
Successful Business Planning For the Modern Law Practice

Version 2

A Project of the
Colorado Bar Association
Modern Law Practice Initiative

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• Colorado Bar Association •

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INTRODUCTION

Successful Business Planning for the Modern Law Practice, Version 2, is a business planning tool designed to assist lawyers in developing a successful and financially viable practice in the ever-evolving practice of law. The manual includes practical and ethical considerations in developing a business plan and providing representation. Among the tools are sample forms, such as an interactive spreadsheet that calculates the amount of income needed to cover overhead, personnel, and lawyer earnings. There also is a discussion about the value of mentorship and other ways to gain competency, many of which are offered through membership in the Colorado Bar Association.

There is a perception by middle class America that they cannot afford a lawyer. This environment results in a large number of self-represented litigants in the Colorado court system, as well as individuals using the Internet as their sole legal resource to draft wills, leases, business agreements, and other documents. Statistics from the State Court Administrator's Office (SCAO) show that for fiscal year 2015, 272,000 parties were involved in cases in Colorado courts in which a lawyer never entered an appearance. For instance, in domestic relations cases, 75% (52,524) of parties did not have a lawyer enter their appearance at any time during the case. Similarly, business owners and others who have drafted their own documents become aware of problems and their need for legal advice only when something goes awry.

We thank the Colorado Bar Association staff for their time and energy in shepherding this project. Specifically, we want to acknowledge Sarah Kottoor, Sue Bertram, and Jessica Bednarz in the research, drafting and editing that has resulted in Version 2 of this toolkit.

The practice of law is in a state of flux. This manual is meant to assist lawyers to be successful as the legal landscape shifts. We recommend that you watch for additional programs and CLEs to understand the nuances of opening a modern law practice.



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Chapter One

Chapter 1

Business Planning

To be profitable, your law firm needs a business plan like any other business. This is a fluid plan that will change as your clientele increases, technology changes, and you increase the number of services you provide. A business plan consists of several components:

1. Who are your intended clients and how do you provide services they value (unbundled, convenient hours, etc.);
2. Choice of entity;
3. Start-up costs and budget for 1-2 years;
4. Marketing strategy (see Chapter 6);
5. Office procedures (billing, etc.) (see Chapters 2 and 3); and
6. Technology needs (see Chapter 8).

Business planning will not only give you focus, but it will also give you a perspective, timelines, and ability to control your firm's growth.

PROVIDING VALUE THROUGH LEGAL EXPERTISE

Providing value to your clients should be the guiding principle in everything that you do in your law practice. Potential clients are coming to you first and foremost for your legal expertise. Thinking about and determining how you can provide value is the first and most important step in the business planning process.

There are five ways you can offer value to a potential client in virtually any kind of legal matter.

Counsel: The trained and objective advice of a lawyer is increasingly critical today, even though potential clients have growing access to legal information and resources that enable them to do more tasks on their own. Even in relatively simple matters, where potential clients generally have access to information or forms that would allow them to proceed with a lawsuit or enter into a contract, the potential clients often do not have:

- the expertise to understand the precise meaning of certain legal terms or the steps that must be taken to achieve their goals;
- the objectivity to determine whether proceeding on their own is the best option; or
- the confidence that they are pursuing the proper course of action for their individual situation.

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Advocate: A skilled advocate may have even greater value to many potential clients, particularly where the potential client is on unequal footing in terms of power. Examples include:

- a consumer debt case where the creditor has deep pockets and is represented by counsel;
- a divorce case where one spouse has significantly more resources and is represented by counsel;
- a business case where a budding small business is working on an important deal with a much larger company.

Having a trained advocate on the client's side can make a tremendous difference in the outcome of the matter and the client's peace of mind.

Navigator: In most instances, the legal system is still very complex and intimidating to the general public. Brief advice and coaching to help clients navigate the system may provide huge value to a client who is unfamiliar with the system but otherwise is well positioned to adequately handle his or her case.

Information Broker: While this was traditionally a core value that lawyers provided to their clients, many consumers today expect to find answers to many of their questions on the internet. Therefore, a great way to build trust and loyalty with potential clients is by knowing where they can get free and reliable information and resources, such as the court websites, and making this information freely available. (Jay Baer, *Youility: Why Smart Marketing is about Help not Hype* (N.Y.: Penguin, 2013).) Providing potential clients with this information means that you can focus your time on more significant and income-generating services.

Connector: A client may need services in addition to the legal assistance you provide in order to fully resolve his or her problem. For example:

- where a domestic violence victim seeking an order of protection also needs non-legal counseling; and
- where a small business client also needs a valuation consultant.

By identifying these needs and acting as a connector, you are offering value to the client.

CREATE AND TEST ASSUMPTIONS ABOUT WHAT CLIENTS VALUE • INCORPORATE CLIENT VALUE INTO BUSINESS STRATEGY

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Throughout this toolkit, we will go into greater detail about three popular and effective approaches to incorporating client value into your business strategy. These approaches are:

- incorporating limited scope representation, Chapter 5: Unbundling/Limited Scope Representation;
- alternative fee arrangements, Chapter 3: Pricing, Fee Structures, Billing and Collection;
- virtual law practice components, Chapter 7: Brick and Mortar or Virtual and Chapter 8: Technology.

Once you are familiar with these three concepts, you need to determine what clients in your target market value and what corresponding value you can offer them. The best way to do this is to create assumptions about what those clients value and test those assumptions:

Example 1: Based on the market research you have conducted and what you know, your assumption is that moderate income clients in your target market value convenience. Specifically, they value being able to access your legal services outside regular business hours (9:00 a.m. to 5:00 p.m.). To test this assumption, you advertise on your website and to your networks that your office will be open on Saturday mornings. What happens? Do clients take advantage of the Saturday morning hours? If they do, why did they? If they do not, why didn't they? Maybe your assumption is correct. Maybe it is incorrect. Maybe it is actually partially correct, but you need to adjust it because potential client feedback indicates Saturday afternoons are actually more convenient for clients than Saturday mornings. The point is to ask specific questions in order to properly evaluate the results. A second way to test this assumption would be by developing an online client portal and then asking clients the same questions regarding it.

Example 2: Based on the market research you conducted and what you know, your assumption is that moderate income clients in your target market value having choices with respect to legal service offerings. To test this assumption, you advertise on your website and to your networks that you offer alternative fee arrangements (*e.g.*, fixed fees by phase, task, or case or contingency fees). See Chapter 3: Pricing, Fee Structures, Billing and Collection. When talking with clients about your various fee arrangements, what do they choose? Why? Did they know that you offered alternative fee arrangements before they came to you? Which fee arrangements do they like the best and why?

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Example 3: Based on the market research you conducted and what you know, your assumption is that moderate income clients in your target market will pay \$800 for an uncontested divorce. To test this assumption, you advertise on your website and to your networks that you will charge \$800 for an uncontested divorce. Do any clients take you up on your offer? If not, your price might be too high and you may need to lower it and retest this assumption with a new price. You may also need to adjust your marketing strategy or simply ask people in person for purposes of this exercise so you can get to the heart of the matter.

It is advisable to continue to test assumptions, evaluate client feedback, and adjust your business strategy accordingly so you can grow your practice going forward.

Today's lawyers also need to consider incorporating process improvement into their practices in order to work more efficiently and bring down the cost of legal services. A great way to achieve this goal is by incorporating the core principles of Lean and Six Sigma process improvement with project management and tailored technologies into your practice. For more information, see www.bluevault.com/2015/10/07/law-firms-look-to-lean-and-six-sigma-for-guidance and the Appendix to this chapter.

PREPARE A BUSINESS PLAN

After considering how you can provide value to clients, the next step is to develop a basic business strategy, plan, and budget to help guide you through the rest of the startup process.

Why Should I Have a Business Plan?

Dwight D. Eisenhower once said, "[I]n preparing for battle I have always found that plans are useless, but planning is indispensable." The same can be said about business planning for start-ups, including law practices. While your initial business plan will likely not get you all the way through the start-up phase, going through the process of creating a business plan is still essential because it forces you to give at least some initial thought to your strategy for launching, maintaining, and growing your firm.

Additionally, writing a business plan forces you to think about the business aspects of a legal practice. If you are considering borrowing money from an investor or a bank, you will need to provide a business plan in order to be extended a line of credit.

Elements of a Business Plan

Initial business plans should contain the following sections:

- **Executive Summary.** Summarizes what the firm does. Why does your law practice exist and what are you looking to achieve?
- **Strategy.** What value are you going to offer to clients in your target market, and how are you going to market and monetize that value? Where do you want your firm to be in one, five, and ten years? See the section above for information about client value.
- **Attorney Overview.** Who will be practicing in this firm? Include lawyer biographies.
- **Financial Plan.** What expenses are associated with operating your practice and what are expected revenue projections? See the section below for more information on writing a thorough budget.
- **Marketing Strategies.** What is your marketing plan? See Chapter 6: Marketing and Business Development for more detailed information.
- **Metrics and Milestones.** How are you going to measure and evaluate your law practice performance? What are your short- and long-term goals for your law practice?

See the Appendix to this chapter for helpful resources.

TIPS

- | | |
|--|--|
| 1. Continually think about and evaluate how you can provide value to your clients. | 5. Consider a business contingency plan for the event of disaster or tragic loss. |
| 2. Create a business plan. | 6. Consider marketing strategies, including building a website and creating business cards. See Chapter 6: Marketing & Business Development. |
| 3. Prepare a budget, paying close attention to expenses and revenue projections. This sample budget allows you to insert projections and manipulate the budget to achieve desired goals. | 7. Research malpractice insurance coverage and providers. See Chapter 10: Legal Malpractice Insurance. |
| 4. Determine what form of organization your practice will be. | |

**Chapter
1****PREPARE A BUDGET**

Calculating your business expenses and revenue target is extremely important in creating a viable business plan. You will need to consider:

- How much it costs to run your business;
- How much money you need to live on; and
- How much money you ultimately want to make beyond that.

Identify and Calculate Your Monthly Business Expenses

Your business expenses include all costs and expenses associated with running your firm, including office expenses, insurance, software and other technology expenses, marketing and other professional expenses, taxes, staffing, and general administration and overhead costs.

**Identify and Calculate Your Personal Living Expenses/
Minimum Annual Salary**

For purposes of this toolkit, your annual personal living expenses include all expenses that are necessary to maintain health, safety, well-being, and the ability to earn money. Examples may include costs associated with housing, utilities, food, clothing, transportation, and various types of insurance, such as health, disability, and automobile. Once you have calculated your annual personal living expenses, add the income taxes that would be paid on your annual personal living expenses in order to calculate your minimum annual salary.

**Determine Your Desired Annual Salary and
Revenue Targets**

Your desired annual salary will take into account your annual personal living expenses and the additional disposable income you want to spend and save each month (*e.g.*, for recreational activities, saving for vacations, saving for retirement, and so on), remembering to also take into account income taxes. Obviously, your desired annual salary needs to be realistic for the state of your practice. If you have just started your firm, your desired salary realistically may be just above what it takes to cover your expenses, while at later stages it should be more realistic to aim higher.

By understanding your costs and identifying realistic income goals, you can determine how much per month or per week you need to average in order to meet your goals. So, for example, if your business and living costs together add up to \$40,000 per year and you hope to make at least \$10,000 beyond that, your revenue target should be to average \$1,000 per week to achieve your goal (assuming you take off for holidays and some vacation time).

Looking at your expenses and goals in this fashion frees you from looking at things through the hourly lens, informs your pricing strategies, and helps you evaluate how you are doing. Instead of focusing on how much you should charge a client for each hour, you can focus on what mix of paid services you need to average each week/month/year to meet your revenue goals.

When creating your initial budget, you might find it useful to use a budget spreadsheet similar to the Moderate Income Client Practice Budget. See the Appendix to this chapter for helpful resources. For a budget template, go to Forms2Share on the Law Practice Management page at www.cobar.org.

CHOICE OF ENTITY

Importantly, if you want to practice in a business organization, you must determine what form of organization your firm will be. There are many different forms that can be used to practice law in Colorado, including:

- *Sole Proprietorship*. One person owns and operates the business and it does not require filing of any paperwork to create.
- *General Partnership*. A general partnership exists when two or more persons operate a business together. Absent an agreement, a partnership is the default under the rules. No filings or paperwork are required to form.
- *Limited Liability Partnership*. This is a general partnership that has been registered with the Secretary of State. The differences between a general partnership and limited liability partnership lie in the assignment of liability to each partner.
- *Limited Liability Company*. This is an unincorporated business organization that is formed by filing Articles of Organization with the Secretary of State. See C.R.S. §§ 7-80-101 et seq.
- *Professional Corporation*. This is a separate legal entity that is created upon the filing of Articles of Incorporation with the Secretary of State. See Colorado Business Corporation Act, C.R.S. § 7-101-101.

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It is important to note that the Colorado Rules of Professional Conduct apply to all attorneys licensed to practice in Colorado regardless of the form of business entity through which they are practicing. As such, although attorneys are allowed to practice through limited liability entities, no attorney can escape malpractice liability. Notably, law firms cannot be owned by non-lawyers as the practice of law cannot be influenced by non-legal business partners. Colo. RPC 5.4.

For more detailed information about the pros and cons of each entity, please see *Lawyers' Professional Liability in Colorado*, which is available through Colorado Bar Association CLE, <http://cle.cobar.org>.

BASIC LAW PRACTICE CHECKLIST

At this point, you have considered what value you can offer your clients, incorporated that value into a business strategy, and drafted a business plan that includes a budget. Now it is time to consider what things you need to open your doors.

A basic law practice should have:

- A law firm name, phone number, and email address;
- A basic website (so that potential clients can find you) with appropriate disclaimers;
- Basic letterhead and business cards;
- Selected a business entity and filed the necessary paperwork with the Colorado Secretary of State's Office;
- Malpractice insurance;
- A space where you can meet with clients (see www.cobar.org/about-the-cba/cba-membership/stratum);
- A system for checking conflicts (see *Creating Conflicts of Interest Procedures to Protect You and Your Firm from Malpractice*, by Sandra J. Roberts (2013) (CBA members can check this book out for no cost through the CBA Lending Library);
- Business operating and client trust accounts;
- Basic billing and bookkeeping systems;
- A basic budget that includes your business expenses and minimum salary;
- Assigned initial pricing to your legal services;
- A basic business contingency plan in place (see the Colorado Supreme Court Office of Attorney Regulation Counsel's "Planning Ahead: A Guide to Protecting your Client's Interests in the Even of your Disability or Death (One of Which is Inevitable)," www.coloradosupremecourt.com/pdf/regulation/closing_practice.pdf);
- Access to legal research (see Casemaker for CBA members at www.cobar.org); and
- Basic technology security, file retention, and backup systems in place (see www.cobar.org/lpm).

APPENDIX

Chapter 1

Colorado Bar Association Resources

CLE

- “Hanging Your Shingle: Hardware, Software, and Anywhere You Want to Go,” CLE held in 2015, <http://cle.cobar.org/homestudies>

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.
- *The Lawyer’s Guide to Creating a Business Plan*, 6th Ed. (Software, 2014), available to CBA members to check out at no cost through the Lending Library

The Colorado Lawyer

- “E-mail Security: The Scary Truth for Lawyers and What to Do About It,” Rob Kilgore & David Willson (May 2015)

Colorado Supreme Court, Office of Attorney Regulation

- Proactive Management-Based Program: OARC Subcommittee-developed self-evaluation tool so law firms can evaluate the firm’s ethical infrastructure and proactively address common risks.

Articles

Billing & Bookkeeping

- *The Small-Firm Guidebook to Accounting Systems: Finding the Fit that’s Just Right for You*, Steve Feters and Christopher T. Anderson, LexisNexis® Law Firm Practice Management Products (2014)
- “How to Choose Billing and Accounting Software for Your Law Firm,” Loretta Ruppert, Blog Post on LegalEase.com (Jan. 11, 2012)
- “Five Pitfalls of Legal Accounting,” Rick Kabra, *Law Practice Today* (Feb. 12, 2016)
- See Chapter 3: Pricing, Fee Structures, Billing and Collection for billing resources

Chapter 1

Developing a Budget

- “Budget Essentials for Law Firm Business Development,” Deborah C. Scaringi, *Legal Marketing Reader* (Oct. 2010)
- “Budgeting is the Key to Effective Alternative Billing,” Ed Poll, *LawBiz* (Oct. 2012)
- “Financing a Law Practice,” Laura A. Calloway and David J. Bilinsky, *GP Solo* (July/Aug. 2011)
- “Increasing Profit by Decreasing Costs,” K. William Gibson, *Law Practice Magazine* (July/Aug. 2012)

Borrowing Money

- U.S. Small Business Administration, www.sba.gov/content/borrowing-money

Building a Basic Website

- “Why a Mobile-Friendly Law Firm Website is Essential,” Austen Loft, Blog Post on SoloInColo.com (Nov. 4, 2015)
- “How to Select a Domain Name for Your Law Firm,” Andrew Cabasso, Blog Post on Lawyerist.com (Feb. 12, 2015)

Business Continuity, Contingency, and Succession Planning

- *The Contingency Planning Guide for Lawyers*, The Law Society of Upper Canada (Oct. 2014)
- *Surviving a Disaster: A Lawyer’s Guide to Disaster Planning*, ABA Special Committee on Disaster Response and Preparedness (Aug. 2011)
- “The 7 Deadly Sins of Succession Planning,” Peter A. Giuliani, *Law Practice Magazine* (Nov./Dec. 2015)

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)

Choosing a Business Entity

- “Choosing a Business Structure for Your Law Firm,” author unknown, Blog Post on FindLaw.com (date unknown)
- “What Business Form to Use for your Law Firm,” Ian E. Scott, Blog Post on TheStudentAppeal.com (date unknown)
- “How to Select a Law Firm Business Entity,” Megan Zavieh, Blog Post on Lawyerist.com (Feb. 23, 2015)
- *ALPS Getting Started Solo Manual*, www.alpsnet.com/gettingstartedsolo/

Choosing a Law Firm Name

- “Selecting a Name for Your New Law Firm,” Matthew Hickey, Blog Post on Rocket Lawyer.com (April 18, 2012)
- “Small Firms, Big Lawyers: Small Firms with Big Names,” Jay Shepherd, Blog post on AboveTheLaw.com (July 27, 2011)
- “Choosing Your Company’s Name: Corporate Names Versus Trademarks,” Sonia Lakhany, Blog Post on MyShingle.com (June 27, 2014)

Client-Centric Law Firms

- “Why Your Firm Should Be Designed With Your Client In Mind,” LegalPracticePro.com (Aug. 27, 2015)
- CLP Speakers Series: “Transforming the Delivery of Legal Services in Canada: Findings of the Canadian Bar Association’s Legal Futures Initiative,” with Fred Headon, Assistant General Counsel, Labour and Employment, at Montreal-based Air Canada and Chair of the CBA’s Legal Futures Initiative (published March 13, 2015)
- “Creating a Client-Centric Practice,” Ed Finkel, *Illinois Bar Journal* (Nov. 2015)
- “For 2016, Should You Expand Your Practice to . . . Walmart?,” Casey C. Sullivan, Blog Post on Findlaw.com (Dec. 22, 2015)
- “The Client-Centered Law Practice (Part 1 of 2),” Jim Calloway, *Oklahoma Bar Journal* (Jan. 17, 2004)
- “The Client-Centered Law Practice (Part 2 of 2),” Jim Calloway, *Oklahoma Bar Journal* (Feb. 14, 2004)
- *Youtility: Why Smart Marketing is about Help Not Hype*, Jay Baer

Creating a Business Plan

- “Lean Startups Need Business Plans, Too,” Tim Berry, Blog Post on Entrepreneur.com (July 10, 2012)
- “Write a Winning Business Plan With These 8 Key Elements,” David Ciccarelli, Blog Post on Entrepreneur.com (June 23, 2014)
- “Creating a Business Plan for Starting a Law Firm,” Paul M. Floyd, Materials from a Minnesota Lawyers Mutual Webcast (April 26, 2012)
- “Are YOU Ready to Fly Solo?,” Ed Poll, *Law Practice Today* (March 2011)

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- “Future Perfect: Staged Business Planning for Law Firms,” Jared Correra, Blog Post on AttorneyAtWork.com (March 5, 2015)
- “Law Firm Recruits Lawyers to Provide a la Carte Divorce Services in Cafe Setting,” Debra Cassens Weiss, *ABA Journal News* (Nov. 2012)
- “Key Points to Consider When Borrowing Money,” U.S. Small Business Administration, *FindLaw* (March 2008)
- “Building a Great Business Plan for Your New Law Practice,” Freya Allen Shoffner of Shoffner & Associates, Boston, MA, *Massachusetts Bar Association LOMAP*
- “Six Tips to Take Charge of Your Own Economy,” Cynthia Sharp, *GP Solo* (Jan./Feb. 2013)

eLawyering

- eLawyering Blog, published by Richard S. Granat

Incorporating Lean Six Sigma & Agile Principles into Your Law Practice

- #LegalLean at MaRS: Ken Grady – “The Seyfarth Lean Journey”: In this talk, Ken highlights the amazing transformation and evolution of the Seyfarth Lean program: a value-driven client service model that combines the core principles of Lean Six Sigma with process improvement, project management, and tailored technology solutions. For almost ten years, SeyfarthLean has been unique to the legal profession and a contemporary approach to providing, delivering, and managing client and legal services.
- *The Lean Startup*, Eric Reis, New York: Crown Business, 2011. Print.
- “Lean Operation for a Client-Centric Practice,” Paul Spitz, *Law Technology Today* (April 16, 2014)
- “Five Tips for Running a Lean Law Practice,” Asaf Cidon, blog post on attorneyatwork.com (March 24, 2015)
- “The Dawn of the Agile Attorney,” John E. Grant, *Law Practice Today* (Feb. 13, 2015)
- “Practice Lean! Implementing Technology-Driven Lean Six Sigma in a Law Firm,” Frank Urbanic, http://works.bepress.com/frank_urbanic/1/ (Nov. 2014)
- “An Introduction to Lean Six Sigma as Applied to Law Firms,” Lisa Glanakos, *Practice Innovation Newsletter*, Thomson Reuters (Oct. 2014)
- “Insiders’ Views: How Lawyers Can Benefit from Lean Six Sigma,” Interview with Jason Moyse & Aron Solomon, *LegalTrek.com* (April 2015)
- The Agile Attorney Blog – Follow it for tips on incorporating agile technology into your law firm
- “Using Informatics to Drive Process Improvement,” Nicholas Gaffney, *Law Practice Today* (Nov. 13, 2015)
- “Imagineering the Future of Law,” Bob Young, *Law Practice Magazine* (Nov./Dec. 2015)

Law Practice Management & Technology — Starting a Practice

- “The Pocket Guide to Launching Your Law Firm,” Roy Ginsburg, Edward Poll, Stacey E. Burke, & Nicole Black, *MyCase*, Podcast Part 1 (Jan. 2016)
- “Launching Your Law Firm: The Necessities,” Stacey E. Burke, *MyCase Pocket Guide to Launching Your Law Firm* (Jan. 2016)
- “Start a Law Firm Guide,” www.myshingle.com

Running a Law Firm

- Opening a Small Firm — How to Survive the First Three Years, Branigan Robertson, DBA-YLD Blog Post (Nov. 2, 2015)

Selecting Office Space – See Chapter 7: Brick and Mortar or Virtual for more information.

- “Tips for Choosing Virtual Office Space,” Carolyn Elefant, Blog Post on MyShingle.com (Feb. 18, 2014)
- “Why Do Small Law Firms and Solo Attorneys Choose Shared Office Space?,” Stephen Perih, Blog Post on LawFirmSuites.com (Feb. 11, 2014)
- “Home Is Where the Office Is: Ethical Implications of the Virtual Office,” Seth L. Laver, Blog Post on ABA Section of Litigation Webpage (March 27, 2014)
- “10 Questions to Ask Yourself Before Choosing an Office Space,” Lisa Girard, Blog Post on Entrepreneur.com (March 19, 2013)
- “Five Things to Look for in Shared Office Space,” Ron Bockstahler, Blog Post on AttorneyAtWork.com (Oct. 7, 2015)

Setting Up Business Operating & Client Trust Accounts – See Chapter 3: Pricing, Fee Structures, Billing and Collection for more information

- “ILOTAs and Client Trust Accounts,” Carole J. Buckner, *GP solo* (July/Aug. 2011)
- Colorado Lawyer Trust Account Foundation, www.coltaf.org
- “Business Bank Accounts: 6 Mistakes Small Businesses Make,” Sarita Harbour, Blog Post on BusinessNewsDaily.com (April 22, 2014)

Technology Security & Backup – See Chapter 8: Technology for more information

- *ABA Legal Technology Buyer’s Guide*, <http://buyersguide.americanbar.org>
- “Computer Security: It’s Scary Out There!,” Vivian Manning, Blog Post on Attorney AtWork.com (Nov. 12, 2013)
- “Back That Cache Up: Data Redundancy Is Essential for Law,” Jared Correia, Blog Post on AttorneyAtWork.com (March 18, 2014)

**Chapter
1****Authorities****Colorado Rules of Professional Conduct**

- Colo. RPC Rule 1.0 through Rule 9.0, www.cobar.org/rulesofprofessionalconduct

Colorado Ethics Opinions

- Formal Ethics Opinions issued by the CBA Ethics Committee and Continuing Legal Education in Colorado, Inc., www.cobar.org/ethicsopinions

American Bar Association Ethics Opinions

- Ethics Opinions, www.americanbar.org/groups/professional_responsibility/publications/ethicsopinions.html

Chapter Two

Client Intake, Initial Screening, and Client Engagement Agreements

Chapter 2

Establishing a relationship with a prospective client is a critical part of the practice of law. First impressions stick, both with the prospective client and the prospective lawyer. The right process for interviewing clients and screening them for suitability can save hours of grief later.

DEVELOP A REPEATABLE PROCESS

Creating a repeatable client intake and initial consultation process that includes the use of templates and leverages technology will increase your efficiency and decrease your chances of missing important facts or steps. While specific intake processes will vary depending on the attorney, firm, and area of practice, the general flow of an intake procedure will include:

- initial/pre-screen that involves a conflicts check and controls the attorney's risk; this is where attorneys should avoid discussing confidential information;
- follow-up conversation to obtain greater detail;
- full meeting to review the case, create an engagement agreement, and discuss management of the legal issue and client expectations.

Pre-screen

The easiest and most obvious way to accomplish pre-screening is by asking basic questions. Good templates will help you catch conflicts of interest and other "red flags" about the requested representation, so develop and use a client intake template to complete this task.

Importantly, while intake provides an opportunity to build rapport with a client and screen for potential conflicts, it is the latter that is the most important aspect initially as attorneys have an ethical duty to conduct a thorough conflicts check. To adequately conduct a conflicts check, you must gather the following information:

1. Names of clients and matters, including all surnames or other names used;
2. Names of adverse parties;

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3. Names of related parties (witnesses, experts, insurance carriers, family members, co-counsel, opposing counsel, related entities, owners of business entities);
4. Names of potential/rejected clients and matters;
5. Dates matters were active/closed/rejected; and
6. Names of timekeepers who worked on particular matters.

After obtaining enough initial information, conduct a thorough conflicts check before discussing any confidential information with the potential client.

Conflicts can arise in many ways, including:

- Being adverse to a current client in any matter, however unrelated;
- Being adverse to a former client in a substantially related matter;
- Representing multiple clients in a single matter;
- Conflicts resulting from dealings with prospective clients that do not mature into engagements;
- Personal interest conflicts, including but not limited to business transactions with clients, gifts from clients, providing financial assistance to clients, sexual relationships with clients.

There are several vendors offering conflict checking software. For further reading on conflicts and establishing a conflicts checking system, see the Appendix to this chapter.

Follow-Up Initial Consultation

“Meet” with the potential client, either in person or virtually (through an online intake system), to discuss and assess his or her perceived legal issues, goals, expectations, budget, etc. and what he or she values most. Again, developing an initial consultation template for each area in which you practice will streamline the process.

The initial consultation is important to the client because the client is trying to decide if you are competent and, most important, if you are the right attorney for him or her. Here are some quick practice pointers for an effective initial consultation:

- *Engage in active listening.* Give the client an opportunity to describe his or her legal issue before you start asking questions. You don’t want to turn this meeting into a client interrogation. Make sure there are no distractions to draw your attention away from the client (turn off cell phones and email alerts).
- *Offer emotional sensitivity.* Provide a safe space for the client to speak frankly and try to empathize with their trouble. In doing this, you will gain the client’s trust which is important to a healthy attorney-client relationship.
- *Avoid problem solving and legal advice.* Remember that the purpose of this meeting is to determine if it is a good fit. It will not be uncommon for a client to ask a complicated legal question yet think the answer is simple. Avoid the urge to offer legal advice and

simply explain that there is no simple answer. Also, if you are unsure of the answer don't be afraid to be honest and explain "I don't know the answer but I can research it and get back to you."

- *Don't be afraid to reject a bad fit.* This is hard, but undoubtedly the most important. During the initial consultation, it is your opportunity to decide if it is a good fit. Don't be afraid to trust your gut and turn down representation as you will save yourself endless time and frustration.

During this meeting, it is important to discuss different fee arrangements. It is likely that as a part of this conversation you will be educating the potential client about limited scope representation and alternative fee structures associated with this practice. Be sure to review Chapter 3: Pricing, Fee Structures, Billing and Collection, as well as Chapter 5: Unbundling/Limited Scope Representation.

After the meeting, determine whether taking the case is a good fit for your practice by comparing what you learn about the client and case with your case acceptance guidelines. See the next subsection for information on developing case acceptance guidelines.

Consider Online Intake

To further streamline your process, you might consider conducting an online intake. Software now allows lawyers to move the client intake and initial consultation process online. Conducting intake online can benefit both potential clients and lawyers. Online intake provides potential clients with greater flexibility and convenience because they can complete the process at a time and location that is convenient for them. Lawyers can benefit by reducing data entry errors, having the ability to easily sort and analyze potential client data, and improving organization and workflow through the seamless connection between their client intake software and case management system ("4 Reasons Why Online Client Intake is a Game Changer," Clio Team Member, GoClio.com (March 19, 2015)). If you do decide to move your client intake process online, you should seriously consider including a click-through website disclaimer to decrease the chances of a potential client prematurely thinking the attorney-client relationship has begun.

Example: I am a lawyer, but I am not your lawyer (unless you have signed a contract with my office). This communication is not intended as legal advice, and no attorney client relationship results. (From *PA Law Practice Management*, by Ellen Freedman.)

Unless you have a practice where you deliver all or some of your legal services online, conducting all of the initial consultation online might not be the best option. Meeting a potential client in person or conversing with him or her via a software application such as Skype or Zoom for at least part of the initial consultation will allow you to better assess the potential client's personality and have a more interactive and fruitful discussion. This is your opportunity to

connect with the client and help the client see why you are the right lawyer to see him or her through the legal process. An online interactive procedure does not offer this chance to bond and gain the client's trust and business.

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Engaging in Attorney-Client Relationship

If both parties have agreed that there is a good fit, draft a client engagement agreement and make sure it is signed by both the attorney and client. Not only is this an ethical requirement, it is good business practice; the client can see up front what he or she will be getting and paying for that service. The client gets a copy and a copy goes in the file. See the following subsection for information on drafting client-engagement agreements.

TIPS

1. Develop a repeatable client intake process.
2. Establish case acceptance guidelines.
3. Do you have a process by which you identify conflicts? See Colo. RPC 1.7.
4. If you have a conflict, but it is consentable, have you obtained valid consent? See Colo. RPC 1.7.
5. Decide how the attorney-client relationship should be structured, specifically considering whether the case might be appropriate for unbundling. See Chapter 5: Unbundling/Limited Scope Representation.
6. Listen carefully to the client, discuss client expectations, and establish reasonable expectations.
7. Make sure the agreement is outlined in a Client Engagement Agreement.
8. What is your policy regarding communication with clients, and have you asked the client what communication methods are preferred? Do you communicate with clients in a professional, timely, and efficient manner that is also respectful of the client and his or her needs? See Colo. RPC 1.4.
9. Trust your gut and don't talk yourself into taking a client you don't feel comfortable representing.
10. Every time you speak with a potential client and decline representation, follow up with a non-engagement letter that affirmatively states you are not representing him or her. See Colo. RPC 1.4.

If there is a good fit in any matter in which you might have a conflict or potential conflict, the conflict might still be consentable. Colo. RPC 1.7 and Colo. RPC 1.0. As stated in Rule 1.0(e), Informed Consent, and comments [18] and [19] to Rule 1.7, informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. The information required depends on the facts and circumstances of the case and the risks involved. The information has to address the implications of the common representation in that matter, including the possible effects on the attorney's duty of loyalty, confidentiality, and privileges, and the advantages and risks involved. For sample engagement and non-engagement templates due to conflicts, see Forms2Share at www.cobar.org/lpm.

If there is not a good fit, be sure to notify the potential client in writing through a non-engagement letter so there is no doubt that there is no further attorney-client relationship. Don't forget to log this client into the conflicts database! You may also consider providing the client with referral options. It is also a good idea to offer the client alternative options if he or she doesn't have the resources to hire you. For sample non-engagement templates, see Forms2Share at www.cobar.org/lpm.

CREATE CASE ACCEPTANCE GUIDELINES

The right process for interviewing clients and screening them for suitability can save hours of grief later, so it is important to create case acceptance guidelines and stick to them. When considering whether to take a case, ask yourself the following questions:

- Are you comfortable with this kind of legal work? If not, do you have the time and desire to become competent in the relevant practice area?
- Do you feel comfortable with this client? If there are personality clashes already, beware — differences at early stages will be magnified if the representation does not go exactly as the client expects.
- Are the client's goals and expectations reasonable?
- Can the client afford the amount of work necessary to accomplish the task?
- Do you have the necessary time to commit to the matter?
- Will other professionals (lawyers, expert witnesses, etc.) be needed?

Consider incorporating these guidelines into your client intake and initial consultation templates.

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IDENTIFYING GOOD CANDIDATES FOR LIMITED SCOPE REPRESENTATION

While limited scope representation is a good and helpful option for many clients, it is not appropriate for everyone and can actually do more harm than good if offered to an inappropriate candidate. When evaluating a case and potential client during the initial consultation to determine whether both are a good fit for limited scope representation, ask yourself these questions:

- Does this case fall within your area(s) of expertise?
- Do you have enough time during which to provide competent assistance (or has the client come to you with a last minute “emergency”)?
- Are you the first lawyer the client has consulted regarding the potential representation?
- Does the potential client have realistic expectations about his or her ability to handle all or parts of the case on his or her own or what you can achieve?
- Does the potential client have the mental, physical, and emotional capacity to handle parts of the case himself or herself?
- Is the potential client capable of representing himself or herself in court?
- Can the case be broken down into discrete steps that can be easily divided between you and the potential client?
- Have all parties been identified?
- Will the other party be difficult to find or serve?
- Are you able to verify the client’s material facts and, if not, does the client understand the consequences of proceeding without your verification?
- Is the case simple enough substantively, strategically, and tactically to allow for a workable allocation of responsibilities between you and the potential client?
- Is the client coming to you before the case has started (*i.e.*, are you working with a clean slate)?
- Is your client able to focus on legal outcomes after you have explained them to him or her (or does he or she seem more focused on revenge)?
- Would the limited scope of your representation be reasonable? See Colo. RPC 1.2.
- Does the potential client seem open to discussing and agreeing to fees?
- Is this a field of practice allowing limited scope representation?

If the answer to any of the above questions is no, you should consider declining to limit the scope of the representation. Additional items to consider include:

- **Whether There Is an Imbalance of Power Between the Parties.** If there is, can you work with the potential client on this case? Is he or she emotionally equipped to handle parts of the case himself or herself? Domestic violence cases typically involve a great disparity in power between the abuser and the survivor. While many survivors would not be equipped to handle any part of the case on their own, some survivors are able to do so and can greatly benefit from coaching from a lawyer prior to going to court.

- **Whether There Is a Language Barrier.** If English is not the potential client's first language and you do not also speak his or her first language, it is important that you hire an interpreter for all parts of the case so that the potential client fully understands the limitations of the representation and what that means for him or her.

During the initial consultation, it is important that you discuss the following items with a potential client who might be a candidate for limited scope representation:

- **The Differences Between Limited Scope Representation and Full Representation.** Explain the differences between the two models to the potential client and make sure the client fully understands his or her role and responsibilities associated with limited scope representation if he or she chooses that option.
- **Proper Filing and Service of Pleadings and Deadlines.** During the initial consultation, you should provide specific instructions to the client regarding proper filing and service of pleadings and advise the client of the importance of deadlines and how he or she will be responsible for keeping track of them.
- **Problems the Potential Client Is Likely to Face.** Try to foresee the problems the potential client is likely to face during the case. Remind the client verbally and in writing of those problems and of his or her independent responsibility for managing them.
- **Issues Outside of the Scope of the Limited Scope Representation.** You *must* advise clients on all related issues outside the scope of the representation and of their right to seek advice on issues outside the scope of the representation, even if they do not ask. Be sure to include this item in your initial consultation checklist(s).

"Unbundling 101: Expanding Your Practice Using Limited Scope Representation," M. Sue Talia, Practicing Law Institute CLE Materials (Jan. 30, 2015), and "Unbundling Legal Services: Options for Clients, Courts & Counsel," Janice B. Davidson, Institute for the Advancement of the American Legal System (Oct. 2015).

CLIENT ENGAGEMENT AGREEMENT

Once you and your potential client have agreed to enter into an attorney-client relationship, it is important that you outline the agreement in a Client Engagement Agreement. Make sure you note any limitations of the scope of the representation (if any) and specifics of the corresponding fee arrangement. Although Colo. RPC 1.5(b) limits any requirement for lawyers to provide clients they have "not regularly represented" with a written engagement agreement, it is highly recommended that lawyers memorialize Client Engagement Agreements in writing in all cases.

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All Client Engagement Agreements should:

- **Define the Scope of the Engagement and the Fee Arrangement.** Your Client Engagement Agreement should first and foremost include the scope of the agreement you reached with your client: what services you have agreed to provide and how you are going to charge the client for those services. Be sure to disclose whether any work will be outsourced to independent contractors. See also Chapter 9: Staffing.

If you are offering limited scope representation, it is best if you can list all of the tasks that need to be completed during the scope of the representation and indicate who is responsible for handling each task. Both you and the client should be able to pick up the Client Engagement Agreement and determine what falls inside and what falls outside of the scope of the agreement. If at any time after you and the client sign the Client Engagement Agreement you expand or contract the scope of the representation, you should draft and sign a new Client Engagement Agreement outlining the new scope of the representation. See the Appendix to this chapter. See Practising Law Institute's "Expanding Your Practice Using Limited Scope Representation" webinar at www.pli.edu for sample forms: an Initial Consultation Checklist; an Attachment to Limited Scope Representation Agreement – Tasks to be Apportioned; an Attachment to Limited Scope Representation Agreement – Issues to be Apportioned; a Follow-up Checklist; and a Tickler Checklist. This webinar is free for all lawyers.

Your Client Engagement Agreement should also clearly outline the fee arrangement, including the following details:

- How much you are going to charge the client;
- When the client is responsible for making payments;
- What forms of payment you accept; and
- What happens if the client does not make the payments on time, including your right to terminate the relationship and withdraw (consult Colo. RPC 1.16 prior to withdrawing from a case).

If certain costs or expenses, such as filing fees, are not included in the fee, it is important to make that clear as well.

If you are offering the client a fee arrangement whereby the client pays all or a portion of the fee up front, be sure to consult Colo. RPC 1.5(f) and include a fee earnings schedule in your Client Engagement Agreement.

- **Include Assumptions Upon Which the Agreement Is Based.** It is equally important to outline in the Client Engagement Agreement what is not included in the scope of the representation and any assumptions upon which the agreement is based. For example, in a domestic relations case, you may offer the client a fixed fee for an uncontested divorce based upon the assumption that the two parties have already

reached an agreement on all issues pertaining to their children. Another example could be that you offer to serve as an on-call general counsel for a small company on a recurring fixed fee basis based on the assumption that the company will remain a certain size and therefore only have certain needs. Spelling out this type of assumption in your Client Engagement Agreement will protect you from getting stuck in a lopsided agreement where you are working many more hours than you bargained for because an assumption turned out to be incorrect.

- **A Right to Renegotiate Clause.** While the goal is to factor as many potential outcomes into your pricing structure as possible, it is often nearly impossible to do so. It is therefore advisable to include a right to renegotiate clause in all of your Client Engagement Agreements. These clauses should be enforced when an unforeseeable outcome has arisen and enforcing the clause is reasonable under the circumstances. If you do choose to renegotiate a fee arrangement with a client, be sure to first consult Colo. RPC 1.8(a). Because the renegotiation could possibly constitute a business transaction, it is best to be on the safe side and afford the client the safeguards outlined in this rule, such as drafting and signing a new written Client Engagement Agreement outlining the new scope of the engagement and fee structure. See also Colo. RPC 1.5(b).
- **Set Boundaries.** When offering alternative fee arrangements, it is essential to strike a balance that:
 - Allows clients to feel that they can contact you without being nickled and dimed when they have new information or a new problem that is relevant to their case; but also
 - Allows you to stay efficient and profitable by not causing you to spend more time on the case than necessary.

One way to proactively handle these situations is to include communication guidelines or requirements in your Client Engagement Agreement. For example, you could require your client to send all communication to you via email, or you could require clients to limit calls to one time per day. You should then have a candid conversation with your client about your communication boundaries, why you have instituted them, and how they will positively affect the client.

- **Include a Clause on Termination by the Client.** The Client Engagement Agreement should specify that the client may terminate the agreement and representation at any time and outline what happens when the client makes that choice. For example, procedures for the return of the client's file and any unearned fees should be spelled out. Lawyers are prohibited from including any improper fees, charges, or waiting periods in the Client Engagement Agreement that would in any way limit the client's absolute right to terminate the relationship.

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- **Include a Clause on Termination by the Lawyer.** The Client Engagement Agreement should also outline the situations in which a lawyer may withdraw from a case and the associated process, including the client's rights and the court's role in the process.
- **Outline a Fee Dispute Process.** The Client Engagement Agreement should outline what happens when a fee dispute arises, including the remedies available to the client and the lawyer. One dispute resolution option is the CBA Legal Fee Arbitration Committee. See www.cobar.org/For-the-Public.

If the Client Engagement Agreement is for limited scope representation, it should also make clear that the client is responsible for disclosing material facts to you and complying with rules, statutes, and deadlines, and should outline who is responsible for communicating with other lawyers, mediators (if applicable), and court staff (if applicable) on the client's behalf.

Please note that the above list is by no means exhaustive, and you should carefully consider each provision in your Client Engagement Agreement with each client. To work at maximum efficiency, consider automating your client engagement process and thinking creatively about rules you could establish that could help you do this. One example might be to require your client to have a functional email address and utilize it as the primary form of communication and service. This would not only increase your efficiency, it would also decrease your expenses. Another example might be to include an outsourcing clause allowing you to outsource some of the legal work in an effort to save you time and the client money, when applicable.

APPENDIX

Colorado Bar Association Resources

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.

The Colorado Lawyer

- "Screen Clients First – Avoid Problems Later," Randy Evans, Shari Klevens & Lino Lipinsky (Dec. 2014)

Solo in Colorado

- “Should a Solo Attorney Charge for an Initial Consultation?,” Melanie Fischer, Blog Post on SoloInColo.com (Dec. 3, 2015)

Colorado Supreme Court, Office of Attorney Regulation

- Proactive Management-Based Program: OARC Subcommittee-developed self-evaluation tool so law firms can evaluate the firm’s ethical infrastructure and proactively address common risks.

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Additional Resources

ALPS Risk Management Resources at Your Fingertips

- www.alpsnet.com/risk-management

Creating Case Acceptance Guidelines

- *Case Acceptance and Client Screening*, Tennessee Bar Association Guide to Setting up a New Practice

Client Intake and Screening

- “Five Questions to Ask a New Client,” Merrilyn Astin Tarlton, Blog Post on AttorneyAtWork.com (Oct. 17, 2014)
- “How to Screen Clients,” Spojmie Nasiri, Blog Post on Nasirilaw.com (June 2, 2012)
- “Client Screening Form Can Help Avoid Tactical Conflicts,” Dan Pinnington, *Slaw* (March 28, 2011)
- “4 Reasons Why Online Client Intake is a Game Changer,” Clio Team Member, Blog Post on GoClio.com (March 19, 2015)
- “Should You Use a Client Intake Form?,” Mark Bassingthwaight, Blog Post on SoloPracticeUniversity.com (Aug. 27, 2015)
- “Best Practices for Effective Law Firm Client Intake,” Christopher Anderson, LexisNexis Business of Law Blog, originally published in *Legal Management Magazine* in June 2013.

Chapter 2

Checking Conflicts

- “Maintaining a Conflict-Checking System,” Marian C. Rice, *Law Practice Magazine* (Nov./Dec. 2013)
- *Creating Conflicts of Interest Procedures to Protect You and Your Firm from Malpractice*, Sandra J. Roberts (2013) (CBA members can check this book out for no cost through the Lending Library)

Client Engagement Agreements

- “Engagement Agreement Essentials,” Allison C. Shields, *Law Practice Magazine* (Nov./Dec. 2015)
- “Today’s Tech: How a Business Lawyer Uses Document Automation in His Practice,” Nicole Black, Blog Post on Above the Law (May 7, 2015)
- “Expanding Your Practice Using Limited Scope Representation,” Practicing Law Institute webinar — free for all lawyers!
- “Simplify Your Retainer Agreement,” Sam Glover, Lawyerist.com (Sept. 2010)
- “Get It Right: Retainer Agreement Do’s and Don’ts,” Dolores Dorsainvil, *The Young Lawyer* (Oct. 2009)
- “Sample Engagement Letters and Fee Agreements,” P.A. Henrichsen, *American Bar Association GPSolo Magazine* (February 2007)

Limited Scope Representation – See Chapter 5: Unbundling/ Limited Scope Representation for more information

- “Expanding Your Practice Using Limited Scope Representation,” M. Sue Talia, Practicing Law Institute CLE Program, Jan. 30, 2015 — free for all lawyers!
- “Unbundling Legal Services: Options for Clients, Courts & Counsel,” Institute for the Advancement of the American Legal System
- ABA Unbundling Resource Center (browse by state), www.americanbar.org/groups/delivery_legal_services/resources.html
- ABA Pro Se/Unbundling Resource Center, <http://apps.americanbar.org/legalservices/delivery/delunbundrules.html>
- American Bar Association Modest Means Task Force *Handbook on Limited Scope Legal Assistance*, <https://apps.americanbar.org/litigation/taskforces/modest/report.pdf>, and Appendix

Authorities

Colorado Appellate Rules

- Colorado Appellate Rule 5(e) — Notice of Limited Representation Entry of Appearance and Withdrawal

Colorado Rules of Civil Procedure

- C.R.C.P. 11(a), Obligations of Parties and Attorneys
- C.R.C.P. 11(b), Limited Representation
- C.R.C.P. 23.3, Rules Governing Contingent Fees

Colorado Rules of Professional Conduct

- Colo. RPC 1.0(e), Informed Consent
- Colo. RPC 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer
- 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 1.10, Imputation of Conflicts of Interest: General Rule
- Colo. RPC 1.16, Declining or Terminating Representation
- Colo. RPC 1.18, Duties to Prospective Client
- Colo. RPC 7.1, Communications Regarding a Lawyers Services
- Colo. RPC 7.2, Advertising
- Colo. RPC 7.3, Direct Contact with Prospective Clients
- Colo. RPC 7.4, Communication of Fields of Practice

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 40, Accepting Case Handled By Another Lawyer
- CBA Ethics Committee Formal Opinion 57, Conflicts of Interest
- CBA Ethics Committee Formal Opinion 68, Conflicts of Interest: Propriety of Multiple Representation
- CBA Ethics Committee Formal Opinion 76, Lawyer Advertising Guidelines
- CBA Ethics Committee Formal Opinion 90, Preservation of Client Confidences in View of Modern Communications Technology
- CBA Ethics Committee Formal Opinion 101, Unbundled Legal Services

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2****American Bar Association Ethics Opinions**

- CBA Ethics Committee Formal Opinion 111, Communication with Represented Person for the Purpose of Providing a “Second Opinion”
- CBA Ethics Committee Formal Opinion 126, Representing the Adult Client with Diminished Capacity

- Formal Opinion 05-436, Future Conflicts
- Formal Opinion 08-453, Consultation Not a Per Se Conflict of Interest with Firm Client
- Formal Opinion 08-450, Multiple Representation
- Formal Opinion 93-377, Positional Conflicts
- Formal Opinion 90-358, Prospective Clients
- Formal Opinion 92-366, Client Fraud
- Formal Opinion 92-367, Client as Adverse Witness in Unrelated Matter
- Formal Opinion 94-384, Disciplinary Complaint Filed by Lawyer Against Opposing Counsel
- Formal Opinion 96-404, Disabled Client

Chapter Three

Pricing, Fee Structures, Billing and Collection

Chapter 3

One of the most fundamental ways lawyer can make their services valuable and accessible, and in turn increase their client base, is through alternative pricing structures. Providing certainty in your pricing can set the stage for more affordable, accessible, and transparent services for the client and a more fulfilling and successful practice for yourself.

SETTING YOUR FEES

Setting fees entails a thorough understanding of the area of law you practice, the average time required to complete a task, and your client base. Your business plan, your fee structure, billing and collection require constant review and monitoring. The following fundamental concepts will help you work most efficiently and effectively, guide your approach to selecting mutually beneficial fee arrangements, and assign appropriate pricing to your legal services.

Consider Alternative Fee Structures

Clients are used to paying a set price for just about everything in their lives, and just about every other consumer market (including for other professional services) offers transparent pricing. Potential clients can see a price and determine whether they can afford to pay it and whether they will get commensurate value in exchange for it.

For legal services based on the billable hour, clients are typically being asked to make what amounts to an open-ended commitment with no sense of control over what it might ultimately cost. The billable hour also can act as a disincentive to efficiency because it puts the focus on the lawyer's time rather than on the value to the client.

As a result, you should consider fee arrangements other than the billable hour that can offer the opportunity for increased affordability, transparency, and accessibility by prioritizing client value, innovation, and efficiency. They also help you to distinguish yourself in the market, opening up what are now latent client opportunities.

While it may feel like you are swimming against the tide at first by not using the billable hour, keep in mind that:

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- There are functioning markets for many consumer legal services that do not depend on the billable hour (*e.g.*, personal injury, real estate closings, etc.);
- Companies such as Legal Zoom, which offer what they describe as legal solutions for fixed prices, are growing their market share every day;
- Many larger companies and a growing number of law firms serving them are successfully using alternative fee arrangements (see the Association for Corporate Counsel Value Challenge, www.acc.com/valuechallenge, for examples); and
- Other professional services, such as accounting and consulting, have been able to transition away from the billable hour, proving that doing so is not only possible, but also potentially lucrative.

Even if you do not use the billable hour, you still need to understand how much time you spend on your legal matters, for a variety of reasons. First, time is a key ingredient in determining your costs (as there are only so many hours you can work) and efficiency. Second, you may need to document the time you have spent on a matter for a fee petition or to defend against an Office of Attorney Regulation Counsel claim. Third, tracking your time will allow you to show clients the value you are bringing to them, which could become particularly important in a case where an assumption changes and you need to revisit and potentially change the Client Engagement Agreement. Finally, tracking time will give you a feel for how much time it typically takes for a certain type of case or task, allowing you to set an appropriate fee.

Alternative fee arrangements are becoming more prevalent by the day as potential clients seek greater value and certainty. As you assign pricing to your legal services, ask yourself what fee arrangements fit your practice and your clients. See the Fee Arrangement Matrix to review a variety of arrangements.

Consider Market Research

When considering what your fees are going to be, you might consider conducting market research. Market research is an important step in the pricing process because determining what other lawyers and businesses in your target market are charging for similar services or other types of resources where there is a discernable market for that service, such as the online legal forms market, will give you a better sense of how to be competitive.

What is the going rate for your type of service? How are lawyers or firms in your practice area and community branding and marketing their services? The purpose of this market research is not to encourage a race to the bottom or suggest that your pricing should match what others may be offering, but your competitors' pricing and branding will help you understand the market. Differentiating yourself and explaining the value you offer is an essential part of your branding and will help you attract prospective clients. If your proposed pricing does not appear competitive in the marketplace, it would be good to assess whether you can become more efficient or reinvent your processes in order to effectively compete in that space. One resource is the Colorado Bar Association's Economic Survey, which provides statistics on Colorado attorney income. See the Economic Survey on the Law Practice Management page at www.cobar.org. This survey is scheduled to be produced again in 2017.

Fees Must Be Fair and Reasonable

Pursuant to Colorado Rule of Professional Conduct 1.5, fees must be fair and reasonable. Colo. RPC 1.5. Factors to be considered include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. Whether the fee is fixed or contingent.

Set Up Proper Accounts

The Colorado Rules of Professional Conduct 1.15(a) through (e), Safekeeping of Property, detail specific rules an attorney must follow to track and protect client's property. Colo. RPC 1.15(A-E).

1. Trust account: A trust account is separate from any business and personal accounts and from any other fiduciary accounts that the lawyer or the law firm may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which the lawyer shall deposit, or shall cause the law firm to deposit, all funds entrusted to the lawyer's care and any advance payment of fees that have not been earned or advance payment of expenses that have not been incurred. A lawyer shall not be required to maintain a trust account when the lawyer is not holding such funds or payments.
 - a. One or more of the trust accounts may be a Colorado Lawyer Trust Account Fund ("COLTAF") account. A COLTAF account is a pooled trust account for funds of clients or third persons that are nominal in amount or are expected to be held for a short period of time, and as such would not be expected to earn interest or pay dividends for such clients or third persons in excess of the reasonably estimated cost of establishing, maintaining, and accounting for trust accounts for the benefit of such clients or third persons. Interest or dividends paid on a COLTAF account shall be paid to COLTAF, and the lawyer and the law firm shall have no right or claim to such interest or dividends.
 - b. Importantly, money held in trust for a client should be placed in a regular trust account. Colo. RPC 1.15B(h). The difference between a regular trust account and a COLTAF trust account is that the interest earned in a regular trust account goes to the client or third party. Similarly to the COLTAF trust account, the lawyer and the law firm have no right or claim to the interest or dividends.

2. Operating account: A business account or accounts is account(s) into which the lawyer shall deposit, or cause the law firm to deposit, all funds received for legal services. Each business account, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as a “business account,” an “office account,” an “operating account,” or a “professional account,” or with a similarly descriptive term that distinguishes the account from a trust account and a personal account.
3. Personal account: An account where funds are deposited that you are paying yourself and paying your personal expenses.

Chapter 3

Understand What Success Means to the Client

It is important that you determine what “success” means to each client so that you can realistically discuss and then choose an appropriate fee arrangement that aligns with the client’s goals.

In some cases, success means a specific outcome, such as being designated as the custodial parent in a custody case or being awarded damages in a breach of contract case. In other cases, success may be more general or intangible, such as minimizing conflict, finding a resolution that is workable for the client, or gaining peace of mind by resolving the matter.

Provide Choices for Legal Assistance

Lawyers distinguish themselves and build positive relationships with clients by providing choices to clients and pricing accordingly:

- offering unbundled services and other options;
- offering payment options for pricing; and
- pointing them toward information and resources they can use on their own to prepare for and supplement your services, such as to the Colorado courts’ self-help website, www.courts.state.co.us/Self_Help/Index.cfm, for free resources and court forms.

Theory of Quantum Meruit and Setting Milestones

Flat fees are not earned until a benefit is conferred on the client. Colo. RPC 1.5. It is important to clarify in the fee agreement the basis of payment if the representation were to terminate before the attorney has completed all agreed upon services. One method is the use of milestones. By including milestones or an earnings schedule in the fee agreement, there is a basis for determining the proper amount of unearned fees that need to be refunded to the client in the event that representation terminates. Also, this adds an element of transparency for the client as to the fee arrangement.

The following is an example of setting milestones in a Chapter 13 Bankruptcy case that could be incorporated into a fee agreement:

**Chapter 13 Bankruptcy Case Example:
Client Charged a \$2,650 Flat Fee**

\$700.00	Earned after lawyer reviews client's credit report and documentation and calls the client to confirm Chapter filing, requests additional documentation from client (if applicable), and schedules the filing.
\$1,200.00	Earned after paperwork required for Chapter filing, including a plan, is completed.
\$750.00	Earned after the client reviews and signs the paperwork required for filing, the case is filed, notice is given to the applicable creditors, and the lawyer has checked in with the client regarding the 341 hearing date.

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**Utilize Solid Project Management and
Process Mapping/Improvement**

By fully understanding the component parts of a given matter and the various contingencies that may arise, you can determine where you are offering the most value to the client, how you might price the matter in each phase of the case, and whether you can offer an unbundled or flat fee.

When breaking down matters involving litigation, such as contested divorces, it is important in this exercise to work through all potential outcomes, including unknown variables and worst-case scenarios, so you can generate the most accurate baselines and guardrails possible. This process helps you identify how you can work more efficiently by forcing you to contemplate what goes into each task and how using technology tools such as document automation can help you work faster and oftentimes more competently. In addition, process mapping can help you better understand all of the steps involved in a particular case and identify and eliminate redundancies and inefficiencies in the way you are doing your work. See samples of Process Mapping in the Appendix to this chapter.

BILLING YOUR CLIENT

When selecting a billing system, think about user-friendly billing experience. Each invoice is an excellent opportunity for you to demonstrate transparency and value to your clients. Each invoice can illustrate that you are carrying out your agreed upon plan and moving closer to achieving the client's goals. Use terms and language that your client will understand, provide detailed descriptions of each segment of work, and send out invoices regularly.

When it comes to creating invoices, you have three options. You can create your own, purchase legal billing software, or purchase law practice management software that includes a billing feature. Many billing and law practice management software programs are designed to integrate with credit card processing software developed specifically for law firms. Note that you still need to provide invoices to clients when they pay all or a portion of the fee up front, including in flat-fee cases. All of the same rules apply, and your invoices should line up with the fee schedule in your Client Engagement Agreement.

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COLLECTIONS

Collections can be challenging for all attorneys. Big and small firms alike have experiences of unpaid bills or writing off receivables as an inevitable aspect of practice. Also, every law firm has at least one client who either does not pay in a timely manner or does not pay his or her fees — or a portion of them — at all. However, there are tools and systems you can set up to help ensure collection.

Detailed Fee Agreement

Develop a Client Engagement Agreement that clearly outlines the terms of the representation, including payment expectations and non-payment ramifications. Basic contract principles apply here: use a written agreement, sign the agreement, have the client sign the agreement, address all material terms therein, etc. Importantly, make sure the agreement clearly states the consequences to the client for failure to honor the agreed-upon payment terms. For further information on Engagement Agreements, be sure to review Chapter 2: Client Intake, Initial Screening, and Client Engagement Agreements.

Send Regular Invoices

Not only does sending regular bills to the client provide transparency and communication, but it also offers a friendly reminder of fees due. Importantly, try to create a conversation with the client to determine why he or she is not paying. The client may be angling for a discounted bill, and a simple conversation might be all that is needed to resolve the dispute. If numerous invoices are ignored, you might consider writing the client a demand letter more firmly requesting payment.

Payment Options

As discussed earlier in this toolkit, clients value convenience and having choices. Therefore, in addition to offering traditional payment options, consider offering credit card and

online payment options, such as eChecks. Certain card processing companies can provide a streamlined process by:

- allowing your clients to pay by credit card (either in person or online);
- immediately separating the funds into trust and operating accounts; and
- deducting service fees only from your operating account, as required by C.R.S. § 5-2-212, the ABA Code of Professional Conduct, and the Colorado Rules of Professional Conduct.

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TIPS

1. Consider alternative fee structures.
2. All fees charged must be reasonable. See Colo. RPC 1.5.
3. Are your fees clearly explained in the fee agreement and communicated to the client?
4. Except in circumstances where a lawyer has previously represented a client, communication regarding fees must be in writing. See Colo. RPC 1.5.
5. Set up proper accounts and ensure that client trust funds are kept in a COLTAF or other bank trust account separate from operating funds in the operating account. See Colo. RPC 1.15.
6. Avoid commingling by regularly transferring earned fees out of the trust account and placing them into the operating account.
7. If the fee agreement involves a retainer, do you have a proper trust account and has it been explained to the client how unearned fees will be held in trust? See Colo. RPC 1.15.
8. Remember, a flat fee cannot be “non-refundable” or “earned upon receipt.”
9. For flat fee arrangements, is it clearly defined how fees are earned?
10. For a contingent fee agreement, have you complied with Chapter 23.3 of the Colorado Rules of Civil Procedure? See C.R.C.P. Chapter 23.3 and forms.
11. Establish a billing system and provide detailed bills that are reviewed regularly.
12. Have you considered tools and establishing systems to help ensure collection, including an arbitration clause?
13. If you are going to accept credit cards, you cannot pass credit card processing fees to the client. See C.R.S. § 5-2-212.
14. If client funds are held in COLTAF in error, you can contact COLTAF and get a refund so the interest goes to the client. See www.coltaf.org/10-2/, click on “COLTAF’s refund procedures.”

Liens

Attorneys can assert liens in Colorado as a means of collecting fees. For detailed information about types of liens, Colorado law and ethical considerations, see Chapter 7 of *Lawyers' Professional Liability in Colorado: Preventing Legal Malpractice and Disciplinary Actions*, published by Colorado Bar Association CLE.

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Include an Arbitration Clause in Fee Agreement

It is advisable to include an arbitration clause in your fee agreement as a way to address potential fee disputes. Arbitration is an informal process, typically faster and a low-cost alternative to court. Additionally, unlike litigation, the arbitration process is confidential and not open to the public. The Colorado Bar Association offers a free arbitration service through the CBA Legal Fee Arbitration Committee, www.cobar.org/legalfee.

Filing a Collection Lawsuit

There are no ethical problems with an attorney filing a lawsuit against a client for collection of fees. (See CBA Ethics Opinion 20, www.cobar.org/ethicsopinions.) However, it is important to note that pursuing unpaid fees through the courts is often not in your firm's best interest. A large percentage of legal malpractice claims are the result of a counterclaim in a fee dispute. As a result, costly litigation that takes time and energy to defend can ensue, so it is important to carefully weigh the costs of litigation as a means to collect. Furthermore, many lawyers get a large percentage of their clients through referrals.

If you do decide to pursue your fees in court, you will first need to secure a judgment from the court in which your case was initially heard. For example, if the underlying case is a

DISCLAIMER: The Colorado Bar Association is committed to compliance with all federal and state antitrust laws. In keeping with that commitment, attorneys are reminded that certain topics are not proper subjects for discussion and consideration by and between competing attorneys. Any action taken to eliminate, restrict, or govern competition among members may constitute a violation of the antitrust laws. If there is any discussion relating to significant factors of competition, an inference may be made that such a discussion is for the purpose of agreeing upon a common course of business conduct. Among the subjects that should never be discussed are fees; prices; costs; delinquency charges or fees; conditions, terms, and prices of service; allocating or sharing customers; or refusing to deal with a particular supplier or class of suppliers. Agreements among competitors relating to any of these subjects may be *per se* violations of the antitrust laws and can lead to criminal and civil penalties.

divorce case, you will need to go back to the domestic relations court and ask for a judgment for your legal fees. Additional statutory or model rules may also be relevant. Once you have an enforceable Client Engagement Agreement and you have sought and obtained a judgment, you can then pursue collection, including but not limited to garnishing property or non-exempt wages.

FIND ADDITIONAL WAYS TO PROVIDE VALUE TO CLIENTS

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It is worth noting that today's clients are seeking value beyond resolution of their perceived legal issues. Many clients, but particularly moderate income clients, also find value in the following:

Price Certainty: This might be a flat fee, such as in a routine traffic case, or a range of pricing or contingency fee options, such as in a contested court proceeding. In other matters, such as a debt collection case, this might be a relatively modest fixed fee for unbundled legal services, advice, and coaching that can lead to other service arrangements going forward. Whatever the case, remember to always have a written fee agreement. The more certainty you can offer the potential client as to what your services will cost, the better. Lack of price certainty has been one of the biggest problems with the billable hour system.

Transparency: A close cousin of price certainty is transparency. Let potential clients know up front as much as you can about your pricing.

Clear and Consistent Communication: This seems straightforward, but the number of lawyers who fail to clearly and consistently communicate with their clients is surprising. See Colorado Supreme Court Office of Attorney Regulation Counsel Annual Report 2015 at www.coloradosupremecourt.com.

Affordable Fees: Offering reasonable fees that are competitive in the marketplace will help you get and keep clients. See the Fee Arrangement Matrix in the Appendix to this chapter for alternative fee structures.

Collaboration: Working closely with the client builds empowerment and trust and can reduce the client's expenses if he or she is able and willing to handle some parts of the legal matter personally. Technology increasingly allows online collaboration as a way for clients to complete forms and other key documents. See Chapter 5: Unbundling/Limited Scope Representation and Chapter 7: Brick and Mortar or Virtual.

Convenience: Offering hours and locations that are convenient for potential clients can be accomplished in several ways, including by offering them the option to communicate and collaborate with you using online collaboration tools or through a virtual law office client portal. See Chapter 7: Brick and Mortar or Virtual.

Flexibility and a Variety of Potential Fee Arrangements: By offering a variety of fee arrangements, you allow potential clients to choose the option that works best for them and show them that you are working to meet their needs. Take care, however, not to overwhelm potential clients — you should offer no more than two or three fee arrangements for any given legal matter. See the Fee Arrangement Matrix in the Appendix to this chapter.

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APPENDIX

CBA Resources

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.
- CBA Economic Survey: provides statistics on Colorado attorney income, annual compensation for other legal staff, and law firm billing rates and practices.

The Colorado Lawyer

- “Collecting Fees: Making Life Easier,” Randy Evans, Shari Klevens & Lino Lipinsky (June 2015)
- “Deciding When to Sue a Client for Unpaid Fees,” Randy Evans, Shari Klevens & Lino Lipinsky (July 2015)
- “Flat-Fee Arrangements: The Risks, the Rules, and Fee Recovery,” Nancy L. Cohen (Dec. 2015)
- “Perfecting the Tenth: Best Practices in Billing,” Heather Kelly & Ed Hafer (Oct. 2016)

The Docket

- “Seven Things to Consider Before Accepting Credit Cards,” Karen Kishbaugh (March 2013)

Articles

Alternative Fee Arrangements & Pricing

- “A Case for Alternative Billing,” Mark A. Robertson, *Law Practice Magazine* (July/Aug. 2012)
- “Making Alternative Fee Arrangements Work for Any Size Law Firm,” author unknown, *YourABA* (July 2015)

- “Post-Recession Gives Rise to New Law Firm Models,” Joe Forward, *Inside LegalTrack* (Sept. 18, 2013)
- “Planning for Flat-Fee Billing,” Frederick J. Esposito Jr., Blog Post on AttorneyAtWork.com (May 24, 2011)
- “Take the Guesswork Out of Flat Fees,” Peggy Gruenke, Blog Post on AttorneyAtWork.com (April 3, 2015)
- Jon Lax: “Let’s Kill the Billable Hour,” published on YouTube.com on March 3, 2014
- “How to Help People Represent Themselves,” Mike Vraa, Lawyerist.com (Feb. 17, 2016)
- *Alternative Fees for Litigators and their Clients*, Patrick Lamb, American Bar Association (2014) (CBA members can check this book out for no cost through the Lending Library)

Conducting Market Research

- Association of Legal Administrators Antitrust Guide (for members)
- Federal Trade Commission – Price Fixing, www.ftc.gov

Billing

- “Bills That Show Progress Get Paid: Some Practical Invoicing Tips To Demonstrate The Value Of Your Work,” Carol Schiro Greenwald, *Law Practice Management* (Nov./Dec. 2015)
- “Communicating with Clients through Invoices,” Gianfranco A. Piertrafesa, *Law Practice Magazine* (Nov./Dec. 2011)
- “Billing is Marketing,” Sally J. Schmidt, Blog Post on AttorneyAtWork.com (Aug. 22, 2013)
- “eChecks: A Simple Alternative to Credit Cards,” Sam Glover, Blog Post on Lawyerist.com (Dec. 9, 2015)

Collections

- “Get What They Owe You,” Edward Poll, Blog Post on AttorneyAtWork.com (May 17, 2011)

Process Mapping

- “What is a Process Map?,” Chris Anderson, Blog Post on *BizManualz.com* (date unknown)
- “Building Valuable Process Maps Takes Skill and Time,” Joy Taylor, Blog Post on *isixsigma.com* (date unknown)

**Chapter
3****Setting Up Business Operating & Client Trust Accounts**

- “ILOTAs and Client Trust Accounts,” Carole J. Buckner, *GPsolo* (July/Aug. 2011)
- Colorado Lawyer Trust Account Foundation, www.coltaf.org
- “Business Bank Accounts: 6 Mistakes Small Businesses Make,” Sarita Harbour, Blog Post on BusinessNewsDaily.com (April 22, 2014)

Setting Up Payment Plans

- “How You Can Afford a Lawyer: Payment Plans for Every Budget,” Antonio B. Mari, Antonio B. Mari, Attorney at Law, WordPress Blog (Oct. 2010)

Taking Credit Cards

- “Credit Card Processing Tips for Lawyers — Don’t Get Ripped Off,” Stella Fayman, *Lawyerist.com*, (July 2010)

Managing Your Trust Account

- Trust, Ethics, and Practice and Financial Monitor Schools, Colorado Office of Attorney Regulation, www.coloradosupremecourt.com

Authorities**Colorado Rules of Civil Procedure**

- Chapter 23.3, Rules Governing Contingent Fees

Colorado Rules of Professional Conduct

- Colo. RPC 1.0(e), Informed Consent
- Colo. RPC 1.4, Communication
- Colo. RPC 1.5, Fees
- Colo. RPC 1.15, Safekeeping of Property
- Colo. RPC 1.16A, Client File Retention
- Colo. RPC 5.4, Professional Independence of a Lawyer – Legal Fee Sharing
- Colo. RPC 7.1, Communications Regarding a Lawyers Services
- Colo. RPC 8.4, Misconduct

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 20, Fee Collection
- CBA Ethics Committee Formal Opinion 25, Use of Attorney’s Signature on Collection Case Summons

- CBA Ethics Committee Formal Opinion 34, Advancement of Living Expenses for Personal Injury Client
- CBA Ethics Committee Formal Opinion 38, Referral Fees
- CBA Ethics Committee Formal Opinion 40, Accepting Case Handled By Another Lawyer
- CBA Ethics Committee Formal Opinion 54, Fees Charged in Foreclosure or Redemption
- CBA Ethics Committee Formal Opinion 66, Imposition of Interest or Finance Charges on Client Accounts
- CBA Ethics Committee Formal Opinion 67, Contingent Fee Arrangement in Child Support and Spousal Maintenance Cases
- CBA Ethics Committee Formal Opinion 72, Recovery of Attorney Fee by Lender Using In-House Counsel
- CBA Ethics Committee Formal Opinion 82, Assertion of Attorney's Retaining Lien on Client Papers
- CBA Ethics Committee Formal Opinion 85, Release and Settlement of Legal Malpractice Claims
- CBA Ethics Committee Formal Opinion 94, Ethical Duties Relating to a Client's Property Held by a Lawyer in Which a Third Party Has an Interest
- CBA Ethics Committee Formal Opinion 99, Use of Credit Cards to Pay for Legal Services
- CBA Ethics Committee Formal Opinion 100, Use of Conversion Clauses in Contingent Fee Agreements
- CBA Ethics Committee Formal Opinion 104, Surrender of Papers to the Client Upon Termination of the Representation
- CBA Ethics Committee Formal Opinion 106, Referrals Fees and Networking Organizations
- CBA Ethics Committee Formal Opinion 109, Acquiring an Ownership Interest in a Client
- CBA Ethics Committee Formal Opinion 110, Assertion of Attorney's Charging Lien and Taking Security Interest in Client Property to Protect Fees
- CBA Ethics Committee Formal Opinion 118, Handling of Funds Disputed After Proper Withdrawal from Trust Account

Case Law

- *Elliott v. Joyce*, 889 P.2d 43 (Colo. 1994): Unless provided in the contingent fee agreement, *quantum meruit* recovery is not enforceable.
- *Dudding v. Norton Frickey & Associates*, 11 P.3d 441 (Colo. 2000): Attorneys may seek *quantum meruit* recovery even when a contingent fee agreement fails as long as the attorney gave written notice to the client of the possibility of a *quantum meruit* claim.
- *Mullens v. Hansel-Henderson*, 65 P.3d 992 (Colo. 2002): An attorney is entitled to fees under *quantum meruit* when the agreed-upon services are successfully completed but the contingent fee agreement is not in writing. The *Dudding* rule only applies when the attorney-client relationship terminates before the agreed-upon services are completed.
- *Fasing v. LaFond*, 944 P.2d 608 (Colo. App. 1997): Attorneys are solely responsible for ensuring the validity of a contingent fee agreement and cannot rely upon a client's representations.

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- *In re Sather*, 3 P3d 403 (Colo. 2000): Advance fees, including flat fees, cannot be “non-refundable” and must be placed in trust accounts to be withdrawn only after the attorney has earned them.
- *Jenkins v. District Court*, 676 P2d 1201 (Colo. 1984): When a lawyer has chosen to seek judicial aid in collecting his or her fees and obtains a judgment, the lawyer can assert the full range of a judgment creditor’s remedies.
- *Enyart v. Orr*, 238 P. 29 (Colo. 1925); *see also Rupp v. Cool*, 362 P2d 396 (Colo. 1961): When an attorney sues a client for unpaid legal fees, the attorney must show, in addition to proof of contract and performance, that the contract was “fair and reasonable under the circumstances” and that the services to be performed were “reasonably worth the amount” stated in the contract.
- *In re Marriage of Swink*, 807 P2d 1245 (Colo. App. 1991): Under the Uniform Dissolution of Marriage Act, the court can order a party to pay a reasonable sum for legal services rendered to the other party by a pro bono attorney in dissolution of marriage proceedings.
- *Olsen and Brown v. City of Englewood*, 867 P2d 96 (Colo. App. 1993), *aff’d*, 899 P2d 673 (Colo. 1995): An attorney’s *quantum meruit* recovery is limited to the value of services rendered as of the date the attorney-client relationship terminated.
- *People v. Banman*, 901 P2d 469 (Colo. 1995): Upon request, an attorney should provide an accounting of fees.
- *Jones v. Feiger, Collison & Kilmer*, 903 P2d 27 (Colo. App. 1994), *rev’d on other grounds, Feiger, Collison & Kilmer v. Jones*, 926 P2d 1244 (Colo. 1996): Any provision in a legal services agreement that would deprive a client of the absolute and unqualified right to accept or reject a settlement is void as against public policy.
- *Law Offices of J. E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P2d 934 (Colo. App. 1993): The reasonableness of attorney fees is still subject to scrutiny by the court even if the parties have agreed to the amount, rate, or terms of the fee.
- *People v. Radinsky*, 490 P2d 951 (Colo. 1971): Excessive fees can be a basis for disciplinary action.
- *In re Gilbert*, 346 P3d 1018 (Colo. 2015): Discussion by Colorado Supreme Court on the applicability of *quantum meruit* in flat-fee disputes between lawyers and their clients.

American Bar Association Ethics Opinions

Fee Agreements

- Formal Opinion 11-458, Changing Fee Arrangements During Representation
- Formal Opinion 02-425, Provision that Fee Disputes Arbitrated

Billing

- Formal Opinion 00-420, Contract Lawyers, Surcharge to Client for Use
- Formal Opinion 93-379, Itemizing Services and Disbursements

Pricing, Fee Structures, Billing and Collection

Business Transactions with Client

- Formal Opinion 00-416, Purchase of Client's Accounts Receivable from Client
- Formal Opinion 00-418, Stock Ownership as Compensation

Contingent Fees

- Formal Opinion 87-354, As Payment Arrangement with Medical-Legal Consulting Firm
- Formal Opinion 94-389, Recovery and Liability Certain
- Formal Opinion 93-373, Reverse Contingent Fee

Division of Fees

- Formal Opinion 95-392, In-House Counsel Sharing Fee Award with For-Profit Corporate Employer
- Formal Opinion 87-355, Prepaid Legal Services
- Formal Opinion 93-374, Pro Bono Organizations, Sharing Court-Awarded Fees with Sponsoring Pro Bono Organizations

Fees Paid by Third Party

- Formal Opinion 08-450, Multiple Representation

Chapter 3

FEE ARRANGEMENT MATRIX

Sample fee structure and suitable practice areas

Type	Description	Well-Suited For
Fixed Fee by Task*	A lawyer charges a specified sum for the completion of a certain task associated with the case or matter (e.g., review of a contract, court appearance, etc.). The term "fixed fee" and "flat fee" are used interchangeably.	Most practice areas
Fixed Fee by Phase	A lawyer charges a specified sum for the completion of a certain phase associated with the case (e.g., initial case review, discovery, trial, etc.).	Many practice areas, including litigation, landlord/tenant, and domestic relations

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Fixed Fee by Case*	A lawyer charges a specified sum for handling the entire case or matter. This arrangement works best for less complex matters with a higher degree of predictability about the potential range of legal work likely to be involved. Concerns with this arrangement include potential “windfalls” if the case is resolved quickly or conversely a lopsided agreement where the lawyer is working many more hours than expected in order to earn the set fee.	Uncontested divorce, many post-decree domestic relations issues, real estate closings, immigration visas, wills/trusts, less complex estates, landlord/tenant, more modest civil litigation and contract disputes
Recurring Fixed Fee* **	Recurring fixed fee arrangements can be used both in litigation and transactional settings, and in both instances involve charging a standard fee on a recurring monthly, quarterly or other time increment basis. Non-litigation recurring fixed fee arrangements are typically used in the context of advising clients. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets.	Small business (non-litigation), domestic relations (e.g., contested custody cases, contested divorce), condo associations
Contract Recurring Fee**	A lawyer charges an initial fee for the creation of a document, such as a contract, and earns a fee every time the client uses the document through a licensing agreement or similar arrangement	Small business (non-litigation)
Pure Contingency ***	The lawyer receives a specified percentage of the amount recovered in the case and either the prospect of recovery and/or the amount that can be recovered is uncertain. The client generally will be charged any hard costs associated with the case, but the lawyer does not receive any fee unless the case results in a successful recovery. This structure is a way to share the risk between lawyer and client and works well when the amount at stake and the potential for recovery are sufficient to balance the risk to the lawyer.	Personal injury, breach of contract, debt collection
Reverse Contingency ***	The lawyer receives a percentage of the amount saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front. Reverse contingency fee arrangements work best in cases where liability is at issue but damages are not.	Breach of contract

Pricing, Fee Structures, Billing and Collection

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Fee-Shifting	Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case and also provide bargaining leverage to recover fees during settlement. When available, this type of fee arrangement works particularly well for clients who can afford to pay little or no money for services and the client's case has potential merit.	Consumer fraud, security deposit, domestic relations (statutory fee shifting allowable where the other party can afford to pay fees),
Flat Fee Plus Contingency ***	The lawyer charges an agreed upon flat fee in addition to a specified percentage of the damages awarded, if any. The client is typically also charged hard costs associated with the case. This arrangement works best in cases when there is greater uncertainty of either liability and/or the amount that may be recovered yet the client still sees value in pursuing the matter.	Breach of contract
Flat Fee Plus Reverse Contingency ***	Where the lawyer charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. The client is typically also charged hard costs associated with the case. This arrangement works well in situations when the client can benefit from receiving brief advice from counsel about their rights and responsibilities in the situation, and benefit from having a lawyer as their advocate to negotiate or obtain a better result than the client likely would be able to obtain on their own.	Consumer debt collection
Time Based	Usually hourly rates based on the amount of expertise of the lawyer and the time spent on the case.	Complicated dissolution cases or contract cases
	Additional hybrids can be found in <i>The Chicago Bar Foundation Pricing Toolkit</i> , http://chicagobarfoundation.org/pdf/jep/pricing-toolkit.pdf .	

*In Colorado, all types of fixed fees are not earned "until a lawyer confers a benefit on the client or performs a legal service for the client." Colo. RPC 1.5. Therefore, these fees must be placed in a trust account upon receipt. Once the fees are earned pursuant to the Client Engagement Agreement, they can be transferred to a business operating account. All client engagement agreements involving fixed fees need to contain an earnings schedule or milestones that form the basis for quantifiable recovery so you can refund the client the proper amount of unearned fees in the event that either of you terminates the representation prior to completion of all the legal services outlined in the agreement.

** A lump-sum or fixed fee should not be confused with an "engagement retainer fee," which "is a fee paid apart from any other compensation, to ensure that a lawyer will be available for the client if required." Colo. RPC 1.5, Comment 16. "[E]ngagement retainer fee[s] will be earned upon receipt because the lawyer provides an immediate benefit to the client, such as forgoing other business

opportunities by making the lawyer's services available for a given period of time to the exclusion of other clients or potential clients, or by giving priority to the client's work over other matters." Id.

***Note that in all contingency fee arrangements, the fee arrangement must be in writing and comply with Chapter 23.3 of the Colorado Rules of Civil Procedure, "Rules Governing Contingent Fees." Fee arrangements that permit lawyers to earn additional money if a certain event occurs or a milestone is achieved could potentially be construed as contingency fee arrangements; therefore, lawyers offering such fee arrangements should put them in writing and comply with same rules.

Chapter 3

PROJECT MANAGEMENT EXAMPLES

As mentioned above, mapping out and fully understanding all aspects of a given matter along with various contingencies will help you determine whether you are offering the most value to your client and how to best price the service(s) you will offer.

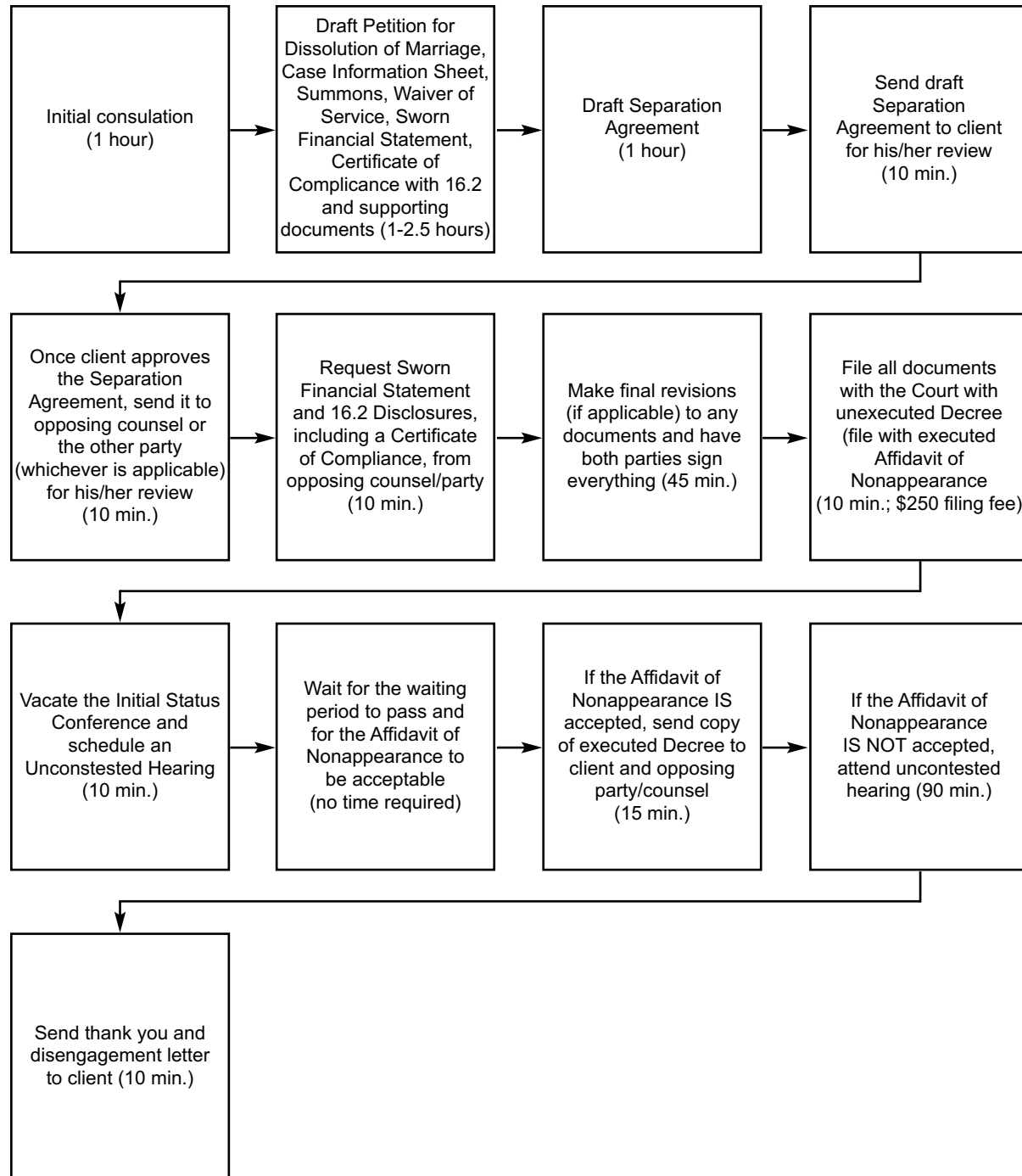
Below are two examples — an uncontested divorce case and a Chapter 7 or 13 bankruptcy case — of how process mapping can help you complete this step and visually break down each matter into discrete tasks with associated units of time. To do this, you will have to start at a baseline. What information do you know about potential clients and potential issues that could arise in this type of matter? What resources (*e.g.*, templates, automated document preparation, past cases that were very similar) do you have to work with? When process mapping, it is important to list any built-in assumptions and to assign dollar values to each task.

Uncontested Divorce Case*

Assumptions:

- No kids, no maintenance, and limited assets;
- Draft all paperwork prior to filing;
- Using Colorado Supreme Court forms as starting points for all drafting;
- Postage (if any) will be built into the final fee; try to communicate and exchange documents electronically.

Pricing, Fee Structures, Billing and Collection



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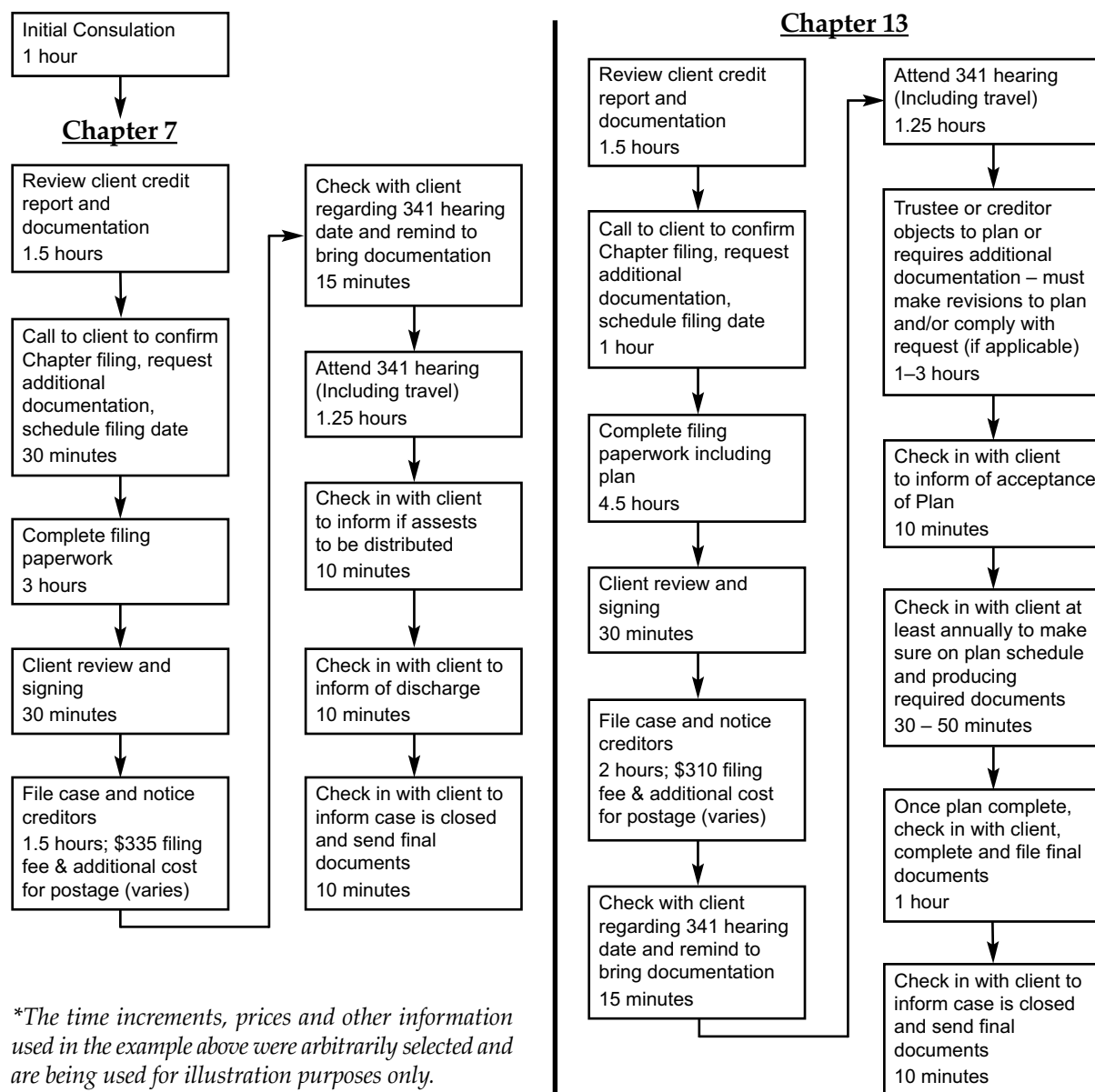
**The time increments, prices and other information used in the example above were arbitrarily selected and are being used for illustration purposes only.*

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Chapter 7 or 13 Bankruptcy Case*

Assumptions:

- Using templates as starting points for all drafting;
- Postage (if any) will be built into the fee; try to communicate and exchange documents electronically;
- \$100 in fees for two required classes for debtors will be included in the final fee;
- Travel costs will be built into the final fee;
- Chapter 13 Bankruptcy has a presumed reasonable fee of \$3,600, and in order to charge in excess, an hourly billing must be provided to the court and notice given to the creditors.



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

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- 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 Benchers* (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) ///



Chapter Five

Unbundling/Limited Scope Representation

Limited scope representation, often referred to as “unbundling,” can be a great way to offer legal services while increasing your client base and bottom line. The reality is that the vast majority of the American population can afford to pay for some legal assistance. Most people want that assistance but are unaware of how to obtain it. Moreover, the number of pro se litigants in the court system is continually growing and these pro se litigants are ill equipped to represent themselves in court causing a greater strain on judicial resources.

There are many rules associated with limited scope representation, and it is only appropriate for certain clients.

Chapter 5

THE DEFINITION, HISTORY, AND RULES ASSOCIATED WITH LIMITED SCOPE REPRESENTATION

Traditionally, the term “legal representation” has referred to the full bundle of legal services: gathering facts, conducting research and discovery, counseling, drafting pleadings and correspondence, negotiating, and representing the client in court. However, with the inception and adoption of limited scope representation pursuant to C.R.C.P. 121 § 1-1(5) and C.R.C.P. 11, lawyers can now also offer to help clients with discrete parts of a case in an *a la carte* fashion. Practically speaking, this means a lawyer in a court case can assist a client by performing only one of the following tasks:

- drafting a pleading;
- providing coaching/advice; or
- representing the client at a specific hearing or deposition.

In these situations, the client is responsible for representing himself or herself for the remaining parts of the case. Unbundled legal services may involve litigation, transactional services, or negotiation, and may involve either discrete tasks (as illustrated above) or issues, such as child support.

Prior to the addition of C.R.C.P. 121 § 1-1(5), if an attorney filed an entry of appearance, signed a pleading, or appeared in a court proceeding, the attorney, without substitution of counsel, was required to file and serve a motion to withdraw from the case. In 2011, Section 5

was added to C.R.C.P. 121 § 1-1 to allow an attorney's appearance to terminate at the conclusion of a limited appearance, without waiting for leave from the court, upon the filing of a notice of completion of limited appearance:

(5) In accordance with C.R.C.P. 11(b) and C.R.C.P. 311(b), an attorney may undertake to provide limited representation to a pro se party involved in a court proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party in one or more specified proceedings, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.

Chapter 5

Limited scope representation is also allowed in Colorado Supreme Court and Colorado Court of Appeals proceedings. Recently, the U.S. District Court for the District of Colorado adopted new local rules allowing for unbundling in civil cases under certain circumstances. Significantly, unbundling is only permitted when there is a court order granting it. The scope of the limited representation must be outlined in a motion to the court, and any change in the scope must be approved again by the court. Unlike Colorado state court, the attorney must file a motion to withdraw after completing limited representation. D.C.Colo.LAtty R2 and R5.

INTEGRATING LIMITED SCOPE REPRESENTATION INTO YOUR PRACTICE

As you begin to offer limited scope representation, consider incorporating the following tips into your practice protocols:

Initial Intake

Conduct an intake by meeting with the potential client to gather all of the pertinent or material facts and documents you need to competently represent the potential client on an unbundled basis. Importantly, you must explain the differences between the unbundled model and the full representation model to the potential client. Remember that the lawyer-client relationship is subjective, from the client's perspective. Regardless of your engagement agreement, if a client has explained their complicated matter to you, the client may be under the expectation that you will "take care of it" for them.

The client may want a deal and be willing to try self-representation to avoid paying a full retainer fee for an attorney to enter an appearance as counsel of record. You must be careful and assess whether that person has the ability to direct his or her own litigation. Some parties have problems that are too complicated or a personality that is just not suited for discrete-task representation.

Engagement Agreement

It is advisable to draft an engagement agreement and review it with your potential client to make sure all parties understand the specific parameters of the scope of your representation. The engagement agreement should make it clear to the client that he or she is responsible for disclosing material facts as well as responsible for complying with the rules, statutes, and deadlines beyond the bounds of your representation. See Chapter Two: Client Intake, Initial Screening, and Client Engagement Agreements for more information on drafting client engagement agreements for cases involving limited scope representation.

If you expand the scope of your representation, draft and require your client to review and sign an addendum outlining the expanded scope of the representation.

Chapter 5

Drafting Pleadings or Ghostwriting

When drafting pleadings and other documents on an unbundled/limited scope basis (a/k/a ghostwriting), you must include your name, address, telephone number, and registration number. However, attorneys are not required to disclose their name, contact information, or certification when assisting unbundled clients with filling out preprinted forms and electronic published forms issued through the judicial branch. See C.R.C.P. 11(b).

Ghostwriting as a form of limited representation is prohibited in the Colorado federal courts, absent written permission given by the court in prisoner rights cases. See D.C.COLO. LAttyR 2(b)(1).

Notice of Limited Appearance

If part of the limited scope representation involves your appearing in court, be sure to file and properly serve the correct Notice of Limited Appearance under C.R.C.P. 11(b) and Notice of Completion of Limited Appearance under C.R.C.P. 11(b).

Communication

If you have entered an appearance for the limited purpose of representing a client at a temporary orders hearing, the opposing party or opposing lawyer must communicate with you with respect to that specific proceeding. However, if unrelated matters or proceedings occur simultaneously, the opposing party or opposing lawyer must communicate directly with the pro se litigant about those matters. If the opposing party or opposing lawyer is unsure who to communicate with, he or she should contact you for clarification.

Moreover, until you are released from the limited scope representation agreement, you should make sure to stay current on the progress of the case and check in from time to time with your client. Maintaining communication is important to avoid surprises for both you and the client. However, you may not be able to bill the client for your time in merely thinking about his or her case.

Accordingly, it is advisable to make sure communication procedures are clear in the engagement agreement so all parties, including opposing counsel, your client and the court, understand the arrangement.

Chapter 5

Conversion to Full Representation

Be careful when converting from limited scope representation to full representation. Clients who are ready to upgrade may not be willing to divulge how they behaved at the last hearing or how many deadlines have passed when they come back seeking an entry of appearance. Aspects of the case that you can no longer manage and maintain because they happened when you had no control over the strategy can have a great impact on the risks and expense of the remainder of the litigation.

Client Education of Filing, Service, and Deadlines

If you enter into discrete-task representation, make sure the client knows the practical aspects of filing and service. Although the client should know that he or she is taking on nearly all the practical tasks of the litigation as a discrete-task client, some are just not prepared for the volume of extra work they are taking on in their life. Discrete-task clients need a thorough education on service of process and continuing obligations of disclosure under the rules.

The discrete-task client should be repeatedly warned to be careful with deadlines and to be aware that he or she must manage his or her own deadlines. You will not be calling the client to remind him or her of the deadlines in the case. It does not hurt to point out those deadlines, but the discrete-task client needs to know how very important deadlines are to successful litigation.

Unbundling Prohibited in Criminal Cases

While the Colorado Rules of Civil Procedure currently allow for unbundling/limited scope representation, the Colorado Rules of Criminal Procedure do not currently contain parallel rules.

Complex Cases

Do not take a highly complex case on an unbundled/limited scope basis. Remember that the Colorado Rules of Professional Conduct require attorneys to provide competent representation. While you may be “competent,” the limited nature of the representation may severely limit your ability to adequately represent certain clients and matters.

Limited Representation Is Not Litigation Insurance

Watch out for discrete-task clients who are really just trying to buy some protection rather than legal advice. A discrete-task client should know and be clearly informed that the attorney is there to provide advice and not insure the client’s litigation. Even by following the advice of counsel, the client still has risk in litigation.

Chapter 5

ADVANTAGES OF LIMITED SCOPE REPRESENTATION

The entry of online legal service companies and branded legal networks, such as LegalZoom, Rocket Lawyer, and Avvo, into the legal market has demonstrated that a very large segment of the American population who previously did not think they could afford legal services can afford to pay at least some money for unbundled legal services and are willing to do so when provided with options they perceive as affordable and valuable.

Here are a few benefits of offering unbundled legal services:

- *Gain more control over your cases and your life.* If you offer unbundled legal services, you can pick and choose what services you will offer. Typically, the more options you can offer potential clients the better, but if you feel strongly about not going to court or providing some other service, unbundling provides you with the option of not doing so. Flexibility in your representation models gives you more control over your case load and, thus, your life outside of work.
- *Unbundled legal services increase economic diversity in your client base.* Because such cases will have greater predictability of the estimated time involved due to the limited scope of representation, you can make better evaluations about reasonable retainers.

Predictability also increases the opportunity for more flexible alternative fee arrangements. Also, because less time commitment will usually be involved, there is less financial exposure if a client fails to meet his or her fee obligations.

- *There is the potential to improve cash flow and collection rates.* Because the representation will usually involve discrete services that can be accomplished fairly quickly and invoices can be generated throughout the month, there will be a greater number of closed files where invoices can be generated. Also, because unbundled legal services often require clients to spend less money on legal services, there is a greater chance that they will be able to pay your entire fee up front before you even start working on the case. See Colo. RPC 1.5 regarding advance fees.

Chapter 5

TIPS

1. Know the rules around limited scope representation. See C.R.C.P. 121, C.R.C.P. 11(b), and C.R.C.P. 311(b).
2. Remember that limited scope representation is not allowed in criminal cases.
3. When ghostwriting, include name, address, telephone number, and registration number on all pleadings. See C.R.C.P. 11(b).
4. Ghostwriting is not allowed in federal court except when specifically granted in prisoner rights cases. See District of Colorado Attorney Rules 2(b)(1).
5. File and properly serve the correct Notice of Limited Appearance under C.R.C.P. 11(b) and Notice of Completion of Limited Appearance under C.R.C.P. 11(b).
6. Clearly define what you will do and will not do for the client in the engagement agreement and review expectations with the client.
7. Get informed consent in writing — have the client sign the engagement agreement setting forth the specific parameters of the scope of the representation and file the Consent under C.R.C.P. 11(b) with the court.
8. Stay within the scope of the agreement and make sure the client understands what his or her responsibility is. See Colo. RPC 1.5(b). Utilize checklists and handouts to educate your client.
9. Develop a marketing strategy for your unbundled legal services. See Chapter 6: Marketing and Business Development.
10. Talk to opposing side about your role — what you are doing and not doing for the client.

Unbundling/Limited Scope Representation

- *Increased and improved courtroom skills.* Due to the nature of limited-scope representation, many lawyers who provide unbundled legal services report that there is an increase in the number of court appearances they make. This means more exposure to judges, courthouses, and courtroom staff and an increase in time “on your feet.”
- *Exposure to several practice areas.* Of course, an attorney must be competent in an area of practice before agreeing to represent a client, whether the services are bundled or the full representation. However, in practice areas where an attorney wishes to gain more experience, unbundled legal services can sometimes be more practical in affiliating with co-counsel and mentoring. Performing discrete tasks with a newer lawyer can also provide good mentoring experiences in working with clients and observing how particular tasks should be performed.
- *Expand your potential client base.* Unbundled representation also allows a lawyer to take a chance on a seemingly risky or “less desirable” client, allowing the lawyer to step down without a court motion if the client’s personal or financial issues prove unworkable.
- *Develop better relationships with your clients.* Anecdotal information from lawyers who have extensive experience offering limited scope representation suggests that it often allows them to develop better client relationships, which frequently results in higher client satisfaction rates and the client’s deciding to switch over to full representation.

Clients also have a lot to gain from lawyers offering unbundled legal services. Unbundled representation allows clients who cannot afford to pay for full representation to still hire a lawyer for what the client, with the lawyer’s counsel, determines to be the part(s) of the matter for which a lawyer is most needed. While most potential clients would hire a lawyer for full representation if they could afford to do so, many potential clients still find value in and benefit from hiring a lawyer for something less than full representation.

ETHICAL CONSIDERATIONS

It is important to be familiar with Colorado Rules of Professional Conduct, as they apply even in situations where attorneys provide limited representation.

According to Colo. RPC 1.2(c):

A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

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As such, an attorney may limit the scope and objectives of representation so long as (1) they are reasonable and (2) the client gives informed consent. There is no hard-and-fast definition of what is “reasonable” when providing limited representation; however, comment [7] specifically notes that an “unreasonable” limitation includes one that interferes with the knowledge, skill, thoroughness, or preparation required to competently represent the client. Additionally, the requirement of “informed consent” is satisfied when the attorney communicates to the client any limitations on the scope of representation and provides information and explanation about the material risks associated with not being fully represented as well as alternatives available to limited representation. Notably, the client’s informed consent to the limited representation and its scope should be in writing.

For a more complete review of the ethical implications associated with limited representation, see the Appendix.

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APPENDIX

Colorado Bar Association Resources

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.
- The Practical and Ethical Considerations to Integrating Unbundling Services: the Unbundling Road Show is a continuing legal education program that provides the nuts and bolts as well as the ethical considerations in providing limited scope representation.

The Colorado Lawyer

- “Ethical Considerations When Providing Unbundled Legal Services,” Hon. Adam J. Espinosa, Amy Goscha, James Garts, Hon. Daniel Taubman, and Danae D. Woody (Sept. 2011)
- “Limited Scope Representation Under the Proposed Amendment to C.R.C.P. 121, § 1-1,” Hon. Adam J. Espinosa and Judge Daniel M. Taubman (Nov. 2011)

Additional Resources

Limited Scope Representation

- “Expanding Your Practice Using Limited Scope Representation,” M. Sue Talia, Practicing Law Institute CLE Program (Jan. 30, 2015) – IT’S FREE!
- “Unbundling Legal Services: Options for Clients, Courts & Counsel,” Institute for the Advancement of the American Legal System
- ABA Unbundling Resource Center (browse by state), www.americanbar.org/groups/delivery_legal_services/resources.html
- Pro Se/Unbundling Resource Center, <http://apps.americanbar.org/legalservices/delivery/delunbundrules.html>
- “The Ethics of Unbundling,” Stephanie L. Kimbro, *GPSolo eReport* (Oct. 2011)
- “Stop Selling Eight-Tracks and Start Unbundling,” Stephanie L. Kimbro, *Daily Dispatch*, attorneyatwork.com (Aug. 27, 2012)

Self-Represented Litigants

- *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report*, Julie Macfarlane (May 2013)
- *Parties without Attorney Representation in Civil Cases FY 2015*, Office of the State Court Administrator

Chapter 5

Authorities

Colorado Rules of Appellate Procedure

- Rule 5(e), Notice of Limited Representation Entry of Appearance and Withdrawal

Colorado Rules of Civil Procedure

- C.R.C.P. 11(b), Signing of Pleadings
- C.R.C.P. 121 § 1-1(5), Local Rules – Statewide Practice Standards
- C.R.C.P. 311(b), Signing of Pleadings

Colorado Rules of Professional Conduct

- Colo. RPC 1.0(e), Informed Consent
- Colo. RPC 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer
- Colo. RPC 1.4, Communication
- Colo. RPC 1.5, Fees
- Colo. RPC 4.2, Communication With Person Represented by Counsel

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 101, Unbundled Legal Services

United States District Court for the District of Colorado, Local Rules of Practice

- D.C.Colo.LAttyR2: Standards of Professional Conduct
- D.C.Colo.LAttyR5: Entry and Withdrawal of Appearance and Maintenance of Contact Information

Case Law

- *People v. Stevens*, 10PDJ002 (Oct. 7, 2010)
- *People v. Gabriesheski*, 262 P3d 653 (Colo. 2011)

American Bar Association Ethics Opinions

- ABA Formal Opinion 07-446, Undisclosed Legal Assistance to Pro Se Litigants
- ABA Formal Opinion 15- 472, Communication with Person Receiving Limited Scope Representation

Chapter 5

Chapter Six

Marketing and Business Development

The terms “marketing” and “business development” are often used interchangeably by lawyers when describing their plan for growing their law firm. They are actually two distinct business functions, however, despite covering similar ground. In the legal context, marketing involves developing a strategic plan for communicating a law firm’s overall message, including its brand, service offerings, and benefits to potential clients, existing clients, partners, and the community at large. Once a marketing plan is in place, lawyers in a law firm can then begin their business development efforts, which typically consist of engaging in activities that will help them strategically build relationships with potential referral sources, such as colleagues and other professionals. Lawyers should plan on devoting a significant amount of time to both marketing and business development when starting a law firm.

DEVELOP A LAW FIRM BRAND

Chapter 6

Clients have many lawyers to choose from when they have a legal issue. What makes you different and sets you apart from other lawyers and law firms? This is where a law firm brand comes in. A law firm brand is your opportunity to convey to clients who you are, what legal service packages you have to offer, and how you are unique.

In the legal profession, attorneys sell an intangible set of skills including their expertise, knowledge, and problem solving abilities. This makes the profession ideal for branding as it gives attorneys a way to set themselves apart. Especially today, with the prolific use of the internet and social media, having a law firm brand is essential.

When developing your brand, consider:

- Target audience;
- Your firm values;
- What your personal and firm strengths are;
- What is unique about you and your firm; and
- How you can offer value to potential clients in your target market.

For more information on what clients in your target market value and what services you can offer, see Chapter 1, Business Planning.

A brand is more than just a logo or a tagline. It is the way people think of you through a combination of your website, logo, letterhead, business cards, social media, and other marketing channels.

MARKETING PLAN AND BUDGET

Every lawyer needs to develop a plan and determine how much money, if any, he or she is going to set aside for communicating and promoting his or her law firm brand, service offerings, and benefits to potential clients. One trap that many lawyers fall into is spending an exorbitant amount of money on marketing and advertising without first determining who their potential clients are and forming the basis for evaluating various marketing and advertising options.

When assessing your marketing options, keep in mind:

- How your potential clients search for legal information;
- Your expected return on investment (whether anticipated revenue will justify the expense of the service); and
- The need to reevaluate your expenses each year to determine whether the expected return has been realized.

The “Marketing and Business Development Planning Template” (see Forms2Share on the Law Practice Management page at www.cobar.org) offers excellent suggestions and forms to use in marketing your services. It can be easily customized and is a good starting point for any law firm.

It is also important to consider the following avenues for marketing your business:

Referrals

The best and most important asset you have is your relationship with colleagues and clients. This means that if you’re just starting out and don’t have any clients, your priority should be cultivating an active source of referrals.

Former clients are many lawyers’ best referral source, so you should be sure to keep your former clients updated on your practice, services, and expertise via social media or some other medium. Ask clients for feedback about why they hired you and what you can do to improve. Use their constructive criticism to improve. Clients will be more likely to refer their family and friends to you later if they feel like you helped them. Another way to maximize these referrals is to include a statement in your closing letter which advises that you maintain your practice through referrals, list your areas of practice, and request that the client keep you in mind for future legal needs or as a referral for family and friends.

Leverage your network of peers, get involved with your local bar association, and do pro bono work. Participating in these types of activities will put you in contact with individuals who can refer potential clients to you if they know what legal services you offer and believe that you will do good work and give good customer service. If you do receive a referral from another attorney, be sure to call that attorney or send them a handwritten note thanking them for the referral. It will only take a moment but can have a long-lasting positive effect.

Internet Presence

A 2014 survey by FindLaw and Thomson Reuters (<http://thomsonreuters.com>) found that consumers turn to the internet first to help them find a lawyer. What's more, the survey was a follow up to one conducted in 2005 where using the internet was the least popular choice. Establishing an internet presence is no longer simply advisable, but required.

TIPS

1. Develop a brand by considering target audience, strengths, and firm values. Colo. RPC 7.5.
2. Create a marketing plan and calendar.
3. Try to do at least one marketing activity a day.
4. Develop an Internet presence; create a website and use social media (such as Facebook, Twitter, and LinkedIn) to connect with potential clients.
5. Make sure your advertisements, including your website, are free of false or misleading statements. Colo. RPC 7.1, 7.2.
6. Make sure your website has a disclaimer stating viewers are not considered clients unless there is a signed retainer agreement. Colo. RPC 7.2, CBA Formal Ethics Opinion 76.
7. Think of inexpensive ways to advertise, including create a listing on Find A Lawyer or AVVO.
8. Get your name out by writing articles for legal publications or blogs, speaking at community organizations, or volunteering.
9. Network with colleges and clients to cultivate referrals.
10. Request client feedback.
11. Create an elevator speech — know what you do and be able to explain it in 30 seconds or less.

There are various avenues for internet presence. Developing a personalized firm website is arguably the most important. Also, Facebook, Twitter, and LinkedIn can be some of the most cost-effective means of communicating and promoting your legal services and practice. Many younger lawyers who have grown up using social media leverage it and do not spend a dime on marketing aside from funds spent to develop their websites.

Importantly, be extremely careful what you post online. Be sure to review the commonly implicated Rules of Professional Conduct in the Appendix to this chapter, keeping in mind potential ethical violations that can arise when using social media.

Referral Services

Additional inexpensive ways to communicate and promote your legal services and practice include listing your practice on bar association lawyer lists, such as CBA Find a Lawyer (www.cobar.org/Find-a-Lawyer), and branded legal networks. You may also consider participating in online attorney review sites such as AVVO and Martindale.

Since 2010, Colorado's state courts have been establishing self-help centers in courthouses throughout the state. The purpose of these self-help centers is to facilitate access to the courts by providing basic information about court procedures and practices to litigants who are not represented by lawyers. Although the courts are prohibited from recommending a specific lawyer or law firm, many local bar associations and access to justice committees collect contact and practice information from lawyers who are interested in having their information made available to these litigants. These lists are then often distributed through self-help centers.

Traditional Advertising

There are many traditional methods of advertising that should not be overlooked if they are avenues that you feel your potential clients will pursue to find an attorney, including:

- Direct mail or email advertisements;
- Printed advertisements displayed in public places or printed in newspapers;
- Television or radio advertisements;
- Purchasing Google AdWords.

Again, before pursuing these avenues, make sure you consider cost, target audience and estimated return on your investment. It is advisable to develop a marketing budget to incorporate into your overall budget and be realistic about all expenditures. Be sure to evaluate every expense to determine your expected return and to reevaluate expenses a year later to determine whether the expected return was realized. Remember to consider how you treat unsolicited ads, mailers, and emails, and remind yourself that most people will treat your advertisement that same way.

Also, as you consider advertising, be sure to thoroughly review the commonly implicated Rules of Professional Conduct in the Appendix to this chapter.

BUSINESS DEVELOPMENT

Once you have a marketing plan and budget in place, you can begin your business development efforts. Business development also requires funds, so you will need to determine how much money you are going to allocate for it and develop an associated plan, budget, and calendar.

Business development is a time-consuming task, especially when you are first starting your law practice. You should plan on devoting at least a third of your time to business development efforts until you have developed a solid client base. For many lawyers, business development feels unnatural and unpleasant. There are numerous ways a lawyer can develop business, however. The key is to choose a strategy that is a natural fit with your personality.

Networking

Some more formal and traditional business development activities include leveraging peer networks, such as getting involved with state and local bar association sections and committees. Don't forget about networking with non-attorney groups as well, such as college alumni associations, rotary groups, religious groups, or neighborhood associations.

Today, some lawyers are also finding business development success through more informal gatherings, such as meetups or through branded legal networks. Again, the key is to choose a strategy and activities that are a good fit for you. Participating in these types of activities will put you in contact with individuals who can refer potential clients to you if they know what legal services you offer and believe that you will do good work and provide client value.

Develop an elevator speech that is less than 30 seconds and constantly practice it so that you can quickly and succinctly summarize your brand identity, legal service offerings, and how you can benefit moderate income clients (*e.g.*, "My firm's mission is to provide client-centric legal services that are affordable, responsive, and accountable to the unique needs of individuals and families in the greater Denver area."). Identify your firm brand, your legal service offerings, and the value you can provide clients, including any alternative fee arrangements and billing methods that you offer. Following up with new contacts — even if it is just sending them a quick email to say it was nice to meet them — will show you are conscientious and serious about developing your practice.

Volunteering

Do pro bono work. Not only will you provide a community benefit, but you will also gain knowledge that you otherwise would never have learned through paid work.

Visibility

To keep yourself disciplined with marketing, create a business development calendar in which you identify and schedule potential business development opportunities, such as:

- Write articles for *The Colorado Lawyer*, bar journals such as *The Docket*, or law school alumni magazines;
- Start a blog and consistently post articles;
- Join the board of an organization (legal or non-legal);
- Present or volunteer at a clinic;
- Participate in Listservs;
- Attend local bar association functions;
- Follow up with new contacts to build your network.

Be diligent about keeping up with this calendar to ensure your name and business are being distributed into the market consistently.

Chapter 6

Evaluation

Every time you meet with a new client, ask the client how he or she found you. This will help you determine which business development efforts are most productive for you. If one of your contacts refers a potential client to you, be sure to thank him or her. Lawyer referrals will likely be one of your biggest business development sources. It will take numerous contacts to determine how fruitful your potential referral sources are. Make sure to seize the opportunity to let your contacts know about developments in your practice, expansion of client services, successes, added staff, etc.

APPENDIX

Colorado Bar Association Resources

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.
- *Personal Branding in One Hour for Lawyers*, Katayoun Goshtashi (2013), available to CBA members to check out at no cost through the Lending Library.

Articles

Branding

- “Marketing vs. Business Development – Why It’s Critical for Law Firms to Know the Difference,” Debra Andrews, Blog Post on go.marketri.com (June 30, 2014)
- “Branding Is the Heart of Your Marketing Message,” Micah U. Buchdahl, *Law Practice Magazine* (Nov./Dec. 2013)
- “Branding on a Shoestring,” David Gent, Blog Post on The Market Donut (date unknown)
- “Does a Small Law Firm Need to Have a Brand?,” Valerie Nelan, Nathan Smith & Stacy Smith, Blog Post on attorneyatwork.com (May 16, 2013)
- “Marketing Matters: Branding Your Law Firm,” Susan Van Dyke, Canadian Bar Association PracticeLink (date unknown)
- “Turn Clients into Client-Advocates: The Brand Experience,” Jay Harrington, Blog Post on AttorneyAtWork.com (Sept. 30, 2014)
- *Branding Yourself Online: Tips for Spinning Your Story with Blogs And Other Social Media*, David King Keller, American Bar Association Book Publishing Division

Chapter 6

Building a Basic Website

- “Why a Mobile-Friendly Law Firm Website is Essential,” Austen Loft, Blog Post on SoloInColo.com (Nov. 4, 2015)
- “How to Select a Domain Name for Your Law Firm,” Andrew Cabasso, Blog Post on Lawyerist.com (Feb. 12, 2015)

Business Development

- “Upping Your Marketing Game,” Sally J. Schmidt, Blog Post on AttorneyAtWork.com (Dec. 7, 2015)
- “Why Meetups Are A Solo’s Secret Weapon,” Susan Cartier Liebel, Blog Post on AboveTheLaw.com (Dec. 2, 2015)
- “Branded Legal Networks: What they are, and how lawyers can utilize them for business development,” Nicholas J. Gaffney, *Law Practice* (Jan./Feb. 2016)
- “Making it Rain – Practical Tips From Those Who Do,” Nakia Gray, Sakkara Turpin, *Law Practice Today* (Feb. 12, 2016)

Marketing

- Legal Marketing Blog, www.legalmarketingblog.com
- The Rainmaker Blog, www.therainmakerblog.com
- Lexis/Nexis Law Firm Marketing Solutions, www.lexisnexis.com/law-firm-marketing/why-lexisnexis
- Law Marketing Monitor, www.lawmarketingmonitor.com
- The Attorney Marketing Blog, www.the-attorneys-atm.com/attorney-marketing-blog
- Practice Smarter, www.abacuslaw.com
- Social Media Marketing for Law Firms, <http://socialmediamarketingforlawfirms.com>
- Certified Practice Advisor’s Blog, www.copleycoaching.com/blog
- Real Lawyers Have Blogs, <http://kevin.lexblog.com>
- Zen & the Art of Legal Networking, www.zenlegalnetworking.com
- CaseDetails, www.casedetails.com
- Technology and Marketing Law Blog, <http://blog.ericgoldman.org>
- AttorneyBoost, www.attorneyboost.com/legal-marketing-blog.html
- AttorneySync, www.attorneysync.com/blog/law-firm-marketing-plan-2013-2
- Tools and Tricks to Automate Your Marketing, Joan Feldman, Blog Post on AttorneyAtWork.com (Feb. 26, 2016)
- How to Conduct Market Research on a Tight Budget, Meghan Keaney Anderson, Blog Post on HubSpot.com (June 4, 2014)
- Marketing Research on a Shoestring for Small Business, author unknown, Blog Post on Score.org (March 29, 2013)
- ABA Solo and Small Firm Resource Center – Marketing
- Axiom: redefining the practice of law and improving the way legal work is done. Axiom conveys this message through its website, social media, workspace, marketing and office materials, and its services.
- Useful YouTube Optimization Tips that Will Help Give Your Video High Ranking, Lalit Sharma, Blog Post on SocialMediaToday.com (Feb. 8, 2016)
- Most Lawyers Suck at Internet Marketing, Keith Lee, post on AboveTheLaw.com (Sept. 17, 2015)
- The 7 Lethal Internet Marketing Mistakes Law Firms Make, Steve Olenski, Forbes.com (March 5, 2015)

- Legal Marketing Blog.com
- ABA Journal Blawg 100
- LMA – Rocky Mountain Chapter

Networking

- “Four Pre-Holiday Networking Tips for Introverts,” Kim Staflund, Blog Post on AttorneyAtWork.com (Nov. 24, 2015)
- “How to Chat at Networking Events,” Theda C. Snyder, Blog Post on AttorneyAtWork.com (Dec. 29, 2015)

Social Media

- “Social Media for Law Firms: It’s All About Adding Value,” Daniel Decker, *Law Practice Today* (November 13, 2015)

Authorities

Colorado Rules of Professional Conduct

- Colo. RPC 7.1, Communications Concerning a Lawyer’s Services
- Colo. RPC 7.2, Advertising
- Colo. RPC 7.3, Direct Contact with Prospective Clients
- Colo. RPC 7.4, Communication of Fields of Practice
- Colo. RPC 7.5, Firm Names and Letterheads

Colorado Ethics Opinions

- CBA Ethics Committee Formal Ethics Opinion 38, Referral Fees
- CBA Ethics Committee Formal Ethics Opinion 74, Lawyer Newsletters
- CBA Ethics Committee Formal Ethics Opinion 76, Lawyer Advertising Guidelines
- CBA Ethics Committee Formal Ethics Opinion 81, Lawyer’s Participation in Prepaid Legal Service Plans
- CBA Ethics Committee Formal Ethics Opinion 84, Listing of Support Personnel Names on Letterhead and Business Cards
- CBA Ethics Committee Formal Ethics Opinion 106, Referral Fees and Networking Organizations
- CBA Ethics Committee Formal Ethics Opinion 117, Ethical Responsibilities of Attorneys in Legal Services and Pro Bono Programs Concerning Prospective Clients
- CBA Ethics Committee Formal Ethics Opinion 122, The Applicability of Colo. RPC 7.2 to Internet-based Lawyer Marketing Programs

Case Law

- *People v. Smith*, 830 P.2d 1003 (Colo. 1992)
 - Letterhead cannot include statements or claims that are false, fraudulent, misleading, or deceptive.
- *Crowe v. Tull*, 126 P.3d 196 (Colo. 2006)
 - Attorneys may be held liable for violations of the Colorado Consumer Protection Act (CCPA). The complainant must allege that “the attorney or law firm knowingly engaged in a deceptive trade practice, which occurred in the course of the attorney or firm’s business, vocation, or occupation, significantly impacting the public as actual or potential consumers of legal services, and causing injury in fact to a legally protected interest of the plaintiff.”

Chapter Seven

Brick and Mortar or Virtual

With the growth of the internet has come the presence of virtual law offices. Lawyers today now have a choice between selecting a permanent commercial location and developing a virtual office. In this chapter, we will explore both options.

VIRTUAL LAW PRACTICE

(The information in this section was adapted from Stephanie L. Kimbro's book Virtual Law Practice: How to Deliver Legal Services Online, Second Edition, American Bar Association (2015) and used with permission from Stephanie L. Kimbro.)

"Virtual law practice" can have different meanings depending on with whom you are speaking. The two most common definitions seem to be:

- 1) "[A] professional law practice that exists online through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the Internet." Stephanie L. Kimbro, *Virtual Law Practice: How to Deliver Legal Services Online, First Edition*, and
- 2) Rentable meeting space, a receptionist, and other services that are shared by several lawyers.

While the latter arrangement can be a great way to save on overhead, it does not require lawyers to incorporate technology into the management or delivery of their legal services. Ideally, lawyers will do both: develop low-overhead practices *and* incorporate technology into the management and delivery of their legal services to clients. In this chapter, we will use Stephanie Kimbro's definition when referring to "virtual law practice."

Virtual law practices can provide tremendous value to potential clients through convenience, transparency, price certainty, affordable fees, and collaboration. For example, clients can have around-the-clock access to information about their cases through a secure portal and that may suit their own busy schedules. Clients unable to travel to a lawyer's office during regular business hours may appreciate the ability to video conference or communicate primarily through portal access, email, and text.

Chapter 7

The benefits of online delivery include:

- Lower overhead;
- The ability to create an eco-friendly, paperless office;
- Greater work/life balance and flexibility;
- The ability to expand your client base across jurisdictions;
- Flexibility to transition between different phases in life and career to meet professional and personal needs;
- The opportunity to tap into a broader market of consumers seeking legal services;
- The ability to serve as an amenity for existing clients of a traditional law practice;
- Added security of hosted backups and other cost-effective benefits of using software as a service (SaaS);
- Less malpractice risk through the use of technology to automate checks; and
- Streamlined administrative features of a law practice that permit lawyers to focus on the actual “practice” of law.

The risks include:

- Ensuring security of the technology, including third-party control and storage of law office data; (see Chapter 8: Technology)
- Properly retaining and returning law office data;
- Maintaining confidentiality;
- Competently providing unbundled legal services (if applicable); and
- Avoiding the unauthorized practice of law in other jurisdictions.

Chapter 7

You do not need a physical office space to have a successful and financially viable law practice. All you really need is a place to meet with clients. CBA members have access to Stratum, a co-working and meeting space for lawyers at the CBA and DBA offices. You might also consider meeting with clients at locations in the community that are convenient for them, as long as you adhere to the applicable Colorado Rules of Professional Conduct, specifically with respect to confidentiality. Meeting at coffee shops, public libraries, community centers, and other public places can be an option if other people cannot make out the details of your conversations with your client.

If you do choose to go this route, strongly consider using a business address other than your home address. Alternatives could include renting a mailbox at a UPS store or a virtual law office. If you go with the former option, you can simply tell clients you work virtually and are happy to meet with them at public locations that are convenient for them. If you would prefer to meet with clients in a professional setting other than the CBA/DBA, most, if not all, virtual offices also rent out meeting space. And if working at home is simply not an option for you, virtual offices and offices with co-working spaces, such as LawBank (<http://law-bank.com>), could be good low-cost alternatives. See the Appendix to this chapter for tips on selecting office space. Again, however, please note that you do not need to rent a physical office space to test client value assumptions or to have a successful and financially viable law practice.

Virtual Law Office Start-up Checklist

- ___ Write a business plan whether you are starting a new practice or incorporating into an existing law firm.
- ___ Select a name and register a domain name. (You can incorporate into your existing website without purchasing a new URL.)
- ___ Contract with a website developer and start creating web content, payment processing.
- ___ Complete business formation and registering with Secretary of State.
- ___ Draft any needed agreements: partnership, fee structure, online legal engagement, disclaimers, etc.
- ___ Draft law firm's policies and procedures for delivering legal services online, including technology use and social media use, email policy, and response/turnaround for handling online clients.
- ___ Develop needed online forms, such as limited scope agreements, etc.

OFFICE SPACE

When selecting office space for your practice, you need to consider all options. Whatever setting you select, you should strive for flexibility, so that as your law practice evolves, the office space can evolve. Avoid long-term leases or agreements. Most importantly, what does the office cost in good times and in lean times? You should not get in over your head.

**Chapter
7****What Are the Basic Considerations and Questions?**

It is best to explore office options such as working from home, virtual office space, office sharing, and individual office rental. When selecting office space, you need to consider your needs, the needs of your clients, the needs of the public, and the needs of your staff. You should think simply and ask practical questions, such as:

- How will your client pay fees and costs in person?
- How will your client drop off signed documents or evidence?
- How will client confidences be kept confidential?
- How will other parties hand-deliver pleadings and documents?
- What meeting space is needed?
- Where does privacy of the attorney and his or her family factor in?
- What kind of lease or office-sharing agreements are needed?
- How often will a meeting room be needed?
- Who answers telephones?
- How will copying and faxing needs be met?
- What are the ethical considerations for sharing offices?

What Are the Office Space Options?

Office space needs can vary depending of type of practice. For example, if your practice includes face-to-face contact with clients, attorneys, and others, an office presence with conference room and meeting space will be necessary. Even if you work from home, alternative arrangements can be made for space rentals on a short-term basis or on an as-needed basis.

- *Keys to Working from Home:* Working from a home office can be the least expensive option. With a home office, you need to balance serving the client with personal and family privacy. It is critical to provide clients a secure, professional place to drop off payments, documents, and evidence. Virtual office vendors provide drop-box services, phone answering, and as-needed meeting room space for the home office attorney. Online communication options such as Google Voice can be the answer to communication issues.

Note: You will need to get tax advice before writing off or deducting home office space.

Chapter 7

TIPS

1. If you are office sharing, be sure to have a written office share agreement.
2. If you are office sharing, establish policies to ensure confidentiality. Colo. RPC 1.6.
3. Avoid the appearance of a partnership if office sharing.
4. Before you write off your home offices on your taxes, be sure to consult with your accountant about IRS regulations, as you can only write off space used exclusively for conducting business (*i.e.*, if you also watch television in the office space it will not qualify).
5. Make sure your office budget includes collateral expenses (*i.e.*, costs for parking, utilities, and costs of common space).
6. Don't forget about insurance!
7. Register a URL and develop a website as your virtual office home base. Colo. RPC 7.1 and 7.2, ABA Formal Ethics Opinion 10-457 — Lawyer Websites.
8. When communicating with clients via email, make sure you comply with all confidentiality requirements. ABA Ethics Opinion 11-459 — Duty to Protect the Confidentiality of E-Mail Communications with One's Client.
9. When meeting with clients in community space convenient for them, make sure you adhere to confidentiality requirements. Colo. RPC 1.6
10. With virtual law offices, ensure COLTAF compliance.

- *Keys to Office-Sharing Arrangements:* Office sharing with other attorneys requires detailed planning. An office-sharing agreement is necessary to address not only business concerns, but also ethical issues. Business concerns involve paying for sharing of equipment, reception services, common space, and sometimes staff.

Note: Office sharing requires special scrutiny of ethical issues involving confidentiality, conflicts of interest, and misleading clients on lawyer relationships.

- *Keys to Renting Individual Office Space:* It's all in the lease and terms of the tenancy. Negotiate terms to avoid getting locked into a long-term and expensive lease, especially when your law practice experiences peaks and valleys. During negotiation of a lease, you should be aware of hidden costs, such as parking, utilities, premises liability insurance, etc. You should lease only the space that is needed and that your practice will support. Seek references from other tenants and former tenants.
- *Consider Combinations of the Options:* Attorneys often rent individual space, then, as the practice expands, use virtual office space or satellite office space. This option is an alternative to leasing more space than you need for growth potential. For expanding staff needs, consider distance working arrangements for clerks and paralegals, who can complete tasks remotely.

ETHICAL CONSIDERATIONS

You need to be continually concerned about ethical duties to the client, the court and the profession. Your office space choice also involves the public's perception, especially in office-sharing arrangements.

Chapter 7

Some key Colorado Rules of Professional Conduct include:

- *Firm Names and Signage:* Colo. RPC 7.1 and 7.5 control how lawyers in an office-sharing situation should designate their individual practices to avoid misrepresenting the relationship among the lawyers in the suite.
- *Confidentiality of Information:* Colo. RPC 1.6 requires every lawyer to keep clients' information confidential, even in office-sharing or virtual office situations. Special care needs to be observed with phone messages, mail, storage of files, and technology.
- *Conflicts of Interest:* As with lawyers in the same law firm, Colo. RPC 1.7, 1.8, and 1.10 apply to imputation of conflicts of interest between office suite lawyers who are on the opposite sides of a dispute. The potential is there for the appearance of impropriety and for actual disclosure of confidential information.
- *Sharing of Fees and Cases:* Office-sharing financial arrangements can create fee-sharing issues raised by Colo. RPC 1.5(d) when space-sharing costs involve a percentage of fees generated. In addition, written fee agreements should list all lawyers working on the case, especially in a contingency fee case under Chapter 23.3, Rules 1-7.

- *Shared Lawyers, Paralegal and Clerical Staff*: When lawyers not in the same firm are sharing office space and also share lawyers, law clerks, paralegals, investigators, and clerical staff, issues of confidentiality, conflict of interest, and misleading appearance of partnership/affiliation of lawyers are likely to arise. See CBA Formal Ethics Opinion 89. In addition, there are supervisory ethical issues under Colo. RPC 5.1, 5.3, and 5.4 with the sharing of staff.

APPENDIX

eLawyering

- eLawyering Blog, published by Richard S. Granat

Selecting Office Space

- “Tips for Choosing Virtual Office Space,” Carolyn Elefant, Blog Post on MyShingle.com (Feb. 18, 2014)
- “Why Do Small Law Firms and Solo Attorneys Choose Shared Office Space?,” Stephen Perih, Blog Post on LawFirmSuites.com (Feb. 11, 2014)
- “Home Is Where the Office Is: Ethical Implications of the Virtual Office,” Seth L. Laver, Blog Post on ABA Section of Litigation Webpage (March 27, 2014)
- “10 Questions to Ask Yourself Before Choosing an Office Space,” Lisa Girard, Blog Post on Entrepreneur.com (March 19, 2013)
- “Five Things to Look for in Shared Office Space,” Ron Bockstahler, Blog Post on AttorneyAtWork.com (Oct. 7, 2015)

Virtual Offices

- *Virtual Law Practice: How to Deliver Legal Services Online, Second Edition*, Stephanie Kimbro, American Bar Association (2015)
- eLawyering Blog, published by Richard S. Granat
- “Virtual Law Practice,” Joshua Poje, *ABA TechReport* (2014)
- “The Counselor: How Rachel Rodgers Built Her Virtual Legal Practice,” Danielle Jenene Powell, Blog Post on FastCompany.com (April 15, 2013)
- “Virtual Firms on the Decline - Why?,” Carolyn Elefant, Blog Post on MyShingle.com (August 16, 2013)
- “The Completely Virtual Lawyer: Can It Be Done?,” Andrew Cabasso, Blog Post on JurisPage.com (date unknown)
- “How Real Are Virtual Law Firms?,” Chat Burton, American Bar Association

Authorities

Colorado Rules of Civil Procedure

- C.R.C.P. 23.3, Rules Governing Contingent Fees
- C.R.C.P. 265, Professional Service Companies

Colorado Rules of Professional Conduct

- 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 1.10, Imputation of Conflicts of Interest: General Rule
- Colo. RPC 7.1, Communications Concerning a Lawyer's Services
- Colo. RPC 7.2, Advertising
- Colo. RPC 7.4, Communication of Fields of Practice
- Colo. RPC 7.5, Firm Names and Letterheads

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 8, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 9, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 13, Office Sharing – Municipal Judge
- CBA Ethics Committee Formal Opinion 50, Definition of Associates as Applied to Lawyers
- CBA Ethics Committee Formal Opinion 89, Office Sharing – Conflicts, Confidentiality, Letterheads and Names
- CBA Ethics Committee Formal Opinion 90, Preservation of Client Confidences in View of Modern Communication Technology

American Bar Association Ethics Opinions

- Formal Ethics Opinion 84-351, Letterhead Designation of “Affiliated” or “Associated” Law Firms
- Formal Ethics Opinion 94-338, Relationships Among Law Firms
- Formal Ethics Opinion 96-401, Limited Liability Partnerships



Chapter Eight

Technology

There are many routine functions in a law firm that can be standardized and more easily accomplished using technology. As your firm grows and you take on more cases, you may find it is more effective to invest in more robust law practice management products and/or services, such as document automation or practice management software, in order to continue to provide value to clients, work efficiently, and stay organized. Selecting the products and services that are the best fit for your growing practice can be a tricky and time-consuming endeavor, as the number of options in each category can be overwhelming.

Before you start the research process, the ABA Legal Technology Center recommends that you first:

1. Understand the problem you are trying to solve;
2. Determine whether technology can really fix your problem;
3. Look at the costs;
4. Develop an implementation strategy; and
5. Know what comes next.

See “Invest Wisely: 5 Tips for Purchasing Technology,” Joshua Poje, *Your ABA* (May 2014), for further explanation of each step.

If you determine that investing in a more robust law practice management or technology project or service is something that makes sense for your growing practice, consider starting your research process by checking out the ABA Legal Technology Resource Center’s Technology Buyer’s Guide (<http://buyersguide.americanbar.org>), which provides a simple breakdown of technology products and services by category. Product listings include basic information on the product and general contact information for the provider. Please note this Guide is not a comprehensive list, as companies have to pay a fee in order to be listed in it. Colorado Bar Association members can also consult the LPM Software and Hardware webpage and contact the Law Practice Management Department with questions regarding law practice management and technology products and services.

Importantly, review the Appendix of this chapter for articles that explore a variety of technology products and services available.

CYBERSECURITY

Law firms maintain a wealth of valuable information, including case information; litigation strategies; attorney-client privileged information; personal identity information for employees, clients, and third parties; and credit card information. In addition to the ethical duties to maintain confidentiality, lawyers have legal responsibilities to protect this information, such as under HIPAA. Loss of data is a result of data theft and data leakage. Data theft can be accomplished by such means as hacking or malware. Data leakage occurs through such means as insider misuse, loss of unsecured laptop, communication over unsecured networks, downloading of unapproved software on firm's computer network, or other problems. To protect yourself, your clients, your firm, and your employees, it is important to implement cybersecurity policies, including encryption, effective security software on all devices, training of staff, and proper disposal of all digital media and devices. Many malpractice carriers offer cyber liability insurance and information on how to protect information.

APPENDIX

CBA Resources

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.

Chapter 8

Articles

Business Continuity, Contingency, and Succession Planning

- *The Contingency Planning Guide for Lawyers*, The Law Society of Upper Canada (Oct. 2014)
- *Surviving a Disaster: A Lawyer's Guide to Disaster Planning*, ABA Special Committee on Disaster Response and Preparedness (Aug. 2011)
- "The 7 Deadly Sins of Succession Planning," Peter A. Giuliani, *Law Practice Magazine* (Nov./Dec. 2015)

Calendaring

- “How Automated Calendaring Can Limit Malpractice Risk,” Joshua Lenon, Blog Post on AttorneyAtWork.com (March 30, 2015)
- “Legal Calendaring: What You Don’t Know Can Hurt You,” Joseph C. Scott, *Law Practice* (March 2016)

Client Satisfaction Surveys — Examples

- Reese Law Office — Client Satisfaction Survey (<http://reeselawoffice.com/client-survey.html>)
- Jeffrey Freedman Attorneys, PLLC — Client Satisfaction Survey (www.jeffreyfreedman.com/client-satisfaction-survey)
- Kuck Immigration Partners LLC — Client Service Survey (www.surveymonkey.com)

Data Security

- “What Will You Do When Your Law Firm Is Breached?,” Sharon D. Nelson & John W. Simek, *Law Practice Magazine* (Nov./Dec. 2015)
- Cyber Security Checklist, ALPS Property and Casualty Insurance Company

Document Automation

- “Document Automation Choices: Buy or Build?,” Marc Lauritsen, Blog Post on AttorneyAtWork.com (Dec. 15, 2015)
- “Choosing a Document Automation System,” Marc Lauritsen, Blog Post on AttorneyAtWork.com (Nov. 18, 2015)
- “Today’s Tech: How A Business Lawyer Uses Document Automation In His Practice,” Nicole Black, *Above the Law* (May 7, 2015)

Law Practice Management & Technology

- “Webinar Recap: Top 10 Law Practice Management Tips for 2016,” Chad Sands, Blog Post on MyCase.com (Feb. 25, 2016)
- “Investing Wisely: 5 Tips for Purchasing Technology,” Joshua Poje, *YourABA* (May 2014)
- “The Long Line: Essential Software for the Modern Law Practice,” Jared Correia, Blog Post on AttorneyAtWork.com (Feb. 2, 2016)
- “50 Web Resources for the Suddenly Solo Lawyer,” Jim Calloway and Allison C. Shields, *Law Practice Today* (April 2012)
- “4 Steps to Getting Serious About Law Firm Cybersecurity,” Joseph Burton, *ABA Law Practice Today* (September 2014)
- “Thinking Small about Legal Tech,” David Perla, *ABA Law Practice Today* (April 2016)
- AttorneyAtWork.com
- myShingle.com

- “Solo and Small Firm Technology,” Richard Ferguson, *ABA TechReport* (2015)
- “Efficiency Killer in Your Law Firm,” Rosemary Kupfert, Blog Post at AttorneyWork.com (Dec. 4, 2015)
- “Six Tips to Take Charge of Your Own Economy,” Cynthia Sharp, *GP Solo* (Jan./Feb. 2013)
- *The Alps Guide to: Minding Your Law Firm Technology*, Mark Bassingthwaighte (2015)

Project Management

- “Building Bridges with Clients in Mind,” Tom Bolt, *Law Practice Magazine* (Nov./Dec. 2015)

Running a Law Firm

- “Opening a Small Firm — How to Survive the First Three Years,” Branigan Robertson, DBA-YLD Blog Post (Nov. 2, 2015)

Websites

- ABA Law Technology Resource Center — FYI: Starting a Website, www.americanbar.org
- “How to Design the Best Law Firm Website,” Mike Ramsey, Blog Post on AttorneyAtWork.com (Sept. 11, 2013)

Authorities

Colorado Rules of Professional Conduct

- Colo. RPC 1.4, Communication
- Colo. RPC 1.6, Confidentiality of Information
- Colo. RPC 1.16A, Client File Retention
- Colo. RPC 8.4, Misconduct

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 90, Preservation of Client Confidences in View of Modern Communications Technology
- CBA Ethics Committee Formal Opinion 119, Disclosure, Review, and Use of Metadata
- CBA Ethics Committee Formal Opinion 127, Use of Social Media for Investigative Purposes

American Bar Association Ethics Opinions

- ABA Formal Ethics Opinion 11-459, Duty to Protect Confidentiality of E-Mail Communications with One's Client
- ABA Formal Ethics Opinion 10-457, Lawyer Websites
- ABA Formal Ethics Opinion 08-451, Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services
- ABA Formal Ethics Opinion 06-442, Review and Use of Metadata
- ABA Formal Ethics Opinion 99-413, Protecting the Confidentiality of Unencrypted E-Mail
- ABA Formal Ethics Opinion 95-398, Access of Nonlawyers to a Lawyer's Data Base

TIPS

1. Dedicate time or hire a technology compliance officer to oversee technology, including security.
2. Keep hardware and software up to date, including updating patches and antivirus software. Remove the human element and set backups to be done automatically.
3. If using an "open" or "wifi" network, make sure steps are taken to protect the confidentiality of client information. Colo. RPC 1.6.
4. Develop office policy with regard to technology security, such as use of personal devices, Internet usage for non-work-related use, etc.
5. Do you have a disaster recovery plan in place for electronic files?
6. Keep in mind file retention requirements under Colo. RPC 1.16A.
7. Create email-use policies for staff to ensure effective communication and confidentiality. Colo. RPC 1.4, 1.6.
8. Consider document automation to make your life easier.
9. Consider purchasing cyber liability insurance.
10. Make sure you have a metadata scrubber and use it to avoid any inadvertent disclosures. CBA Ethics Opinion 119 — Disclosure, Review and Use of Metadata; ABA Formal Ethics Opinion — Review and Use of Metadata.



Chapter Nine

Staffing

WHAT STAFF DO I NEED FOR MY LAW PRACTICE?

Strategic and appropriate staffing for any law practice is the key to getting you the help you need to adequately represent clients. The components of successful staffing include recruitment, hiring, retaining, supervising, and evaluating the staff. Whether staff members are full-time, part-time, contract workers, or paid interns, these components still apply. Just like all of the other “business aspects” of law practice, what the practice needs and what the practice can realistically afford are key factors.

Outsourcing Work

You can outsource administrative tasks, business tasks, legal work, or any combination of the three. Bookkeeping, payroll, accounting, IT support, and receptionist duties are examples of administrative tasks that can easily be outsourced. Marketing is an example of a business task that many solo and small firm lawyers outsource. Various legal tasks can also be outsourced. The most popular example is research, but others could include drafting a pleading, covering a routine status in court, or issuing or responding to discovery. When outsourcing legal tasks, lawyers should be mindful of ethics rules, particularly rules pertaining to conflicts of interest, confidentiality, and supervision. Outsource work only if it will save you time, save the client money, and allow you to deliver a work product that is equivalent to or better than the work product you would deliver had you done the work yourself.

Hiring Staff

Your firm may grow to a point where outsourcing work no longer satisfies your firm needs and you need to hire staff. Strategic and effective staffing involves hiring the right people; training, supervising, and evaluating them; and then keeping them happy so you can retain them for long periods of time.

The first step to successful recruiting of strategic and appropriate staff is for the attorney to accurately determine what the practice needs. Key factors in this assessment include the following:

Identify Tasks: Look at the type of cases, clients, and nature of your practice to identify the tasks that need to be completed. Determine what kinds of tasks need to be completed (*e.g.*, workflow management, going to court, drafting pleadings, marketing) and what type of staff member needs to complete them (*e.g.*, a lawyer, a paralegal, a law student, other).

Identify Who Needs to Accomplish the Tasks: Determine which tasks need to be completed by you as the lawyer, by paralegals, or by other staff. Ideally, you should delegate as much work as you can to other staff members so you can spend as much time as possible doing work that requires a law license. See the CBA's Guidelines for the Utilization of Paralegals and Paralegals and Law Office Support Staff webpage (www.cobar.org). Remember, when delegating tasks, that you are responsible for the ethics and the competence of the work, so it is essential to train your staff to complete the delegated tasks and to evaluate their competence. (See Colo. RPC 5.3.)

Employment Status: After you determine what type of staff member you need to hire, it is then important that you consider:

- *Differences in Employment Status.* What is a full-time employee versus a part-time employee versus an independent contractor? Where do interns and law clerks fit in? What is the difference between exempt staff and non-exempt staff? Caution — this area is a minefield, so proceed carefully!
- *Differences in Tax and Benefit Packages for Each Employment Status.* Who qualifies for which benefits? What taxes need to be withheld for which types of staff members?

Create Job Descriptions and Post: After identifying the tasks and determining what skills are needed for the tasks, you should draft job descriptions to advertise or post the job notices. Spend some time carefully crafting your job description, as it will dictate who applies for the job and drive the selection process. At a minimum, the job description should include:

- The job or position title;
- The reporting structure for the position;
- A list of the position's essential or key job duties;
- The qualifications and educational requirements for the position;
- The qualities or attributes you would like the new staff member to have;
- The salary and benefits associated with the position; and
- How interested candidates can apply.

Good places to post job descriptions include bar association and paralegal/secretary job boards, such as the CBA Employment and Classified Ads (www.cobar.org), and online job posting sites such as Craigslist (but be prepared to receive a ton of responses) and indeed.org.

Screening Applicants: Rule out applications that are sloppy, contain misspellings, or are addressed to the incorrect firm or person, as this lack of attention to detail will likely carry forward into the applicant's work at your firm. Be on the lookout for red flags, such as employment gaps, and do your due diligence prior to offering someone an interview or job. Formal and informal (social media) background checks are easy to conduct online, and reference checks can take less than an hour. Don't forget to ask for references and make the calls to check those references.

During each interview, ask open-ended questions that will help you determine whether the candidate possesses the skills, education, and attributes needed to perform the job well. Let the candidates do the talking. Observe how the applicant presents himself or herself during the interview. Is the applicant well spoken, prepared, polite, and self-confident? Will the applicant fit in well in your office? Is the applicant tech savvy and a strong writer? Does he or she appear to be excited about the position? Take all of these considerations into account and offer the job to the best candidate. Keep in mind there are certain questions you cannot ask during an interview (see What You Can Ask and What You Can't — Legal/Illegal Interview Questions (www.mtu.edu/equity/pdfs/whatyoucanandcantasklongversion8-12-04.pdf)).

Training, Supervision, and Evaluation

Once you have hired a new staff member, it is important that you adequately train, supervise, and evaluate him or her. Some suggestions for supervision and evaluation include:

Provide Job Training and Orientation: Because your goal is to delegate as much work to this new staff member as possible, it is important that you invest time in training him or her well. All staff members, including lawyers, should be trained on ethical pitfalls, including client confidentiality, and office policies and procedures. Staff members who work with client trust accounts require additional training on how to properly handle and record the movement of client and firm funds.

Checklists and Manuals: Create procedure and process manuals. Encourage staff members to help keep manuals current and up-to-date.

Regular Feedback Systems: Construct a regular feedback system for staff to report to you on the progress of their projects. The system should include oral and written progress reports from staff members.

Encourage Questions: You may understandably like the "self-starter" staff member, but encourage questions about the nature and extent of tasks.

Emphasize Confidentiality Responsibilities: Have a confidentiality agreement for all employees, whether part-time, full-time, or independent contractors. Make sure that staff is aware of the special confidentiality concerns of the practice of law. (See Colo. RPC 1.6.)

Know Your Ethical Obligations: Colorado Rules of Professional Conduct 5.1, 5.2, and 5.3 outline a lawyer's responsibilities with respect to supervising lawyer and nonlawyer staff. Familiarize yourself with these rules and include them in your staff training. Encourage open communication at your firm and make it easy for staff members to voice their concerns to you so you can identify and solve problems as soon as they arise. Regularly check in with, evaluate, and offer constructive feedback to staff members as well.

TIPS

1. Consider outsourcing administrative tasks.
2. Know the difference between independent contractors and employees.
3. Do you have written policies for lawyers and support staff explaining the applicable duties to preserve client confidences? Colo. RPC 1.6.
4. Create and have employees sign a confidentiality agreement. Colo. RPC 1.6.
5. Create and review email usage policy with employees covering confidentiality and inadvertent disclosures. Colo. RPC 1.6 and 4.4.
6. Consider and discuss use of social media by staff. Colo. RPC 1.6, CBA Formal Opinion 90 — Preservation of client confidences in view of modern communications.
7. If using outside vendors, do you have a confidentiality policy? Colo. RPC 1.6. Don't forget vendors such as cleaning staff or computer maintenance vendors.
8. Be sure to train non-lawyer staff. Colo. RPC 5.3. By training, have you trained employees to avoid the unauthorized practice of law? Colo. RPC 5.5.
9. Beyond training, create a system to regularly supervise and evaluate employees. Colo. RPC 5.3.
10. Encourage and listen to staff feedback.
11. Is staff aware of the requirement to report ethical violations, misconduct, wrongdoing, alcohol or drug misuse, and any other matters that could cause harm to the attorney's reputation or client's satisfaction?
12. Do you conduct proper due diligence such as background checks before hiring employees?

Retention

Hiring staff is a big investment of time and money. Ideally, you want to retain each staff member for as long as possible. The best way to accomplish this goal is to keep staff members happy. Here are some suggestions on how to do this:

Offer Competitive Compensation and Benefits: Financial stability is very important, and employees who do not feel financially stable or properly compensated for their work will eventually look for a job elsewhere.

Provide Professional Development Opportunities: Many employees are looking to work for firms that will provide them with professional development opportunities as an added work benefit.

Recognize Good Work and Promote When Possible: All employees like to be recognized for the good work they do, and most employees strive to move up to the next level.

Provide a Good Work Environment: A good work environment with good people is just as important as compensation and benefits to many employees and helps retain them in the long run and motivate them to work harder. What constitutes a good work environment likely varies slightly by person and industry, but generally employees like environments that foster good communication, inspire them to work together toward a common goal, welcome creative and diverse opinions, and offer open physical spaces with plenty of natural light.

Say Thank You, Often: This one is easy. Be polite and thank people for working for you as often as possible. Yes, it is their job to complete certain tasks for you as outlined in the job description and employment agreement. Many employees can easily go elsewhere, though, so if you want to retain them, demonstrate your gratitude to them.

APPENDIX

CBA Resources

Chapter 9

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.

The Colorado Lawyer

- Review of Legal Resources: “You Raised Us – Now Work With Us: Millennials, Career Success, and Building Strong Workplace Teams,” Frederic Marienthal (Sept. 2016)
- “Employee Rights and Social Media,” Lynn Feiger and Stephen E. Kapnik (Nov. 2012)
- “Disclosure to Clients of the Use of Temporary Lawyers and Outsourcing,” Eli Wald (April 2012)

IRS Resources

- Small Business and Self-Employed Tax Center
- Small Business and Self-Employed Online Learning and Educational Products
- Independent Contractor (Self-Employed) or Employee?

U.S. Department of Labor Resources

- Fair Labor Standards Act (FLSA) Advisor
- FLSA Checklist: Exempt vs. Non-exempt Status

Articles**Hiring & Managing Staff**

- “3 Tips for Finding the Best Law Firm Staff,” Greg Hamblin, Blog Post on FileVine.com (Oct. 23, 2015)
- “Hiring, Training, and Retaining Staff,” Robert A. Kraft, *GP Solo* (Oct./Nov. 2010)
- “Writing Effective Job Descriptions,” U.S. Small Business Administration, sba.gov (posting date unknown)
- “Twenty-Five Tips for Employee Training and Supervision,” Diane M. Ellis, State Bar of Arizona (date unknown)
- “How Important Is Your Work Environment?,” Matthew Walden, Blog Post on infinity-cs.com (March 25, 2015)
- “Hiring Workers: Employment Law Basics,” author unknown, Blog Post on HRHero.com (date unknown)
- Mountain States Employers Council, www.msec.org

Outsourcing

- “Outsourcing for Beginners,” Ruth Carter, Blog Post on AttorneyAtWork.com (Dec. 10, 2013)
- “Give Your Clients the Most by Outsourcing,” Nicole Bradick, Blog Post on AttorneyAtWork.com (Sept. 30, 2015)

Staffing

- “Five Sources for Professional Help in a Pinch,” Theda C. Snyder, Blog Post on AttorneyAtWork.com (Aug. 14, 2015)
- “For Law Firms and Lawyers, Outsourcing is ‘In,’” Edward Poll, Blog Post on SmallFirmInnovation.com (Aug. 28, 2013)
- “The Ethics of Using a Freelance Lawyer,” Benjamin Scott Wright, Research Memorandum on bswright.com (April 29, 2015)
- “Hire a Contractor or an Employee?,” SBA.gov

Project Management

- “Building Bridges with Clients in Mind,” Tom Bolt, *Law Practice Magazine* (Nov./Dec. 2015)

Taxes

- <https://lawyerist.com/78128/year-end-tax-planning-lawyers/>

Websites

- ABA Law Technology Resource Center — FYI: Starting a Website (www.americanbar.org)
- “How to Design the Best Law Firm Website,” Mike Ramsey, Blog Post on AttorneyAtWork.com (Sept. 11, 2013)

Authorities

Colorado Rules of Professional Conduct

- 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 1.10, Imputation of Conflicts of Interest: General Rule
- Colo. RPC 4.4, Respect of Rights for Third Persons
- Colo. RPC 5.1, Responsibilities of a Partner or Supervisory Lawyer
- Colo. RPC 5.2, Responsibilities of a Subordinate Lawyer
- Colo. RPC 5.3, Responsibilities Regarding Nonlawyer Assistants
- Colo. RPC 5.4, Professional Independence of a Lawyer
- Colo. RPC 5.5, Unauthorized Practice of Law
- Colo. RPC 7.1, Communications Concerning a Lawyer’s Services
- Colo. RPC 7.2, Advertising
- Colo. RPC 7.5, Firm Names and Letterheads

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 8, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 9, Office Sharing – “Associates”
- CBA Ethics Committee Formal Opinion 13, Office Sharing – Municipal Judge
- CBA Ethics Committee Formal Opinion 50, Definition of Associates as Applied to Lawyers
- CBA Ethics Committee Formal Opinion 61, Legal Assistants
- CBA Ethics Committee Formal Opinion 76, Lawyer Advertising Guidelines
- CBA Ethics Committee Formal Opinion 79, Use of Legal Assistants in Client Representation
- CBA Ethics Committee Formal Opinion 84, Listing of Support Personnel Names on Letterhead and Business Cards
- CBA Ethics Committee Formal Opinion 87, Collaboration with Non-Lawyers in Preparation and Marketing of Estate Planning Documents
- CBA Ethics Committee Formal Opinion 89, Office Sharing – Conflicts, Confidentiality, Letterheads and Names
- CBA Ethics Committee Formal Opinion 90, Preservation of Client Confidences in View of Modern Communication Technology
- CBA Ethics Committee Formal Opinion 105, Opinion on Temporary Lawyers
- CBA Ethics Committee Formal Opinion 106, Referral Fees and Networking Organizations
- CBA Ethics Committee Formal Opinion 108, Inadvertent Disclosure of Confidential Documents
- CBA Ethics Committee Formal Opinion 116, Ethical Consideration in the Dissolution of a Law Firm or a Lawyer’s Departure from a Law Firm
- CBA Ethics Committee Formal Opinion 121, Use of Temporary Lawyers and Other Professionals Not Admitted to Practice Law in Colorado (“Outsourcing”)
- CBA Ethics Committee Formal Opinion 122, The Applicability of Colo. RPC 7.2 to Internet-Based Lawyer Marketing Programs

American Bar Association Ethics Opinions

- ABA Formal Ethics Opinion 87-354, Lawyer’s Use of Medical-Legal Consulting Firm
- ABA Formal Ethics Opinion 88-356, Temporary Lawyers
- ABA Formal Ethics Opinion 90-357, Use of Designation “Of Counsel”
- ABA Formal Ethics Opinion 00-420, Surcharge to Client for Use of a Contract Lawyer
- ABA Formal Ethics Opinion 08-451, Outsourcing Legal Work

Chapter Ten

Legal Malpractice Insurance

Colorado, like many states, does not require that attorneys carry professional liability insurance. However, the Colorado Supreme Court has created an incentive for attorneys to obtain liability insurance through Rule 265 of the Colorado Rules of Civil Procedure. C.R.C.P. 265 contains important protections for lawyer/owners of professional service companies as long as prescribed minimums of liability insurance are in place.

Obtaining legal malpractice insurance for any type of law practice is highly recommended. Not only does such insurance help protect the client should malpractice occur, it also diminishes exposure of your personal assets and defrays the large expense costs of defending a malpractice suit even if it is determined that no malpractice occurred. Many legal malpractice carriers have special scaled pricing programs based upon your income and years of practice. Insurance may cost much less than you anticipate and can be of critical importance should the need arise.

There are many things to consider when choosing the right insurance company and type of coverage. For a comprehensive overview, see Chapter 15 of *Lawyers' Professional Liability in Colorado*, available through Colorado Bar Association CLE (www.cle.cobar.org).

Notably, cyber liability is a growing risk that will continue to evolve and cyber insurance is becoming increasingly available as the market for it matures. Lawyers and firms are a target for hackers and cyber criminals because they have valuable, confidential client information (think trade secrets, employee data, personal information of clients such as social security numbers), trust account funds, and credit card information. Attorneys have a legal and ethical obligation to safeguard their clients' confidential and personal information. As such, it is strongly advisable that you consider asking about cyber liability coverage when investigating malpractice coverage.

APPENDIX

Resources for CBA Members

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management 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.
- Lawyers Professional Liability Committee: Educational programs and resources aimed at improving the quality of legal practice and avoiding malpractice claims.
- The CBA's endorsed professional liability insurance direct carrier is ALPS (www.alpsnet.com). The CBA's endorsed broker is HUB International (www.hubinternational.com/colorado/colorado-bar-association).

The Colorado Lawyer

- *Whoops – Legal Malpractice Prevention* (periodic feature)

Websites

ABA Resources

- Standing Committee on Lawyers' Professional Liability
- Colorado Directory – Professional Liability Insurance
- Risk Management Resources
- Professional Liability Insurance Information

Chapter 10

TIPS

- | | |
|--|--|
| 1. Do you have malpractice insurance? C.R.C.P. 265(3). | 3. Have you put in to place the risk management policies required or recommended by the insurer? |
| 2. Do you regularly review insurance coverage to ensure you have a large enough limit? | 4. Have you considered cyber liability insurance? |

Confidential Assistance

- Colorado Lawyers Assistance Program (COLAP) (<http://coloradolap.org>)
- Colorado Lawyers Helping Lawyers (CLHL) (www.clhl.org)

Authorities

Colorado Rules of Professional Conduct

- Colo. RPC 1.0(e), Informed Consent
- Colo. RPC 1.2, Scope of Representation and Allocation of Authority Between Client and Lawyer
- Colo. RPC 7.1(d), Communication re: Fees/Costs
- Colo. RPC 8.3, Reporting Professional Misconduct
- Colo. RPC 8.4, Misconduct
- Colo. RPC 8.5, Disciplinary Authority; Choice of Law

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 56, Settlement of Lawyer Malpractice, Withdrawal of Grievance Complaint
- CBA Ethics Committee Formal Opinion 85, Release and Settlement of Legal Malpractice Claims
- CBA Ethics Committee Formal Opinion 101, Unbundled Legal Services

American Bar Association Ethics Opinions

- Formal Ethics Opinion 07-446, Undisclosed Legal Assistance to Pro Se Litigants
- Formal Ethics Opinion 11-49, Email Communication

