever possible not to add to, or manipulate, the emotional burden of any dispute or transaction by our conduct, words, or attitudes.

3.9 When scheduling, we will keep in mind that a reasonable balance between life and work helps promote the efficient and fair administration of justice and effective delivery of legal services. We will not make unreasonable demands on off-hours time when dealing with parties, witnesses, opposing counsel, co-counsel, associates, partners, or employees

IV. Principle: In serving the client, a lawyer must be ever conscious of the broader duty to the judicial system of which both attorney and client are a part.

Practical Considerations:

4.1 We are committed to the loyal and ardent representation of our clients, using our skills and training to seek their legitimate ends. We are equally committed to preventing the use of the legal system to cause unjust harm or to gain unjust advantage. We recognize that, just as legal action pursued for legitimate ends can accomplish great good, legal action pursued for improper purposes or by unjust means can cause great harm. An unjust process can never lead to a just result, and a successful result cannot remedy the harm of an unjust process.¹¹

4.2 We will scrupulously refrain from making misleading statements of law or fact, whether by omission, inference, or implication.¹²

4.3 We will abide by our promises and agreements, whether written or oral. Our word is our bond. In the event of a conflict, we will attempt in good faith to resolve the conflict before seeking court intervention.¹³

4.4 When exchanging drafts of agreements, we will call to the attention of other parties and their counsel any changes or suggestions for new language and issues that have not been agreed upon or discussed beforehand.¹⁴

4.5 We must accept fully the responsibility that comes with the privilege and licensure of practicing law. This requires that we respect the legal rights of others, that we act reasonably and with candor toward others, and that we not seek to advance our personal interests at the expense of the legitimate interests of others.¹⁵

4.6 Justice is not achieved where short-term victory plants the seed of future conflict. The satisfactory completion of a transaction or the settlement of an adversarial dispute through mutual agreement creates a foundation for future cooperation. The just resolution of a dispute begins a process of reconciliation for the parties.

4.7 Neither we nor our clients are the sole possessors of truth or righteousness in any circumstance. While we may strive zealously for our clients' rights, our zeal also must be directed to achieving justice in the process. Zealous representation is not a justification for failure to act with professionalism.¹⁶

V. Principle: A lawyer owes to the profession a duty to counsel, mentor, advise, educate, and guide less experienced lawyers. Mentoring should encompass not only the practical and substantive aspects of the practice of law but also the fundamental role of professionalism. As a mentor, a lawyer should encourage those lawyers to whom guidance is provided to engage in activities that enhance the image of lawyers in the eyes of the public, including becoming involved in volunteer service to the community, educating the public about the American legal system, and fostering respect and trust among lawyers. An experienced lawyer should demonstrably impart the intangible qualities of the profession of honor, duty, and pride.

Practical Considerations:

5.1 We will emphasize through mentoring, practice, and guidance the importance of collegiality and of the exercise of ethical and civil behavior.

5.2 We will emphasize through mentoring, practice, and guidance the importance of participation and inclusion in the professional associations of the Colorado bar.

5.3 We will emphasize through mentoring, practice, and guidance the mandate of providing clients a high standard of representation through competency and the exercise of sound and reasoned judgment.

5.4 We will emphasize through mentoring, practice and guidance the imperative of maintaining best practices for client representation, including following legal principles learned from practical experience and maintaining sound law office management practices.

5.5 We will promote through mentoring, practice, and guidance the role of our profession as a public service.

5.6 We will elevate the quality of legal services provided by the profession through mentoring and guiding other lawyers.

5.7 We will welcome requests from other lawyers seeking our guidance and advice on legal professionalism issues.

VI. Principle: A client has no right to demand that counsel abuse any participant in the judicial system or indulge in offensive conduct. Effective advocacy requires neither.¹⁷

VII. Principle: A lawyer should not use any form of discovery, the scheduling of discovery, or any other part of the dispute resolution process as a means of harassing opposing counsel or opposing counsel's client or as a means of impeding the timely, efficient, and cost-effective resolution of a dispute.¹⁸

Practical Considerations:

7.1 Discovery Generally

7.1.1 We will not use any form of discovery or discovery scheduling as a means of harassing anyone or for the purpose of obstructing the prosecution or defense of the case.¹⁹

7.1.2 We will only use definitions and instructions in written discovery that are pertinent, clear, and concise.²⁰

7.1.3 We will object to disclosure or discovery only when we have a good faith belief in the merit of the objection.²¹

7.1.4 We will provide disclosures and respond to written discovery requests reasonably. We will not strain to interpret requests or disclosure requirements in the rules of procedure in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.²²

7.2 Conduct During Depositions

7.2.1 We will conduct ourselves in depositions with the same courtesy and respect as is expected in court.²³

7.2.2 We will not conduct examinations or engage in other behavior that is purposely offensive, demeaning, harassing or intimidating, or that unnecessarily invades the privacy of anyone.²⁴

7.2.3 If sensitive or controversial matters are to be inquired into in a deposition, counsel should consider discussing those matters with opposing counsel in advance. When appropriate, we will attempt to engage in meaningful dialogue with opposing counsel for the purpose of exploring agreements regarding the scope of the examination and the use of the information after the deposition.²⁵

7.2.5 We will refrain from coaching deponents by objecting, commenting, or acting in any other manner that suggests a particular answer to a question.²⁶

7.2.6 We will not object for the purpose of disrupting or distracting the questioner or the witness. We will object only in the manner provided by the rules.²⁷

7.2.7 We will not interrupt the examination for an off-the-record conference with the deponent when the purpose is solely to obstruct the deposition or to coach the witness.²⁸

7.2.8 We will not intentionally misstate facts or mischaracterize prior statements or testimony.²⁹

7.3 Motions And Conduct In Court

7.3.1 We will scrupulously avoid misleading the court in our presentation of the law, facts, case history, or procedure.³⁰

7.3.3 We will only make objections that are concise, specific, and supported by applicable law.³¹

7.3.4 We will demonstrate courtesy and respect for the court and its staff at all times. When in court, we will stand when the judge and jury enter, when addressing the judge, and when the judge and jury leave, unless the custom and practice of a particular court is different.

7.3.7 We will not transmit correspondence or copies of correspondence to the court unless requested or encouraged by the court, authorized by the applicable law or rules and/or by all other parties or their counsel or necessitated by extraordinary circumstances.³²

7.3.8 We will not engage the court staff in *ex parte* communications concerning the merits of a pending case, ask the court staff for an indication of how the judge may rule, or ask the court staff for legal advice.³³

7.3.9 We will respectfully seek permission before continuing to argue after the court has ruled.

7.3.10 We will not take positions on litigated or contested matters that are legally or factually unsupportable, and we will not use motions or procedural issues to delay the prompt and fair resolution of a matter, or to harass, intimidate, or wear down an opponent.³⁴

7.3.11 We will not lightly seek court sanctions.³⁵

7.3.12 We will cooperate in presenting evidence by providing the court and counsel with the names of witnesses to be called and estimates of time for examination and by sharing equipment (such as audio-visual equipment) in the courtroom.³⁶

VIII. Principle: A lawyer will be punctual in communications with others and in honoring scheduled appearances and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.³⁷

Practical Considerations:

8.1 We will cooperate by agreeing upon and keeping reasonable deadlines for exchanging drafts, scheduling and completing transactions and providing required documentation.

8.2 We will seek agreements on preliminary, procedural and factual matters, and we will enter into appropriate written stipulations or agreements that will make more effective use of everyone's time.³⁸

8.3 We will respond promptly to requests for agreements, even when our response is that agreement on a certain issue is not possible.³⁹

8.4 When discussing final stipulations or agreements, we will act promptly to submit proposals for agreement both as to form and content, and we will cooperate in assuring that the final documents fairly and accurately reflect the parties' agreements.⁴⁰

8.5 We will act promptly to advise the courts and other interested parties of all stipulations and agreements.⁴¹

8.6 We will follow through to assure that all details involved in concluding any agreement or transaction are quickly and efficiently addressed and finalized.⁴²

8.7 While always keeping our client's interests paramount, we will also keep in mind that our goal should be the prompt, efficient, and fair resolution of disputes, and the prompt, efficient, and fair completion of transactions on which we are engaged.⁴³

IX. Principle: A lawyer providing representation in a transactional matter owes to the legal system, opposing counsel, and all parties duties of candor and transparency, subject to the protection of client confidences.

Practical Considerations:

9.1 When dealing with unrepresented persons, we will encourage them to engage counsel, we will inform them that we do not and cannot represent their interests, and we will avoid any appearance or impression that we are providing any unrepresented persons advice as to the transaction or matter.⁴⁴

9.2 When exchanging electronically drafted documents subject to form and content negotiation, where appropriate, we will furnish to opposing counsel and *pro se* parties "redline" versions or otherwise call specific attention to all changes we have made. We will also take steps to assure that the final document executed by the parties is the document to which all parties have agreed.⁴⁵

9.3 When representing a party in a transactional matter, we will not ask for an opinion-of-counsel from opposing counsel that we, in a similar situation, would be unable (or unwilling) to give.

9.4 We will honor reasonable requests to re-transmit materials or to provide hard copies of documents or drafts.

X. Principle: If a fellow member of the bar makes a just request for cooperation or seeks scheduling accommodations, a lawyer will not arbitrarily or unreasonably withhold consent. ⁴⁶

Practical Considerations:

10.1 We will endeavor to schedule hearings, depositions, or other matters by agreement with opposing counsel. ⁴⁷

10.2 We will give opposing counsel notice of cancellation of hearings, depositions, and other matters at the earliest possible time. ⁴⁸

10.3 We will not seek extensions or postponements for the purpose of harassment or to prolong, delay, or increase the cost or complexity of any matter. ⁴⁹

10.4 In scheduling matters, including requests for reasonable extensions of time, we will act in a spirit of cooperation and accommodation. We will act with consideration of the need for expediting the litigation or transaction and the professional and personal schedules of others involved. We will raise scheduling conflicts only when they actually exist. ⁵⁰

XI. Principle: A lawyer owes to the public a devotion to the public good and to public service; a commitment to the improvement of the administration of justice; a duty to abide by and, subject to a good-faith reservation as to existence of a violation, to report violations by others of any disciplinary rules; and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance. ⁵¹

Practical Considerations:

11.1 We will endeavor to make legal services available to people who have legal needs, but cannot afford to pay customary charges, and we will strive to provide advisory or other assistance to non-profit community service organizations. ⁵²

XII. Principle: A lawyer will not attack, demean, or otherwise degrade opposing counsel. The public cannot be expected to hold the profession in high esteem if we do not ourselves respect one another. ⁵³

Practical Considerations:

12.1 We will not impute improper motives to other lawyers or make any statements that impugn their character unless clearly justified by the facts and essential to the resolution of an issue.

12.2 We will commit to treat the representation of the client as the client's transaction, dispute or controversy, and not as a personal dispute with opposing counsel.⁵⁴

XIII. Principle: Above all, a lawyer owes to all with whom the lawyer comes in contact, civility, professional integrity, and personal dignity.⁵⁵