

## **Ethical Issues that Arise When Crowdfunding Is Utilized to Pay for Legal Representation**

**Adopted June 2025**

### ***I. Introduction and Scope***

This opinion addresses ethical issues that arise when a crowdfunding platform is utilized to raise funds for attorneys' fees and costs, including both when a client initiates the fundraiser and when a lawyer initiates the fundraiser via the crowdfunding platform. Concerns include unauthorized disclosure of information relating to the representation of a client, communication with clients regarding fees and costs, communication with the public regarding the use of funds raised, maintenance of professional independence, complying with requirements related to property of clients and third parties, and avoidance of engaging in misconduct.

### ***II. Syllabus***

As used in this opinion, the term "crowdfunding" means raising funds through many small donations from a large number of people, typically through a platform on the internet. It is a type of alternative financing that has been used to raise funds for artistic projects, business ventures, and particular causes such as cancer research.<sup>1</sup> Crowdfunding

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<sup>1</sup> See Merriam-Webster on-line dictionary at <https://www.merriam-webster.com/dictionary/crowd>

sometimes has been used as a means to raise funds to pay for someone's legal representation. *See* D.C., Ethics Op. 375, "Ethical Considerations of Crowdfunding" (2018) (DC Opinion 375).<sup>2</sup>

When a lawyer or the lawyer's client uses crowdfunding to raise funds for the client's attorney fees and costs in a legal matter, many parts of the Colorado Rules of Professional Conduct (Colo. RPC or Rules) are implicated. The implicated Rules are Rules 1.0(e) (Definition re Informed Consent), 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4 (Lawyer-Client Communication), 1.5(b)(1) (Fees), 1.6 (Confidentiality of Information), 1.8 (Conflict of Interest: Current Clients, Specific Rules), 1.15A (General Duties of Lawyers Regarding Property of Clients and Third Parties), 3.6 (Trial Publicity), 4.1 (Truthfulness in Statements to Other), 5.4 (Professional Independence of a Lawyer), and 8.4 (Misconduct).

If a client uses a crowdfunding platform to raise funds for their attorneys' fees and costs, there is risk that the lawyer's independent professional judgment could be compromised. Thus, the engaged lawyer must ensure that the lawyer's professional judgment is not impaired and that there is no interference with the client-lawyer relationship as a result. Further, a lawyer must not make unauthorized disclosures of information on the platform relating to the representation of the client, and the lawyer

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fundings (Feb. 2025); Wikipedia at <https://en.wikipedia.org/wiki/Crowdfunding> (last visited Feb. 24, 2025); Investopedia at <https://www.investopedia.com/terms/c/crowdfunding.asp> (last visited Feb. 24, 2025).

<sup>2</sup> *See also* New Hampshire Bar Ass'n Ethics Comm. Op. #2021-22/02 (2022) (examining professional conduct rules implicated by the use of crowdfunding for legal fees and costs).

should caution the client to avoid waiving privilege and confidentiality protections as a result of communications to the public on the platform. Finally, there is risk that a client might commit a criminal or fraudulent act in the use of crowdfunding. A lawyer must avoid assisting a client in any conduct that could be considered a criminal or fraudulent act (e.g. a client purportedly raising funds for a legal matter but actually taking some of the donated funds to purchase a new car or for personal travel), and should take reasonable steps to ensure that the lawyer is not assisting in criminal or fraudulent conduct (e.g. discussing with clients the lawyer's duty not to engage or assist a client in conduct the lawyer knows is criminal or fraudulent).

Alternately, if a lawyer uses a crowdfunding platform to raise funds for a client's attorneys' fees and costs, the engaged lawyer must not make unauthorized disclosures of information on the platform relating to the representation of the client. Additionally, the lawyer must have clear communication with the client regarding the fees and costs as well as with the public regarding the use of raised funds. Finally, the lawyer must maintain professional independence with special care to the considerations that arise from the lawyer's use of crowdfunding and the lawyer must comply with Colo. RPCs 1.15A through 1.15E with respect to property belonging to clients and third parties. A lawyer can minimize the risk of running afoul of the Rules by allowing the client to manage the crowdfunding campaign.

### ***III. Applicable Rules***

#### **A. Duties Implicated by the Existence of Third-Party Payors**

Informed consent is “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.” Colo. RPC 1.0(e).

The lawyer must “reasonably consult with the client about the means by which the client’s objectives are to be accomplished.” Colo. RPC 1.4.

Rule 1.8(f) states:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information relating to representation of a client is protected as required by Rule 1.6.

Colo. Rule 5.4(c) states:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

## **B. Confidentiality**

Colo. RPC 1.6(a) states:

[A] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or disclosure is permitted by paragraph (b).

## **C. Misconduct**

“A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent...” Colo. RPC 1.2(d).

#### **D. Communication with Third Parties**

Colo. RPC 8.4(c) states in pertinent part:

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Colo. RPC 4.1(a) states:

In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

Colo. RPC 3.6(a) states:

“A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”

#### **E. Fees<sup>3</sup>**

Colo. RPC 1.5(f) states:

Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer’s trust account pursuant to Rule 1.15B(a)(1) until earned.

#### **F. Business Transaction with a Client**

Colo. RPC 1.8(a) states:

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

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<sup>3</sup> See also Colo. RPC 1.15A through RPC 1.15E.

- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

#### ***IV. Illustrations***

This opinion addresses two fact patterns involving the use of crowdfunding to pay for a client's legal fees and expenses by analyzing the ethical issues for the lawyer under the Rules for each fact pattern.

*Fact Pattern 1.* Client A comes to lawyer in need of legal representation but lacks sufficient funds to pay for the representation. Client A decides, or had already decided, to create a crowdfunding campaign to raise funds for Client A's legal fees and costs relating to their representation ("Client-Sponsored Crowdfunding").

*Fact Pattern 2.* Client A comes to a lawyer in need of legal representation but lacks sufficient funds to pay for the representation. Lawyer suggests that the lawyer set up a crowdfunding campaign to raise funds for Client A's legal representation, Client A agrees, and lawyer creates a crowdfunding campaign to raise funds for Client A's legal fees and costs associated with their representation ("Lawyer-Sponsored Crowdfunding").

#### ***V. Analysis***

##### **A. Fact Pattern 1: Client-Sponsored Crowdfunding**

The crowdfunding scenario that presents the fewest concerns for the lawyer is that in which the client creates and manages the crowdfunding site with the lawyer having no control or management of the fundraising. This is analogous to a client who asks for and

receives financial help from a family member or friend to help pay legal fees, the family member or friend gives the client the funds, and the client uses the funds to pay their lawyer. Although there are fewer concerns with this fact pattern than with the lawyer-sponsored crowdfunding campaign fact pattern, some ethical implications remain.<sup>4</sup>

### *1. Duties Implicated by the Existence of Third-Party Payors*

If the lawyer knows that the client is receiving financial assistance to pay the lawyer's fees, the lawyer must protect the integrity of the client-lawyer relationship and the lawyer's independent professional judgment from influences from third-party payors. Colo. RPC 1.8(f) and Colo. RPC 5.4(c). The lawyer should inform the client that contributions do not permit the contributor to direct the lawyer's conduct in any way and to communicate such information clearly on the website where the crowdfunding occurs so that any contributor is informed that even though the contributor is making a financial donation, the contributor is not allowed to be involved with or direct the lawyer's representation of the client.

### *2. Confidentiality of Information*

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<sup>4</sup> The ethical considerations for a lawyer representing a client who is the subject of a crowdfunding campaign controlled by a third-party individual or organization do not significantly differ from those analyzed under Fact Pattern 1, except that when a third party is involved, the lawyer would need to clearly delineate who is involved and the communications and obtain informed consent from the client.. This could include, for example, a disclaimer on the crowdfunding site that the crowdfunding is being conducted by the third-party, not [name of lawyer's client], and any statements made by the third-party are not statements of [name of lawyer's client] and are not to be attributed to [name of lawyer's client]. Such a disclaimer could be important to minimize the risk of statements made by the third-party potentially being used against the lawyer's client as admissions or statements against interest or to argue that a defendant in a criminal matter has waived his or her Fifth Amendment privilege against self-incrimination. In this circumstance, the lawyer may also wish to have some influence on content placed on the crowdfunding campaign by the third-party.

The lawyer must not disclose to any contributor information relating to the representation without the client's informed consent. Colo. RPC 1.6(a). Additionally, if the lawyer knows that the client is engaged in crowdfunding to pay for legal fees, the lawyer should advise the client to be careful about what the client communicates during in the crowdfunding process because communications the client may make could waive the client's confidentiality protections under Colo. RPC 1.6, the client's attorney-client privilege, or the client's Fifth Amendment privilege against self-incrimination. The lawyer should also advise the client that information included on the crowdfunding site could be subject to discovery. Finally, the client should add to the crowdfunding statement that the contributor is not entitled to any confidential information as a result of making a donation. Colo. RPC 1.8(f).

### 3. *Misconduct*

There is a risk that a client might commit a criminal or fraudulent act in the use of crowdfunding. For example, a client might represent on the crowdfunding platform that the funds being raised are for attorney fees and costs in a particular legal matter, but then the client uses the funds for a different, undisclosed purpose, such as purchasing a new car or traveling to an exotic vacation spot. Similarly, a client might represent on the crowdfunding platform that any funds raised that exceed the actual attorney fees and costs for the legal matter will be donated to a particular charity or cause, but then the client keeps the excess funds rather than donating them. Pursuant to Colo. RPC 1.2(d), a lawyer must avoid any conduct or advice that would assist a client in the use of crowdfunding in a manner that could be considered a criminal or fraudulent act, and the lawyer must withdraw



from representation if the lawyer discovers that the lawyer is assisting the client in a criminal or fraudulent act.<sup>5</sup> The lawyer may want to advise the client that if illegality results from their conduct and the lawyer is, or is alleged to be, involved, the attorney-client privilege may not apply and the client may not be able to rely upon it. Colo. RPC 1.2(d) and 1.6.

## **B. Analysis of Fact Pattern 2: Lawyer-Sponsored Crowdfunding**

When a lawyer creates and manages the crowdfunding site, several concerns arise and several Rules are implicated. Although not presumptively unethical, this scenario is rife with the potential for the lawyer to run afoul of the Rules.

### *1. Duties Implicated by the Existence of Third-Party Payors*

A lawyer engaging in crowdfunding campaigns must maintain independence and operate with the informed consent of the client. Colo. RPC 1.8(f) and 5.4(c).

This Committee previously opined that, in order to obtain the client's informed consent with respect to third-party payors, the lawyer "should discuss with the client the details of the third-party payment arrangement so that the client understands the circumstances and conditions under which the payment is to be provided." CBA Formal Op. 129, "Ethical Duties of Lawyer Paid by One Other Than the Client" (2017), p. 4. Because the lawyer must communicate to the client the basis or rate of the fee and expenses for which the client will be responsible, in writing "[b]efore or within a reasonable time

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<sup>5</sup> To avoid this issue, the lawyer may want to consider adding language to the lawyer's engagement agreement with the client that would clarify that the lawyer has the right, but not the obligation, to review, edit, change, or approve any language or visual material to be included in the crowdfunding webpage prior to its posting or after it is posted.

after commencing the representation,” Colo. RPC 1.5(b)(1), that writing would be one logical place to also communicate the details of the third-party payment arrangement. CBA Formal Op. 129, p. 5.

Further, “the client’s expression of consent to the third-party payment arrangement will usually require an affirmative response. In general, a lawyer should not assume consent from the client’s silence or tacit acquiescence.” CBA Formal Op. 129, p. 6. The lawyer must reasonably consult with the lawyer’s client regarding the third-party arrangement, and the lawyer must obtain informed consent from the client after the lawyer communicates adequate information, material risks and reasonably available alternatives to the arrangement. Colo RPC 1.0(e) and 1.4.

A lawyer engaging in a crowdfunding campaign on behalf of a client might want to consider including the details of the crowdfunding payment arrangement in the engagement letter the lawyer sends to the client and consider having the client provide the client’s written consent to those terms.

## *2. Confidentiality of Information*

Confidentiality can be precarious when a lawyer engages in crowdfunding. The lawyer engaging in crowdfunding must take caution to maintain client confidentiality and only share information on the crowdfunding platform for which the client provides informed consent. Colo. RPC 1.6(a).

The scope of confidentiality under Rule 1.6(a) is broad: it “applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.” Colo. RPC 1.6, cmt. [3]; *see also People v. Isaac*,

470 P.3d 837, 840 & n.13 (Colo. O.P.D.J. 2016) (even the client’s identity may be confidential under certain circumstances); *People v. Albani*, 276 P.3d 64, 70 (Colo. O.P.D.J. 2011); *People v. Hohertz*, 102 P.3d 1019, 1022 (Colo. O.P.D.J. 2004). There is no exception to a lawyer’s confidentiality obligations imposed by Rule 1.6(a), even if the information relating to the representation is otherwise contained in public records, is readily available from public sources, or has been in the news. CBA Formal Op. 130, “Online Posting and Other Sharing of Materials Relating to the Representation of a Client,” (2018), p. 4; *see also* ABA Comm. on Ethics and Prof. Resp., Formal Op. 480, “Confidentiality Obligations for Lawyer Blogging and Other Public Commentary,” (2018), pp. 3-4.

There is risk in sharing details of a client’s story, which is likely a critical element for the effective marketing of the crowdfunding campaign. Clear communication with the client regarding what aspects of the client’s confidential information will be used and what will be communicated about the client’s legal matter on the crowdfunding platform is key to obtaining the client’s informed consent. The Committee further urges judiciousness in determining the material used for the campaign.

### 3. *Communication to Third Parties*

The lawyer engaging in crowdfunding must not make any misrepresentation as to how the funds raised through the crowdfunding platform will be used. Colo. RPC 4.1(a) and 8.4(c).

If the crowdfunding platform states that funds raised will be used to help pay the client’s attorney fees and legal costs in a matter, and some of the funds—even a small amount—are used for a different purpose (e.g., the client’s living expenses, food, clothing,

or travel, or for the personal use of the lawyer), such use and failure to disclose the same could be construed as dishonesty, fraud, deceit, or misrepresentation in violation of Rules 8.4(c), Rule 1.2(d)<sup>6</sup>, and/or Rule 4.1(a). A lawyer should take reasonable steps to ensure there are no misrepresentations made to the public regarding the use of crowdfunded funds.

In consulting with the client about the contents of the crowdfunding campaign, the lawyer might also want to discuss the implications of Rule 3.6 regarding trial publicity.

#### 4. *Crowdfunded Fees*

A lawyer must treat funds sourced through crowdfunding as a lawyer treats unearned client trust funds provided by third parties. Colo. RPC 1.5(f).

The requirements of Rules 1.15A through 1.15E must also be observed. These requirements include but are not limited to the lawyer's obligation to: (1) hold crowdfunded funds separate from the lawyer's own property in a trust account until earned, in compliance with Rule 1.15B, and (2) maintain complete records of the funds in compliance with Rule 1.15D. There is no difference between crowdfunded fees from third parties and fees paid by third parties in a more traditional manner; the funds must be treated the same.

##### a. Excess Funds

The client and lawyer might want to consider placing a statement on the crowdfunding platform that communicates the client will use any excess funds at the end

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<sup>6</sup> The risk regarding Rule 1.2(d) is even more significant in the context of lawyer-sponsored crowdfunding because the lawyer's increased control over the campaign may give rise to increased liability.

of the representation as the client sees fit.<sup>7</sup> If, at the end of the representation, the total funds raised by the lawyer through crowdfunding exceed the total attorney fees and legal costs incurred by the client, the statement made by the lawyer on the crowdfunding site regarding the use of excess funds raised must be followed.<sup>8</sup> Donors should be explicitly informed as to how funds that are left at the end of the legal matter that exceed the client's total attorney fees and legal costs, if any, will be handled.

These actions would reduce the risk of an allegation that the lawyer engaged in dishonesty, fraud, deceit, or misrepresentation, regardless of how the funds are used. Potentially, the client may wish to include a statement on the crowdfunding platform that any excess funds will be donated to a particular charity or organization (e.g., a shelter for victims of domestic violence, a substance abuse rehabilitation program, a cancer treatment center, etc.), but the lawyer would run the risk of an allegation of dishonesty, fraud, deceit, or misrepresentation if the statement to the public was not honored.<sup>9</sup>

The lawyer could not accept as earned fees any excess funds raised in the crowdfunding campaign as additional compensation for the lawyer's services unless

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<sup>7</sup> Lawyers should also ensure that the statement on the crowdfunding platform informs donors that once donated, any funds not spent on the legal matter will not be returned to the donor because returning excess funds to the donors would be impractical and likely impossible to accomplish.

<sup>9</sup> If the crowdfunding campaign states that excess funds may be used for charity, and the client wishes to donate the funds to a charity in which the lawyer has an interest, the lawyer should make a disclosure to the client regarding their/its interest in the charity.

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acceptance of these funds would be reasonable and the client agrees.<sup>10</sup> Rule 1.5(a) states: “A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.” Rule 1.5 lists eight factors to consider in determining the reasonableness of the lawyer’s fee and those factors could allow for the lawyer to accept funds raised in excess of the lawyer’s actual fees and costs. However, by definition, the excess funds raised will exceed the total attorney fees and legal costs incurred by the client. Therefore, the lawyer could not retain those excess funds unless, pursuant to Rule 1.5, the circumstances of the representation would allow a greater fee and the client agrees to such an arrangement.

For example, if the attorney fees incurred by the client were unreasonably low, the client potentially could make an adjustment and pay an additional fee to the lawyer to bring the total attorney fees up to a reasonable amount consistent with the factors listed in Rule 1.5(a), as long as doing so would not be contrary to any statement on the crowdfunding platform as to how excess funds would be handled.

b. Timing of Transfer from Platform to Lawyer Account

Due to the mechanics of operating a crowdfunding campaign, certain issues arise as to the timing of transferring crowdfunded fees to the lawyer’s account(s).

Colo. RPC 1.15A(a) requires: “A lawyer shall hold property of clients or third persons that is in the lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in trust accounts maintained in compliance

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<sup>10</sup> This analysis does not concern statutory multipliers of awarded fees because such fees are paid by opposing parties, not by the client.

with Rule 1.15B....” Therefore, funds raised in an online crowdfunding platform for a client’s legal fees must be transferred to a trust account from the crowdfunding platform, and the transfer should be performed as soon as practicable. Any portion of those funds that had already been earned should be paid promptly out of the trust account to the lawyer so that the lawyer maintains the client’s funds (pre-paid, unearned fees) separate from the lawyer’s earned fees. The lawyer also must keep detailed records as described in Colo. RPC 1.15D(a)(1)(A) & (a)(2), as well as copies of written agreements and communications regarding fees, the engagement for legal services, and disbursement of funds, as described in Colo. RPC 1.15D(a)(3) & (a)(4).

c. Fees Charged by Platform for Use of Platform

The mechanics of operating a crowdfunding campaign also create issues regarding fees incurred to use the crowdfunding platform. Some platforms charge a usage fee and some platforms offer options for expediting the transfer of raised funds for an extra charge.

Colo. RPC 1.5(b)(1) requires a lawyer “to communicate in writing the basis or rate of the fee and expenses for which the client will be responsible.” Colo. RPC 1.4 requires a lawyer to “promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required” and to “reasonably consult with the client about the means by which the client’s objectives are to be accomplished.”

The lawyer should have a clear agreement with the client, documented in writing, as to how the fees of the crowdfunding platform are to be paid and whether the lawyer is authorized to incur additional fees to expedite the transfer of funds from the fundraising

platform to the lawyer's trust account.<sup>11</sup> On the other hand, if the client has not agreed to be responsible for the crowdfunding fees and the lawyer has chosen to pay the crowdfunding fees as office overhead, it would not be ethically permissible for the lawyer to allow the crowdfunding platform to deduct the crowdfunding fees before transferring funds to the lawyer's trust account because the lawyer must treat the funds raised as property of the client, as discussed above. The lawyer would need to make arrangements for the lawyer to pay the crowdfunding fees directly to the crowdfunding provider so that the full amount of the funds raised for the client, which are treated as the client's property, can be transferred to the lawyer's trust account.

Finally, the lawyer should maintain records of the funds raised through crowdfunding and the fees charged by the crowdfunding platform in order to provide a full accounting to the client upon request by the client pursuant to Colo. RPC 1.15A(b).

### 5. *Business Transaction with a Client*

The lawyer engaging in crowdfunding must ensure not to create a conflict of interest when contracting with the client and the crowdfunding platform for the client's representation and raising fees for that representation. Colo. RPC 1.8(a).

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<sup>11</sup> There is nothing in the Rules that would require the lawyer to pay the crowdfunding fees for the client's specific litigation matter as office overhead, as long as the client has agreed in writing to be responsible for the crowdfunding fees. *See* CBA Formal Op. 99, "Use of Credit Cards to Pay for Legal Services" (1997), p. 4-289 (opining that a previous version of the Rules on lawyer trust accounts "seems to allow for the [credit card] charging fee (the percentage of the total transaction deducted by the charging institution as profit) to be deducted by the bank from the full charge" before payment is placed in the lawyer's COLTAF account); *see also* ABA Comm. on Ethics and Prof. Resp., Formal Op. 484, "A Lawyer's Obligations When Clients Use Companies or Brokers to Finance the Lawyer's Fee" (2018) (discussing ethical considerations involved when a lawyer facilitates the financing of attorney fees or costs by referring a client to a finance company or broker).



For example, in entering a relationship with a client and engaging in a crowdfunding campaign, a lawyer might decide to request an administration fee for maintaining and monitoring the crowdfunding campaign that is above and beyond legal fees and costs. If the lawyer chooses to request such a fee, the lawyer must follow Colo. RPC 1.8(a) and ensure that: (1) the transaction and terms are fair, reasonable, fully disclosed to the client, in writing and in a manner that can be reasonably understood by the client; (2) the client is advised to seek independent legal counsel and given the opportunity to do so; and (3) the client gives informed consent in writing. Colo. RPC 1.8(a).

## ***VI. Conclusions and Recommendations***

A lawyer whose representation is paid with funds raised in a crowdfunding campaign has many ethical issues to consider. Whether the crowdfunded campaign is client-sponsored (as described in *Fact Pattern 1*) or lawyer-sponsored (as described in *Fact Pattern 2*), the lawyer must ensure that the third-party payor does not interfere with the lawyer-client relationship or the lawyer's professional judgment.

Under *Fact Pattern 1*, the lawyer: (1) **should** ensure that the information in the statement on the crowdfunding site contains no more confidential information than is necessary; (2) **should** ensure that the client provides informed consent to all information regarding representation placed on the crowdfunding site; and (3) **must** ensure that the client is advised as to potential waiver of attorney-client privilege, as well as the potential waiver of their Fifth Amendment privilege against self-incrimination, by the publishing of statements on the crowdfunding site.

Under *Fact Pattern 2*, the lawyer **must** ensure that: (1) the information in the statement on the crowdfunding site contains no more confidential information than is necessary; (2) the client provides informed consent to all information regarding representation placed on the crowdfunding site; and (3) the client is advised as to potential waiver of attorney-client privilege by the publishing of statements on the crowdfunding site.

When the lawyer sponsors the crowdfunding campaign as described in *Fact Pattern 2*, the lawyer must obtain the client's written informed consent regarding the material risks of and reasonably available alternatives to a third-party payor arrangement. Additionally, the lawyer must be sure that no misrepresentations as to use of funds, including regarding excess funds, are made on the crowdfunding site.<sup>12</sup> Crowdfunded funds must be transferred into the lawyer's trust account, and any portion of the funds that has been earned must be paid out of the trust account to the lawyer. These transfers should be performed as soon as practicable. Finally, a lawyer should communicate in writing, and obtain the client's informed consent concerning, the procedure for handling fees charged by the crowdfunding platform.

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<sup>12</sup> Under the client-sponsored crowdfunding campaign described in *Fact Pattern 1*, the lawyer should take reasonable steps to ensure that no misrepresentations are made to the public concerning the use of crowdfunded funds.