

Chapter Four

Getting Competent/Practicing Law

Although the concept sounds simple, competency in a law practice involves much more than a license to practice law and hanging your shingle. It requires you to become knowledgeable in the areas in which you are practicing, develop practice skills relevant to your practice, familiarize yourself with the courthouses in which you will be practicing, and learn how to empathize with clients.

Chapter 4

SUBSTANTIVE KNOWLEDGE AND PRACTICE SKILLS

Legal Education

- Attending continuing legal education (CLE) programs and getting involved with bar association substantive practice sections or committees are great ways to increase your substantive legal knowledge and sharpen your practice skills. Lawyers who are in their first five years of practice should strongly consider purchasing a New Lawyer Edge CLE membership (www.cle.cobar.org/NewLawyerEdge). The more you know about a particular practice area, the more comfortable and competent you will be when you take a case.
- In addition to attending CLE programs each year, you should also consider building a library or informational resources. As a CBA member, you have access to the CBA Lending Library, which includes many helpful materials on getting and maintaining competency in the legal field. Also, CBA-CLE publishes books and Colorado specific practice manuals written by practitioners in many areas of the law. You should also consider subscribing to the CBA e-slips (online published opinions from the Court of Appeals and Supreme Court delivered via e-mail) and reviewing the relevant opinions. The combination of publications and online opinions will keep you current for your clients.

Listserv

- Listservs can also be helpful resources. The legal community is closest to the issues and has likely dealt with similar questions you might have. With that in mind, both the ABA and CBA have created listservs to bring attorneys together to support each other. See the Appendix for listservs and newsletters you may like to join.

**Chapter
4****Courtroom Comfort**

- Equally important is honing your practice skills. Unless you do transactional work, you will likely be going to court at least once in a while for your cases. Therefore, you need to become skilled in handling hearings and trials and comfortable and proficient in courtroom and trial procedure and the rules of evidence. Unfortunately, what you learned in law school and during bar review will likely not be enough. There are at least four good options for strengthening your courtroom skills and knowledge:
 - First, you can attend CLE programs on these topics;
 - Second, you can participate in more hands-on and interactive trial skills training programs run by organizations such as the National Institute for Trial Advocacy (NITA), the ABA, and many local bar associations;
 - Third, you can go to various courthouses and watch cases in action;
 - Finally, you can take pro bono cases. Not only will you be helping others, but pro bono legal work is a great training ground to build skills and confidence as well as make connections with others.

Co-Counsel

- If you are presented with a case that you do not feel comfortable handling yet due to lack of experience, consider asking a more experienced lawyer to co-counsel the case with you. Although you may be concerned about sharing your fee with the lawyer, the experience and education you will gain from the co-counsel relationship will more than make up for it. See the Find Mentors section below for more resources.

NAVIGATING THE COURTHOUSE**Physical Location**

- When beginning your practice, you should physically go to every courthouse in the jurisdiction(s) in which you will be practicing, walk around, and determine the location of the courtrooms, clerk's offices, conference rooms, cafeteria, and restrooms. You want to be proficient in moving around these buildings so you can work efficiently and direct your clients to where they need to go. Your being familiar with the courthouse will provide your client with a sense of comfort and indicate to them that this is not your first court appearance, even if it is. The Denver Bar Association and other local bar associations offer formal or informal tours of the various federal and state courthouses located throughout the state.

Staff and Local Rules

- While at the courthouse(s), you should introduce yourself to the staff. Courthouse personnel, including judges, talk a lot about the lawyers they deal with. A positive and friendly reputation in every courthouse will serve you well when you need their help in the future. These are the people who can get you out of a scheduling jam, move you up on a crowded docket, or move your file to the top of a judge's pile of paperwork.
- When speaking with the various clerks in the clerk's offices and courtrooms, be sure to ask them if they have any local rules of which you should be aware. It might be helpful to make copies of the local rules and keep the applicable one(s) in the front of each client's case folder for quick reference later.
- Also, keep in mind that most judges run their courtroom practice as they choose. When talking to staff in each courtroom, make sure to ask if they have any preference in how they set hearings in their division. Some will do them only on certain days or at certain times. Do not forget to take notes while they are talking, as you will need them later on.

Chapter 4

TIPS

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| <ol style="list-style-type: none"> 1. Do I have the legal knowledge and education to handle this matter? 2. Attend CLE programs regularly to increase substantive knowledge. 3. Consider finding a mentor. 4. Ask to co-counsel with an experienced attorney to gain experience and knowledge outside your typical practice area. 5. Remember, a lawyer cannot charge a client fees for time spent achieving competence. See Colo. Rule 1.5. 6. Get comfortable with local courthouses, staff, and local rules and court procedures. | <ol style="list-style-type: none"> 7. If you don't have necessary expertise, do you have the time, resources and infrastructure in place to prepare and offer thorough representation? 8. Take advantage of online resources such as CBA e-slips, list-servs, and <i>The Colorado Lawyer</i>. 9. Create a library of resources and determine what legal research provider you will utilize. |
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- Meeting and getting to know every judicial officer is almost impossible, even if only due to turnover or changes in the nature of their dockets. However, each courthouse seems to reflect its respective community and culture. Your ability to fit in or at least manage the personalities of each courthouse creates calm for the client and potentially gets you through the courthouse processes more efficiently. Often, a client's fear or lack of familiarity with the courthouse can cause him or her to act differently, inappropriately, or in a forced and stilted manner, which in turn can negatively affect his or her credibility. In these cases, a lawyer's role as "host" to his or her client at the courthouse is very important to calm the client's nerves.

Client Empathy

Chapter 4

- Client empathy is often overlooked and cannot be overemphasized. While clients are not coming to you for therapy and you certainly are not expected to be a therapist, learning how to empathize with your clients will serve both you and them well. Often, by the time clients are seeking your help, they are in the midst of one of the most stressful experiences of their life. In order to understand clients' needs and provide them with the best representation and counsel, you need to gain their trust and confidence and manage their emotions. This can be accomplished by demonstrating to them that you understand what they are going through and why they feel the way they do.
- A client who trusts you will generally be satisfied with your representation on his or her case, come back with other problems in the future, and refer you to friends and family. This is probably one of the largest areas of self-study that will pay off in the growth of your practice. It is generally overlooked by the legal industry as a whole; however, there are numerous online sites and printed periodicals, such as *Psychology Today*, that are worth their small subscription fees.

Client Management

- Equally important to your legal practice competence is client management competence. You should have an organizational system for your client management process from the first meeting to the closure of the case. See Chapter 1: Business Planning and Chapter 2: Client Intake, Initial Screening and Engagement Agreements.
- The process should follow a paperwork pattern that is repeated for almost every case to create good file documentation. Documents should include a client intake questionnaire, fee agreements, descriptions of services to be provided, conflict of interest checklist, income and employment information, contact information, and documentation regarding any particular time frames for deadlines that must be met

for the client. Additional systems in place should include billing, case management software, calendaring, tickler systems, and automated case law update. See Chapter 2: Client Intake, Initial Screening and Engagement Agreements.

Find Mentors

- Finding mentors can be a great way to start bridging the gap between law school and law practice. Mentors can help you with a variety of topics: the nuts and bolts of practicing law, law practice management and technology, work/life balance, career development, etc. Instead of trying to find one mentor who can advise you on all of these topics, consider finding separate mentors for each topic. While many mentors are more experienced, your peers may also turn out to be great mentors.
- Mentoring relationships can take on many forms. Some might be one-time interactions, while others will grow into lifelong relationships. Some are more formal, such as the Colorado Attorney Mentoring Program (CAMP, <http://coloradomentoring.org>), or Metro Volunteer Lawyers' Pro Bono Mentoring Program (www.metrovolunteerlawyers.org/volunteer-with-mvl), where you are matched with a mentor through the program, while others are more informal and you identify and connect with the mentor yourself. Both types of mentoring relationships can be equally effective. Mentors can be found in a variety of places, including, but not limited to, in office sharing spaces, bar associations, professional networking and peer groups, alumni associations, volunteer opportunities such as clinics, law firms, government entities, and legal aid organizations.
- Once you have found a mentor, it is important that you:
 - **Establish Mentoring Goals.** Determine what you want to get out of the mentoring relationship and share your goals with your mentor.
 - **Learn your Mentor's Communication Style.** Just because you prefer to communicate via text does not mean your mentor shares your preference. Determine early on how your mentor likes to communicate and who should be responsible for scheduling meetings so you can keep the communication flowing and the relationship moving forward.
 - **Be Respectful of the Mentor's Time.** Mentors are busy people and their time is valuable. Before you meet or reach out to a mentor for help with a case or issue, be sure to first fully research the issue so you can limit the amount of time the mentor needs to spend assisting you.
 - **Invest in the Relationship and Give Back.** Your mentoring relationships should not be one-way streets. In order to develop and strengthen a mentoring relationship, you need to give back to your mentor. You can do this in a variety of ways. Examples include attending an event at which the mentor is speaking, sending the mentor a note when you see or hear something that reminds you of him or her, donating time or money to a charity that is important to the

**Chapter
4**

mentor, etc. Also consider what you might be able to teach your mentor. Many older lawyers did not grow up using social media and other technologies and may be interested in learning more about them.

- **Be Open to the Mentor's Advice.** The whole point of finding a mentor is to benefit from his or her advice and guidance on topics or issues of your choice. If you constantly reject the mentor's advice, you have defeated the purpose of finding the mentor and perhaps also irritated the mentor and wasted his or her time in the process.
- **Approach the Mentoring Relationship with Enthusiasm.** Mentors want to work with mentee lawyers who are enthusiastic about the profession and have a desire to learn. No one wants to mentor a Debbie Downer, a know-it-all, or an apathetic lawyer with no direction. So bring enthusiasm and a desire to learn to the relationship!

APPENDIX**Colorado Bar Association Resources****Law Practice Management**

- As a service to its members, the CBA Department of Law Practice Management (www.cobar.org/lpm) provides information and resources on a variety of law practice management issues, including templates on Forms2Share, a collection of materials in the Lending Library, Tech Tuesday Webinars, and monthly newsletters.
- Legal resource and technology tools including:
 - Casemaker: Full access to broad and comprehensive libraries that cover all 50 states and federal materials.
 - Casemaker Digest: Will keep you up-to-date with the latest cases published in your practice area.
 - Casecheck+: Will indicate whether citations you are reading or referencing are still considered good law.
 - Cite Check: Gets you the latest information on citations in your briefs..
 - E-Slips: Delivers the announcement sheets, published opinions, and opinion summaries for the Colorado Supreme Court and Colorado Court of Appeals.
 - E-Legislative Report: Keeps you apprised of what the General Assembly and your bar association are up to at the capital.
 - CBA-CLE Legal Connection Blog.
 - Solo in Colo Blog
 - Section-specific luncheon programs

- *CBA Listservs and Newsletters*
 - C-Brief
 - Young Lawyers Division E-News
 - Solo/Small Firm Practitioner's Section Listserv
 - Business Law Section Newsletter
 - Environmental Law Section Newsletter
 - Immigration Law Section Discussion Listserv
 - Real Estate Law Section Newsletter
 - Real Estate Law Section "High Altitude" Discussion Listserv
 - Trust and Estate Section Council Notes
 - Trust and Estate Section Discussion Listserv
 - Family Law Section Newsletter
 - Family Law Section Discussion Listserv
 - Government Counsel Section Listserv
 - Health Law Section Listserv
 - Inns of Court, <https://inns.innsocourt.org>

Law Business Services

- Discounted Products and Services, including:
 - Business Services
 - Financial Services
 - Insurance
 - Personal Services

The Colorado Lawyer

- "The Mentoring Relationship: How to Make it Work and Why it Matters," Mark A. Fogg, Richard L. Gabriel, and Margrit Lent Parker (Oct. 2013)
- "Fostering Civility, Respect for Lawyers, and Respect for the Law Through Mentoring," David L. Masters (Sept. 2011)
- "Mentoring: An Unmet Challenge," A. Bruce Campbell (July 2011)

Articles

Client Empathy

- "Embrace the Empathy Piece," Jayne Reardon, Blog Post on 2Civility.org (Oct. 14, 2014)
- "How Can Empathy Help You Differentiate Your Law Firm?," Ilina Rejeva, Blog Post on LegalTrek.com (Sept. 28, 2014)
- "Emotional Intelligence, Lawyers, and Empathy - Using the Power of Listening with Care to Build Better Professional Relationships and Satisfy Clients," Dan DeFoe, Blog Post on psycholawlogy.com (Nov. 25, 2012)

- “Lawyers: Gatekeepers for Psychological Issues,” Janice Mucalov, Canadian Bar Association Website (date unknown)
- “Empathy the Missing Ingredient in Poor Client Relations,” Ed Poll, Blog Post on Lawbiz.com (Aug. 8, 2013)

Legal Research

- “Internet Legal Research on a Budget,” Judy K. Davis and Carole A. Levitt, *Law Practice Today* (Feb. 2014)

Mentoring

- “Navigating the Mentor-Mentee Relationship,” Erin Binns, *Student Lawyer* (Feb. 2013)
- “The Power of Informal Mentoring Programs,” Tammy A. Patterson and Mark J. Korf, *The Bench* (March/April 2013)

Chapter 4

Authorities

Colorado Rules of Civil Procedure

- Chapter 2, Pleadings and Motions – C.R.C.P. 11, Signing of Pleadings
- Chapter 4, Disclosure and Discovery
- Chapter 17A, Practice Standards and Local Court Rules
- Chapter 20, Colorado Rules of Procedure Regarding Attorney Discipline and Disability Proceedings, Colorado Attorneys’ Fund for Client Protection, and Mandatory Continuing Legal Education and Judicial Education

Colorado Rules of Professional Conduct

- Colo. RPC 1.1, Competence
- Colo. RPC 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer
- Colo. RPC 1.3, Diligence
- Colo. RPC 1.4, Communication
- Colo. RPC 1.5, Fees
- Colo. RPC 1.6, Confidentiality of Information
- Colo. RPC 1.7, Conflict of Interest: Current Clients
- Colo. RPC 1.8, Conflict of Interest: Current Clients: Specific Rules
- Colo. RPC 1.9, Duties to Former Clients
- Colo. RPC 1.16A, Client File Retention
- Colo. RPC 2.1, Advisor
- Colo. RPC 3.1, Meritorious Claims and Contentions
- Colo. RPC 3.2, Expediting Litigation

- Colo. RPC 3.3, Candor Toward the Tribunal
- Colo. RPC 3.4, Fairness to Opposing Party and Counsel
- Colo. RPC 4.1, Truthfulness in Statements to Others
- Colo. RPC 4.2, Communication with Person Represented by Counsel
- Colo. RPC 4.3, Dealing with Unrepresented Person
- Colo. RPC 5.5, Unauthorized Practice of Law; Multijurisdictional Practice of Law
- Colo. RPC 8.4, Misconduct

Colorado Ethics Opinions

- Formal Ethics Opinion 40, Accepting Case Handled by Another Lawyer
- Formal Ethics Opinion 47, Attorney Representation in Dissolution of Marriage
- Formal Ethics Opinion 57, Conflicts of Interest
- Formal Ethics Opinion 62, Duty of Attorney to Report an Ethical Violation
- Formal Ethics Opinion 68, Conflicts of Interest: Propriety of Multiple Representation
- Formal Ethics Opinion 79, Use of Legal Assistants in Client Representation
- Formal Ethics Opinion 98, Dual Practice
- Formal Ethics Opinion 106, Referral Fees and Networking Organizations
- Formal Ethics Opinion 108, Inadvertent Disclosure of Privileged or Confidential Documents
- Formal Ethics Opinion 113, Ethical Duty of Attorney to Disclose Errors to Clients
- Formal Ethics Opinion 117, Ethical Responsibilities of Attorneys in Legal Services and Pro Bono Programs Concerning Prospective Clients
- Formal Ethics Opinion 123, Candor to the Tribunal and Remedial Measures in Civil Proceedings

Chapter 4

Case Law

- *In re Shipley*, 135 S. Ct. 1589-90 (2015)
- *Allen v. Steele*, 252 P.3d 476 (Colo. 2011)
- *People v. Riddle*, 35 P.3d 146 (Colo. 1999)
- *People v. Madigan*, 914 P.2d 346 (Colo. 1996)
- *People v. Pittman*, 889 P.2d 678 (Colo. 1995)
- *Mehaffy, Rider, Windholz & Wilson v. Central Bank Denver, N.A.*, 892 P.2d 230 (Colo. 1995)

American Bar Association Ethics Opinions

- Formal Opinion 95-395, Joint Defense Consortium (Co-Counsel)
- Formal Opinion 06-441, Criminal Defense (Competence) ///

