

## Document: Colo. RPC 1.6

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#### Copy Citation

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

#### Rule 1.6. Confidentiality of Information.

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**(a)** 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 the disclosure is permitted by paragraph (b).

**(b)** A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

**(1)** to prevent reasonably certain death or substantial bodily harm;

**(2)** to reveal the client's intention to commit a crime and the information necessary to prevent the crime;

**(3)** to prevent the client from committing a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

**(4)** to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

**(5)** to secure legal advice about the lawyer's compliance with these Rules, other law or a court order;

**(6)** to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information is not protected by the attorney-client privilege and its revelation is not reasonably likely to otherwise materially prejudice the client; or

(8) to comply with other law or a court order.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

## History

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Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [16], [17], and [18] added and effective November 6, 2008; (b)(4), (6), (7) amended, (c) added, and Comment amended, effective April 6, 2016; comment [5] amended and effective May 14, 2020.

### ▼ Annotations

#### Commentary

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##### COMMENT

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work-product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such

information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

#### *Authorized Disclosure*

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter, including disclosures made by the lawyer pursuant to the Colorado Electronic Preservation of Abandoned Estate Planning Documents Act. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

#### *Disclosure Adverse to Client*

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[6A] Paragraph (b)(2) permits disclosure regarding a client's intention to commit a crime in the future and authorizes the disclosure of information necessary to prevent the crime. This paragraph does not apply to completed crimes. Although paragraph (b)(2) does not require the lawyer to reveal the client's intention to commit a crime, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[7] Paragraph (b)(3) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(3) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(4) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(4) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules, other law, or a court order. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(5) permits such disclosure because of the importance of a lawyer's compliance with these Rules, other law, or a court order. For example, Rule 1.6(b)(5) authorizes disclosures that the lawyer reasonably believes are necessary to seek advice involving the lawyer's duty to provide competent representation under Rule 1.1. In addition, this rule permits disclosure of information that the lawyer reasonably believes is necessary to secure legal advice concerning the lawyer's broader duties, including those addressed in Rules 3.3, 4.1 and 8.4.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(6) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(6) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(7) permits the lawyer to make such disclosures as are necessary to comply with the law.

#### *Detection of Conflicts of Interest*

[13] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if the information is protected by the attorney-client privilege or its disclosure is reasonably likely to materially prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to

compel the disclosure. For purposes of paragraph (b)(8), a subpoena is a court order. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(8) permits the lawyer to comply with the court's order.

[15A] Rule 4.1(b) requires a disclosure when necessary to avoid assisting a client's criminal or fraudulent act, if such disclosure will not violate this Rule 1.6.

[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[16A] The interrelationships between this Rule and Rules 1.2(d), 1.13, 3.3, 4.1, 8.1, and 8.3, and among those rules, are complex and require careful study by lawyers in order to discharge their sometimes conflicting obligations to their clients and the courts, and more generally, to our system of justice. The fact that disclosure is permitted, required, or prohibited under one rule does not end the inquiry. A lawyer must determine whether and under what circumstances other rules or other law permit, require, or prohibit disclosure. While disclosure under this Rule is always permissive, other rules or law may require disclosure. For example, Rule 3.3 requires disclosure of certain information (such as a lawyer's knowledge of the offer or admission of false evidence) even if this Rule would otherwise not permit that disclosure. In addition, Rule 1.13 sets forth the circumstances under which a lawyer representing an organization may disclose information, regardless of whether this Rule permits that disclosure. By contrast, Rule 4.1 requires disclosure to a third party of material facts when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless that disclosure would violate this Rule. See also Rule 1.2(d)(prohibiting a lawyer from counseling or assisting a client in conduct the lawyer knows is criminal or fraudulent). Similarly, Rule 8.1(b) requires certain disclosures in bar admission and attorney disciplinary proceedings and Rule 8.3 requires disclosure of certain violations of the Rules of Professional Conduct, except where this Rule does not permit those disclosures.

[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b) (1) through (b)(8). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction, and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule.

#### *Reasonable Measures to Preserve Confidentiality*

[18] Paragraph (c) requires a lawyer to make reasonable efforts to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the

scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Comments [3] and [4] to Rule 5.3.

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

#### *Former Client*

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

## State Notes

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## ANNOTATION

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**Law reviews.** For formal opinion of the Colorado Bar Association on Ethical Duties of Attorney Selected by Insurer to Represent Its Insured, see 22 Colo. Law. 497 (1993). For article, "The Maverick Council Member: Protecting Privileged Attorney-Client Communications from Disclosure", see 23 Colo. Law. 63 (1994). For article, "Ethical Considerations and Client Identity", see 30 Colo. Law. 51 (Apr. 2001). For article, "Preservation of the Attorney-Client Privilege: Using Agents and Intermediaries to Obtain Legal Advice", see 30 Colo. Law. 51 (May 2001). For article, "Policing the Legal System: The Duty to Report Misconduct", see 30 Colo. Law. 85 (Sept. 2001). For article, "Am I My Brother's Keeper? Redefining the Attorney-Client Relationship", see 32 Colo. Law. 11 (Apr. 2003). For article, "Metadata: Hidden Information Microsoft Word Documents Its Ethical Implications", see 33 Colo. Law. 53 (Oct. 2004). For article, "Representation of Multiple Estate Or Trust Fiduciaries: Practical and Ethical Issues", see 34 Colo. Law. 65 (July 2005). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (Oct. 2005). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (Nov. 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (Nov. 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (Oct. 2008). For article, "The Duty of Confidentiality: Legal Ethics and the Attorney-Client and Work Product Privileges", see 38 Colo. Law. 35 (Jan. 2009). For article, "Attorney-Client



Communications in Colorado”, see 38 Colo. Law. 59 (Apr. 2009). For article, “Repugnant Objectives”, see 41 Colo. Law. 51 (Dec. 2012). For article, “Third-Party Opinion Letters: Limiting the Liability of Opinion Givers”, see 42 Colo. Law. 93 (Nov. 2013). For article, “Client-Drafted Engagement Letters and Outside Counsel Policies”, see 43 Colo. Law. 33 (Feb. 2014). For casenote, “A Colorado Child’s Best Interests: Examining the Gabriesheski Decision and Future Policy Implications”, see 85 U. Colo. L. Rev. 537 (2014). For article, “Top 10 Things In-House Lawyers Need to Know about Ethics”, see 45 Colo. Law. 59 (July 2016). For article, “Colorado Considers ABA’s Ethics 20/20 Project and Amends Rules of Professional Conduct”, see 45 Colo. Law. 41 (Nov. 2016). For article, “Attorney-Client Privilege and the Work Product Doctrine: Is Confidentiality Lost in Email?”, see 46 Colo. Law. 32 (Nov. 2017). For article, “Ethical Considerations When Using Freelance Legal Services”, see 47 Colo. Law. 36 (June 2018). For article, “Defense Counsel’s Duties in Juvenile Delinquency Cases: Should a Guardian ad Litem be Appointed?”, see 47 Colo. Law. 48 (Nov. 2018). For article, “Trial Counsel’s Continued Duty of Confidentiality in Postconviction Proceedings”, see 48 Colo. Law. 32 (Dec. 2019). For article, “Online Dispute Resolution -- A Digital Door to Justice or Pandora’s Box? Part 3”, 49 Colo. Law. 26 (Apr. 2020). For article, “In-House Counsel, Whistleblowing, and Ethics”, see 49 Colo. Law. 29 (June 2020). For article, “Just Don’t Do It: Lawyers, Extrajudicial Statements, and Social Media”, see 50 Colo. Law. 38 (May 2021). For article, “The Legal Ethics of Generative AI - Part 3”, see 52 Colo. Law. 30 (Oct. 2023). For article, “Artificial Intelligence and Professional Conduct Considering the Ethical Implications of Using Electronic Legal Assistants”, see 53 Colo. Law. 20 (Jan.-Feb. 2024).

**Annotator’s note.** Rule 1.6 is similar to Rule 1.6 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.

**Public censure appropriate discipline** for lawyer who delivered document containing admissions of client to district attorney without first obtaining client’s authorization. *People v. Lopez*, 845 P.2d 1153 (Colo. 1993).

**“Implied” consent not encompassed by rule authorizing attorney to disclose client confidences or secrets.** Such disclosure may be made only after full disclosure to and with consent of client. *People v. Lopez*, 845 P.2d 1153 (Colo. 1993).

**Attorney must not reveal information related to the representation of a client** in the absence of the client’s consent. *People v. Albani*, 276 P.3d 64 (Colo. O.P.D.J. 2011).

**Disclosure of client confidences violated section (a).** Public, online responses to negative client reviews on the internet, which included information relating to attorney’s representation of the clients, ran contrary to attorney’s duty of loyalty to those clients. *People v. Isaac*, 470 P.3d 837

(Colo. O.P.D.J. 2016).

**Attorney's social media posts were neither permitted under the terms of her engagement agreement nor impliedly authorized by her clients in order to carry out the representation.** People v. Piccone, 459 P.3d 136 (Colo. O.P.D.J. 2020).

**A decedent's former attorney may provide the decedent's personal representative with confidential information necessary to settle the estate unless the decedent has expressly indicated otherwise.** In re Estate of Rabin, 2020 CO 77, 474 P.3d 1211.

**But the attorney cannot provide a decedent's complete legal files to the personal representative unless** the decedent gave informed consent for such broad disclosure in the will or elsewhere. In re Estate of Rabin, 2020 CO 77, 474 P.3d 1211.

**By unnecessarily including information tending to show weakness in the client's case** in a motion to voluntarily dismiss a claim without prejudice, an attorney discloses work product in violation of this rule. People v. Muhr, 370 P.3d 667 (Colo. O.P.D.J. 2015).

**Unnecessarily disclosing confidential client information without client's consent in an attorney's motion to withdraw is conduct violating this rule.** People v. Waters, 438 P.3d 753 (Colo. O.P.D.J. 2019).

**Attorney-client privilege does not survive a corporation's dissolution** if (1) there are no ongoing post-dissolution proceedings, and (2) no one with the authority to invoke or waive the privilege on the corporation's behalf remains. Kissinger & Fellman, PC v. Affiniti Colo., LLC, 2019 COA 147, 461 P.3d 606.

**Guardian ad litem (GAL) does not have an attorney-client relationship with child** who is the subject of a dependency and neglect proceeding, and chief justice directive 04-06 does not designate an attorney-client relationship nor create an evidentiary privilege. The trial court erred in concluding that the evidentiary privilege in § 13-90-107 (1)(b) precluded the GAL's testimony concerning the child's communications. People v. Gabriesheski, 262 P.3d 653 (Colo. 2011).

**Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension for nine months** plus additional conditions. People v. Muhr, 370 P.3d 667 (Colo. O.P.D.J. 2015).

**Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension.** People v. Braham, 470 P.3d 1031 (Colo. O.P.D.J. 2017); People v. Layton, 494



P.3d 693 (Colo. O.P.D.J. 2021).

**Disbarment appropriate** where attorney accepted fees from a number of clients prior to terminating her legal practice, failed to inform her clients of such termination, failed to refund clients' retainer fees, failed to place clients' funds in separate account, and gave clients' files to other lawyers without clients' consent. *People v. Tucker*, 904 P.2d 1321 (Colo. 1995).

**Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment.** *People v. Lindley*, 349 P.3d 304 (Colo. O.P.D.J. 2015); *People v. Waters*, 438 P.3d 753 (Colo. O.P.D.J. 2019).

#### **Cases Decided Under Former DR 4-101.**

**Law reviews.** For article, "The Perjurious Defendant: A Proposed Solution to the Defense Lawyer's Conflicting Ethical Obligations to the Court and to His Client", see 59 Den. L.J. 75 (1981). For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law. 880 (1982). For article, "Ethics, Tax Fraud and the General Practitioner", see 11 Colo. Law. 939 (1982). For article, "Prior Representation: The Specter of Disqualification of Trial Counsel", see 11 Colo. Law. 1214 (1982). For article, "The Search for Truth Continued: More Disclosure, Less Privilege", see 54 U. Colo. L. Rev. 51 (1982). For article, "The Search for Truth Continued, The Privilege Retained: A Response to Judge Frankel", see 54 U. Colo. L. Rev. 67 (1982). For article, "Some Comments on Conflicts of Interest and the Corporate Lawyer", see 12 Colo. Law. 60 (1983). For article, "Protecting Technical Information: The Role of the General Practitioner", see 12 Colo. Law. 1215 (1983). For article, "Potential Liability for Lawyers Employing Law Clerks", see 12 Colo. Law. 1243 (1983). For article, "Attorney Disclosure: The Model Rules in the Corporate/Securities Area", see 12 Colo. Law. 1975 (1983). For comment, "Colorado's Approach to Searches and Seizures in Law Offices", see 54 U. Colo. L. Rev. 571 (1983). For casenote, "Caldwell v. District Court: Colorado Looks at the Crime and Fraud Exception to the Attorney-Client Privilege", see 55 U. Colo. L. Rev. 319 (1984). For article, "Incest and Ethics: Confidentiality's Severest Test", see 61 Den. L.J. 619 (1984). For article, "Defending the Federal Drug or Racketeering Charge", see 16 Colo. Law. 605 (1987). For article, "Coping with the Paper Avalanche: A Survey on the Disposition of Client Files", see 16 Colo. Law. 1787 (1987). For comment, "Attorney-Client Confidences: Punishing the Innocent", see 61 U. Colo. L. Rev. 185 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990). For article, "Sex, Lawyers and Vilification", see 21 Colo. Law. 469 (1992). For formal opinion of the Colorado Bar Association Ethics Committee on Preservation of Client Confidences in View of Modern Communications Technology, see 22 Colo. Law. 21 (1993).

**Prevailing rule is that it will be presumed that confidences were reposed where** an attorney-client relationship has been shown to have existed. *Osborn v. District Court*, 619 P.2d 41 (Colo. 1980).

**Ethical obligation to preserve client confidences continues after termination of attorney-client relationship.** *Rodriquez v. District Court*, 719 P.2d 699 (Colo. 1986).

**Trustee in bankruptcy succeeds to a debtor's right to assert** or waive the attorney-client privilege. *In re Inv. Bankers, Inc.*, 30 B.R. 883 (Bankr. D. Colo. 1983).

**Crime-fraud exception to attorney-client privilege recognized.** The code of professional responsibility recognizes the crime-fraud exception to the attorney-client privilege and work-product doctrine. *Law Offices of Bernard D. Morley, P.C. v. MacFarlane*, 647 P.2d 1215 (Colo. 1982).

**Attorney's failure to safeguard a draft letter to a client in which the attorney suggests that the client misrepresented his qualifications,** and where federal prosecutor later used the letter during the client's trial on federal criminal charges, violated DR 4-101(B)(1). *People v. O'Donnell*, 955 P.2d 53 (Colo. 1998).

**Bald assertion insufficient to warrant disqualification of district attorney.** Bald assertion by defendant that he made confidential statements to the prosecutor during the existence of a prior attorney-client relationship was insufficient to warrant disqualification of the district attorney. *Osborn v. District Court*, 619 P.2d 41 (Colo. 1980).

**An accused seeking to disqualify a prosecutor because of prior representation of a co-defendant by a member of the prosecutor's former firm** must show that either the prosecutor or the firm member, by virtue of the prior professional relationship with the co-defendant, received confidential information about the accused which was substantially related to the pending criminal action. *McFarlan v. District Court*, 718 P.2d 247 (Colo. 1986).

**It is no abuse of discretion for court to order public defender to withdraw from a defendant's case** where public defender's prior representation of a prosecution witness and his present representation of defendant created a conflict of interest. *Rodriquez v. District Court*, 719 P.2d 699 (Colo. 1986); *People v. Reyes*, 728 P.2d 349 (Colo. App. 1986).

**Prior employment of plaintiff's attorney by defendant** does not disqualify the attorney where the instant case is not substantially related to any matter in which the attorney previously represented the defendant. *Food Brokers, Inc. v. Great W. Sugar*, 680 P.2d 857 (Colo. App. 1984).

**Disbarment warranted** where attorney filed false pleadings and disciplinary complaints, disclosed information concerning the filing of disciplinary complaints, offered to withdraw a disciplinary complaint filed against a judge in exchange for a favorable ruling, failed to serve copies of pleadings on opposing counsel, revealed client confidences and material considered derogatory and harmful to the client, aggravated by a repeated failure to cooperate with the investigation of misconduct, disruption of disciplinary proceedings, and a record of prior discipline. *People v. Bannister* 814 P.2d 801 (Colo. 1991).

**An attorney must disclose information** to the court in camera if ordered to do so. *People v. Salazar*, 835 P.2d 592 (Colo. App. 1992).

**Applied** in *People v. Schultheis*, 44 Colo. App. 452, 618 P.2d 710 (1980); *People v. Schultheis*, 638 P.2d 8 (Colo. 1981); *People v. Smith*, 778 P.2d 685 (Colo. 1989).

Colorado Court Rules

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