The Colorado Rules of Professional Conduct

As adopted by the Colorado Supreme Court
on May 7, 1992,
effective January 1, 1993,
As amended through Rule Change 2018(3), effective February 22, 2018

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Colorado Court Rules

Colorado Rules of Professional Conduct

Preamble and Scope

As amended through Rule Change 2018(3), effective February 22, 2018

Preamble

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law. Zealousness does not, under any circumstances, justify conduct that is unprofessional, discourteous or uncivil toward any person involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested

largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

Scope.

Colorado Court Rules

Colorado Rules of Professional Conduct

Preamble and Scope

As amended through Rule Change 2018(3), effective February 22, 2018

Scope

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constructive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do

not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self- assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, in appropriate cases, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Rule 1.0. Terminology.

Colorado Court Rules

Colorado Rules of Professional Conduct

Preamble and Scope

As amended through Rule Change 2018(3), effective February 22, 2018

Rule 1.0. Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(b-1) "Document" includes e-mail or other electronic modes of communication subject to being read or put into readable form.

(c) "Firm" or "law firm" denotes a partnership, professional company, or other entity or a sole proprietorship through which a lawyer or lawyers render legal services; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, an owner of a professional company, or a member of an association authorized to practice law.

(1) "Professional company" has the meaning ascribed to the term in C.R.C.P. 265.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and electronic communications. A "signed" writing includes an

electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Cite as RPC 1.0

History. Amended October 17, 1997, effective January 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; (c) and (g) amended and effective February 26, 2009; (b-1) added and (n) amended and effective April 6, 2016.

Note:

COMMENT

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter. Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules. Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of

these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform. Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (n). Knowingly, Known or Knows

[7A] In considering the prior Colorado Rules of Professional Conduct, the Colorado Supreme Court has stated, "with one important exception [involving knowing misappropriation of property] we have considered a reckless state of mind, constituting scienter, as equivalent to 'knowing' for disciplinary purposes." In the Matter of Egbune, 971 P.2d 1065, 1069 (Colo.1999). See also People v. Rader, 822 P.2d 950 (Colo. 1992); People v. Small, 962 P.2d 258, 260 (Colo. 1998). For purposes of applying the ABA Standards for Imposing Lawyer Sanctions, and in determining whether conduct is fraudulent, the Court will continue to apply the Egbune line of cases. However, where a Rule of Professional Conduct specifically requires the mental state of "knowledge," recklessness will not be sufficient to establish a violation of that Rule and to that extent, the Egbune line of cases will not be followed. Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10(e), 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Case Notes:

ANNOTATION

Law reviews. For article, "Private Screening", see 38 Colo. Law. 59 (June 2009).

Rule 1.1. Competence.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.1. Competence

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

Cite as RPC 1.1

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT Legal knowledge and skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable

preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2. Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, and changes in communications and other relevant technologies, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. See Comments [18] and [19] to Rule 1.6.

Case Notes:

Law reviews. For article, "Representing the Debtor: Counsel Beware!", see 23 Colo. Law. 539 (1994). For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (March 2004). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Professionalism and E-Discovery: Considerations Post-Zubulake", see 41 Colo. Law. 65 (June 2012).

Annotator's note. Rule 1.1 is similar to Rule 1.1 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Disbarment was appropriate discipline for attorney who borrowed or otherwise obtained money from elderly and vulnerable client where attorney failed (a) to disclose that the likelihood of repayment was remote and the inadequacy of security purportedly given to secure loans; (b) to provide client with adequate legal documentation to ensure repayment; and (c) to obtain client's consent to possible conflicts of interest. People v. Schindelar, 845 P.2d 1146 (Colo. 1993).

Duty of competence imposed by this rule violated by attorney's failure to adequately supervise and monitor non-attorney employee's actions on behalf of clients in bankruptcy proceedings. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

One-year and one-day suspension warranted where respondent failed to serve a cross-claim, failed to respond to several motions, failed to keep client informed, advanced defense that was not warranted by the facts and existing law, and misrepresented to client the basis for the judgment in favor of the opposing party. People v. Genchi, 849 P.2d 28 (Colo. 1993).

Attorney conduct violating this rule in conjunction with other rules sufficient to justify suspension when violation did not arise from neglect or willingness to take advantage of client's vulnerability and is mitigated by her inexperience in the practice of law, her lack of any prior disciplinary record, the fact that she had already been held in contempt and punished by the district court, and the fact that there is no suggestion of selfish motivation. Attorney's failure to appreciate the serious nature of conduct and the jurisdiction of the hearing board to discipline her is a serious matter meriting a period of suspension and a redetermination of her fitness before being permitted to practice law again. In re Roose, 69 P.3d 43 (Colo.), cert. denied, 540 U.S. 1053, 124 S. Ct. 815, 157 L. Ed. 2d 705 (2003).

Attorney's conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify six-month suspension, stayed upon completion of two-year probationary period. Attorney neglected to provide competent representation by failing to take action to secure survivor benefits for client. In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption).

Forty-five-day suspension warranted where respondent neglected child custody matter and had a prior public censure, a prior admonishment, and prior suspensions, but where the respondent did not demonstrate a dishonest or selfish motive and exhibited a cooperative attitude and expressions of remorse. People v. Dowhan, 951 P.2d 905 (Colo. 1998).

Attorney's neglect resulting in an untimely filing of an inadequate certificate of review and dismissal of his client's case, combined with fact that certificate contained false statements of material fact that attorney later repeated to an investigative counsel with the office of disciplinary counsel warranted a 45-day suspension, despite mitigating factors. People v. Porter, 980 P.2d 536 (Colo. 1999).

Neglecting to file response to motion for summary judgment and to return client files upon request was sufficient to result in one-year and one-day suspension. People v. Honaker, 847 P.2d 640 (Colo. 1993).

Thirty-day suspension warranted where attorney, with previous history of discipline and experience in practicing law, neglected a civil rights suit by failing to provide an accounting with respect to fees charged and by failing to return unearned fees. People v. Fritsche, 849 P.2d 31 (Colo. 1993).

Stipulated agreement and recommendation of suspension for 30 days based upon conditional admission of misconduct were warranted for attorney who committed unfair insurance claim settlement practices and tortious conduct in handling insurance investigation of fire claim that he was not competent to handle. People v. McClung, 953 P.2d 1282 (Colo. 1998).

Attorney's inaction over a period of more than two years and other disciplinary violations warrant suspension for 30 days where there are mitigating factors. People v. LaSalle, 848 P.2d 348 (Colo. 1993).

Thirty-day suspension was appropriate discipline where attorney advised client to take action in violation of child custody order but failed to warn her of criminal consequences of such action. People v. Aron, 962 P.2d 261 (Colo. 1998).

Public censure warranted where respondent negligently filed an involuntary bankruptcy petition that was ill-advised and without factual or legal basis. Mitigating factors included the fact that respondent's mental state was one of negligence rather than knowing misconduct, respondent had not been disciplined before, and respondent cooperated in the discipline action. People v. Moskowitz, 944 P.2d 76 (Colo. 1997).

Public censure appropriate where harm suffered by attorney's client was speculative, attorney retracted his misrepresentations and admitted to his client before the institution of disciplinary proceedings that he had done nothing on the client's appeal, attorney had no prior discipline, he made full and free disclosure of his misconduct to the grievance committee, and he expressed remorse for his misconduct. People v. Nelson, 848 P.2d 351 (Colo. 1993).

Public censure appropriate where attorney failed to review district attorney's file and the transcript of the preliminary hearing before trial. People v. Bonner, 927 P.2d 836 (Colo. 1996).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Doherty, 908 P.2d 1120 (Colo. 1996); People v. Doherty, 945 P.2d 1380 (Colo. 1997); People v. Kolko, 962 P.2d 979 (Colo. 1998).

Conduct violating this rule sufficient to justify public censure. People v. Smith, 847 P.2d 1154 (Colo. 1993).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Hohertz, 926 P.2d 560 (Colo. 1996); People v. Dieters, 935 P.2d 1 (Colo. 1997); People v. Primavera, 942 P.2d 496 (Colo. 1997); In re Tolley, 975 P.2d 1115 (Colo. 1999); People v. Maynard, 238 P.3d 672 (Colo. O.P.D.J.

2009).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Walsh, 880 P.2d 766 (Colo. 1994); People v. Roybal, 949 P.2d 993 (Colo. 1997); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Cases Decided Under Former DR 6-101.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with effective assistance of counsel, see 61 Den. L.J. 303 (1984). For article, "Third-Party Malpractice Claims Against Real Estate Lawyers", see 13 Colo. Law. 996 (1984).

License to practice law assures public that the lawyer who holds the license will perform basic legal tasks honestly and without undue delay, in accordance with the highest standards of professional conduct. People v. Witt, 200 Colo. 522, 616 P.2d 139 (1980); People v. Dixon, 621 P.2d 322 (Colo. 1981).

Attorney has burden of proving his own incompetence. Attorney who is appointed to represent criminal defendant and who believes he is incompetent to handle case has burden of proving his incompetence to the court and if attorney carries the burden, the trial court must decide whether attorney is capable of becoming competent on his own or whether appointment of co-counsel is necessary until attorney becomes competent. Stern v. County Court, 773 P.2d 1074 (Colo. 1989).

Claim of ineffective assistance of counsel by court-appointed attorney is premature before representation has occurred and, therefore, attorney was not entitled to withdraw from case. Stern v. County Court, 773 P.2d 1074 (Colo. 1989).

Public expects appropriate discipline for misconduct. The public has a right to expect that one who engages in professional misconduct will be disciplined appropriately. People v. Witt, 200 Colo. 522, 616 P.2d 139 (1980); People v. Dixon, 621 P.2d 322 (Colo. 1981).

An attorney's personal problems cannot excuse his negligence or professional misconduct, for discipline is required not only to punish the attorney but also to protect the public. People v. Morgan, 194 Colo. 260, 574 P.2d 79 (1977); People v. Belina, 765 P.2d 121 (Colo. 1988).

The right to effective assistance of counsel is not a right to acquittal. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

When cross-examination is permitted by defense counsel on previous felony convictions that the defendant has suffered without a prior foundation which establishes that defendant had counsel at the time he was convicted, counsel's representation is competent when the defendant brought his prior convictions to the jury's attention and made no claim that he was not represented by counsel. Steward v. People, 179 Colo. 31, 498 P.2d 933 (1972).

Agreeing to have depositions read at trial, rather than to have forceful live testimony, is a trial strategy decision for counsel. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Clients' business simply must be processed in apt time. People v. Bailey, 180 Colo. 211, 503 P.2d 1023 (1972).

Lawyer owes obligation to client to act with diligence in handling his client's legal work and in his representation of his client in court. People v. Bugg, 200 Colo. 512, 616 P.2d 133 (1980); People v. Pooley, 774 P.2d 239 (Colo. 1989).

An attorney violates his obligations to his client in not filing suit until almost four years after retained, in not proceeding with the lawsuit during the period thereafter, in not procuring the client's permission to transfer the case to another attorney, and in not supervising its handling by that attorney, all of which actions constitute gross negligence and unprofessional conduct. People v. Zelinger, 179 Colo. 379, 504 P.2d 668 (1972).

A lawyer's failure to prepare a will for at least eight months after being employed to do so, especially where client is aged person, is grossly negligent and shows total lack of responsibility. People v. James, 1 80 Colo. 133, 502 P.2d 1105 (1972).

Attorney's only preparation for hearing in dissolution of marriage action occurring in car on way to courthouse constituted handling a legal matter without adequate preparation in violation of this rule. People v. Felker, 770 P.2d 402 (Colo. 1989).

Attorney violated this rule and C.R.P.C. 8.4(d) when he prepared and filed child support worksheets that failed to properly reflect the new stipulation concerning custody. People v. Davies, 926 P.2d 572 (Colo. 1996).

Suspension for one year and one day was warranted for attorney who violated this rule and C.R.P.C. 8.4(d) by preparing and filing child support worksheets that failed to properly reflect the new stipulation concerning custody and where aggravating factors included a previous disciplinary history and failure to appear in the grievance proceedings. People v. Davies, 926 P.2d 572 (Colo. 1996).

Attorney violated this rule by taking no action on client's tort claim and by failing to file client's workers' compensation claim until July, 1985, although retained in 1984 to do so. People v. Felker, 770 P.2d 402 (Colo. 1989).

Attorney neglected legal matter entrusted to her by taking no action on client's claim which resulted in claim being barred by the statute of limitations. People v. Felker, 770 P.2d 402 (Colo. 1989).

Hindsight cannot replace a decision which counsel makes in the heat of trial. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

There was insufficient evidence to establish incompetence of defense counsel. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Conduct found to violate disciplinary rules. People v. Bugg, 635 P.2d 881 (Colo. 1981); People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982); People v. Goss, 646 P.2d 334 (Colo. 1982); People v. Ross, 810 P.2d 659 (Colo. 1991).

Applied in People v. Leader, 193 Colo. 402, 5 67 P.2d 800 (1977); People v. Good, 195 Colo. 177, 576 P.2d 1020 (1978); People v. McMichael, 1 96 Colo. 128, 586 P.2d 1 (1978); People v. Susman, 196 Colo. 458, 587 P.2d 782 (1978); People v. Cameron, 197 Colo. 330, 595 P.2d 677 (1979); People v. Pacheco, 198 Colo. 455, 608 P.2d 333 (1979); People v. Pacheco, 199 Colo. 108, 608 P.2d 334 (1979); People ex rel. Silverman v. Anderson, 200 Colo. 76, 612 P.2d 94 (1980); People v. Barbour, 199 Colo. 126, 612 P.2d 1082 (1980); People v. Hilgers, 200 Colo. 211, 612 P.2d 1134 (1980); People v. Haddock, 200 Colo. 218, 613 P.2d 335 (1980); People v. Lanza, 200 Colo. 241, 613 P.2d 337 (1980); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People v. Dixon, 200 Colo. 520, 616 P.2d 103 (1980); People ex rel. Cortez v. Calvert, 200 Colo. 157, 617 P.2d 797 (1980); People v. Hurst, 200 Colo. 537, 618 P.2d 1113 (1980); People v. Gottsegen, 623 P.2d 878 (Colo. 1981); People v. Dutton, 629 P.2d 103 (Colo. 1981); People v. Wright, 638 P.2d 251 (Colo. 1981); People v. Hebeler, 638 P.2d 254 (Colo. 1981); People v. Archuleta, 638 P.2d 255 (Colo. 1981); People v. Gellenthien, 638 P.2d 295 (Colo. 1981); People v. Barbour, 639 P.2d 1065 (Colo. 1982); People v. Whitcomb, 676 P.2d 11 (Colo. 1983); People v. Bollinger, 681 P.2d 950 (Colo. 1984); People v. Underhill, 683 P.2d 349 (Colo. 1984); People v. Simon, 698 P.2d 228 (Colo. 1985); People v. Blanck, 700 P.2d 560 (Colo. 1985); People v. Gerdes, 782 P.2d 2 (Colo. 1989).

II. DISCIPLINARY ACTIONS.

A. Public Censure.

When a lawyer is negligent in handling estates, a public reprimand is warranted for his dereliction of duty. People v. Bailey, 180 Colo. 211, 503 P.2d 1023 (1972).

Attorney was negligent in closing two different estates in an untimely manner. Public censure is an appropriate sanction when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. People v. Gebauer, 821 P.2d 782 (Colo. 1991).

Undertaking to provide services to clients in areas in which one lacks experience, which would ordinarily result in a reprimand, warrants a 30-day suspension when coupled with continued neglect after private censure. People v. Frank, 752 P.2d 539 (Colo. 1988).

Delay in handling and closing decedents' estates and failure to properly prepare inheritance tax returns, following prior letters of admonition, justify public censure. People v. Clark, 681 P.2d 482 (Colo. 1984).

An attorney's neglect and delay in handling an adoption proceeding, considered with other circumstances, justified public censure. People v. Moore, 681 P.2d 480 (Colo. 1984).

Neglect of a legal matter ordinarily warranting a letter of admonition by way of reprimand requires the imposition of public censure when such conduct is repeated after three letters of admonition. People v. Goodwin, 782

P.2d 1 (Colo. 1989).

Evidence sufficient to warrant public reprimand for dereliction of duty. People v. Atencio, 177 Colo. 439, 494 P.2d 837 (1972); People v. Zelinger, 179 Colo. 379, 504 P.2d 668 (1972).

Failure to obtain an order for service by publication, failing to return client phone calls, and failure to set a case for trial justify public censure. People v. Barr, 805 P.2d 440 (Colo. 1991).

Public censure for failure to promptly distribute proceeds of a settlement is warranted since respondent's negligence did little or no actual or potential injury to client. People v. Genchi, 824 P.2d 815 (Colo. 1992).

Public censure appropriate where attorney delayed hiring experts for case, neglected to familiarize himself and comply with the criminal discovery rules, inadequately prepared for trial, and proceeded to trial without knowing whether his own experts' testimony would support his client's defense. People v. Silvola, 888 P.2d 244 (Colo. 1995).

Public censure was appropriate where attorney's failure to appear at three hearings and to timely return a stipulation violated DR 1-102(A)(5) and, in aggravation, there was a pattern of misconduct. People v. Cabral, 888 P.2d 245 (Colo. 1995).

Public censure justified where attorney failed to attend to bankruptcy proceeding and scheduled meetings, failed to timely file pleadings and responses, and allowed his paralegal to engage in unauthorized practice of law. People v. Fry, 875 P.2d 222 (Colo. 1994).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Ashley, 796 P.2d 962 (Colo. 1990); People v. Nichols, 796 P.2d 966 (Colo. 1990); People v. Taylor, 799 P.2d 930 (Colo. 1990); People v. Smith, 819 P.2d 497 (Colo. 1991); People v. Odom, 829 P.2d 855 (Colo. 1992); People v. Sadler, 831 P.2d 887 (Colo. 1992); People v. Fry, 875 P.2d 222 (Colo. 1994); People v. O'Donnell, 955 P.2d 53 (Colo. 1998).

Conduct violating this rule sufficient to justify public censure. People v. Driscoll, 716 P.2d 1086 (Colo. 1986); People v. Mayer, 716 P.2d 1094 (Colo. 1986); People v. Carpenter, 731 P.2d 726 (Colo. 1987); People v. Wilson, 745 P.2d 248 (Colo. 1987); People v. Smith, 757 P.2d 628 (Colo. 1988); People v. Dowhan, 759 P.2d 4 (Colo. 1988); People v. Smith, 769 P.2d 1078 (Colo. 1989); People v. Baird, 772 P.2d 110 (Colo. 1989); People v. Fieman, 788 P.2d 830 (Colo. 1990); People v. Good, 790 P.2d 331 (Colo. 1990); People v. Brinn, 801 P.2d 1195 (Colo. 1990); People v. Moffitt, 801 P.2d 1197 (Colo. 1990); People v. Richardson, 820 P.2d 1120 (Colo. 1991); People v. Odom, 829 P.2d 855 (Colo. 1992).

B. Suspension.

The failure for more than five years to record a deed and to return it and the abstract constitutes gross professional negligence and carelessness warranting a suspension of one year from the practice of law. People v. James, 176 Colo. 299, 490 P.2d 291 (1971).

Where an attorney misrepresents to a client that he has filed a case, fails for two years to take action on behalf of another client, and, knowing that a hearing had been set on charges against him, deliberately leaves the jurisdiction of the court without making any arrangements with the grievance committee and without arranging for representation, his conduct warrants suspension from the bar. People v. Kane, 177 Colo. 378, 494 P.2d 96 (1972).

Where counsel appears to be totally oblivious to obligations to render the services for which he is paid, this crass irresponsibility or callous indifference in the handling of a client's affairs is inexcusable under any circumstances and warrants indefinite suspension from the bar. People v. Van Nocker, 176 Colo. 354, 490 P.2d 697 (1971).

Attorney suspended for three years for repeated neglect and delay in handling legal matters, failure to comply with the directions contained in a letter of admonition, and failure to answer letter of complaint from the grievance committee constitute a violation of this rule, and, with other offenses of the code of professional responsibility. People v. Hebenstreit, 764 P.2d 51 (Colo. 1988).

Suspension of lawyer for three years, which is the longest possible period for suspension, is appropriate where there was extensive pattern of client neglect and intentional deception in client matters over a period of years. Anything less would be too lenient. People v. Hellewell, 811 P.2d 386 (Colo. 1991).

Suspension for three years is appropriate where lawyer failed to respond to motions or appear at hearing, resulting in dismissal of clients' bankruptcy proceeding, thereby increasing clients' debts tenfold. The hearing board further found that the attorney engaged in bad faith obstruction of the disciplinary proceedings and refused to acknowledge the wrongful nature of his conduct or the vulnerability of his clients. People v. Farrant, 883 P.2d 1 (Colo. 1994).

Suspension for one year and one day warranted for attorney who "represented" client for a period of 19 months without that person's knowledge or consent, even asserting a counterclaim on his behalf without talking to him; who did not communicate with him in any manner for an extended period of time and then did not withdraw within a reasonable time after being unable to contact him; and who failed to answer discovery requests, resulting in the entries of default and then a default judgment against him. People v. Silvola, 915 P.2d 1281 (Colo. 1996).

Disbarment not warranted where there was mitigating evidence concerning attorney's mental and physical disabilities. Instead, the board imposed a three-year suspension with a condition for reinstatement that professional medical evidence be presented that the disabilities do not interfere with the attorney's ability to practice law. People v. Stewart, 892 P.2d 875 (Colo. 1995).

Suspension for three years, the longest period available, was appropriate in case where violation of this rule and others would otherwise have justified disbarment but mitigating factors included personal and emotional problems, interim rehabilitation, and remorse. People v. McCaffrey, 925 P.2d 269 (Colo. 1996).

Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. People v. Henderson, 967 P.2d 1038 (Colo. 1998).

Eighteen-month suspension warranted where attorney failed to notify client of an actual conflict of interest and subsequently neglected a matter, but did so without dishonest or selfish motive. People v. Watson, 833 P.2d 50 (Colo. 1992).

Failure to appear after accepting retainer justifies suspension. Where, after accepting a retainer for the defense of an action, an attorney failed to appear or advise his client of the fact that he was not going to appear and thereby prejudiced his client's case, the attorney's conduct violated the code of professional responsibility and C.R.C.P. 241.6. People v. Southern, 638 P.2d 787 (Colo. 1982).

Failure to respond to repeated inquiries from client and client's parents, failure to monitor client's case in the court system, including failure to respond to calls from the court clerk, and failure to return client's urgent calls after client was arrested and jailed constitutes a pattern of neglect and warrants 30 day suspension. People v. O'Leary, 752 P.2d 530 (Colo. 1988).

Suspension is fitting sanction when lawyer knowingly fails to perform services for a client and thereby causes injury to such client. People v. Masson, 782 P.2d 335 (Colo. 1988).

Initiation of unnecessary proceeding and legal incompetence warrant suspension. Where lawyer initiates unnecessary probate proceeding, as well as fails to meet minimum standards of legal competence for corporate and mining law problems which he has undertaken, his professional misconduct warrants suspension from the bar. People ex rel. Goldberg v. Gordon, 199 Colo. 296, 607 P.2d 995 (1980).

Failure to designate record on appeal, causing nine-month delay in criminal appeal, considered with other violations, justifies suspension. People v. May, 745 P.2d 218 (Colo. 1987).

Suspension is appropriate discipline given number and severity of instances of misconduct, including pattern of neglect over clients' affairs over lengthy period and in variety of circumstance and misrepresentation in dissolution case to client who wished to remarry concerning the filing of a dissolution petition. Considering misconduct in light of proper mitigating factors, suspension was appropriate. People v. Griffin, 764 P.2d 1166 (Colo. 1988).

There is evidence to warrant indefinite suspension. People v. Stewart, 178 Colo. 352, 497 P.2d 1003 (1972).

More severe sanction of 90-day suspension rather than public censure appropriate discipline for attorney who neglected client matter, caused potential injury to client, and engaged in conduct prejudicial to the administration of justice when aggravated by a history of five prior instances of disciplinary offenses for neglect, pattern of misconduct, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, and substantial experience in the practice of law. People v. Dolan, 813 P.2d 733 (Colo. 1991).

Pattern of inaction, including failure to perform adequate research on statute of limitations problem, violated sections (A)(2) and (A)(3) and other disciplinary rules, justifying six-month suspension. People v. Barber, 799 P.2d 936 (Colo. 1990).

Failing to resolve an inability to proceed on behalf of a client, neglecting to respond to communications from the grievance committee, failing to fulfill commitments made to the investigator for the disciplinary counsel, and misrepresenting to such investigator the status of the case under investigation is conduct warranting suspension. People v. Chappell, 783 P.2d 838 (Colo. 1989).

Failing to obtain substitute counsel after accepting a retainer while under suspension constitutes neglect of a legal matter. People v. Redman, 819 P.2d 495 (Colo. 1991).

Failure to file bankruptcy petition warrants suspension from the practice of law for a period of 90 days. The respondent's misconduct was compounded by his prolonged refusal to respond to his client's inquiries and his failure to inform his client of domicile issues bearing on her desire to obtain a discharge in bankruptcy in Colorado. People v. Cain, 791 P.2d 1133 (Colo. 1990).

Delay in filing bankruptcy petition and failing to file complaint or return retainer warrants six-month suspension. People v. Archuleta, 898 P.2d 1064 (Colo. 1995).

Suspension for one year and one day warranted where attorney misrepresented to client that a trial had been scheduled, that continuances and new trial settings had been made, that a settlement had been reached, and where the attorney's previous, similar discipline, was a significant aggravating factor. People v. Smith, 888 P.2d 248 (Colo. 1995).

Suspension for one year and one day warranted for attorney who "represented" client for a period of 19 months without that person's knowledge or consent, even asserting a counterclaim on his behalf without talking to him; who did not communicate with him in any manner for an extended period of time and then did not withdraw within a reasonable time after being unable to contact him; and who failed to answer discovery requests, resulting in the entries of default and then a default judgment against him. People v. Silvola, 915 P.2d 1281 (Colo. 1996).

Failure to communicate with clients, court, and opposing counsel, misrepresentation of the status of the proceedings to client, failure to investigate clients' case, failure to attend one hearing and being late for another hearing, and refusing client an accounting and a refund of the unused portion of attorney fee, justifies three-year suspension. People v. Wilson, 814 P.2d 791 (Colo. 1991).

Ninety-day suspension warranted where attorney neglected client's legal matter, failed to pay for court reporting services, and showed complete disregard of grievance proceedings. People v. Whitaker, 814 P.2d 812 (Colo. 1991).

Suspension for 90 days is warranted for attorney's continued practice of law during a period of suspension in view of prior record and substantial experience in practice of law even if attorney incorrectly believed that he had been reinstated. People v. Dieters, 883 P.2d 1050 (Colo. 1994).

Suspension of one year and one day warranted for attorney whose misconduct included neglect of legal matter, failure to seek lawful objectives of client, intentional failure to carry out employment contract resulting in intentional prejudice or damage to client, and who also pled guilty to class 5 felony of failure to pay employee

income tax withheld. People v. Franks, 866 P.2d 1375 (Colo. 1994).

Absent mitigating or aggravating factors, suspension appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. People v. Glaess, 884 P.2d 722 (Colo. 1994).

It was appropriate to require an attorney to petition for reinstatement under C.R.C.P. 241.22 (b) to (d), even though his period of suspension for violating section (A)(3) did not exceed one year, where the extraordinary number of previous matters in which the attorney was cited for neglect showed the need for a demonstration that he had been rehabilitated. People v. C De Baca, 862 P.2d 273 (Colo. 1993).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Moya, 793 P.2d 1154 (Colo. 1990); People v. Creasey, 793 P.2d 1159 (Colo. 1990); People v. Schmad, 793 P.2d 1162 (Colo. 1990); People v. Baptie, 796 P.2d 978 (Colo. 1990); People v. Garrett, 802 P.2d 1082 (Colo. 1990); People v. Rhodes, 803 P.2d 514 (Colo. 1991); People v. Flores, 804 P.2d 192 (Colo. 1991); People v. Crimaldi, 804 P.2d 863 (Colo. 1991), 854 P.2d 782 (Colo. 1993); People v. Dunsmoor, 807 P.2d 561 (Colo. 1991); People v. Hall, 810 P.2d 1069 (Colo. 1991); People v. Koeberle, 810 P.2d 1072 (Colo. 1991); People v. Gaimara, 810 P.2d 1076 (Colo. 1991); People v. Dash, 811 P.2d 36 (Colo. 1991); People v. Honaker, 814 P.2d 785 (Colo. 1991); People v. Heilbrunn, 814 P.2d 819 (Colo. 1991); People v. Anderson, 817 P.2d 1035 (Colo. 1991); People v. Redman, 819 P.2d 495 (Colo. 1991); People v. Smith, 828 P.2d 249 (Colo. 1992); People v. Hyland, 830 P.2d 1000 (Colo. 1992); People v. Smith, 830 P.2d 1003 (Colo. 1992); People v. Raubolt, 831 P.2d 462 (Colo. 1992); People v. Regan, 831 P.2d 893 (Colo. 1992); People v. Southern, 832 P.2d 946 (Colo. 1992); People v. Denton, 839 P.2d 6 (Colo. 1992); People v. Hindorff, 860 P.2d 526 (Colo. 1993); People v. Stevens, 866 P.2d 1378 (Colo. 1994); People v. Butler, 875 P.2d 219 (Colo. 1994); People v. Cole, 880 P.2d 158 (Colo. 1994); People v. Smith, 880 P.2d 763 (Colo. 1994); People v. Kardokus, 881 P.2d 1202 (Colo. 1994); People v. Johnson, 881 P.2d 1205 (Colo. 1994); People v. Pittam, 889 P.2d 678 (Colo. 1995); People v. Swan, 893 P.2d 769 (Colo. 1995); People v. Banman, 901 P.2d 469 (Colo. 1995); People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Dickinson, 903 P.2d 1132 (Colo. 1995); People v. Davis, 911 P.2d 45 (Colo. 1996); People v. Calvert, 915 P.2d 1310 (Colo. 1996).

Conduct violating this rule sufficient to justify suspension. People v. Yaklich, 646 P.2d 938 (Colo. 1982); People v. Pilgrim, 698 P.2d 1322 (Colo. 1985); People v. Convery, 704 P.2d 296 (Colo. 1985); People v. Foster, 716 P.2d 1069 (Colo. 1986); People v. Barnett, 716 P.2d 1076 (Colo. 1986); People v. Fleming, 716 P.2d 1090 (Colo. 1986); People v. Larson, 716 P.2d 1093 (Colo. 1986); People v. McDowell, 718 P.2d 541 (Colo. 1986); People v. Yost, 729 P.2d 348 (Colo. 1986); People v. Holmes, 731 P.2d 677 (Colo. 1987); People v. Turner, 746 P.2d 49 (Colo. 1987); People v. Yost, 752 P.2d 542 (Colo. 1988); People v. Convery, 758 P.2d 1338 (Colo. 1988); People v. Lustig, 758 P.2d 1342 (Colo. 1988); People v. Goens, 770 P.2d 1218 (Colo. 1989); People v. Dolan, 771 P.2d 505 (Colo. 1989); People v. Flores, 772 P.2d 610 (Colo. App. 1989); People v. Emeson, 775 P.2d 1166 (Colo. 1989); People v. Hodge, 782 P.2d 25 (Colo. 1989); People v. Fahrney, 782 P.2d 743 (Colo. 1989); People v. Gregory, 788 P.2d 823 (Colo. 1990); People v. Bergmann, 790 P.2d 840 (Colo. 1990); People v. Hensley-Martin, 795 P.2d 262 (Colo. 1990); People v. Stayton, 798 P.2d 903 (Colo. 1990); People v. Grossenbach, 803 P.2d 961 (Colo. 1990); People v. Creasey, 811 P.2d 40 (Colo. 1991); People v. Rhodes, 814 P.2d 787 (Colo. 1991); People v. Williams, 824 P.2d 813 (Colo. 1992); People v. Watson, 833 P.2d 50 (Colo. 1992); People v. Farrant, 883 P.2d 1 (Colo. 1994); People v. Singer, 897 P.2d

798 (Colo. 1995); People v. Williams, 915 P.2d 669 (Colo. 1996).

C. Disbarment.

Attorney disbarred for continued pattern of conduct involving neglect and misrepresentation and for failure to cooperate in investigation by grievance committee. People v. Young, 673 P.2d 1003 (Colo. 1984); People v. Johnston, 759 P.2d 10 (Colo. 1988).

Failure to file bankruptcy petition for eight months justifies disbarment. When a lawyer, after being paid for his services, neglects to file a bankruptcy petition for his client for a period of approximately eight months, during which time the client is sued and his wages attached on several occasions, the lawyer's gross neglect and failure to carry out a contract of employment justify disbarment. People v. McMichael, 199 Colo. 433, 609 P.2d 633 (1980).

Failure to timely file estate tax returns on behalf of personal representative of estate, failure to be adequately prepared for argument at scheduled hearing, failure to file timely notice of alibi, and failure to notify opposing counsel constitutes continuing pattern of neglect causing risk of serious injury to clients and justifies disbarment. People v. Stewart, 752 P.2d 528 (Colo. 1987).

Failing to commence any action on behalf of a client, exploiting a client's friendship and trust to extort funds for one's personal use, and failing to cooperate with the grievance committee in its investigation of complaints with respect to such matters is conduct warranting disbarment. People v. McMahill, 782 P.2d 336 (Colo. 1989).

Where an attorney demonstrates an extreme indifference to the welfare of his clients and the status of their cases and an extreme insensitivity to his professional duties in the face of adverse judgments due to neglect, client complaints, and repeated disciplinary proceedings, disbarment is the appropriate sanction. People v. Wyman, 782 P.2d 339 (Colo. 1989).

Conduct which causes a client serious or potentially serious injury and demonstrates a complete lack of concern for a client's interests and welfare warrants disbarment. People v. Lyons, 762 P.2d 143 (Colo. 1988).

Continuing to practice law while suspended is conduct justifying disbarment. People v. James, 731 P.2d 698 (Colo. 1987).

Facts sufficient to justify disbarment of attorney for failure to comply with registration requirements of C.R.C.P. 227, misappropriation of funds, and improper withdrawal from employment. People v. Scudder, 197 Colo. 99, 590 P.2d 493 (1979).

Total disregard of obligation to protect a client's rights and interests over an extended period of time in conjunction with the violation of a number of disciplinary rules and an extended prior record of discipline requires most severe sanction of disbarment. People v. O'Leary, 783 P.2d 843 (Colo. 1989).

Attorney's continued practice of law while under an order of suspension, with no efforts to wind up the legal practice, and the failure to take action to protect the legal interests of the attorney's clients, warrants disbarment.

People v. Wilson, 832 P.2d 943 (Colo. 1992).

Disbarment was the proper remedy where the attorney was afforded multiple opportunities including two suspensions and court ordered rehabilitation and where attorney's conduct demonstrated (a) neglect of legal matters entrusted to him; (b) misrepresentation to the client and the grievance committee; and (c) a pattern of neglect followed by the respondent that had the potential of causing serious injury to his clients. People v. Susman, 787 P.2d 1119 (Colo. 1990).

Disbarment proper remedy for lawyer who, shortly after admission to bar and continuing for two years, embarked on a course of conduct resulting in ten separate instances of professional misconduct, some of which presented the potential for serious harm to clients and to the administration of justice. People v. Murray, 887 P.2d 1016 (Colo. 1994).

A lawyer's continued practice of law while under an order of suspension, with no efforts to wind up the legal practice, and failure to take action to protect the legal interests of the lawyer's clients, warrants disbarment. People v. Wilson, 832 P.2d 943 (Colo. 1992).

Pattern of misconduct involving failure to render services, multiple offenses, and conversion of clients' property sufficient to warrant disbarrment. People v. Vermillion, 814 P.2d 795 (Colo. 1991).

Disbarment appropriate where attorney converted client funds, neglected a legal matter entrusted to him, and had a history of discipline. People v. Grossenbach, 814 P.2d 810 (Colo. 1991).

Disbarment appropriate when attorney neglected numerous legal matters and engaged in other conduct prejudicial to client and the administration of justice. People v. Theodore, 926 P.2d 1237 (Colo. 1996).

Failure to respond to discovery and motions, failure to attend case management hearing, and failure to inform client of progress of a civil case is grounds for disbarment. People v. Hebenstreit, 823 P.2d 125 (Colo. 1992).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Ashley, 817 P.2d 965 (Colo. 1991); People v. Rouse, 817 P.2d 967 (Colo. 1991); People v. Margolin, 820 P.2d 347 (Colo. 1991); People v. Koransky, 824 P.2d 819 (Colo. 1992); People v. Bradley, 825 P.2d 475 (Colo. 1992); People v. Southern, 832 P.2d 946 (Colo. 1992); People v. McGrath, 833 P.2d 731 (Colo. 1992); People v. Singer, 955 P.2d 1005 (Colo. 1998).

Conduct violating this rule sufficient to justify disbarment. People v. Kendrick, 646 P.2d 337 (Colo. 1982); People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Craig, 653 P.2d 1115 (Colo. 1982); People v. Golden, 654 P.2d 853 (Colo. 1982); People v. Coca, 716 P.2d 1073 (Colo. 1986); People v. Quick, 716 P.2d 1082 (Colo. 1986); People v. Quintana, 752 P.2d 1059 (Colo. 1988); People v. Lovett, 753 P.2d 205 (Colo. 1988); People v. Brooks, 753 P.2d 208 (Colo. 1988); People v. Turner, 758 P.2d 1335 (Colo. 1988); People v. Danker, 759 P.2d 14 (Colo. 1988); People v. Score, 760 P.2d 1111 (Colo. 1988); People v. Kengle, 772 P.2d 605 (Colo. 1989); People v. Murphy, 778 P.2d 658 (Colo. 1989); People v. Frank, 782 P.2d 769 (Colo. 1989); People v. Johnston, 782 P.2d 1195 (Colo. 1989); People v. Dulaney, 785 P.2d 1302 (Colo. 1990); People v. Franks, 791 P.2d 1 (Colo. 1990); People v. Gregory, 797 P.2d 42

(Colo. 1990); People v. Mullison, 829 P.2d 382 (Colo. 1992); People v. Hyland, 830 P.2d 1000 (Colo. 1992).

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(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).

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Cite as RPC 1.2

History. Ssubdivisions (a) and (c), and comment amended and adopted June 17, 1999, effective July 1, 1999; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; paragraph [14] added to comment, March 24, 2014, effective immediately.

Note:

COMMENT Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14. Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities. Agreements Limiting Scope of Representation.

[5A] Regarding communications with clients when a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the providing of legal services to the client, see Comment [6] to Rule 1.1.

[5B] Regarding communications with clients and with lawyers outside of the lawyer's firm when lawyers from more than one firm are providing legal services to the client on a particular matter, see Comment [7] to Rule 1.1.

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition,

the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6. Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must

consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

[4] A lawyer may counsel a client regarding the validity, scope, and meaning of Colorado constitution article XVIII, secs. 14 & 16, and may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and the statutes, regulations, orders, and other state or local provisions implementing them. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on Ethical Duties of Attorney Selected by Insurer to Represent Its Insured, see 22 Colo. Law. 497 (1993). For article, "Discrete Task Representation a/k/a Unbundled Legal Services", see 29 Colo. Law. 5 (January 2000). For article, "Limited Representation in Criminal Defense Cases", see 29 Colo. Law. 77 (October 2000). For article, "Ethical Considerations and Client Identity", see 30 Colo. Law. 51 (April 2001). For article, "Settlement Ethics", see 30 Colo. Law. 53 (December 2001). For comment, "Increasing Access to Justice: Expanding the Role of Nonlawyers in the Delivery of Legal Services to Low-Income Coloradans", see 72 U. Colo. L. Rev. 459 (2001). For article, "Ethical Guidelines for Settlement Negotiations", see 34 Colo. Law. 11 (February 2005). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (October 2005). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Litigating Disputes Involving the Medical Marijuana Industry", see 41 Colo. Law. 103 (August 2012). For article, "Repugnant Objectives", see 41 Colo. Law. 51 (December 2012).

Annotator's note. Rule 1.2 is similar to Rule 1.2 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Even though section (c) of this rule allows unbundling of legal services, an attorney remains obligated to comply with C.R.C.P. 11(b). In re Merriam, 250 Bankr. 724 (Bankr. D. Colo. 2000).

Having a litigant appear to be pro se when in truth an attorney is authoring pleadings and necessarily guiding the course of the litigation with an unseen hand is disingenuous and far below the level of candor that must be met by members of the bar. Such conduct is contrary to section (d) of this rule. Johnson v. Bd. of County Comm'rs of Fremont, 868 F. Supp. 1226 (D. Colo. 1994).

Any provision in an agreement to provide legal services that would deprive a client of the right to control settlement is unenforceable as against public policy, including a provision that purports to prohibit the client from unreasonably refusing to settle. A client's right to reject settlement is absolute and unqualified; parties to litigation have the right to control their own cases. Jones v. Feiger, Collison & Killmer, 903 P.2d 27 (Colo. App. 1994), rev'd on other grounds, 926 P.2d 1244 (Colo. 1996).

The decision to enter a guilty plea or withdraw a guilty plea is one of the few fundamental choices that must

be decided by the defendant alone. People v. Davis, 2012 COA 1, __ P.3d __.

Aiding client to violate custody order sufficient to justify disbarment. People v. Chappell, 927 P.2d 829 (Colo. 1996).

Suspension for three years, the longest period available, was appropriate in case where violation of this rule and others would otherwise have justified disbarment but mitigating factors included personal and emotional problems, interim rehabilitation, and remorse. People v. McCaffrey, 925 P.2d 269 (Colo. 1996).

Suspension for one year and one day appropriate when attorney neglected to file response to motion for summary judgment and to return client files upon request. People v. Honaker, 847 P.2d 640 (Colo. 1993).

Public censure appropriate where harm suffered by attorney's client was speculative, attorney retracted his misrepresentations and admitted to his client before the institution of disciplinary proceedings that he had done nothing on the client's appeal, attorney had no prior discipline, he made full and free disclosure of his misconduct to the grievance committee, and he expressed remorse for his misconduct. People v. Nelson, 848 P.2d 351 (Colo. 1993).

If prosecution witness advises the prosecutor that he or she knows or recognizes one of the jurors, the prosecutor has an affirmative duty immediately to notify the court and opposing counsel of the witness' statement. People v. Drake, 841 P.2d 364 (Colo. App. 1992).

When a lawyer accepts fees from clients and then abandons those clients while keeping their money and causing serious harm, disbarment is appropriate. People v. Steinman, 930 P.2d 596 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Steinman, 930 P.2d 596 (Colo. 1997); In re Bilderback, 971 P.2d 1061 (Colo. 1999).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Sousa, 943 P.2d 448 (Colo. 1997).

Cases Decided Under Former DR 2-110.

Law reviews. For article, "Coping with the Paper Avalanche: A Survey on the Disposition of Client Files", see 16 Colo. Law. 1787 (1987).

Suspension for one year and one day warranted for attorney who "represented" client for a period of 19 months without that person's knowledge or consent, even asserting a counterclaim on his behalf without talking to him; who did not communicate with him in any manner for an extended period of time and then did not withdraw within a reasonable time after being unable to contact him; and who failed to answer discovery requests, resulting in the entries of default and then a default judgment against him. People v. Silvola, 915 P.2d 1281 (Colo. 1996).

Attorney who undertakes to conduct action impliedly agrees that he will pursue it to some conclusion; and he

is not free to abandon it without reasonable cause. Sobol v. District Court, 619 P.2d 765 (Colo. 1980); Anderson, Calder & Lembke v. District Court, 629 P.2d 603 (Colo. 1981).

Even where cause may exist, attorney's withdrawal must be undertaken in proper manner, duly protective of his client's rights and liabilities. Sobol v. District Court, 619 P.2d 765 (Colo. 1980).

Attorney's withdrawal from employment was improper where attorney gave clients insufficient notice of her intention to withdraw, failed to return the file of one client, and took no steps to avoid foreseeable injury to the clients' interests. People v. Felker, 770 P.2d 402 (Colo. 1989).

Trial dates accepted shall be honored before withdrawal from employment. When public defender or a busy defense lawyer finds that his representation of one client is inimical to his representation of another client and he must make an election as to the client he will represent, he has a heavy duty to the court to see that he honors dates that he has agreed to for the trial of a case. Watson v. District Court, 199 Colo. 76, 604 P.2d 1165 (1980).

Attorney's withdrawal is within trial court's discretion. The question of whether an attorney should be permitted to withdraw his general appearance on behalf of a litigant in a civil case is, under ordinary circumstances, within the discretion of the trial court; and its decision will not be reversed unless this discretion has been demonstrably abused. Sobol v. District Court, 619 P.2d 765 (Colo. 1980).

Motions for withdrawal of counsel are addressed to the discretion of the court and will not be reversed unless clear error or abuse is shown. Anderson, Calder & Lembke v. District Court, 629 P.2d 603 (Colo. 1981).

A decision as to whether counsel should be permitted to withdraw must lie within the sound discretion of the trial judge. As long as the trial court has a reasonable basis for believing that the lawyer-client relation has not deteriorated to the point where counsel is unable to give effective aid in the fair presentation of a defense, the court is justified in refusing to appoint new counsel. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

The question of whether a lawyer may withdraw during course of trial due to the client's conduct is within the trial court's discretion and court must balance need for orderly administration of justice with facts underlying request for withdrawal. People v. Rubanowitz, 688 P.2d 231 (Colo. 1984).

The trial court's decision will not be disturbed on review absent abuse. The decision of the trial court to deny a motion to withdraw will not be disturbed on review absent a clear abuse of discretion. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

Disagreement concerning counsel's refusal to call witnesses is insufficient grounds. A disagreement between defense counsel and the accused concerning counsel's refusal to call certain witnesses is not sufficient to require the trial judge to grant the motion to withdraw and replace defense counsel. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

Filing of a grievance because of disagreement as to trial tactics is insufficient grounds. Mere filing of grievance

concerning counsel's refusal to file certain motions and refusal to file a civil action is not sufficient to require trial judge to grant the motion to withdraw and replace defense counsel. People v. Martinez, 722 P.2d 445 (Colo. App. 1986).

Counsel should request permission to withdraw where client insists on presenting perjured testimony. When a serious disagreement arises between the defense counsel and the accused, and counsel is unable to dissuade his client from insisting that fabricated testimony be presented by a witness, counsel should request permission to withdraw from the case in accordance with the procedures set forth in this opinion. If the motion to withdraw is denied, however, he must continue to serve as defense counsel. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

When confronted with a client who insists upon presenting perjured testimony as to an alibi, counsel may only state, in the motion to withdraw, that he has an irreconcilable conflict with his client. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

Failure and refusal to refund unearned portions of fees collected from two clients constituted violations of C.R.C.P. 241(B), DR 9-102, and this rule. People v. Gellenthien, 621 P.2d 328 (Colo. 1981).

Failure to withdraw for over a year after being discharged by client, accompanied by protracted failure to return client's file, justifies suspension. People v. Hodge, 752 P.2d 533 (Colo. 1988).

Conduct violating this rule in conjunction with other disciplinary rules sufficient to justify public censure. People v. Vsetecka, 893 P.2d 1309 (Colo. 1995).

Failing to return the file of a client while at the same time neglecting to make further filings in such client's case during a period of suspension for similar acts of misconduct warrants further suspension from the practice of law. People v. Hodge, 782 P.2d 25 (Colo. 1989).

Suspended attorney must demonstrate rehabilitation. The actions of a suspended attorney who took part in a complex real estate transaction and engaged in the practice of law by representing, counseling, advising, and assisting a former client warrant suspension until he demonstrates by clear and convincing evidence that (1) he has been rehabilitated; (2) he has complied with and will continue to comply with all applicable disciplinary orders and rules; and (3) he is competent and fit to practice law. People v. Belfor, 200 Colo. 44, 611 P.2d 979 (1980).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Moya, 793 P.2d 1154 (Colo. 1990); People v. Creasey, 793 P.2d 1159 (Colo. 1990); People v. Wilson, 814 P.2d 791 (Colo. 1991); People v. Whitaker, 814 P.2d 812 (Colo. 1991); People v. Heilbrunn, 814 P.2d 819 (Colo. 1991); People v. Anderson, 817 P.2d 1035 (Colo. 1991); People v. Hyland, 830 P.2d 1000 (Colo. 1992); People v. Raubolt, 831 P.2d 462 (Colo. 1992); People v. Southern, 832 P.2d 946 (Colo. 1992); People v. Regan, 871 P.2d 1184 (Colo. 1994); People v. Cole, 880 P.2d 158 (Colo. 1994).

Conduct violating this rule sufficient to justify suspension. People v. Geller, 753 P.2d 235 (Colo. 1988).

Facts sufficient to justify disbarment of attorney for failure to comply with registration requirements of C.R.C.P.

227, misappropriation of funds, and improper withdrawal from employment. People v. Scudder, 197 Colo. 99, 590 P.2d 493 (1979).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Southern, 832 P.2d 946 (Colo. 1992); People v. McGrath, 833 P.2d 731 (Colo. 1992); People v. Fritsche, 897 P.2d 805 (Colo. 1995).

Conduct violating this rule sufficient to justify disbarment. People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Kengle, 772 P.2d 605 (Colo. 1989); People v. Franks, 791 P.2d 1 (Colo. 1990); People v. Vermillion, 814 P.2d 795 (Colo. 1991); People v. Mullison, 829 P.2d 382 (Colo. 1992); People v. McGrath, 833 P.2d 731 (Colo. 1992).

Applied in People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978); People v. Pacheco, 198 Colo. 455, 608 P.2d 333 (1979); People v. Pacheco, 199 Colo. 108, 608 P.2d 334 (1979); People v. Johnson, 199 Colo. 248, 612 P.2d 1097 (1980); People v. Lanza, 200 Colo. 241, 613 P.2d 337 (1980); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People v. Archuleta, 638 P.2d 255 (Colo. 1981).

Cases Decided Under Former DR 7-101.

Law reviews. For article, "The Ethical Aspects of Compromise, Settlement and Arbitration", see 25 Rocky Mt. L. Rev. 454 (1953). For article, "Incriminating Evidence: What to Do With a Hot Potato", see 11 Colo. Law. 880 (1982). For article, "Third-Party Malpractice Claims against Real Estate Lawyers", see 13 Colo. Law. 996 (1984). For article, "The Role of Parents' Counsel in Dependency and Neglect Proceedings -- Part I", see 14 Colo. Law. 568 (1985). For article, "The Ethical Duty to Consider Alternatives to Litigation", see 19 Colo. Law. 249 (1990).

Lawyers are required by the obligations of their office to act with diligence in the affairs of their clients and in judicial proceedings. People v. Heyer, 176 Colo. 188, 489 P.2d 1042 (1971).

Failure to take any action on behalf of his client after he was retained and entrusted with work and after making representations to his client which were false, an attorney violates the code of professional responsibility and C.R.C.P. 241.6. People v. Southern, 638 P.2d 787 (Colo. 1982).

Trial court may explore adequacy of trial counsel's representations regarding grounds for withdrawal, but in the course of this inquiry, the court may not compel the attorney to disclose any confidential communications. People v. Schultheis, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

Attorney may not breach his duty of maintaining his client's confidences even when he knows his client has previously perjured himself. People v. Schultheis, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

Attorney shall not use testimony that he knows is perjured. People v. Schultheis, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

Defense counsel may waive right to confront witnesses. The right to confront witnesses is a fundamental right and

waiver of such a right is not to be lightly found, but this decision is properly the responsibility of defense counsel, and therefore, the decision of defense counsel to allow the prosecution to use depositions of witnesses in court is an effective waiver. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Matters of trial conduct and strategy are the responsibility of defense counsel. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Defendant cannot complain when it falls short of accomplishing an acquittal. It is not error to deny a motion for a new trial based on incompetence of trial counsel where the incompetence claimed arises out of defense counsel's failure to call certain witnesses that the defendant suggested, because defense counsel is responsible for trial strategy, and the defendant will not be heard to complain when trial strategy falls short of accomplishing an acquittal. People v. Moreno, 1 81 Colo. 106, 507 P.2d 857 (1973).

If every decision in a contested trial had to be made by the accused, he would be denied effective assistance and the judgment of his trial counsel; the defendant's attorney is the expert at trial, not the defendant. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Continued and chronic neglect over a period of two years must be considered willful and supports finding of intentional prejudice or damage to clients. People v. Barber, 799 P.2d 936 (Colo. 1990).

Trial court did not abuse its discretion by imposing sanctions on attorney who, at direction of clients, failed to advise opposing party of clients' bankruptcy and automatic stay in advance of trial. Under such circumstances the attorney was faced with an irreconcilable conflict between his duty to his clients and his professional obligations to opposing counsel and would have been justified in requesting permission to withdraw. Parker v. Davis, 888 P.2d 324 (Colo. App. 1994).

Inappropriate personal relationship with a client may prejudice or damage client under this rule. People v. Gibbons, 685 P.2d 168 (Colo. 1984).

Where an attorney requests, on the day of trial, dismissal of federal court proceedings because of lack of jurisdictional amount while representing plaintiff, fails to appear in court when scheduled, shows gross indifference and disregard toward the court, the jurors, and opposing counsel, and fails to keep appointments with the grievance committee assigned to investigate charges against him, a public reprimand for dereliction of duty is called for. People v. Heyer, 176 Colo. 188, 489 P.2d 1042 (1971).

Public censure was appropriate where attorney's failure to appear at three hearings and to timely return a stipulation violated DR 1-102(A)(5) and, in aggravation, there was a pattern of misconduct. People v. Cabral, 888 P.2d 245 (Colo. 1995).

Conduct of attorney warranted public censure under paragraph (A)(1). People v. Stayton, 798 P.2d 903 (Colo. 1990); People v. Smith, 819 P.2d 497 (Colo. 1991).

Conduct of attorney warranted public reprimand under paragraph (A)(2). People v. Atencio, 177 Colo. 439, 494 P.2d 837 (1972).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Ashley, 796 P.2d 962 (Colo. 1990); People v. Fitzgibbons, 909 P.2d 1098 (Colo. 1996).

Conduct violating this rule sufficient to justify public censure. People v. Mayer, 716 P.2d 1094 (Colo. 1986); People v. Wilson, 745 P.2d 248 (Colo. 1987); People v. Wyman, 769 P.2d 1076 (Colo. 1989); People v. Baird, 772 P.2d 110 (Colo. 1989); People v. Fieman, 788 P.2d 830 (Colo. 1990); People v. Good, 790 P.2d 331 (Colo. 1990).

Where an attorney misrepresents to a client that he has filed a case, fails for two years to take action on behalf of another client, and, knowing that a hearing had been set on charges against him, deliberately leaves the jurisdiction of the court without making any arrangements with the grievance committee and without arranging for representation, his conduct warrants suspension from the bar. People v. Kane, 177 Colo. 378, 494 P.2d 96 (1972).

Suspension is fitting sanction when lawyer knowingly fails to perform services for a client and thereby causes injury to such client. People v. Masson, 782 P.2d 335 (Colo. 1989).

Failing to resolve an inability to proceed on behalf of a client, neglecting to respond to communications from the grievance committee, failing to fulfill commitments made to the investigator for the disciplinary counsel, and misrepresenting to such investigator the status of the case under investigation is conduct warranting suspension. People v. Chappell, 783 P.2d 838 (Colo. 1989).

Suspension of lawyer for three years which is the longest possible period for suspension, is appropriate where there was extensive pattern of client neglect and intentional deception in client matters over a period of years. Anything less would be too lenient. People v. Hellewell, 811 P.2d 386 (Colo. 1991).

Failure to communicate with clients, court, and opposing counsel, misrepresentation of the status of the proceedings to the client, and failure to investigate clients' case justifies three-year suspension. People v. Wilson, 814 P.2d 791 (Colo. 1991).

Knowing failure to prosecute client's claim or to obtain client's informed consent to abandon the claim and neglecting to pursue settlement negotiations damaged client and constitutes intentional failure to carry out contract of employment sufficient to justify suspension. People v. Honaker, 814 P.2d 785 (Colo. 1991).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to warrant suspension. People v. Creasey, 793 P.2d 1159 (Colo. 1990); People v. Schmad, 793 P.2d 1162 (Colo. 1990); People v. Wilbur, 796 P.2d 976 (Colo. 1990); People v. Baptie, 796 P.2d 978 (Colo. 1990); People v. Taylor, 799 P.2d 930 (Colo. 1990); People v. Garrett, 802 P.2d 1082 (Colo. 1990); People v. Rhodes, 803 P.2d 514 (Colo. 1991); People v. Flores, 804 P.2d 192 (Colo. 1991); People v. Dunsmoor, 807 P.2d 561 (Colo. 1991); People v. Hall, 810 P.2d 1069 (Colo. 1991); People v. Koeberle, 810 P.2d 1072 (Colo. 1991); People v. Dash, 811 P.2d 36 (Colo. 1991); People v. Creasey, 811 P.2d 40 (Colo. 1991); People v. Whitaker, 814 P.2d 812 (Colo. 1991); People v. Hansen, 814 P.2d 816 (Colo. 1991);

People v. Hyland, 830 P.2d 1000 (Colo. 1992); People v. Raubolt, 831 P.2d 462 (Colo. 1992); People v. Regan, 831 P.2d 893 (Colo. 1992); People v. Denton, 839 P.2d 6 (Colo. 1992); People v. Hindorff, 860 P.2d 526 (Colo. 1993); People v. Cole, 880 P.2d 158 (Colo. 1994); People v. Smith, 880 P.2d 763 (Colo. 1994); People v. Schaefer, 938 P.2d 147 (Colo. 1997).

Conduct violating this rule sufficient to justify suspension. People v. Yaklich, 646 P.2d 938 (Colo. 1982); People v. Brackett, 667 P.2d 1357 (Colo. 1983); People v. Pilgrim, 698 P.2d 1322 (Colo. 1985); People v. Convery, 704 P.2d 296 (Colo. 1985); People v. Foster, 716 P.2d 1069 (Colo. 1986); People v. Coca, 716 P.2d 1073 (Colo. 1986); People v. Barnett, 716 P.2d 1076 (Colo. 1986); People v. Fleming, 716 P.2d 1090 (Colo. 1986); People v. Larson, 716 P.2d 1093 (Colo. 1986); People v. Richards, 748 P.2d 341 (Colo. 1987); People v. Convery, 758 P.2d 1338 (Colo. 1988); People v. Griffin, 764 P.2d 1166 (Colo. 1988); People v. Goens, 770 P.2d 1218 (Colo. 1989); People v. Flores, 772 P.2d 610 (Colo. 1989); People v. Pooley, 774 P.2d 239 (Colo. 1989); People v. Fahrney, 782 P.2d 743 (Colo. 1989); People v. Gregory, 788 P.2d 823 (Colo. 1990); People v. Bergmann, 790 P.2d 840 (Colo. 1990).

Failure to file bankruptcy petition for eight months justifies disbarment. When a lawyer, after being paid for his services, neglects to file a bankruptcy petition for his client for a period of approximately eight months, during which time the client is sued and his wages attached on several occasions, the lawyer's gross neglect and failure to carry out a contract of employment justify disbarment. People v. McMichael, 199 Colo. 433, 609 P.2d 633 (1980).

Converting estate or trust funds for one's personal use, overcharging for services rendered, neglecting to return inquiries relating to client matters, failing to make candid disclosures to grievance committee, and attempting to conceal wrongdoing during disciplinary proceedings warrants the severe sanction of disbarment. People v. Gerdes, 782 P.2d 2 (Colo. 1989).

Disbarment was the proper remedy where attorney's conduct demonstrated (a) neglect of legal matters entrusted to him; (b) misrepresentation to the client and the grievance committee; and (c) a pattern of neglect followed by the respondent that had the potential of causing serious injury to his clients, and the attorney was afforded multiple opportunities including two suspensions and court ordered rehabilitation. People v. Susman, 787 P.2d 1119 (Colo. 1990).

Converting trust funds to one's own use in the amount of $13,100 and refusing to make payments on a promissory note taken as restitution was conduct intentionally prejudicial to the client sufficient to justify disbarment. People v. Whitcomb, 819 P.2d 493 (Colo. 1991).

Converting trust funds, along with other misconduct, sufficient to justify disbarment. Where attorney withdraws $62,550 from trust without beneficiaries' knowledge or permission, fails to repay a $5,000 loan from the trustee, prepares fictional quarterly trust reports, disburses principal to beneficiaries in lieu of interest and lies regarding the amount of principal remaining in the trust, there is conduct sufficiently prejudicial to the client to justify disbarment. People v. Tanquary, 831 P.2d 889 (Colo. 1992).

When attorney converted client's funds, named himself trustee, misrepresented to banks that the funds were his own, engaged in self-dealing, and maintained custody of the client's investment accounts, disbarment was

warranted. There were no mitigating factors. People v. Warner, 8873 P.2d 724 (Colo. 1994).

Misrepresenting the status of a dissolution of marriage action with knowledge of impending remarriage and then forging the purported decree of dissolution is conduct involving moral turpitude deserving of disbarment. People v. Belina, 782 P.2d 26 (Colo. 1989).

Conduct which causes a client serious or potentially serious injury and demonstrates a complete lack of concern for a client's interests and welfare warrants disbarment. People v. Lyons, 762 P.2d 143 (Colo. 1988).

Where an attorney demonstrates an extreme indifference to the welfare of his clients and the status of their cases and an extreme insensitivity to his professional duties in the face of adverse judgments due to neglect, client complaints, and repeated disciplinary proceedings, disbarment is the appropriate sanction. People v. Wyman, 782 P.2d 339 (Colo. 1989).

Facts sufficient to justify disbarment of attorney for failure to comply with registration requirements of C.R.C.P. 227, misappropriation of funds, and improper withdrawal from employment. People v. Scudder, 197 Colo. 99, 590 P.2d 493 (1979).

Failure to respond to discovery and motions, failure to attend case management hearing, and failure to inform client of progress of a civil case is grounds for disbarment. People v. Hebenstreit, 823 P.2d 125 (Colo. 1992).

Disbarment is appropriate sanction where attorney knowingly converts client property and causes injury or potential injury to a client. People v. Bowman, 887 P.2d 18 (Colo. 1994).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Nichols, 796 P.2d 966 (Colo. 1990); People v. Ashley, 817 P.2d 965 (Colo. 1991); People v. Rouse, 817 P.2d 967 (Colo. 1991); People v. Crimaldi, 804 P.2d 863 (Colo. 1991); People v. Bergmann, 807 P.2d 568 (Colo. 1991); People v. Rhodes, 814 P.2d 787 (Colo. 1991); People v. Heilbrunn, 814 P.2d 819 (Colo. 1991); People v. Whitcomb, 819 P.2d 493 (Colo. 1991); People v. Koransky, 824 P.2d 819 (Colo. 1992); People v. Bradley, 825 P.2d 475 (Colo. 1992); People v. Southern, 832 P.2d 946 (Colo. 1992); People v. Schindelar, 845 P.2d 1146 (Colo. 1993); People v. Schaefer, 944 P.2d 78 (Colo. 1997); People v. Skaalerud, 963 P.2d 341 (Colo. 1998).

Conduct violating this rule sufficient to justify disbarment. People v. Kendrick, 646 P.2d 337 (Colo. 1982); People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Golden, 654 P.2d 853 (Colo. 1982); People v. Bealmear, 655 P.2d 402 (Colo. 1982); People v. Buckles, 673 P.2d 1008 (Colo. 1984); People v. Gibbons, 685 P.2d 168 (Colo. 1984); People v. Quick, 716 P.2d 1082 (Colo. 1986); People v. James, 731 P.2d 698 (Colo. 1987); People v. Carpenter, 731 P.2d 726 (Colo. 1987); People v. Coca, 732 P.2d 640 (Colo. 1987); People v. Stewart, 752 P.2d 528 (Colo. 1987); People v. Quintana, 752 P.2d 1059 (Colo. 1988); People v. Lovett, 753 P.2d 205 (Colo. 1988); People v. Brooks, 753 P.2d 208 (Colo. 1988); People v. Turner, 758 P.2d 1335 (Colo. 1988); People v. Danker, 759 P.2d 14 (Colo. 1988); People v. Costello, 781 P.2d 85 (Colo. 1989); People v. Frank, 782 P.2d 769 (Colo. 1989); People v. Johnston, 782 P.2d 1195 (Colo. 1989).

Conduct violating this rule sufficient to justify disbarment. People v. Dulaney, 785 P.2d 1302 (Colo. 1990); People v. Franks, 791 P.2d 1 (Colo. 1990); People v. Gregory, 797 P.2d 43 (Colo. 1990); People v. Vermillion, 814 P.2d 795 (Colo. 1991).

Conduct found to violate disciplinary rules. People v. Bugg, 635 P.2d 881 (Colo. 1981); People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982); People v. Ross, 810 P.2d 659 (Colo. 1991).

Applied in People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978); People v. McMichael, 1 96 Colo. 128, 586 P.2d 1 (1978); People v. Harthun, 197 Colo. 1, 593 P.2d 324 (1979); People v. Pacheco, 199 Colo. 108, 608 P.2d 334 (1979); People v. Belfor, 200 Colo. 44, 611 P.2d 979 (1980); People ex rel. Silverman, v. Anderson, 200 Colo. 76, 612 P.2d 94 (1980); People v. Barbour, 199 Colo. 126, 612 P.2d 1082 (1980); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People v. Dixon, 200 Colo. 520, 616 P.2d 103 (1980); People v. Gottsegen, 623 P.2d 878 (Colo. 1981); People v. Dutton, 629 P.2d 103 (Colo. 1981); People v. Hebeler, 638 P.2d 254 (Colo. 1981); People v. Archuleta, 638 P.2d 255 (Colo. 1981); People v. Gellenthien, 638 P.2d 295 (Colo. 1981); People v. Barbour, 639 P.2d 1065 (Colo. 1982); People v. Castro, 657 P.2d 932 (Colo. 1982); People v. Emmert, 676 P.2d 672 (Colo. 1983); People v. Simon, 698 P.2d 228 (Colo. 1985).

Cases Decided Under Former DR 7-102.

Law reviews. For article, "The Perjurious Defendant: A Proposed Solution to the Defense Lawyer's Conflicting Ethical Obligations to the Court and to His Client", see 59 Den. L.J. 75 (1981). For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law. 880 (1982). For article, "Ethics, Tax Fraud and the General Practitioner", see 11 Colo. Law. 939 (1982). For article, "The Search for Truth Continued: More Disclosure, Less Privilege", see 54 U. Colo. L. Rev. 51 (1982). For article, "The Search for Truth Continued, The Privilege Retained: A Response to Judge Frankel", see 54 U. Colo. L. Rev. 67 (1982). For casenote, "Caldwell v. District Court: Colorado Looks at the Crime and Fraud Exception to the Attorney-Client Privilege", see 55 U. Colo. L. Rev. 319 (1984). For article, "Defending the Federal Drug or Racketeering Charge", see 16 Colo. Law. 605 (1987). For article, "A Proposal on Opinion Letters in Colorado Real Estate Mortgage Loan Transactions Parts I and II", see 18 Colo. Law. 2283 (1989) and 19 Colo. Law. 1 (1990). For comment, "Attorney-Client Confidences: Punishing the Innocent", see 61 U. Colo. L. Rev. 185 (1990).

Attorney-client relationship required. Rule requires the existence of an attorney-client relationship as an essential element of the proscribed professional misconduct. People v. Morley, 725 P.2d 510 (Colo. 1986).

A client is a person who employs or retains an attorney for advice or assistance on a matter relating to legal business. People v. Morley, 725 P.2d 510 (Colo. 1986).

The relationship of an attorney and client can be inferred from the conduct of the parties. People v. Morley, 725 P.2d 510 (Colo. 1986).

The relationship is sufficiently established when it is shown that the client seeks and receives the advice of the lawyer on the legal consequences of the client's past or contemplated actions. People v. Morley, 725 P.2d 510 (Colo. 1986).

Attorney shall not use testimony that he knows is perjured. People v. Schultheis, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

If he does so, he commits subornation of perjury. A lawyer who presents a witness knowing that the witness intends to commit perjury thereby engages in the subornation of perjury. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

Trial court may explore adequacy of trial counsel's representations regarding grounds for withdrawal, but in the course of this inquiry, the court may not compel the attorney to disclose any confidential communications. People v. Schultheis, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

Attorney may not breach his duty of maintaining his client's confidences even when he knows his client has previously perjured himself. People v. Schultheis, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

Unauthorized recordation of telephone conversation establishes unethical conduct. Telephone conversation, which attorney initiated and recorded without the permission of other party to conversation, established unethical conduct on attorney's part. People v. Wallin, 621 P.2d 330 (Colo. 1981).

Planned course of conduct which is unresponsive to civil discovery constitutes intent to deceive, and such conduct is prejudicial to the administration of justice. People v. Haase, 781 P.2d 80 (Colo. 1989).

In fulfilling the duty under Canon 7 of the Code of Professional Responsibility to zealously represent a client, a lawyer may advance a claim or defense not recognized under existing law if it can be supported by a good faith argument for an extension, modification, or reversal of existing law. Sullivan v. Lutz, 827 P.2d 626 (Colo. App. 1992).

Unsuccessful appeal is not necessarily frivolous. Because a lawyer may present a supportable argument which is extremely unlikely to prevail on appeal, it cannot be said that an unsuccessful appeal is necessarily frivolous. Mission Denver Co. v. Pierson, 674 P.2d 363 (Colo. 1984).

An attorney should not pursue frivolous appeals. An attorney's decision not to pursue a frivolous appeal complies with his ethical responsibilities to his client. Hodges v. Barry, 701 P.2d 1240 (Colo. 1985).

Failure to inform arbitrators of errors in expert witness' testimony constituted violation of DR 7-102 warranting public censure because attorney did not disclose that expert had informed attorney of mistakes in writing, and ttorney made closing arguments based on uncorrected expert conclusions. People v. Bertagnolli, 861 P.2d 717 (Colo. 1993).

Actions taken by attorney contrary to court order violate this rule and justify suspension. People v. Awenius, 653 P.2d 740 (Colo. 1982).

False testimony and counselling such conduct warrant disbarment. When a lawyer counsels his client to testify falsely at a hearing on a bankruptcy petition and the client does so, and the lawyer gives a false answer to a question

asked of him by the bankruptcy judge, his misconduct warrants disbarment. People v. McMichael, 199 Colo. 433, 609 P.2d 633 (1980).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Smith, 830 P.2d 1003 (Colo. 1992).

Conduct violating this rule sufficient to justify suspension. People v. Belfor, 197 Colo. 223, 591 P.2d 585 (1979); People v. Barnthouse, 775 P.2d 545 (Colo. 1989), cert. denied, 493 U.S. 1026, 110 S. Ct. 734, 107 L. Ed. 2d 752 (1990); People v. Bergmann, 790 P.2d 840 (Colo. 1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Hansen, 814 P.2d 816 (Colo. 1991); People v. Calt, 817 P.2d 969 (Colo. 1991); People v. Whitcomb, 819 P.2d 493 (Colo. 1991); People v. Smith, 830 P.2d 1003 (Colo. 1992); People v. Southern, 832 P.2d 946 (Colo. 1992); People v. Marmon, 903 P.2d 651 (Colo. 1995).

Conduct violating this rule sufficient to justify disbarment. People v. Kendrick, 646 P.2d 337 (Colo. 1982); People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Morley, 725 P.2d 510 (Colo. 1986); People v. Turner, 758 P.2d 1335 (Colo. 1988); People v. Franks, 791 P.2d 1 (Colo. 1990); People v. Mullison, 829 P.2d 382 (Colo. 1992); People v. Sims, 913 P.2d 526 (Colo. 1996).

Conduct held to violate this rule. People v. Goss, 646 P.2d 334 (Colo. 1982).

Applied in People v. Good, 195 Colo. 177, 576 P.2d 1020 (1978); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People v. Rotenberg, 635 P.2d 220 (Colo. 1981); Law Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.2d 1215 (Colo. 1982); People v. Simon, 698 P.2d 228 (Colo. 1985); People v. Hebenstreit, 764 P.2d 51 (Colo. 1988).

Cases Decided Under Former DR 9-101.

Law reviews. For article, "The Conflicted Attorney", see 11 Colo. Law. 2589 (1982). For article, "Access and Friendship with Local Decision-makers -- May a Lawyer Exploit", see 16 Colo. Law. 482 (1987). For article, "Coping with the Paper Avalanche: A Survey on the Disposition of Client Files", see 16 Colo. Law. 1787 (1987).

Since employment in a public defender's office is not the type of public employment contemplated in paragraph (B) of this rule, no conflict of interest can be perceived in the representation of a defendant by a deputy public defender and the subsequent representation by the same attorney in a private capacity of the defendant in the same case. Coles, Manter & Watson v. Denver Dist. Court, 177 Colo. 210, 493 P.2d 374 (1972).

Disqualification of former district attorney and his firm was appropriate. Disqualification of former district attorney and his firm from representing client in case in which former district attorney had done investigation under this canon was clearly appropriate. Osburn v. District Court, 619 P.2d 41 (Colo. 1980).

Disqualification of district attorney's office required where two former district attorneys are witnesses on

contested issues in case. Pease v. District Court, 708 P.2d 800 (Colo. 1985).

Where a lawyer knows or should know that he is dealing improperly with a client's property and causes potential injury to the client, a suspension from the practice of law, at the very least, is an appropriate sanction. People v. McGrath, 780 P.2d 492 (Colo. 1989).

Where there is no evidence of a specific identifiable impropriety, there is no basis for disqualification under this canon. Food Brokers, Inc. v. Great Western Sugar, 680 P.2d 857 (Colo. App. 1984).

Factors for determining "an appearance of impropriety" discussed in Cleary v. District Court, 704 P.2d 866 (Colo. 1985).

"Substantial responsibility" requirement of paragraph (B) of this rule applied in Cleary v. District Court, 704 P.2d 866 (Colo. 1985); People v. Anaya, 732 P.2d 1241 (Colo. App. 1986), rev'd on other grounds, 764 P.2d 779 (Colo. 1988).

Conduct violating this rule sufficient to justify disbarment. People v. Dulaney, 785 P.2d 1302 (Colo. 1990).

Rule 1.3. Diligence.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Cite as RPC 1.3

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the

client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer); C.R.C.P. 251.32(h).

Case Notes:

ANNOTATION

Law reviews. For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "The Rules of Professional Conduct: An Equal Opportunity for Ethical

Pitfalls", see 41 Colo. Law. 71 (October 2012).

Annotator's note. Rule 1.3 is similar to Rule 1.3 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Public censure appropriate where harm suffered by attorney's client was speculative, attorney retracted his misrepresentations and admitted to his client before the institution of disciplinary proceedings that he had done noting on the client's appeal, attorney had no prior discipline, he made full and free disclosure of his misconduct to the grievance committee, and he expressed remorse for his misconduct. People v. Nelson, 848 P.2d 351 (Colo. 1993).

Public censure appropriate where attorney failed to review district attorney's file and the transcript of the preliminary hearing before trial. People v. Bonner, 927 P.2d 836 (Colo. 1996).

More severe sanction of public censure rather than private censure warranted where attorney continued to rely on methods of communication which had previously failed even after it became evident that the settlement agreement would be withdrawn and the client's interests would be harmed. People v. Podoll, 855 P.2d 1389 (Colo. 1993).

Public censure instead of private censure was appropriate where attorney failed to respond to discovery requests and motions for summary judgment and the findings of the board did not support the applicability of ABA Standard 9.32(i) as a mitigating factor since there was no medical evidence that attorney was affected by chemical dependency or that alcohol contributed to or caused the misconduct. People v. Brady, 923 P.2d 887 (Colo. 1996).

Public censure and monitoring conditions for one year, rather than private censure, were appropriate where attorney had a history of private sanctions indicating a pattern of misconduct. The attorney had also had a six-month suspension entered against him during the same time period in which the acts giving rise to censure occurred. Had the acts occurred following the suspension, public censure would be too lenient. People v. Field, 967 P.2d 1035 (Colo. 1998).

Aggravating and mitigating factors. The following factors are considered aggravating when deciding the appropriate level of discipline: (1) Prior discipline, (2) a pattern of misconduct, and (3) bad faith obstruction of the disciplinary process through total non-cooperation with the disciplinary authorities. Failure to appear before the disciplinary board will cause one to lose the ability to present evidence of mitigating factors. People v. Stevenson, 980 P.2d 504 (Colo. 1999).

Attorney's restitution agreement was neither an aggravating nor mitigating factor since the attorney did not propose or attempt any form of restitution until after a request for investigation had been filed with the office of disciplinary counsel. People v. Brady, 923 P.2d 887 (Colo. 1996).

Attorney's argument that public discipline is not appropriate because it would stigmatize a recovering alcoholic was rejected since overriding concern in discipline proceedings is to protect the public through the enforcement of professional standards of conduct. People v. Brady, 923 P.2d 887 (Colo. 1996).

Public censure appropriate where attorney allowed the statute of limitations to run before filing a complaint on the client's personal injury claim. People v. Hockley, 968 P.2d 109 (Colo. 1998).

Public censure appropriate where neglect extended over a long period of time, respondent had no prior history of discipline, and the actual harm caused by the misconduct was slight. People v. Berkley, 858 P.2d 699 (Colo. 1993).

Public censure appropriate for failure to submit settlement papers to client and to take any further action in the matter, in addition to other conduct violating rules. People v. Berkley, 858 P.2d 699 (Colo. 1993).

Public censure appropriate where attorney neglected and made misrepresentations in two separate legal matters. People v. Eagan, 902 P.2d 841 (Colo. 1995).

Public censure with additional conditions imposed on lawyer who neglected client's matter and then misinformed client of its status. People v. Kram, 966 P.2d 1065 (Colo. 1998).

Public censure warranted where, although respondent did not notify his clients and opposing counsel of his suspension, he did notify the court early in proceedings, did not go forward with court proceedings while on suspension and no actual harm was demonstrated to any of his clients. People v. Dover, 944 P.2d 80 (Colo. 1997).

Forty-five-day suspension warranted where respondent neglected child custody matter and had a prior public censure, a prior admonishment, and prior suspensions, but where the respondent did not demonstrate a dishonest or selfish motive and exhibited a cooperative attitude and expressions of remorse. People v. Dowhan, 951 P.2d 905 (Colo. 1998).

Attorney's inaction over a period of more than two years and other disciplinary violations warrant suspension for 30 days where there are mitigating factors. People v. LaSalle, 848 P.2d 348 (Colo. 1993).

Neglecting to file response to motion for summary judgment and to return client files upon request was sufficient to result in one-year and one-day suspension. People v. Honaker, 847 P.2d 640 (Colo. 1993).

Suspension for one year and one day appropriate when attorney neglected to file response to motion for summary judgment and to return client files upon request. People v. Honaker, 847 P.2d 640 (Colo. 1993).

Suspension for one year and one day appropriate when lawyer neglects matters of multiple clients and charges unreasonable fees. People v. Reedy, 966 P.2d 1057 (Colo. 1998).

Suspension for three years, the longest period available, was appropriate in case where violation of this rule and others would otherwise have justified disbarment but mitigating factors included personal and emotional problems, interim rehabilitation, and remorse. People v. McCaffrey, 925 P.2d 269 (Colo. 1996).

Suspension for three years was appropriate in case involving violation of this rule and others, together with attorney's breach of his duty as client's trustee to protect his client, who was a particularly vulnerable victim that was recuperating from a serious head injury. People v. DeRose, 945 P.2d 412 (Colo. 1997).

Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. People v. Henderson, 967 P.2d 1038 (Colo. 1998).

Three-year suspension warranted for attorney who effectively abandoned and failed to communicate with clients. People v. Shock, 970 P.2d 966 (Colo. 1999).

Conduct warranted one-year extension of attorney's suspension. People v. Silvola, 933 P.2d 1308 (Colo. 1997).

Disbarment appropriate remedy for attorney who neglected client's legal matter, failed to return retainer after being requested to do so, abandoned law practice, evaded process, and failed to respond to request of grievance committee. People v. Williams, 845 P.2d 1150 (Colo. 1993).

Attorney who failed to make sufficient efforts to ensure that his client received timely payments from the trust for which he was the trustee violated this rule. People v. DeRose, 945 P.2d 412 (Colo. 1997).

When a lawyer accepts fees from clients and then abandons those clients while keeping their money and causing serious harm, disbarment is appropriate. People v. Steinman, 930 P.2d 596 (Colo. 1997).

Attorney's failure to take prompt measures to secure client's rights to share of former spouse's retirement benefits constitutes neglect of a legal matter in violation of this rule. In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption).

Duty of diligence imposed by this rule violated by attorney's failure to adequately supervise and monitor non-attorney employee's actions on behalf of clients in bankruptcy proceedings. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Attorney's conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify six-month suspension, stayed upon completion of two-year probationary period. In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption).

Previously disbarred attorney who violated this rule would be forced to pay restitution to clients as a condition of readmission. People v. Vigil, 945 P.2d 1385 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules sufficient to justify disbarment where the attorney continued to practice law while on suspension, repeatedly neglecting his clients and failing to take reasonable steps to protect clients' interests. People v. Fager, 938 P.2d 138 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Titoni, 893 P.2d 1322 (Colo. 1995); People v. Doherty, 908 P.2d 1120 (Colo. 1996); People v. Woodrum, 911 P.2d 640 (Colo. 1996); People v. Murray, 912 P.2d 554 (Colo. 1996); People v. Barbieri, 935 P.2d 12 (Colo.

1997); People v. Williams, 936 P.2d 1289 (Colo. 1997); People v. Buckingham, 938 P.2d 1157 (Colo. 1997); People v. Todd, 938 P.2d 1160 (Colo. 1997); People v. Doherty, 945 P.2d 1380 (Colo. 1997); People v. Yates, 952 P.2d 340 (Colo. 1998); People v. Barr, 957 P.2d 1379 (Colo. 1998); People v. Kolko, 962 P.2d 979 (Colo. 1998).

Conduct violating this rule sufficient to justify public censure. People v. Smith, 847 P.2d 1154 (Colo. 1993); People v. Podoll, 855 P.2d 1389 (Colo. 1993); People v. Essling, 893 P.2d 1308 (Colo. 1995); People v. Belsches, 918 P.2d 559 (Colo. 1996); People v. Gonzalez, 933 P.2d 1306 (Colo. 1997); People v. Mohar, 935 P.2d 19 (Colo. 1997); People v. White, 951 P.2d 483 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Farrant, 852 P.2d 452 (Colo. 1993); People v. Barr, 855 P.2d 1386 (Colo. 1993); People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Kuntz, 908 P.2d 1110 (Colo. 1996); People v. Fager, 925 P.2d 280 (Colo. 1996); People v. Hohertz, 926 P.2d 560 (Colo. 1996); People v. Paulson, 930 P.2d 582 (Colo. 1997); People v. Bates, 930 P.2d 600 (Colo. 1997); People v. Reynolds, 933 P.2d 1295 (Colo. 1997); People v. White, 935 P.2d 20 (Colo. 1997); People v. Scott, 936 P.2d 573 (Colo. 1997); People v. Harding, 937 P.2d 393 (Colo. 1997); People v. Primavera, 942 P.2d 496 (Colo. 1997); People v. Field, 944 P.2d 1252 (Colo. 1997); People v. Wotan, 944 P.2d 1257 (Colo. 1997); People v. Johnson, 946 P.2d 469 (Colo. 1997); People v. Wright, 947 P.2d 941 (Colo. 1997); People v. de Baca, 948 P.2d 1 (Colo. 1997); People v. Babinski, 951 P.2d 1240 (Colo. 1998); People v. Rishel, 956 P.2d 542 (Colo. 1998); In re Corbin, 973 P.2d 1273 (Colo. 1999); In re Bobbitt, 980 P.2d 538 (Colo. 1999); In re Demaray, 8 P.3d 427 (Colo. 1999); People v. Maynard, 219 P.3d 430 (Colo. O.P.D.J. 2008); People v. Staab, 287 P.3d 122 (Colo. O.P.D.J. 2012).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Walsh, 880 P.2d 766 (Colo. 1994); People v. Marsh, 908 P.2d 1115 (Colo. 1996); People v. Jenks, 910 P.2d 688 (Colo. 1996); People v. Jamrozek, 921 P.2d 725 (Colo. 1996); People v. Steinman, 930 P.2d 596 (Colo. 1997); People v. Townshend, 933 P.2d 1327 (Colo. 1997); People v. Madigan, 938 P.2d 1162 (Colo. 1997); People v. Swan, 938 P.2d 1164 (Colo. 1997); People v. Sousa, 943 P.2d 448 (Colo. 1997); People v. Schaefer, 944 P.2d 78 (Colo. 1997); People v. Clyne, 945 P.2d 1386 (Colo. 1997); People v. Crist, 948 P.2d 1020 (Colo. 1997); People v. Roybal, 949 P.2d 993 (Colo. 1997); People v. Holmes, 951 P.2d 477 (Colo. 1998); People v. Holmes, 955 P.2d 1012 (Colo. 1998); People v. Hindman, 958 P.2d 463 (Colo. 1998); People v. Valley, 960 P.2d 141 (Colo. 1998); People v. Skaalerud, 963 P.2d 341 (Colo. 1998); People v. Gonzalez, 967 P.2d 156 (Colo. 1998); In re Bilderback, 971 P.2d 1061 (Colo. 1999); In re Hugen, 973 P.2d 1267 (Colo. 1999); In re Tolley, 975 P.2d 1115 (Colo. 1999); In re Stevenson, 979 P.2d 1043 (Colo. 1999); People v. Rasure, 212 P.3d 973 (Colo. O.P.D.J. 2009); People v. Sweetman, 218 P.3d 1123 (Colo. O.P.D.J. 2008); People v. Zodrow, 276 P.3d 113 (Colo. O.P.D.J. 2011); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011); People v. Tolentino, 285 P.3d 340 (Colo. O.P.D.J. 2012).

Rule 1.4. Communication.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Cite as RPC 1.4

History. Comment amended April 20, 2000, effective July 1, 2000; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation. Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under

consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Withholding Information

[6A] Regarding communications with clients when a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the providing of legal services to the client, see Comment [6] to Rule 1.1.

[6B] Regarding communications with clients and with lawyers outside of the lawyer's firm when lawyers from more than one firm are providing legal services to the client on a particular matter, see Comment [7] to Rule 1.1.

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be

likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

Explanation of Fees and Expenses

[7A] Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. Additionally, the lawyer should promptly respond to the client's reasonable requests concerning such matters. It is strongly recommended that all these communications be in writing. As to the basis or rate of the fee, see Rule 1.5(b).

Case Notes:

ANNOTATION

Law reviews. For article, "The Evolving Doctrine of Informed Consent in Colorado", see 23 Colo. Law. 591 (1994). For article, "Confirm Attorney Fees in Writing: Court Changes Colo. RPC 1.4, 1.5", see 29 Colo. Law. 27 (June 2000). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (October 2005). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "Attorney-Client Communications in Colorado", see 38 Colo. Law. 59 (April 2009). For article, "Informed Consent Under the Rules of Professional Conduct", see 40 Colo. Law. 109 (July 2011). For article, "The Rules of Professional Conduct: An Equal Opportunity for Ethical Pitfalls", see 41 Colo. Law. 71 (October 2012).

Annotator's note. Rule 1.4 is similar to Rule 1.4 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Public censure appropriate where harm suffered by attorney's client was speculative, attorney retracted his misrepresentations and admitted to his client before the institution of disciplinary proceedings that he had done nothing on the client's appeal, attorney had no prior discipline, he made full and free disclosure of his misconduct to the grievance committee, and he expressed remorse for his misconduct. People v. Nelson, 848 P.2d 351 (Colo. 1993).

Public censure instead of private censure was appropriate where attorney failed to respond to discovery requests and motions for summary judgment and the findings of the board did not support the applicability of ABA Standard 9.32(i) as a mitigating factor since there was no medical evidence that attorney was affected by chemical dependency or that alcohol contributed to or caused the misconduct. People v. Brady, 923 P.2d 887 (Colo. 1996).

Aggravating and mitigating factors. The following factors are considered aggravating when deciding the

appropriate level of discipline: (1) Prior discipline, (2) a pattern of misconduct, and (3) bad faith obstruction of the disciplinary process through total non-cooperation with the disciplinary authorities. Failure to appear before the disciplinary board will cause one to lose the ability to present evidence of mitigating factors. People v. Stevenson, 980 P.2d 504 (Colo. 1999).

Attorney's restitution agreement was neither an aggravating nor mitigating factor since the attorney did not propose or attempt any form of restitution until after a request for investigation had been filed with the office of disciplinary counsel. People v. Brady, 923 P.2d 887 (Colo. 1996).

Attorney's argument that public discipline is not appropriate because it would stigmatize a recovering alcoholic was rejected since overriding concern in discipline proceedings is to protect the public through the enforcement of professional standards of conduct. People v. Brady, 923 P.2d 887 (Colo. 1996).

Neglecting to file response to motion for summary judgment and to return client files upon request was sufficient to result in one-year and one-day suspension. People v. Honaker, 847 P.2d 640 (Colo. 1993).

Ninety-day suspension justified where attorney's failure to respond to discovery requests resulted in default and entry of judgment against client for $816,613. People v. Clark, 927 P.2d 838 (Colo. 1996).

Attorney's inaction over a period of more than two years and other disciplinary violations warrant suspension for 30 days where there are mitigating factors. People v. LaSalle, 848 P.2d 348 (Colo. 1993).

Suspension for one year and one day appropriate when attorney neglected to return client files upon request. People v. Honaker, 847 P.2d 640 (Colo. 1993).

Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. People v. Henderson, 967 P.2d 1038 (Colo. 1998).

Three-year suspension warranted for attorney who effectively abandoned and failed to communicate with clients. People v. Shock, 970 P.2d 966 (Colo. 1999).

Duty to communicate imposed by this rule violated by attorney's failure to keep clients in bankruptcy proceedings reasonably notified about the status of the case, including the dismissal of their first bankruptcy petition and the filing of their second. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Previously disbarred attorney who violated this rule would be forced to pay restitution to clients as a condition of readmission. People v. Vigil, 945 P.2d 1385 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Titoni, 893 P.2d 1322 (Colo. 1995); People v. Doherty, 908 P.2d 1120 (Colo. 1996); People v. Woodrum, 911 P.2d 640 (Colo. 1996); People v. Barbieri, 935 P.2d 12 (Colo. 1997); People v. Williams, 936 P.2d 1289 (Colo.

1997); People v. Buckingham, 938 P.2d 1157 (Colo. 1997); People v. Todd, 938 P.2d 1160 (Colo. 1997); People v. Doherty, 945 P.2d 1380 (Colo. 1997); People v. Barr, 957 P.2d 1379 (Colo. 1998).

Conduct violating rule sufficient to justify public censure. People v. Smith, 847 P.2d 1154 (Colo. 1993); People v. Damkar, 908 P.2d 1113 (Colo. 1996); People v. Marsh, 908 P.2d 1115 (Colo. 1996); People v. Jenks, 910 P.2d 688 (Colo. 1996); People v. Pooley, 917 P.2d 712 (Colo. 1996); People v. Belsches, 918 P.2d 559 (Colo. 1996).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Kuntz, 908 P.2d 1110 (Colo. 1996); People v. Murray, 912 P.2d 554 (Colo. 1996); People v. Hohertz, 926 P.2d 560 (Colo. 1996); People v. Paulson, 930 P.2d 582 (Colo. 1997); People v. Bates, 930 P.2d 600 (Colo. 1997); People v. Reynolds, 933 P.2d 1295 (Colo. 1997); People v. Townshend, 933 P.2d 1327 (Colo. 1997); People v. Scott, 936 P.2d 573 (Colo. 1997); People v. Sather, 936 P.2d 576 (Colo. 1997); People v. Harding, 937 P.2d 393 (Colo. 1997); People v. Primavera, 942 P.2d 496 (Colo. 1997); People v. Field, 944 P.2d 1252 (Colo. 1997); People v. Johnson, 946 P.2d 469 (Colo. 1997); People v. Wright, 947 P.2d 941 (Colo. 1997); People v. Rishel, 956 P.2d 542 (Colo. 1998); In re Corbin, 973 P.2d 1273 (Colo. 1999); In re Bobbitt, 980 P.2d 538 (Colo. 1999); In re Demaray, 8 P.3d 427 (Colo. 1999); People v. Albani, 276 P.3d 64 (Colo. O.P.D.J. 2011); People v. Staab, 287 P.3d 122 (Colo. O.P.D.J. 2012).

Conduct violating this rule, in conjunction with other disciplinary rules, sufficient to justify disbarment where the attorney continued to practice law while on suspension, repeatedly neglecting his clients and failing to take reasonable steps to protect clients' interests. People v. Fager, 938 P.2d 138 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Jamrozek, 921 P.2d 725 (Colo. 1996); People v. Steinman, 930 P.2d 596 (Colo. 1997); People v. Wallace, 936 P.2d 1282 (Colo. 1997); People v. Mannix, 936 P.2d 1285 (Colo. 1997); People v. Madigan, 938 P.2d 1162 (Colo. 1997); People v. Swan, 938 P.2d 1164 (Colo. 1997); People v. Clyne, 945 P.2d 1386 (Colo. 1997); People v. Crist, 948 P.2d 1020 (Colo. 1997); People v. Roybal, 949 P.2d 993 (Colo. 1997); People v. Holmes, 951 P.2d 477 (Colo. 1998); People v. Holmes, 955 P.2d 1012 (Colo. 1998); People v. Hindman, 958 P.2d 463 (Colo. 1998); People v. Valley, 960 P.2d 141 (Colo. 1998); People v. Skaalerud, 963 P.2d 341 (Colo. 1998); In re Bilderback, 971 P.2d 1061 (Colo. 1999); In re Hugen, 973 P.2d 1267 (Colo. 1999); In re Tolley, 975 P.2d 1115 (Colo. 1999); In re Stevenson, 979 P.2d 1043 (Colo. 1999); In re Haines, 177 P.3d 1239 (Colo. 2008); People v. Rasure, 212 P.3d 973 (Colo. O.P.D.J. 2009); People v. Sweetman, 218 P.3d 1123 (Colo. O.P.D.J. 2008); People v. Zodrow, 276 P.3d 113 (Colo. O.P.D.J. 2011); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011); People v. Tolentino, 285 P.3d 340 (Colo. O.P.D.J. 2012).

Conduct violating rule sufficient to justify disbarment. People v. Robnett, 859 P.2d 872 (Colo. 1993).

Cases Decided Under Former DR 9-102.

Law reviews. For series of articles, "Interest on Lawyer Trust Accounts Program: A Primer for Lawyers", see 12 Colo. Law 577 (1983). For article, "Ethical Problem Areas for Probate Lawyers", see 19 Colo. Law. 1069 (1990).

Paragraphs (A) and (B)(3) require as a minimum standard of conduct that a lawyer segregate his clients' funds from his own and keep them in identifiable bank trust accounts. People v. Harthun, 197 Colo. 1, 593 P.2d 324 (1979); People v. Schubert, 799 P.2d 388 (Colo. 1990).

Most severe punishment is required when a lawyer disregards his professional obligations and converts his clients' funds to his own use. People v. Kluver, 199 Colo. 511, 611 P.2d 971 (1980); People v. Dohe, 800 P.2d 71 (Colo. 1990); People v. Whitcomb, 819 P.2d 493 (Colo. 1991).

Misuse of funds by a lawyer strikes at the heart of the legal profession by destroying public confidence in lawyers. The most severe punishment is required when a lawyer disregards his professional obligations and converts his clients' funds to his own use. People v. Buckles, 673 P.2d 1008 (Colo. 1984); People v. Wolfe, 748 P.2d 789 (Colo. 1987).

Conversion of client funds is conduct warranting disbarment because it destroys the trust essential to the attorney-client relationship, severely damages the public's perception of attorneys, and erodes public confidence in our legal system. People v. Radosevich, 783 P.2d 841 (Colo. 1989).

Disbarment is the presumed sanction for misappropriation of funds barring significant mitigating circumstances. People v. Young, 864 P.2d 563 (Colo. 1993); People v. Varallo, 913 P.2d 1 (Colo. 1996); People v. Coyne, 913 P.2d 12 (Colo. 1996).

Failure and refusal to refund unearned portions of fees collected from two clients constituted violations of C.R.C.P. 241(B) (now C.R.C.P. 241.6), DR 2-110, and this rule. People v. Gellenthien, 621 P.2d 328 (Colo. 1981).

Attorney obligated to forward client's file upon request. Failure to forward client's file a year after a request is made constitutes conduct violative of disciplinary rules. People v. Belina, 765 P.2d 121 (Colo. 1988).

Failing to provide a client with an accounting of charges applied against a retainer after the client's request therefor, in conjunction with other instances of neglect, is conduct warranting public censure. People v. Goodwin, 782 P.2d 1 (Colo. 1989).

Failure to make proper accounting to client with respect to trust funds and failure to promptly deliver to the client funds to which she is entitled warrants public censure. People v. Robnett, 737 P.2d 1389 (Colo. 1987).

Failure to deposit funds in trust account, to notify client of receipt of funds and provide accounting, and to forward file promptly to new attorney constitute a violation of this rule and, with other offenses, warrants public censure. People v. Swan, 764 P.2d 54 (Colo. 1988).

Violation of duty to account for and promptly return client property upon request over a three-year period warrants public censure. People v. Shunneson, 814 P.2d 800 (Colo. 1991).

Public censure for failure to promptly distribute proceeds of a settlement is warranted since respondent's negligence did little or no actual or potential injury to client. People v. Genchi, 824 P.2d 815 (Colo. 1992).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Ashley, 796 P.2d 962 (Colo. 1990); People v. Sadler, 831 P.2d 887 (Colo. 1992).

Converting estate or trust funds for one's personal use, overcharging for services rendered, neglecting to return inquiries relating to client matters, failing to make candid disclosures to grievance committee, and attempting to conceal wrongdoing during disciplinary proceedings warrants the severe sanction of disbarment. People v. Gerdes, 782 P.2d 2 (Colo. 1989).

Conduct violating this rule sufficient to justify public censure. People v. Bollinger, 648 P.2d 620 (Colo. 1982); People v. Wright, 698 P.2d 1317 (Colo. 1985); People v. Mayer, 716 P.2d 1094 (Colo. 1986); People v. Schaiberger, 731 P.2d 728 (Colo. 1987); People v. Barr, 748 P.2d 1302 (Colo. 1988); People v. Danker, 759 P.2d 14 (Colo. 1988).

Two-year unjustified retention of one client's file, coupled with failure to withdraw at request of said client and refusal to forward a second client's file to subsequent counsel, resulting in both clients sustaining injuries, justifies suspension for the period of a year and a day. People v. Hodge, 752 P.2d 533 (Colo. 1988).

Failure to account for money collected on behalf of client, despite numerous client requests for accounting, and failure to adhere to terms of agreement with client regarding representation, coupled with prior, ongoing suspension, warrants additional six-month suspension. People v. Yost, 752 P.2d 542 (Colo. 1988).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Moya, 793 P.2d 1154 (Colo. 1990); People v. Creasey, 793 P.2d 1159 (Colo. 1990); People v. Schubert, 799 P.2d 388 (Colo. 1990); People v. Garrett, 802 P.2d 1082 (Colo. 1990); People v. Lamberson, 802 P.2d 1098 (Colo. 1990); People v. Crimaldi, 804 P.2d 863 (Colo. 1991); People v. Dunsmoor, 807 P.2d 561 (Colo. 1991); People v. Dash, 811 P.2d 36 (Colo. 1991); People v. Creasey, 811 P.2d 40 (Colo. 1991); People v. Wilson, 814 P.2d 791 (Colo. 1991); People v. Heilbrunn, 814 P.2d 819 (Colo. 1991); People v. Smith, 828 P.2d 249 (Colo. 1992); People v. Driscoll, 830 P.2d 1019 (Colo. 1992); People v. Regan, 831 P.2d 893 (Colo. 1992); People v. Denton, 839 P.2d 6 (Colo. 1992). People v. Smith, 880 P.2d 763 (Colo. 1994); People v. Banman, 901 P.2d 469 (Colo. 1995); People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Dickinson, 903 P.2d 1132 (Colo. 1995); People v. Davis, 911 P.2d 45 (Colo. 1996).

Conduct violating this rule sufficient to justify suspension. People v. Vernon, 660 P.2d 879 (Colo. 1982); People v. Pilgrim, 698 P.2d 1322 (Colo. 1985); People v. Foster, 716 P.2d 1069 (Colo. 1986); People v. Coca, 716 P.2d 1073 (Colo. 1986); People v. Calvert, 721 P.2d 1189 (Colo. 1986); People v. Holmes, 731 P.2d 677 (Colo. 1987); People v. Geller, 753 P.2d 235 (Colo. 1988); People v. Griffin, 764 P.2d 1166 (Colo. 1988); People v. Goldberg, 770 P.2d 408 (Colo. 1989); People v. Goens, 770 P.2d 1218 (Colo. 1989); People v. Kaemingk, 770 P.2d 1247, (Colo. 1989); People v. McGrath, 780 P.2d 492 (Colo. 1989).

Derelictions in fiduciary duties by an attorney which go beyond mere negligence warrant disbarment. People v. Roads, 1 80 Colo. 192, 503 P.2d 1024 (1972).

Attorney failed to deliver property of a client in violation of this rule by ignoring requests for client's files made by

the client, the client's attorney, and the grievance committee. People v. Felker, 770 P.2d 402 (Colo. 1989).

Refusal to provide accounting for money and jewelry delivered to him and refusal to itemize the services performed and the costs incurred warrant disbarment. People v. Lanza, 660 P.2d 881 (Colo. 1983).

Commingling and appropriation of funds warrants disbarment. When a lawyer collects $3000 on behalf of a client in connection with a sale of real estate and commingles it with his other trust funds and unlawfully converts it to his own use, his flagrant disregard of his professional obligation warrants disbarment. People v. McMichael, 199 Colo. 433, 609 P.2d 633 (1980).

Where a practicing attorney breached fiduciary duties to his client in misrepresenting his dealings and in handling of funds given to him in trust, his conduct warranted disbarment, and, before he may seek readmittance to the state bar association, he must first demonstrate to the grievance committee that rehabilitation has occurred and that he is entitled to a new start. People ex rel. Buckley v. Beck, 199 Colo. 482, 610 P.2d 1069 (1980).

Commingling a client's funds with those of the lawyer is a serious violation of the Code of Professional Responsibility, even in the absence of an actual loss to the client, because the act of commingling subjects the client's funds to the claims of the lawyer's creditors. People v. McGrath, 780 P.2d 492 (Colo. 1989).

Misappropriation of funds, failure to account, and deceit and fraud in handling the affairs of a client necessitate that an attorney be disbarred. People v. Bealmear, 655 P.2d 402 (Colo. 1982); People v. Costello, 781 P.2d 85 (Colo. 1989).

Conduct which causes a client serious or potentially serious injury and demonstrates a complete lack of concern for a client's interests and welfare warrants disbarment. People v. Lyons, 762 P.2d 143 (Colo. 1988).

Alcoholism not excuse. Efforts at alcoholism rehabilitation do not excuse conduct which includes dishonesty and fraud, failing to preserve identity of client funds, and failing to properly pay or deliver client funds, and which otherwise warrants disbarment. People v. Shafer, 765 P.2d 1025 (Colo. 1988).

Total disregard of obligation to protect a client's rights and interests over an extended period of time in conjunction with the violation of a number of disciplinary rules and an extended prior record of discipline requires most severe sanction of disbarment. People v. O'Leary, 783 P.2d 843 (Colo. 1989).

Disbarment was appropriate where attorney removed $5,000 from a client's trust account, refused to return money upon several request by the client which ultimately resulted in a suit against the attorney, and the attorney lied about the transaction to the attorney with whom he shared office space. Factors in aggravation included a history of prior discipline, including suspension for conversion of client funds, the dishonest motive of the attorney in removing and not returning the client's funds, the attorney's refusal to acknowledge the wrongful nature of his conduct, the vulnerability of the client, and the attorney's legal experience. Mitigating factors were insufficient for disciplinary action short of disbarment. People v. McGrath, 833 P.2d 731 (Colo. 1992).

Disbarment is appropriate sanction where attorney knowingly converts client property and causes injury or potential injury to a client. People v. Bowman, 887 P.2d 18 (Colo. 1994); People v. Varallo, 913 P.2d 1 (Colo. 1996).

Rule is violated when attorney "knowingly" converts client funds; there is no requirement that the attorney intend to permanently deprive the client of the funds. People v. Varallo, 913 P.2d 1 (Colo. 1996).

Disbarment was appropriate where attorney converted $25,000 of client funds on seven different occasions over a period of four months and did not restore any of the missing funds until after he was detected. People v. Robbins, 869 P.2d 517 (Colo. 1994).

Disbarment was appropriate where the balance of the respondent's trust accounts fell below the amount necessary to pay settlements on at least 45 occasions and where the respondent withdrew attorney fees on at least 68 occasions from trust accounts before receiving the funds from which the fees were to be taken. People v. Lefly, 902 P.2d 361 (Colo. 1995).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Nichols, 796 P.2d 966 (Colo. 1990); People v. Broadhurst, 803 P.2d 478 (Colo. 1990); People v. Rhodes, 814 P.2d 787 (Colo. 1991); People v. Vermillion, 814 P.2d 795 (Colo. 1991); People v. Ashley, 817 P.2d 965 (Colo. 1991); People v. Rouse, 817 P.2d 967 (Colo. 1991); People v. Whitcomb, 819 P.2d 493 (Colo. 1991); People v. Margolin, 820 P.2d 347 (Colo. 1991); People v. Bradley, 825 P.2d 475 (Colo. 1992); People v. Mullison, 829 P.2d 382 (Colo. 1992); People v. Tanquary, 831 P.2d 889 (Colo. 1992); People v. McGrath, 833 P.2d 731 (Colo. 1992); People v. Brown, 840 P.2d 348 (Colo. 1992); People v. Walsh, 880 P.2d 766 (Colo. 1994); People v. Varallo, 913 P.2d 1 (Colo. 1996); People v. Coyne, 913 P.2d 12 (Colo. 1996); People v. Jamrozek, 921 P.2d 725 (Colo. 1996).

Conduct violating this rule sufficient to justify disbarment. People v. Kendrick, 646 P.2d 337 (Colo. 1982); People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Golden, 654 P.2d 853 (Colo. 1982); People v. Fitzke, 716 P.2d 1065 (Colo. 1986); People v. Quick, 716 P.2d 1082 (Colo. 1986); People v. Yost, 729 P.2d 348 (Colo. 1986); People v. James, 731 P.2d 698 (Colo. 1987); People v. Coca, 732 P.2d 640 (Colo. 1987); People v. Foster, 733 P.2d 687 (Colo. 1987); People v. Quintana, 752 P.2d 1059 (Colo. 1988); People v. Kengle, 772 P.2d 605 (Colo. 1989); People v. Frank, 782 P.2d 769 (Colo. 1989); People v. Dulaney, 785 P.2d 1302 (Colo. 1990); People v. Franks, 791 P.2d 1 (Colo. 1990); People v. Mulligan, 817 P.2d 1028 (Colo. 1991); People v. Young, 864 P.2d 563 (Colo. 1993).

Failure to transfer file to new attorney after repeated requests constitutes a violation of this rule. People v. Hebenstreit, 764 P.2d 51 (Colo. 1988).

Conduct held to violate this rule. People v. Goss, 646 P.2d 334 (Colo. 1982).

Applied in People v. Spiegel, 193 Colo. 161, 567 P.2d 353 (1977); People v. Good, 195 Colo. 177, 576 P.2d 1020 (1978); People v. Pacheco, 198 Colo. 455, 608 P.2d 333 (1979); People v. Belfor, 200 Colo. 44, 611 P.2d 979 (1980); People ex rel. Silverman v. Anderson, 200 Colo. 76, 612 P.2d 94 (1980); People v. Lanza, 200 Colo. 241, 613 P.2d 337 (1980); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People v. Davis, 620 P.2d 725 (Colo. 1980); People v. Dutton, 629 P.2d 103 (Colo. 1981); People v. Moore, 681 P.2d 480 (Colo. 1984); People v. Underhill, 683

P.2d 349 (Colo. 1984); People v. Franco, 698 P.2d 230 (Colo. 1985); People v. Blanck, 700 P.2d 560 (Colo. 1985); People v. Turner, 746 P.2d 49 (Colo. 1987).

Rule 1.5. Fees.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(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.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is otherwise prohibited. A contingent fee agreement shall meet all of the requirements of Chapter 23.3 of the Colorado Rules of

Civil Procedure, "Rules Governing Contingent Fees."

(d) Other than in connection with the sale of a law practice pursuant to Rule 1.17, a division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the basis upon which the division of fees shall be made, and the client's agreement is confirmed in writing; and

(3) the total fee is reasonable.

(e) Referral fees are prohibited.

(f) Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.15B(a)(1) until earned. If advances of unearned fees are in the form of property other than funds, then the lawyer shall hold such property separate from the lawyer's own property pursuant to Rule 1.15A(a).

(g) Nonrefundable fees and nonrefundable retainers are prohibited. Any agreement that purports to restrict a client's right to terminate the representation, or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees, is prohibited.

Cite as RPC 1.5

History. (b) and Comment amended April 20, 2000, effective July 1, 2000; (d) amended and adopted April 18, 2001, effective July 1, 2001; entire rule and Comment amended and adopted May 30, 2002, effective July 1, 2002; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [7] amended and effective November 6, 2008; (b) amended and Comment [3A] repealed March 10, 2011, effective July 1, 2011; (f) amended effective April 6, 2016.

Note:

COMMENT Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, the basis or rate of the fee must be promptly communicated in writing to the client. When the lawyer has regularly represented a client, they ordinarily will have reached an understanding concerning the basis or rate of the fee; but, when there has been a change from their previous understanding, the basis or rate of the fee should be promptly communicated in writing. All contingent fee arrangements must be in writing, regardless of whether the client-lawyer relationship is new or established. See C.R.C.P., Ch. 23.3, Rule 1. A written communication must disclose the basis or rate of the lawyer's fees, but it need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. Moreover, it is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, to identify the factors that may be take into account in finally fixing the fee, or to furnish the client with a simple memorandum or the lawyer's customary fee schedule. When developments occur during the representation that render an earlier disclosure substantially inaccurate, a revised written disclosure should be provided to the client.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

[3A] Repealed.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[6] [No Colorado comment.]

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (d) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should refer a matter only to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (d) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Advances of Unearned Fees and Engagement Retainer Fees

[10] The analysis of when a lawyer may treat advances of unearned fees as property of the lawyer must begin with the principle that the lawyer must hold in trust all fees paid by the client until there is a basis on which to conclude that the lawyer has earned the fee; otherwise the funds must remain in the lawyer's trust account because they are not the lawyer's property.

[11] To make a determination of when an advance fee is earned, the written statement of the basis or rate of the fee, when required by Rule 1.5(b), should include a description of the benefit or service that justifies the lawyer's earning the fee, the amount of the advance unearned fee, as well as a statement describing when the fee is earned. Whether a lawyer has conferred a sufficient benefit to earn a portion of the advance fee will depend on the circumstances of the particular case. The circumstances under which a fee is earned should be evaluated under an objective standard of reasonableness. Rule 1.5(a).

Rule 1.5(f) Does Not Prohibit Lump-sum Fees or Flat Fees

[12] Advances of unearned fees, including "lump-sum" fees and "flat fees," are those funds the client pays for specified legal services that the lawyer has agreed to perform in the future. Pursuant to Rule 1.15, the lawyer must deposit an advance of unearned fees in the lawyer's trust account. The funds may be earned only as the lawyer performs specified legal services or confers benefits on the client as provided for in the written statement of the basis of the fee, if a written statement is required by Rule 1.5(b). See also Restatement (Third) of the Law Governing Lawyers §§ 34, 38 (1998). Rule 1.5(f) does not prevent a lawyer from entering into these types of arrangements.

[13] For example, the lawyer and client may agree that portions of the advance of unearned fees are deemed earned at the lawyer's hourly rate and become the lawyer's property as and when the lawyer provides legal services.

[14] Alternatively, the lawyer and client may agree to an advance lump-sum or flat fee that will be earned in whole or in part based upon the lawyer's completion of specific tasks or the occurrence of specific events, regardless of the precise amount of the lawyer's time involved. For instance, in a criminal defense matter, a lawyer and client may agree that the lawyer earns portions of the advance lump-sum or flat fee upon the lawyer's entry of appearance, initial advisement, review of discovery, preliminary hearing, pretrial conference, disposition hearing, motions hearing, trial, and sentencing. Similarly, in a trusts and estates matter, a lawyer and client may agree that the lawyer earns portions of the lump-sum or flat fee upon client consultation, legal research, completing the initial draft of testamentary documents, further client consultation, and completing the final documents.

[15] The portions of the advance lump sum or flat fee earned as each such event occurs need not be in equal amounts. However, the fees attributed to each event should reflect a reasonable estimate of the proportionate value of the legal services the lawyer provides in completing each designated event to the anticipated legal services to be provided on the entire matter. See Rule 1.5(a); Feiger, Collison & Killmer v. Jones, 926 P.2d 1244, 1252-53 (Colo. 1996) (client's sophistication is relevant factor).

[16] "[A]n 'engagement retainer fee' is a fee paid, apart from any other compensation, to ensure that a lawyer will be available for the client if required. An engagement retainer must be distinguished from a lump-sum fee constituting the entire payment for a lawyer's service in a matter and from an advance payment from which fees will be subtracted (see § 38, Comment g). A fee is an engagement retainer only if the lawyer is to be additionally compensated for actual work, if any, performed." Restatement (Third) of the Law Governing Lawyers § 34 Comment e. An engagement retainer fee agreement must comply with Rule 1.5(a), (b), and (g), and should expressly include the amount of the engagement retainer fee, describe the service or benefit that justifies the lawyer's earning the engagement retainer fee, and state that the engagement retainer fee is earned upon receipt. As defined above, an engagement retainer fee 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.

[17] Because an engagement retainer fee is earned at the time it is received, it must not be commingled with client property. However, it may be subject to refund to the client in the event of changed circumstances.

[18] It is unethical for a lawyer to fail to return unearned fees, to charge an excessive fee, or to characterize any lawyer's fee as nonrefundable. Lawyer's fees are always subject to refund if either excessive or unearned. If all or

some portion of a lawyer's fee becomes subject to refund, then the amount to be refunded should be paid directly to the client if there is no further legal work to be performed or if the lawyer's employment is terminated. In the alternative, if there is an ongoing client-lawyer relationship and there is further work to be done, it may be deposited in the lawyer's trust account, to be withdrawn from the trust account as it is earned.

Case Notes:

ANNOTATION

Law reviews. For article, "Confirm Attorney Fees in Writing: Court Changes Colo. RPC 1.4, 1.5", see 29 Colo. Law. 27 (June 2000). For article, "Fee Agreements: Types, Provisions, Ethical Boundaries, and Other Considerations-Part I", see 31 Colo. Law. 35 (March 2002). For article, "Fee Agreements: Types, Provisions, Ethical Boundaries, and Other Considerations-Part II", see 31 Colo. Law. 35 (April 2002). For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (March 2004). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Non-Monetary Compensation for Legal Services How Many Chickens Am I Worth?", see 35 Colo. Law. 95 (January 2006). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "Midstream Fee and Expense Modifications Under the Colorado Ethics Rules", see 40 Colo. Law. 79 (August 2011). For article, "The Rules of Professional Conduct: An Equal Opportunity for Ethical Pitfalls", see 41 Colo. Law. 71 (October 2012).

Annotator's note. Rule 1.5 is similar to Rule 1.5 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Supreme court is exclusive tribunal for regulation of the practice of law, including reasonableness of fees, notwithstanding statutory provision allowing the director of the division of workers' compensation to determine reasonableness of fees in a workers' compensation case. In re Wimmershoff, 3 P.3d 417 (Colo. 2000).

Agreement for the division of fees between a firm and an attorney separating from the firm is valid and not against public policy. Where an attorney enters into a separation agreement with his or her firm upon departure and the agreement specifies the division of fees for clients continuing legal services with the departing attorney, the agreement is enforceable and does not implicate the policies behind this rule. Norton Frickey, P.C. v. James B. Turner, P.C., 94 P.3d 1266 (Colo. App. 2004).

Further, clients benefit from separation agreements between a departing attorney and the firm because the client is not charged additional fees as a result of the agreement, nor is the client deceived or misled. Norton Frickey, P.C. v. James B. Turner, P.C., 94 P.3d 1266 (Colo. App. 2004).

Charging client for costs of defending grievance proceeding violates DR 2-106(A) where charges are not unfounded and there is no prior agreement to pay such costs. People v. Brown, 840 P.2d 1085 (Colo. 1992).

Lawyer who billed client for the costs of defending a grievance violated this rule. There was no agreement between the attorney and the client to justify the billing, and the attorney's claim that the billing stemmed from the attorney's independent duty to protect the client was found by the grievance panel to be false. Therefore, the billing based on such a theory is deceptive and dishonest in violation of this rule. The appropriate sanction for the lawyer's conduct is public censure. People v. Brown, 840 P.2d 1085 (Colo. 1992).

Attorney's professional misconduct involving the improper collection of attorney's fees in six instances justified 45-day suspension. People v. Peters, 849 P.2d 51 (Colo. 1993).

Lawyer's bills proper under this rule when lawyer billed attorney and secretarial services separately. Newport Pac. Capital Co. v. Waste, 878 P.2d 136 (Colo. App. 1994).

Relief in the nature of mandamus may be appropriate when it is alleged that a sheriff or chief of police has refused to accept applications for concealed weapons permits from private investigators who are not current or retired law enforcement officers and the sheriff or police chief has thereby breached a statutory duty to conduct a background check on each applicant. Miller v. Collier, 878 P.2d 141 (Colo. App. 1994).

Public policy of protecting a client's right to control settlement will be better served by not treating a clause in a representation agreement that restricts the client's right to control settlement as severable from the provision for calculating fees. Where representation agreement provided alternate method of calculating the fees payable if the client unreasonably refused to settle, court refused to enforce either provision and allowed only reasonable value of services rendered by law firm. Jones v. Feiger, Collison & Killmer, 903 P.2d 27 (Colo. App. 1994), rev'd on other grounds, 926 P.2d 1244 (Colo. 1996).

Stipulated agreement and recommendation of public censure with certain conditions and monitoring based upon conditional admission of misconduct were warranted for attorney who required that his associates sign a covenant that allowed his firm to collect 75 to 100 percent of the total fee generated by a case in which his firm did less than all the work. People v. Wilson, 953 P.2d 1292 (Colo. 1998).

Public censure and restitution were appropriate in case of attorney who unilaterally charged client $1,000 in addition to previously agreed contingent fee. In re Wimmershoff, 3 P.3d 417 (Colo. 2000).

Conduct violating this rule in conjunction with other disciplinary rules, where mitigating factors were present, warrants public censure. People v. Davis, 950 P.2d 586 (Colo. 1998).

Conduct violating this rule sufficient to justify public censure. In re Green, 11 P.3d 1078 (Colo. 2000).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Hohertz, 926 P.2d 560 (Colo. 1996); People v. Sather, 936 P.2d 576 (Colo. 1997); People v. Kotarek, 941 P.2d 925 (Colo. 1997); People v. Johnson, 946 P.2d 469 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment.

People v. Jenks, 910 P.2d 688 (Colo. 1996); People v. Jamrozek, 921 P.2d 725 (Colo. 1996); People v. Sousa, 943 P.2d 448 (Colo. 1997); People v. Clyne, 945 P.2d 1386 (Colo. 1997); People v. Roybal, 949 P.2d 993 (Colo. 1997); People v. Valley, 960 P.2d 141 (Colo. 1998); People v. Tolentino, 285 P.3d 340 (Colo. O.P.D.J. 2012).

Cases Decided Under Former DR 2-103.

Law reviews. For article, "The Lawyer's Duty to Report Ethical Violations", see 18 Colo. Law. 1915 (1989). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

Attorney's conduct in paying inmates for referrals to attorney for the provision of legal services justifies 60-day suspension. People v. Shipp, 793 P.2d 574 (Colo. 1990).

Attorney's conduct in allowing company selling living trust packages to provide his name, exclusively, to customers upon sale, in conjunction with other violations and aggravating factors justifies six-month suspension. People v. Cassidy, 884 P.2d 309 (Colo. 1994).

Cases Decided Under Former DR 2-106.

Law reviews. For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Attorney's Fees", see 11 Colo. Law. 411 (1982). For article, "Providing Legal Services for the Poor: A Dilemma and an Opportunity", see 11 Colo. Law. 666 (1982). For article, "Reduced Malpractice and Augmented Competency: A Proposal", see 12 Colo. Law. 1444 (1983). For article, "Ethical Problem Areas for Probate Lawyers", see 19 Colo. Law. 1069 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Recovery of Attorney Fee by Lender Using In-House Counsel, see 20 Colo. Law. 697 (1991).

Where an attorney makes a uniform practice of imposing charges that exceed the statutory standards, such violates Canon 2. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

Attorney's charges for probate proceeding considered excessive on facts of case. People ex rel. Goldberg v. Gordon, 199 Colo. 296, 607 P.2d 995 (1980).

Attorney who assessed excessive legal fees and attempted to retain improperly charged fees, neglected clients' interests to their detriment, and made misrepresentations as to services actually performed on clients' cases was properly suspended for thirty days. Although attorney previously found to have engaged in professional misconduct, attorney suffered personal tragedy prior to misconduct and subsequently improved by engaging in activities beneficial to legal and professional community. People v. Brenner, 764 P.2d 1178 (Colo. 1988).

Where attorney enters into a fee arrangement basing his compensation directly on royalties his client might receive from oil and gas wells, it is clear that the arrangement is not intended as compensation for legal services

provided and therefore constitutes conduct violating this rule sufficient to justify suspension. People v. Nutt, 696 P.2d 242 (Colo. 1984).

Contingent fee agreement in a probate proceeding is not unconscionable or unreasonable where it was openly made and supported by adequate consideration. In re Estate of Reid, 680 P.2d 1305 (Colo. App. 1983).

Excessive fees are basis for indefinite suspension of attorney. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

Contract held not to violate prohibition against maintenance. Northland Ins. Co. v. Bashor, 177 Colo. 463, 494 P.2d 1292 (1972).

Evidence insufficient to establish excessive fee in violation of paragraph (A). People v. Lanza, 660 P.2d 881 (Colo. 1983).

Suspended or disbarred attorney does not lose right to assert a claim for fees earned prior to suspension or disbarment. Rutenbeck v. Grossenbach, 867 P.2d 36 (Colo. App. 1993).

Suspended attorney was entitled to collect one-third share of contingency fee under an agreement to divide the fee with two other attorneys where the agreement was based on a good faith division of services and responsibility at the time it was entered into. Rutenbeck v. Grossenbach, 867 P.2d 36 (Colo. App. 1993).

Public censure warranted where attorney kept the first lump sum check obtained in settlement as a lump sum payment of his contingency fee and reimbursement of costs even though he knew the settlement might later be reduced by the social security disability award and the client's union award. People v. Maceau, 910 P.2d 692 (Colo. 1996).

Suspension for one year and one day warranted where attorney billed for time that was not actually devoted to work contemplated by contract and for time not actually performed. People v. Shields, 905 P.2d 608 (Colo. 1995).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Schmad, 793 P.2d 1162 (Colo. 1990); People v. Sullivan, 802 P.2d 1091 (Colo. 1990); People v. Dunsmoor, 807 P.2d 561 (Colo. 1991); People v. Koeberle, 810 P.2d 1072 (Colo. 1991); People v. Kardokus, 881 P.2d 1202 (Colo. 1994); People v. Johnson, 881 P.2d 1205 (Colo. 1994); People v. Banman, 901 P.2d 469 (Colo. 1995); People v. Dickinson, 903 P.2d 1132 (Colo. 1995); People v. Mills, 923 P.2d 116 (Colo. 1996).

Conduct violating this rule sufficient to justify suspension. People v. Fleming, 716 P.2d 1090 (Colo. 1986).

Conduct violating this rule sufficient to justify disbarment. People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Golden, 654 P.2d 853 (Colo. 1982); People v. Franks, 791 P.2d 1 (Colo. 1990); In re Bilderback, 971 P.2d 1061 (Colo. 1999).

Applied in Hartman v. Freedman, 197 Colo. 275, 591 P.2d 1318 (1979); People v. Meldahl, 200 Colo. 332, 615 P.2d

29 (1980); People ex rel. Cortez v. Calvert, 200 Colo. 157, 617 P.2d 797 (1980); Mau v. E.P.H. Corp., 638 P.2d 777 (Colo. 1981); Heller v. First Nat'l Bank, 657 P.2d 992 (Colo. App. 1982); People v. Franco, 698 P.2d 230 (Colo. 1985); People v. Coca, 732 P.2d 640 (Colo. 1987).

Rule 1.6. Confidentiality of Information.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.6. Confidentiality of Information

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

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

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

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

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

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

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

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

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

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

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

Cite as RPC 1.6

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [16], [17], and [18] added and effective November 6, 2008; (b) amended and (c) added effective April 6, 2016.

Note:

COMMENT

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

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

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

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

Authorized Disclosure

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

Disclosure Adverse to Client

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

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

[7] Paragraph (b)(3) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(3) does not require the

lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

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

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

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

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

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

make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

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

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

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. For purposes of paragraph (b)(8), a subpoena is a court order. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(8) permits the lawyer to comply with the court's order.

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

[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should

be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

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

[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b) (1) through (b)(7). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule.

Reasonable Measures to Preserve Confidentiality

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

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

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

Former Client

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

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on Ethical Duties of Attorney Selected by Insurer to Represent Its Insured, see 22 Colo. Law. 497 (1993). For article, "The Maverick Council Member: Protecting Privileged Attorney-Client Communications from Disclosure", see 23 Colo. Law. 63 (1994). For article, "Ethical Considerations and Client Identity", see 30 Colo. Law. 51 (April 2001). For article, "Preservation of the Attorney-Client Privilege: Using Agents and Intermediaries to Obtain Legal Advice", see 30 Colo. Law. 51 (May 2001). For article, "Policing the Legal System: The Duty to Report Misconduct", see 30 Colo. Law. 85 (September 2001). For article, "Am I My Brother's Keeper? Redefining the Attorney-Client Relationship", see 32 Colo. Law. 11 (April 2003). For article, "Metadata: Hidden Information Microsoft Word Documents Its Ethical Implications", see 33 Colo. Law. 53 (October 2004). For article, "Representation of Multiple Estate Or Trust Fiduciaries: Practical and Ethical Issues", see 34 Colo. Law. 65 (July 2005). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (October 2005). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "The Duty of Confidentiality: Legal Ethics and the Attorney-Client and Work Product Privileges", see 38 Colo. Law. 35 (January 2009). For article, "Attorney-Client Communications in Colorado", see 38 Colo. Law. 59 (April 2009). For article, "Repugnant Objectives", see 41 Colo. Law. 51 (December 2012).

Annotator's note. Rule 1.6 is similar to Rule 1.6 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this

rule.

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

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

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

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

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

Cases Decided Under Former DR 4-101.

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

(1990). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990). For article, "Sex, Lawyers and Vilification", see 21 Colo. Law. 469 (1992). For formal opinion of the Colorado Bar Association Ethics Committee on Preservation of Client Confidences in View of Modern Communications Technology, see 22 Colo. Law. 21 (1993).

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

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

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

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

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

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

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

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

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

Disbarment warranted where attorney filed false pleadings and disciplinary complaints, disclosed information concerning the filing of disciplinary complaints, offered to withdraw a disciplinary complaint filed against a judge in

exchange for a favorable ruling, failed to serve copies of pleadings on opposing counsel, revealed client confidences and material considered derogatory and harmful to the client, aggravated by a repeated failure to cooperate with the investigation of misconduct, disruption of disciplinary proceedings, and a record of prior discipline. People v. Bannister 814 P.2d 801 (Colo. 1991).

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

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

Rule 1.7. Conflict of Interest: Current Clients.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.7. Conflict of Interest: Current Clients

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

(1) the representation of one client will be directly adverse to another client; or

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

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Cite as RPC 1.7

History. Committee comment amended October 17, 1996, effective January 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order

to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c). Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director. Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning

possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage or when there is a cohabiting relationship between the lawyers, there may be a significant risk that client confidences will be revealed and that the lawyer's family or cohabiting relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse (or in a cohabiting relationship with another lawyer,) ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship or a cohabiting relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j). Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation. Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by

applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1). Informed Consent

[18] 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. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests. Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing. Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer

from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result. Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b). Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit,

unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter. Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them. Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16. Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles might conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility

of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on Ethical Duties of Attorney Selected by Insurer to Represent Its Insured, see 22 Colo. Law. 497 (1993). For article, "Representation of Multiple Estate Or Trust Fiduciaries: Practical and Ethical Issues", see 34 Colo. Law. 65 (July 2005). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (October 2005). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "Engagement Letters and Common Conflicts of Interest in Joint Representation", see 38 Colo. Law. 43 (February 2009). For article, "Climate Change and Positional Conflicts of Interest", see 40 Colo. Law. 43 (October 2011). For article, "Repugnant Objectives", see 41 Colo. Law. 51 (December 2012).

Annotator's note. Rule 1.7 is similar to Rule 1.7 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Where there is a large group of clients who are not recognized as a single legal entity, an attorney has an attorney-client relationship with each individual member of the group. Abbott v. Kidder Peabody & Co., Inc., 42 F. Supp. 2d 1046 (D. Colo. 1999).

Representation agreement that gives counsel the ability to negotiate settlement for each member of a large group of clients without providing him or her with personalized advisement and without obtaining individual authority to enter into a settlement agreement violates the professional and ethical standards created to regulate the legal profession in Colorado. Abbott v. Kidder Peabody & Co., Inc., 42 F. Supp. 2d 1046 (D. Colo. 1999).

Any provision of an attorney-client agreement that deprives a client of a right to control his or her case is void as against public policy. Abbott v. Kidder Peabody & Co., Inc., 42 F. Supp. 2d 1046 (D. Colo. 1999).

Valid client consent to waive the potential conflict of interest cannot be obtained under the circumstances. Abbott v. Kidder Peabody & Co., Inc., 42 F. Supp. 2d 1046 (D. Colo. 1999).

Where counsel simultaneously represented company's interests as well as those of company's employees for a substantial period of time and the representation continued through the emergence of conflicts, counsel could continue to represent company because the company and the former clients, the employees, through counsel, consented to such representation after consultation and there was an indication that counsel reasonably believed that the continued representation would not adversely affect the relationship with the former clients. Gates Rubber Co. v. Bando Chem. Indus., Ltd., 855 F. Supp. 330 (D. Colo. 1994).

A defendant may waive the right to conflict-free counsel. The waiver is valid when: (1) The defendant is aware of the conflict and its likely effect on the attorney's ability to render effective assistance; and (2) the waiver is voluntary, knowing, and intelligent. A waiver is voluntary, knowing, and intelligent when the defendant is aware of and understands the various risks, has the capacity to make a decision on the basis of this information, and states unequivocally a desire to hazard those dangers. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

A waiver is not knowing and intelligent where a defendant gives merely pro forma answers to pro forma questions. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

Defendant does not have an absolute right to revoke waiver of conflict-free counsel at any time, but is subject to the same limitations as any defendant terminating counsel. The court may refuse to revoke an untimely waiver or to grant a revocation that is filed for improper purposes based upon evidence presented at the time of attempted revocation. People v. Maestas, 199 P.3d 713 (Colo. 2009).

Attorney violated paragraph (a) by simultaneously representing both a borrower and the purported lenders to a proposed transaction that he attempted to persuade both parties to enter into. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Lawyer violated section (b) when his representation of a client was materially limited by his responsibilities to another client. He represented loan documents to be investment agreements to circumvent a provision in the Colorado Liquor Code that restricts the cross-ownership of businesses holding liquor licenses. In re Lopez, 980 P.2d 983 (Colo. 1999).

Public censure was appropriate for attorney who violated this rule by simultaneously representing, as defendants in a quantum meruit and lis pendens suit initiated by a subcontractor, the homeowners, the general contractor, the bank holding deed of trust on homeowners property, and two other parties who had contracted with contractor. Balancing the seriousness of the misconduct with the factors in mitigation, and taking into account the respondent's mental state when he entered into the conflicts in representation, public censure is appropriate. People v. Fritze, 926 P.2d 574 (Colo. 1996).

Public censure warranted for attorney's solicitation of prostitution during telephone conversation with wife of client whom he was representing in a dissolution of marriage proceeding. People v. Bauder, 941 P.2d 282 (Colo. 1997).

Critical inquiry when representation of one client may be limited by representation of another is whether a

conflict is likely to arise, and, if so, whether it materially interferes with the lawyer's independent professional judgment. People in Interest of J.A.M., 907 P.2d 725 (Colo. App. 1995).

Actual conflict existed where criminal charges were pending against defense counsel in the same district in which his client was being prosecuted. People v. Edebohls, 944 P.2d 552 (Colo. App. 1996).

Attorney's representation of criminal defendant for whom attorney negotiated a plea bargain for testifying against another criminal defendant prohibited attorney from also representing the other criminal defendant where such other defendant did not consent to conflict-free counsel. People ex rel. Peters v. District Court, 951 P.2d 926 (Colo. 1998).

Attorney who was the trustee of client's trust violated section (b) by utilizing the trust's funds to loan money to his daughter and to purchase his son-in-law's parents' former residence for the purpose of leasing it back to them, and by then failing to take any legal action against them when they did not make lease payments. People v. DeRose, 945 P.2d 412 (Colo. 1997).

Preparation of an extension agreement on the repayment of a loan made to a client by the attorney violated section (b) because certain exceptions were not satisfied. People v. Ginsberg, 967 P.2d 151 (Colo. 1998).

Thirty-day suspension warranted where lawyer, who represented an individual accused of first-degree murder, communicated with co-defendant who also was charged with first-degree murder and whose interests were adverse to the lawyer's client, without the knowledge or consent of the co-defendant's lawyers. The potential for harm was high in a first-degree murder case and the number of unauthorized contacts demonstrated more than negligence on the lawyer's part. People v. DeLoach, 944 P.2d 522 (Colo. 1997).

Suspension for three years was appropriate in case involving violation of this rule and others, together with attorney's breach of his duty as client's trustee to protect his client, who was a particularly vulnerable victim that was recuperating from a serious head injury. People v. DeRose, 945 P.2d 412 (Colo. 1997).

Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. Attorney's ability to represent his client in a bankruptcy was materially limited by his own interest as a creditor in collecting attorney fees. People v. Henderson, 967 P.2d 1038 (Colo. 1998).

The presumed sanction of suspension is appropriate where the attorney knew of a conflict of interest and did not fully disclose to a client the possible effect of that conflict even though such action caused no actual harm. In re Cimino, 3 P.3d 398 (Colo. 2000).

Whether an attorney expects to be paid or not is insignificant to the issue of whether an attorney-client relationship existed. In re Cimino, 3 P.3d 398 (Colo. 2000).

The hearing panel of the former grievance committee committed harmless error by failing to consider the personal and emotional problems that an attorney was experiencing at the time of the attorney's misconduct as mitigating in determining sanctions because no medical or psychological proof of emotional problems was brought forward. In re Cimino, 3 P.3d 398 (Colo. 2000).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Robinson, 853 P.2d 1145 (Colo. 1993); People v. Good, 893 P.2d 101 (Colo. 1995); People v. Silver, 924 P.2d 159 (Colo. 1996); People v. Mason, 938 P.2d 133 (Colo. 1997); People v. Reed, 955 P.2d 65 (Colo. 1998); In re Tolley, 975 P.2d 1115 (Colo. 1999); People v. Beecher, 224 P.3d 442 (Colo. O.P.D.J. 2009); People v. Albani, 276 P.3d 64 (Colo. O.P.D.J. 2011).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Bennett, 843 P.2d 1385 (Colo. 1993); In re Lopez, 980 P.2d 983 (Colo. 1999); People v. Sweetman, 218 P.3d 1123 (Colo. O.P.D.J. 2008); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Cases Decided Under Former DR 5-101.

Law reviews. For article, "The Conflicted Attorney", see 11 Colo. Law. 2589 (1982). For article, "The Ethics of Moving for Disqualification of Opposing Counsel", see 13 Colo. Law. 55 (1984). For article, "Why Shouldn't an Attorney Go Into Business With a Client?", see 13 Colo. Law. 431 (1984). For article, "Avoiding Family Law Malpractice: Recognition and Prevention -- Part I", see 14 Colo. 787 (1985). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For article, "Defending the Federal Drug or Racketeering Charge", see 16 Colo. Law. 605 (1987). For article, "Sex, Lawyers and Vilification", see 21 Colo. Law. 469 (1992).

License to practice law assures public that the lawyer who holds the license will perform basic legal tasks honestly and without undue delay, in accordance with the highest standards of professional conduct. People v. Dixon, 621 P.2d 322 (Colo. 1981).

Public expects appropriate discipline for misconduct. The public has a right to expect that one who engages in professional misconduct will be disciplined appropriately. People v. Dixon, 621 P.2d 322 (Colo. 1981).

A lawyer, by preparing 95 to 99 percent of the pleadings, continues to represent a client even though he has other attorneys sign the pleadings. People v. Garnett, 725 P.2d 1149 (Colo. 1986).

Public censure warranted where attorney engaged in sexual relations with client attorney represented in dissolution of marriage action even though client suffered no actual harm. People v. Zeilinger, 814 P.2d 808 (Colo. 1991).

By investing trust funds in a venture in which the attorney was involved financially and professionally, he allowed his personal interests to affect the exercise of his professional judgment on behalf of his client in violation of DR 5-101(A), justifying suspension from practice. People v. Wright, 698 P.2d 1317 (Colo. 1985).

Theft of client's money, misrepresentations, representation of multiple clients with adverse interests, and failure to respond to informal complaints warrants disbarment. People v. Quick, 716 P.2d 1082 (Colo. 1986).

Conduct found to violate disciplinary rules. People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982).

Representing client without full disclosure of potential conflict of interest violates disciplinary rule. People v. Watson, 787 P.2d 151 (Colo. 1990).

No violation of paragraph (A). Although disclosure was inadequate as to the nature of the business relationships between the attorney and his business-partner client, record does not support conclusion that attorney's business relationship with individual client would or reasonably might affect his professional judgment with respect to his representation of that client. In re Quiat, 979 P.2d 1029 (Colo. 1999).

Violation of paragraph (B) where attorney knew, when he accepted employment in connection with his client's bankruptcy, that he could be a witness by virtue of his interests in the general and limited partnerships that were assets of the bankruptcy estate, and by his failure to transfer the partnership interests to his client's children prior to the filing of the bankruptcy. In re Quiat, 979 P.2d 1029 (Colo. 1999).

Representation of client when the exercise of the lawyer's professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests violates disciplinary rule. People v. Ginsberg, 967 P.2d 151 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Stevens, 883 P.2d 21 (Colo. 1994); People v. Wollrab, 909 P.2d 1093 (Colo. 1996); People v. O'Donnell, 955 P.2d 53 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Schmad, 793 P.2d 1162 (Colo. 1990); People v. Lopez, 796 P.2d 957 (Colo. 1990); People v. Watson, 833 P.2d 50 (Colo. 1992); People v. Boyer, 934 P.2d 1361 (Colo. 1997); In re Quiat, 979 P.2d 1029 (Colo. 1999); In re Cohen, 8 P.3d 429 (Colo. 1999).

Conduct violating this rule sufficient to justify suspension. People v. Vernon, 660 P.2d 879 (Colo. 1982); People v. Stineman, 716 P.2d 1079 (Colo. 1986).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. McGrath, 833 P.2d 731 (Colo. 1992).

Conduct violating this rule sufficient to justify disbarment. People v. McGrath, 833 P.2d 731 (Colo. 1992).

Applied in People v. Spiegel, 193 Colo. 161, 567 P.2d 353 (1977); Jones v. District Court, 617 P.2d 803 (Colo. 1980); McCall v. District Court, 783 P.2d 1223 (1989).

Cases Decided Under Former DR 5-102.

Law reviews. For article, "Prior Representation: The Specter of Disqualification of Trial Counsel", see 11 Colo. Law. 1214 (1982). For article, "The Ethics of Moving for Disqualification of Opposing Counsel", see 13 Colo. Law. 55 (1984). For article, "Defending the Federal Drug or Racketeering Charge", see 16 Colo. Law. 605 (1987). For article, "Ethical Problem Areas for Probate Lawyers", see 19 Colo. Law. 1069 (1990).

A lawyer cannot act as an advocate on behalf of his client and yet give testimony adverse to the interests of that client in the same proceeding. Riley v. District Court, 1 81 Colo. 90, 507 P.2d 464 (1973).

Prosecution subpoena of accused's attorney may stand. A prosecutorial subpoena served on a criminal defendant's attorney can withstand a motion to quash only if the prosecution shows the following: (1) Defense counsel's testimony will be actually adverse to the accused; (2) the evidence will likely be admissible at trial; and (3) there is a compelling need for the evidence which cannot be satisfied from another source. Williams v. District Court, 700 P.2d 549 (Colo. 1985).

The act of subpoenaing defense counsel is itself the functional equivalent of a motion to disqualify. Williams v. District Court, 700 P.2d 549 (Colo. 1985).

Test applied in Rodriquez v. District Court, 719 P.2d 699 (Colo. 1986).

Paragraph (A) of this rule relates to potential testimony of a lawyer during the trial of a matter for which he is presently employed. People v. Rubanowitz, 688 P.2d 231 (Colo. 1984).

When deputy district attorney was endorsed as witness for prosecution, disqualification of deputy district attorney was proper, and disqualification of entire staff of county district attorney's office, under the circumstances, was not an abuse of discretion. People v. Garcia, 698 P.2d 801 (Colo. 1985).

Dismissal of charge is not an appropriate remedy. People v. Garcia, 698 P.2d 801 (Colo. 1985).

Motion to disqualify must set forth specific facts which point to a clear danger that either prejudices counsel's client or his adversary. People ex rel. Woodard v. District Court, 704 P.2d 851 (Colo. 1985).

Paragraph (B) does not provide a tool for disqualifying counsel by the mere stratagem of suggesting that opposing counsel may be called as a witness during the trial. People ex rel. Woodard v. District Court, 704 P.2d 851 (Colo. 1985).

Although the Code mandates that an attorney withdraw on the attorney's own initiative if the attorney violates paragraph (B), there are no provisions in this rule for the trial court to disqualify attorneys and this rule does not require a new trial if the attorney does not withdraw. Although plaintiff's attorneys testified for the defendant, the court found that plaintiff was bound by his counsel's decision not to withdraw and refused to grant plaintiff a new trial. Taylor v. Grogan, 900 P.2d 60 (Colo. 1995).

Applied in Jones v. District Court, 617 P.2d 803 (Colo. 1980); Fed. Deposit Ins. v. Isham, 782 F. Supp. 524 (D. Colo. 1992).

Cases Decided Under Former DR 5-104.

Law reviews. For article, "Why Shouldn't an Attorney Go Into Business With a Client?", see 13 Colo. Law. 431 (1984). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part I", see 19 Colo. Law. 465 (1990). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part II", see 19 Colo. Law. 647 (1990).

Attorney, with power to act as trustee, who obtains a loan from the trust through the actual trustee, but does not disclose conflict and does not discuss security for the loan with the actual trustee, violates this section. People v. Tanquary, 831 P.2d 889 (Colo. 1992).

Public censure appropriate for lawyer who failed to make full disclosure to client of their differing interests prior to obtaining her consent for a loan to the lawyer. People v. Potter, 966 P.2d 1061 (Colo. 1998).

An attorney's conduct in lending money to a client, preparing a promissory note with an excessive interest rate, and failing to fully disclose his differing interest in the business transaction constitutes conduct violating this rule. People v. Ginsberg, 967 P.2d 151 (Colo. 1998).

Exploiting a client's friendship and trust to extort funds for one's personal use is reprehensible conduct deserving of disbarment. People v. McMahill, 782 P.2d 336 (Colo. 1988).

Lawyer's encouragement of a client to enter into a business transaction with said lawyer in which the two had differing interests and lawyer's failure to disclose relevant facts warrant disbarment. People v. Martinez, 739 P.2d 838 (Colo. 1987), cert. denied, 484 U.S. 1054, 108 S. Ct. 1003, 98 L. Ed. 2d 970 (1988); People v. Score, 760 P.2d 1111 (Colo. 1988).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Lopez, 796 P.2d 957 (Colo. 1990); People v. Schubert, 799 P.2d 388 (Colo. 1990); People v. Sigley, 917 P.2d 1253 (Colo. 1996).

Conduct violating this rule sufficient to justify suspension. People v. Vernon, 660 P.2d 879 (Colo. 1982); People v. Foster, 716 P.2d 1069 (Colo. 1986).

An attorney's conduct in borrowing money from his former clients and in failing to record deeds of trust on their behalf to be used as security constitutes professional misconduct and justifies his suspension. People v. Brackett, 667 P.2d 1357 (Colo. 1983).

An attorney's failure to disclose to his clients that he was a lender and holder of a long-term mortgage on their property and that his interests in the transaction were necessarily adverse to their interests constitutes conduct violating this rule sufficient to justify suspension. People v. Nutt, 696 P.2d 242 (Colo. 1984).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Broadhurst, 803 P.2d 478 (Colo. 1990); People v. Rouse, 817 P.2d 967 (Colo. 1991); People v. Mulligan, 817 P.2d 1028 (Colo. 1991); People v. Tanquary, 831 P.2d 889 (Colo. 1992).

Conduct violating this rule sufficient to justify disbarment. People v. Quick, 716 P.2d 1082 (Colo. 1986); People v. Foster, 733 P.2d 687 (Colo. 1987); People v. Score, 760 P.2d 1111 (Colo. 1988).

Conduct found to violate disciplinary rules. People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982); People v. Bennett, 810 P.2d 661 (Colo. 1991); People v. McKie, 900 P.2d 768 (Colo. 1995).

Applied in People v. Good, 195 Colo. 177, 576 P.2d 1020 (1978); People v. Cameron, 197 Colo. 330, 595 P.2d 677 (1979); People v. Luxford, 626 P.2d 675 (Colo. 1981); People v. Barbour, 639 P.2d 1065 (Colo. 1982); People v. Underhill, 683 P.2d 349 (Colo. 1984); People v. Stineman, 716 P.2d 1079 (Colo. 1986).

Cases Decided Under Former DR 5-105.

Law reviews. For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Prior Representation: The Specter of Disqualification of Trial Counsel", see 11 Colo. Law. 1214 (1982). For article, "The Conflicted Attorney", see 11 Colo. Law. 2589 (1982). For article, "Some Comments on Conflicts of Interest and the Corporate Lawyer", see 12 Colo. Law. 60 (1983). For article, "The Professional Liability Insurer's Duty to Defend -- Part II", see 15 Colo. Law. 1029 (1986). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For article, "Conflict of Interest Systems", see 16 Colo. Law 628 (1987). For article, "Corporate Fiduciary Surcharge Litigation", see 16 Colo. Law. 983 (1987). For article, "Ethics and the Estate Planning Lawyer", see 17 Colo. Law. 241 (1988). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part I", see 19 Colo. Law. 465 (1990). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part II", see 19 Colo. Law. 647 (1990). For article, "Ethical Problem Areas for Probate Lawyers", see 19 Colo. Law. 1069 (1990).

Intent of rule is to guarantee the independence of counsel from the conflicting interests of other clients in order to preserve the integrity of the attorney's adversary role. Allen v. District Court, 184 Colo. 202, 519 P.2d 351 (1974).

Genuine conflicts of interest must be scrupulously avoided. Allen v. District Court, 184 Colo. 202, 519 P.2d 351 (1974); McCall v. District Court, 783 P.2d 1223 (Colo. 1989).

It is of the utmost importance that an attorney's loyalty to his client not be diminished, fettered, or threatened in any manner by his loyalty to another client. Allen v. District Court, 184 Colo. 202, 519 P.2d 351 (1974); Watson v. District Court, 199 Colo. 76, 604 P.2d 1165 (1980).

Conflict arises where parties would be opposed in subsequent contribution action. Where litigants in a negligence action are represented by the same attorneys, a conflict of interest arises if the plaintiff are considered opposing parties in the same action for purposes of a subsequent contribution action, because both parties would

want to place a higher degree of fault on the other party. Nat'l Farmers Union Prop. & Gas. Co. v. Frackelton, 662 P.2d 1056 (Colo. 1983).

Whenever a motion to withdraw is filed on the grounds that a conflict of interest may exist or may arise in the future, the trial judge must conduct a hearing to determine if a conflict of interest, or a potential conflict of interest, requires that counsel withdraw, and if, from the facts presented at the hearing, it appears that a substantial conflict of interest exists, or will in all probability arise in the course of counsel's representation, the motion to withdraw should be granted. Allen v. District Court, 184 Colo. 202, 519 P.2d 351 (1974); McCall v. District Court, 783 P.2d 1223 (Colo. 1989).

Consent of all parties may be insufficient. There are certain factual situations where the conflicts of interests between parties are so critically adverse to one another so as not to permit the representation of multiple parties by an attorney, even with the consent of all parties made after full disclosure. In re King Res. Co., 20 Bankr. 191 (Bankr. D. Colo. 1982).

Attorney should evaluate potential for impropriety. The attorney should not only inform the parties of the former representations, but should evaluate for himself, as well as for his client, any potential for impropriety that might arise. In re King Res. Co., 20 Bankr. 191 (Bankr. D. Colo. 1982); People v. Belina, 765 P.2d 121 (Colo. 1988).

It must be "obvious" that attorney can adequately represent clients. The general rule that a lawyer may represent clients with potentially conflicting interests with the consent of the clients is qualified in that it must be "obvious" that he can adequately do so. In re King Res. Co., 20 Bankr. 191 (Bankr. D. Colo. 1982); People v. Chew, 830 P.2d 488 (Colo. 1992).

Attorney may represent individual officer of client corporation. When an individual director or officer of a corporation seeks representation from an attorney hired by the corporation, the attorney may serve the individual only if the lawyer is convinced that differing interests are not present. In re King Res. Co., 20 Bankr. 191 (Bankr. D. Colo. 1982).

Knowledge of one attorney must be imputed to lawyers with whom he practices. Osborn v. District Court, 619 P.2d 41 (Colo. 1980).

Imputed disqualification applies to public law firm. The same rule of imputed disqualification stated in subdivision (D) of this rule may be considered in determining the ethical standards for disqualification of a public law firm, such as a district attorney. People v. Garcia, 698 P.2d 801 (Colo. 1985); McCall v. District Court, 783 P.2d 1223 (Colo. 1989).

Rule of imputed disqualification applies to public defenders. Allen v. District Court, 519 P.2d 351 (Colo. 1974); McCall v. District Court, 783 P.2d 1223 (Colo. 1989).

Due to imputed disqualification, appellate division of state public defender's office must be permitted to withdraw from representing on appeal a defendant who claims ineffective counsel provided by local deputy public defender. McCall v. District Court, 783 P.2d 1223 (Colo. 1989).

Disqualification of district attorney's office required where two former district attorneys are witnesses on contested issues in case. Pease v. District Court, 708 P.2d 800 (Colo. 1985).

Trial dates accepted should be honored before withdrawal from employment. When a public defender or a busy defense lawyer finds that his representation of one client is inimical to his representation of another client and he must make an election as to the client he will represent, he has a heavy duty to the court to see that he honors dates that he has agreed to for the trial of a case. Watson v. District Court, 199 Colo. 76, 604 P.2d 1165 (1980).

Attorney's compensation may be denied. Where an attorney is shown to represent more than one party with conflicting interests, a court may deny him all compensation under a retainer agreement. In re King Res. Co., 20 Bankr. 191 (Bankr. D. Colo. 1982).

Continued representation of clients with conflicting interests violates this rule and warrants discipline. People v. Awenius, 653 P.2d 740 (Colo. 1982).

Public censure is generally appropriate when a lawyer is negligent in determining whether the representation of a client will adversely affect another client, causing injury or potential injury to a client. Attorney's representation of two estates where the beneficiaries of the estates have conflicting interests and the attorney fails to obtain waivers from the beneficiaries violates this rule. People v. Gebauer, 821 P.2d 782 (Colo. 1991).

Public censure was appropriate where attorney simultaneously represented one client in automobile accident case and another client, who was involved in the automobile accident, in a bankruptcy proceeding without listing the accident client as a creditor of the bankruptcy client, and where aggravating factors existed. People v. Gonzales, 922 P.2d 933 (Colo. 1996).

Public censure warranted where attorney entered into compensated consulting agreement with law firm to which he referred client's cases, without full disclosure of agreement to client. People v. Mulvihill, 814 P.2d 805 (Colo. 1991).

An attorney is not always precluded from representing a client in a transaction with a former or currently inactive client. Whether an attorney properly may do so depends upon the nature and extent of the former legal work performed for the previous client as well as the possible relationship between the two transactions. Crystal Homes, Inc. v. Radetsky, 895 P.2d 1179 (Colo. App. 1995).

Evidence sufficient to justify suspension from the practice of law. People v. Belfor, 197 Colo. 223, 591 P.2d 585 (1979); People v. Foster, 716 P.2d 1069 (Colo. 1986).

Three-month suspension appropriate for violation of DR 5-105 (A) and (B) and DR 5-101 (B). The interests of the client and the client's wife, from whom the client was then separated, were so adverse, or potentially adverse, that the conflicts could not be waived even had there been full disclosure. As such, it was not obvious that the attorney could represent the client, the client's estranged wife, and their children in the client's bankruptcy proceedings. Because the attorney knew of the conflicts involved when he undertook the multiple representation, a short period of suspension is warranted, but not the requirement of reinstatement proceedings. In re Quiat, 979 P.2d 1029 (Colo. 1999).

Forty-five-day suspension appropriate for violation of this rule where pattern of misconduct and multiple offenses are factors in aggravation. People v. Chew, 830 P.2d 488 (Colo. 1992).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Odom, 829 P.2d 855 (Colo. 1992); People v. Stevens, 883 P.2d 21 (Colo. 1994); People v. Vsetecka, 893 P.2d 1309 (Colo. 1995); People v. Wollrab, 909 P.2d 1093 (Colo. 1996).

Public censure appropriate where attorney represented buyer and seller of restaurant and did not properly advise the buyer or protect the buyer's interest. People v. Odom, 829 P.2d 855 (Colo. 1992).

Conduct violating this rule sufficient to justify public censure. People v. Gebauer, 821 P.2d 782 (Colo. 1991).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Lopez, 796 P.2d 957 (Colo. 1990); People v. Hansen, 814 P.2d 816 (Colo. 1991); People v. Watson, 833 P.2d 50 (Colo. 1992); People v. Butler, 875 P.2d 219 (Colo. 1994); People v. Banman, 901 P.2d 469 (Colo. 1995); People v. Miller, 913 P.2d 23 (Colo. 1996); People v. Silver, 924 P.2d 159 (Colo. 1996); In re Cohen, 8 P.3d 429 (Colo. 1999).

Conduct violating this rule sufficient to justify disbarment. People v. Quick, 716 P.2d 1082 (Colo. 1986); People v. Martinez, 739 P.2d 838 (Colo. 1987), cert. denied, 484 U.S. 1054, 108 S. Ct. 1003, 98 L. Ed. 2d 970 (1988).

Conduct found to violate disciplinary rules. People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982).

Applied in People ex rel. MacFarlane v. Boyls, 197 Colo. 242, 591 P.2d 1315 (1979); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People v. Castro, 657 P.2d 932 (Colo. 1983); People v. Underhill, 683 P.2d 349 (Colo. 1984); People v. McDowell, 718 P.2d 541 (Colo. 1986).

Cases Decided Under Former DR 5-107.

Law reviews. For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

Applied in People ex rel. MacFarlane v. Boyls, 197 Colo. 242, 591 P.2d 1315 (1979).

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules

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

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

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

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

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (b) through (i) that applies to any one of them shall apply to all of them.

Cite as RPC 1.8

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires. Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3. Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position. Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i). Financial Assistance

[10] Lawyers may not subsidize law suits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue law suits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation

expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted. Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing. Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class. Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph

does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel. Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5. Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters. Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (b) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not solicit a substantial gift from a client of another member of the firm, even if the soliciting lawyer is not personally involved in the representation of the client, because the prohibition in paragraph (c) applies to all lawyers associated in the firm. The prohibitions set forth in paragraphs (a) and (j) are personal and are not applied to associated lawyers.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on Ethical Duties of Attorney Selected by Insurer to Represent Its Insured, see 22 Colo. Law. 497 (1993). For article, "Ethical Considerations of Attorney's Liens", see 31 Colo. Law. 51 (April 2002). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (October 2005). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "The Rules of Professional Conduct: An Equal Opportunity for Ethical Pitfalls", see 41 Colo. Law. 71 (October 2012).

Annotator's note. Rule 1.8 is similar to Rule 1.8 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Although the basis of this rule is to deter common law champerty and maintenance, the scope of the rule is not limited to conduct that would constitute champerty and maintenance. People v. Mason, 938 P.2d 133 (Colo. 1997).

A violation of this rule is per se a false representation under 11 U.S.C. § 523(a)(2)(A) of the federal bankruptcy code. In re Waller, 210 Bankr. 370 (Bankr. D. Colo. 1997).

Personal loan from client to attorney was not a standard commercial transaction exempt from the requirements of section (a) of this rule. In re Riebesell, 586 F.3d 782 (10th Cir. 2009).

Advancing an appellate-lawyer's fees for a client does not violate section (e). Paying another lawyer to appeal a case is an "expense of litigation", and, therefore, does not violate the rule against providing financial assistance to a client. Mercantile Adjustment Bureau v. Flood, 2012 CO 38, 278 P.3d 348.

Suspension for 60 days appropriate for lawyer who entered into an agreement with a client and failed to fully inform the client of the terms of the agreement in writing or obtain the client's consent to the transaction. People v. Foreman, 966 P.2d 1062 (Colo. 1998).

The presumed sanction of suspension is appropriate where the attorney knew of a conflict of interest and did not fully disclose to a client the possible effect of that conflict even though such action caused no actual harm. In re Cimino, 3 P.3d 398 (Colo. 2000).

Whether an attorney expects to be paid or not is insignificant to the issue of whether an attorney-client relationship existed. In re Cimino, 3 P.3d 398 (Colo. 2000).

The hearing panel of the former grievance committee committed harmless error by failing to consider the personal and emotional problems that an attorney was experiencing at the time of the attorney's misconduct as mitigating in determining sanctions because no medical or psychological proof of emotional problems was brought forward. In re Cimino, 3 P.3d 398 (Colo. 2000).

Suspension is generally appropriate when a lawyer knows of a conflict of interest and fails to disclose to a client the possible effect of that conflict. Respondent admittedly and knowingly failed to fully disclose to a client the possible effect of a conflict of interest and was therefore suspended from the practice of law for ninety days, stayed upon the successful completion of a one-year period of probation. People v. Fischer, 237 P.3d 645 (Colo. O.P.D.J. 2010).

By acquiring promissory note and deed of trust in client's property, attorney acquired a pecuniary interest in client's property that was adverse to the client's interest. Therefore, attorney was obligated to comply with requirements of section (a). In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption).

When the attorney secured a promissory note with a deed of trust in client's residence, he acquired a proprietary interest in the subject matter of the litigation in violation of former section (j) (now section (i)). In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption).

Attorney's conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify six-month suspension, stayed upon completion of two-year probationary period. In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption).

Attorney's conduct warrants punishment whether or not he knew conduct was improper under the rules. In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption).

Conduct violating this rule in conjuntion with other disciplinary rules is sufficient to justify suspension. People v. Robinson, 853 P.2d 1145 (Colo. 1993); People v. Silver, 924 P.2d 159 (Colo. 1996); People v. Ginsberg, 967 P.2d 151 (Colo. 1998); In re Tolley, 975 P.2d 1115 (Colo. 1999); People v. Albani, 276 P.3d 64 (Colo. O.P.D.J. 2011).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Walsh, 880 P.2d 766 (Colo. 1994); In re Tolley, 975 P.2d 1115 (Colo. 1999); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Applied in People v. Culter, 277 P.3d 954 (Colo. O.P.D.J. 2011).

Cases Decided Under Former DR 5-103.

Law reviews. For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986).

The effect of Canon 5 is that whenever a contingent fee contract becomes a subject of litigation in the courts, the lawyer, by reason of the canon, understands that the court, under its general supervisory powers over attorneys as officers of the courts, will determine the reasonableness of the amount and will subject it to the test of quantum meruit. Brillhart v. Hudson, 169 Colo. 329, 455 P.2d 878 (1969).

However, this does not mean that the court can or should remake the contract, but rather that it should determine from all the facts and circumstances the amount of time spent, the novelty of the questions of law, and the risks of nonreturn to the client as well as to the attorney in the situation. Brillhart v. Hudson, 169 Colo. 329, 455 P.2d 878 (1969).

Where the "legal services" rendered were for the most part those which are ordinarily performed by a business chance broker, the established commission payable to such broker at the time would be considered to determine reasonableness. Brillhart v. Hudson, 169 Colo. 329, 455 P.2d 878 (1969) (shown to be 10 percent of purchase price).

Court cannot approve commission of 25 percent. In the exercise of supervisory powers over attorneys as officers of this court, the supreme court cannot approve -- under the guise of a "contingent fee" contract for legal services -- the payment of what in fact amounts to a broker's commission of 25 percent of the purchase price of the leasehold interest. Brillhart v. Hudson, 169 Colo. 329, 455 P.2d 878 (1969).

Attorney fees secured by a note which was secured by a deed of trust on property to be sold violated this rule when, upon receipt of a check at closing, the attorney was aware that he had encumbered the property in excess of his client's share of the equity. People v. Franco, 698 P.2d 230 (Colo. 1985).

Arrangement of counsel and clients in written fee agreement which assigned alleged interest in oil and gas properties in order to secure payment of legal fees did not endanger a fair trial. Trial court abused its discretion in granting a mistrial, disqualifying counsel, and assessing attorney fees. Gold Rush Invs. v. Ferrell, 778 P.2d 297 (Colo.

App. 1989).

Public censure warranted where attorney kept the first lump sum check obtained in settlement as a lump sum payment of his contingency fee and reimbursement of costs even though he knew the settlement might later be reduced by the social security disability award and the client's union award. People v. Maceau, 910 P.2d 692 (Colo. 1996).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Smith, 830 P.2d 1003 (Colo. 1992); In re Polevoy, 980 P.2d 985 (Colo. 1999).

Evidence sufficient to justify suspension from the practice of law. People v. Belfor, 197 Colo. 223, 591 P.2d 585 (1979).

Cases Decided Under Former DR 5-106.

Law reviews. For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982).

Cases Decided Under Former DR 6-102.

Law reviews. For article, "Limiting Liability to the Client", see 11 Colo. Law. 2389 (1982). For article, "Potential Liability for Lawyers Employing Law Clerks", see 12 Colo. Law. 1243 (1983). For article, "The Ethical Obligation to Disclose Attorney Negligence", see 13 Colo. Law 232 (1984). For article, "A Proposal on Opinion Letters in Colorado Real Estate Mortgage Loan Transactions Parts I and II", see 18 Colo. Law. 2283 (1989) and 19 Colo. Law. 1 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Release and Settlement of Legal Malpractice Claims, see 19 Colo. Law. 1553 (1990).

Conduct violating this rule sufficient to justify suspension. People v. Foster, 716 P.2d 1069 (Colo. 1986).

Conduct violating this rule sufficient to justify disbarment. People v. Dwyer, 652 P.2d 1074 (Colo. 1982).

Applied in People v. Good, 195 Colo. 177, 576 P.2d 1020 (1978).

Rule 1.9. Duties to Former Clients.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.9. Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Cite as RPC 1.9

History. IP(c) amended March 17, 1994, effective July 1, 1994; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services. Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the Rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the Rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information

protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on Ethical Duties of Attorney Selected by Insurer to Represent Its Insured, see 22 Colo. Law. 497 (1993). For article, "Entity Foundation: Defining the Client And the Duty of Confidentiality", see 34 Colo. Law. 77 (July 2005). For article, "Engagement Letters and Common Conflicts of Interest in Joint Representation", see 38 Colo. Law. 43 (February 2009).

Annotator's note. Rule 1.9 is similar to Rule 1.9 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

The purpose of this rule and rule 1.10 is to protect a client's confidential communications with his attorney. Funplex Partnership v. FDIC, 19 F. Supp. 2d 1202 (D. Colo. 1998).

Motions to disqualify counsel rest within the sound discretion of the trial court. FDIC v. Sierra Res., Inc., 682 F. Supp. 1167 (D. Colo. 1987); Funplex Partnership v. FDIC, 19 F. Supp. 2d 1202 (D. Colo. 1998).

The party seeking disqualification under this rule must provide the court with specific facts to show that disqualification is necessary and he cannot rely on speculation or conjecture. FDIC v. Sierra Res., Inc., 682 F. Supp. 1167 (D. Colo. 1987); Funplex Partnership v. FDIC, 19 F. Supp. 2d 1202 (D. Colo. 1998).

Specifically, the moving party must show that: (1) An attorney-client relationship existed in the past; (2) the present litigation involves a matter that is "substantially related" to the prior litigation; (3) the present client's interests are materially adverse to the former client's interests; and (4) the former client has not consented to the disputed representation after consultation. English Feedlot, Inc. v. Norden Lab., Inc., 833 F. Supp. 1498 (D. Colo. 1993); Funplex Partnership v. FDIC, 19 F. Supp. 2d 1202 (D. Colo. 1998).

Substantiality is present if the factual contexts of the two representations are similar or related. English Feedlot, Inc. v. Norden Lab., Inc., 833 F. Supp. 1498 (D. Colo. 1993); Cole v. Ruidoso Municipal Sch., 43 F.3d 1373 (10th Cir. 1994); Funplex Partnership v. FDIC, 19 F. Supp. 2d 1202 (D. Colo. 1998).

Attorney's former representation of the alternate suspect in criminal case prohibited him from representing the criminal defendant where the cases were substantially related because the murder victim in the present case was the informant in the former client's case. People ex rel. Peters v. District Court, 951 P.2d 926 (Colo. 1998).

An attorney needs only to receive consent from his or her former client to represent a new client when the matter the attorney represented the former client in is substantially related to the representation of the new client. The two matters are "substantially related" when they involve the same transaction or legal dispute or if there is substantial risk that confidential factual information as would be normally be obtained by defense counsel in prior representation would materially advance the position of the new client in the current proceeding. The record does not support a finding that there was a substantial risk that confidential factual information as would be normally be obtained by defense counsel in prior representation would materially advance the position of the new client in the current proceeding. People v. Frisco, 119 P.3d 1093 (Colo. 2005).

Applied in English Feedlot, Inc. v. Norden Laboratories, Inc., 833 F. Supp. 1498 (D. Colo. 1993).

Rule 1.10. Imputation of Conflicts of Interest: General Rule.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the matter is not one in which the personally disqualified lawyer substantially participated;

(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(3) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer's prior representation and the screening procedures to be employed) to the affected former clients and the former clients' current lawyers, if known to the personally disqualified lawyer, to enable the former clients to ascertain compliance with the provisions of this Rule; and

(4) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.

Cite as RPC 1.10

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT GENERAL RULE Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0 , Comments [2] - [4]. Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule

applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

Case Notes:

ANNOTATION

Law reviews. For article, "Private Screening", see 38 Colo. Law. 59 (June 2009).

Annotator's note. Rule 1.10 is similar to Rule 1.10 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

The purpose of this rule and rule 1.9 is to protect a client's confidential communications with his attorney. Funplex Partnership v. FDIC, 19 F. Supp. 2d 1202 (D. Colo. 1998).

When an attorney associates with a law firm, the principle of loyalty to the client extends beyond the individual attorney and applies with equal force to the other attorneys practicing in the firm. People ex rel. Peters v. District Court, 951 P.2d 926 (Colo. 1998).

The rule of imputed disqualification can be considered from the premise that a firm of attorneys is essentially one attorney for purposes of the rules governing loyalty to the client, or from the premise that each attorney is vicariously bound by the obligation of loyalty owed by each lawyer in the firm. People ex rel. Peters v. District Court, 951 P.2d

926 (Colo. 1998).

And the rule of imputed disqualification applies with equal force to court-appointed attorneys. People ex rel. Peters v. District Court, 951 P.2d 926 (Colo. 1998).

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c) ; and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer's prior participation in the matter and the screening procedures to be employed), to the government agency to enable the government agency to ascertain compliance with the provisions of this Rule; and

(3) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated, reasonably believe that the steps

taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9 ; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment [6].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Case Notes:

ANNOTATION

Law reviews. For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007).

Trial court abused its discretion in disqualifying entire state public defender's office from representing defendant where no direct conflict of interest existed because neither individual public defender representing defendant was involved in prior representation of witnesses, potential conflicts that may have existed with regard to other public defenders within the statewide office could not be imputed under this rule to individuals representing defendant, and defendant knowingly, intelligently, and voluntarily waived any conflict. People v. Shari, 204 P.3d 453 (Colo. 2009).

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-party Neutral.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer's prior participation in the matter and the screening procedures to be employed), to the parties and any appropriate tribunal, to enable the parties and the tribunal to ascertain compliance with the provisions of this Rule; and

(3) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated, reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Cite as RPC 1.12

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [1] amended and effective July 11, 2012.

Note:

COMMENT

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Paragraph III(B) of the Application Section of the Colorado Code of Judicial Conduct provides that a part-time judge "shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto." Rule 2.11(A)(5)(a) of the Colorado Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge served as a lawyer in the matter in controversy, or the judge was associated with a lawyer who participated substantially as a lawyer in the matter during such association. Although phrased differently from this Rule, those Rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(b) and (e). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c) (1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Rule 1.13. Organization as Client.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to the information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those

paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Cite as RPC 1.13

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that, when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation. Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1) - (7). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(2), 1.6(b)(3) and 1.6(b)(4) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a client arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal. Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope. Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case. Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder. Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty

to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Case Notes:

ANNOTATION

Law Reviews. For article, "Am I My Brother's Keeper? Redefining the Attorney-Client Relationship", see 32 Colo. Law. 11 (April 2003). For article, "Entity Foundation: Defining the Client And the Duty of Confidentiality", see 34 Colo. Law. 77 (July 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Attorney-Client Communications in Colorado", see 38 Colo. Law. 59 (April 2009).

There is no ethical violation in the attorney general suing the secretary of state where no client confidences are involved and the attorney general is representing the broader institutional concerns of the state regarding allegedly unconstitutional legislation enacting a congressional redistricting plan. People ex rel. Salazar v. Davidson, 79 P.3d 1221 (Colo. 2003), cert. denied, 79 U.S. 1221, 124 S. Ct. 2228, 159 L. Ed. 2d 260 (2004) (decided prior to 2007 repeal and readoption of the Colorado rules of professional conduct).

Rule 1.14. Client with Diminished Capacity.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.14. Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Cite as RPC 1.14

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d). Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the

representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client. Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one. Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf

of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Case Notes:

ANNOTATION

Law reviews. For article, "Ethical Obligations of Petitioners' Counsel in Guardianship and Conservator Cases", see 24 Colo. Law. 2565 (1995). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (October 2005). For article, "Rule of Professional Conduct 1.14 and the Diminished-Capacity Client", see 39 Colo. Law. 67 (May 2010).

Annotator's note. Rule 1.14 is similar to Rule 1.14 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

When a substantial question exists regarding the mental competence of a spouse in a domestic relations proceeding, the preferred procedure is for the trial court to conduct a hearing to determine whether or not the spouse is competent, so that a guardian ad litem may be appointed if needed. In re Sorensen, 166 P.3d 254 (Colo. App. 2007).

Because wife's second attorney was allowed to simply withdraw the motion filed by wife's first attorney for the appointment of a guardian ad litem for his client, and because a factual question clearly existed regarding the wife's ability to understand the nature of the proceedings and direct counsel, trial court was required to hold an evidentiary hearing on the issue of wife's competency. In re Sorensen, 166 P.3d 254 (Colo. App. 2007).

Rule 1.15A. General Duties of Lawyers Regarding Property of Clients and Third Parties.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.15A. General Duties of Lawyers Regarding Property of Clients and Third Parties

(a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in trust accounts maintained in compliance with Rule 1.15B. Other property shall be appropriately safeguarded. Complete records of such funds and other property of clients or third parties shall be kept by the lawyer in compliance with Rule 1.15D.

(b) Upon receiving funds or other property of a client or third person, a lawyer shall, promptly or otherwise as permitted by law or by agreement with the client or third person, deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, promptly upon request by the client or third person, render a full accounting regarding such property.

(c) When in connection with a representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until there is a resolution of the claims and, when necessary, a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(d) The provisions of Rule 1.15B, Rule 1.15C, Rule 1.15D, and Rule 1.15E apply to funds and other property, and to accounts, held or maintained by the lawyer, or caused by the lawyer to be held or maintained by a law firm through which the lawyer renders legal services, in connection with a representation.

Cite as RPC 1.15A

History. Rule 1.15 Repealed and Readopted by the Court, En Banc, June 17, 2014, effective immediately.

Note:

Note: The following six comments are applicable to this Rule 1.15A and to Rule 1.15B, Rule 1.15C, Rule 1.15D, and Rule 1.15E.

[1] Trust accounts containing funds of clients or third persons held in connection with a representation must be interest-bearing or dividend-paying for the benefit of the clients or third persons or, if the funds are nominal in amount or expected to be held for a short period of time, for the benefit of the Colorado Lawyer Trust Account Foundation ("COLTAF"). A lawyer should exercise good faith judgment in determining initially whether funds are of such nominal amount or are expected to be held by the lawyer for such a short period of time that the funds should not be placed in an interest-bearing account for the benefit of the client or third person. The lawyer should also consider such other factors as (i) the costs of establishing and maintaining the account, service charges, accounting fees, and tax report

procedures; (ii) the nature of the transaction(s) involved; and (iii) the likelihood of delay in the relevant proceedings. A lawyer should review at reasonable intervals whether changed circumstances require further action respecting the deposit of such funds, including without limitation the action described in paragraph 1.15B(i).

[2] If a lawyer or law firm participates in Interest on Lawyer Trust Account ("IOLTA") programs in more than one jurisdiction, including Colorado, IOLTA funds that the lawyer or law firm holds in connection with the practice of law in Colorado should be held in the lawyer or law firm's COLTAF account (as defined in Rule 1.15B(2)(b)). The lawyer or law firm should exercise good faith judgment in determining which IOLTA funds it holds in connection with the practice of law in Colorado.

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds should be promptly distributed.

[4] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction. See Rule 1.16(d) for standards applicable to retention of client papers.

[6] The duty to keep separate from the lawyer's own property any property in which any other person claims an interest exists whether or not there is a dispute as to ownership of the property. Likewise, although the second sentence of Rule 1.15A(c) deals specifically with disputed ownership, the first sentence of that provision applies even if there is no dispute as to ownership.

[7] What constitutes "reasonable efforts," within the meaning of Colo. RPC 1.15B(k), will depend on whether the lawyer does not know the identity of the owner of certain funds held in a COLTAF account, or the lawyer knows the identity of the owner of the funds but not the owner's location or the location of a deceased owner's heirs or personal representative. When the lawyer does not know the identity of the owner of the funds or a deceased owner's heirs or personal representative, reasonable efforts include an audit of the COLTAF account to determine how and when the funds lost their association to a particular owner or owners, and whether they constitute attorneys' fees earned by the lawyer or expenses to be reimbursed to the lawyer or a third person. When the lawyer knows the identity but not the location of the owner of the funds or the location of the owner's heirs or personal representative, reasonable efforts include attempted contact using last known contact information, reviewing the file to identify and contact third parties who may know the location of the owner or the owner's heirs or personal representative, and conducting internet searches. After making reasonable but unsuccessful efforts to identify and locate the owner of the funds or the

owner's heirs or personal representative, a lawyer's decision to continue to hold funds in a COLTAF or other trust account, as opposed to remitting the funds to COLTAF, does not relieve the lawyer of the obligation to maintain records pursuant to Rule 1.15D(a)(1)(A) or to determine whether it is appropriate to maintain the funds in a COLTAF account, as opposed to a non-COLTAF trust account, pursuant to Colo. RPC 1.15B(b). When COLTAF has made a refund to a lawyer following the lawyer's determination of the identity and the location of their owner or the identity and location of the owner's heirs or personal representative, the lawyer's obligations with respect to those funds are set forth in Colo. RPC 1.15A or are subject to applicable probate procedures or orders. The disposition of unclaimed funds held in the COLTAF account of a deceased lawyer is to be determined in accordance with written procedures published by COLTAF. [*Comment 7 Added November 3, 2016*]

Rule 1.15B. Account Requirements.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.15B. Account Requirements

(a) Every lawyer in private practice in this state shall maintain in the lawyer's own name, or in the name of the lawyer's law firm:

(1) A trust account or accounts, 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.

(2) A business account or accounts 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.

(b) One or more of the trust accounts may be a Colorado Lawyer Trust Account Foundation ("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.

(c) Each trust account, as well as all deposits slips and checks drawn thereon, shall be prominently designated as a "trust account," provided that each COLTAF account shall be designated as a "COLTAF Trust Account." A trust account may bear any additional descriptive designation that is not misleading.

(d) Except as provided in this paragraph (d), each trust account, including each COLTAF account, shall be maintained in a financial institution that is approved by the Regulation Counsel pursuant to Rule 1.15E. If each client and third person whose funds are in the account is informed in writing by the lawyer that Regulation Counsel will not be notified of any overdraft on the account, and with the informed consent of each such client and third person, a trust account in which interest or dividends are paid to the clients or third persons need not be in an approved institution.

(e) Each trust account, including each COLTAF account, shall be an interest-bearing, or dividend-paying, insured depository account; provided that, with the informed consent of each client or third person whose funds are in the account, an account in which interest or dividends are paid to clients or third persons need not be an insured depository account. For the purpose of this provision, an "insured depository account" shall mean a government insured account at a regulated financial institution, on which withdrawals or transfers can be made on demand, subject only to any notice period which the financial institution is required to reserve by law or regulation.

(f) The lawyer may deposit, or may cause the law firm to deposit, into a trust account funds reasonably sufficient to pay anticipated service charges or other fees for maintenance or operation of the account. Such funds shall be clearly identified in the lawyer's or law firm's records of the account.

(g) All funds entrusted to the lawyer shall be deposited in a COLTAF account unless the funds are deposited in a trust account described in paragraph (h) of this Rule. The foregoing requirement that funds be deposited in a COLTAF account does not apply in those instances where it is not feasible for the lawyer or the law firm to establish a COLTAF account for reasons beyond the control of the lawyer or law firm, such as the unavailability in the community of a financial institution that offers such an account; but in such case the funds shall be deposited in a trust account described in paragraph (h) of this Rule.

(h) If funds entrusted to the lawyer are not held in a COLTAF account, the lawyer shall deposit, or shall cause the law firm to deposit, the funds in a trust account that complies

with all requirements of paragraphs (c), (d), and (e) of this Rule and for which all interest earned or dividends paid (less deductions for service charges or fees of the depository institution) shall belong to the clients or third persons whose funds have been so deposited. The lawyer and the law firm shall have no right or claim to such interest or dividends.

(i) If the lawyer or law firm discovers that funds of a client or third person have mistakenly been held in a COLTAF account in a sufficient amount or for a sufficiently long time so that interest or dividends on the funds being held in such account exceeds the reasonably estimated cost of establishing, maintaining, and accounting for a trust account for the benefit of such client or third person (including without limitation administrative costs of the lawyer or law firm, bank service charges, and costs of preparing tax reports of such income to the client or third person), the lawyer shall request, or shall cause the law firm to request, a refund from COLTAF, for the benefit of such client or third persons, of the interest or dividends in accordance with written procedures that COLTAF shall publish and make available through its website and shall provide to any lawyer or law firm upon request.

(j) Every lawyer or law firm maintaining a trust account in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by Rule 1.15E and shall indemnify and hold harmless the financial institution for its compliance with such reporting and production requirement.

(k) If a lawyer discovers that the lawyer does not know the identity or the location of the owner of funds held in the lawyer's COLTAF account, or the lawyer discovers that the owner of the funds is deceased, the lawyer must make reasonable efforts to identify and locate the owner or the owner's heirs or personal representative. If, after making such efforts, the lawyer cannot determine the identity or the location of the owner, or the owner's heirs or personal representative, the lawyer must either (1) continue to hold the unclaimed funds in a COLTAF or other trust account or (2) remit the unclaimed funds to COLTAF in accordance with written procedures published by COLTAF and available through its website or upon request. A lawyer remitting unclaimed funds to COLTAF must keep a record of the remittance pursuant to Rule 1.15D(a)(1)(C). If, after remitting unclaimed funds to COLTAF, the lawyer determines both the identity and the location of the owner or the owner's heirs or personal representative, the lawyer shall request a refund for the benefit of the owner or the owner's estate, in accordance with written procedures that COLTAF shall publish and make available through its website and shall provide upon request.

Cite as RPC 1.15B

History. Rule 1.15 Repealed and Readopted by the Court, En Banc, June 17, 2014, effective immediately; amended

November 3, 2016, effective immediately.

Note:

See comments following Rule 1.15A.

Rule 1.15C. Use of Trust Accounts.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.15C. Use of Trust Accounts

(a) A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a trust account. Cash withdrawals from trust accounts and checks drawn on trust accounts payable to "Cash" are prohibited. All trust account funds intended for deposit shall be deposited intact without deductions or "cash out" from the deposit, and the duplicate deposit slip that evidences the deposit shall be sufficiently detailed to identify each item deposited.

(b) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in this state or by a person supervised by such lawyer. Such withdrawals and transfers may be made only by authorized bank or wire transfer or by check payable to a named payee. Only a lawyer admitted to practice law in this state or a person supervised by such lawyer shall be an authorized signatory on a trust account.

(c) No less than quarterly, a lawyer admitted to practice law in this state or a person supervised by such a lawyer shall reconcile the trust account records both as to individual clients or other persons and in the aggregate with the bank statements issued by the bank in which the trust account is maintained.

Cite as RPC 1.15C

History. Rule 1.15 Repealed and Readopted by the Court, En Banc, June 17, 2014, effective immediately.

Note:

See comments following Rule 1.15A.

Rule 1.15D. Required Records.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.15D. Required Records

(a) A lawyer shall maintain, or shall cause the lawyer's law firm to maintain, in a current status and shall retain or cause the lawyer's law firm to retain for a period of seven years after the event that they record:

(1) An appropriate record-keeping system identifying each separate person for whom the lawyer or the law firm holds funds or other property and adequately showing the following:

(A) For each trust account the date and amount of each deposit; the name and address of each payor of the funds deposited; the name and address of each person for whom the funds are held and the amount held for the person; a description of the reason for each deposit; the date and amount of each charge against the trust account and a description of the charge; the date and amount of each disbursement; and the name and address of each person to whom the disbursement is made and the amount disbursed to the person.

(B) For each item of property other than funds, the nature of the property; the date of receipt of the property; the name and address of each person from whom the property is received, the name and address of each person for whom the property is held and, if interests in the property are held by more than one person, a statement of the nature and extent of each person's interest in the property, to the extent known; a description of the reason for each receipt; the date and amount of each charge against the property and a description of the charge; the date of each delivery of the property by the lawyer; and the name and address of each person to whom the property is delivered by the lawyer.

(C) For any unclaimed funds remitted to COLTAF pursuant to Rule 1.15B(k), the name and last known address of the owner of the funds, if the owner of the funds is known; the date of death of a deceased owner if the owner of the funds is known; the efforts made to identify or locate the owner of the

funds or a deceased owner's heirs or personal representative; the amount of the funds remitted; the period of time during which the funds were held in the lawyer's or law firm's COLTAF account; and the date the funds were remitted.

(2) Appropriate records of all deposits in and withdrawals from all other bank accounts maintained in connection with the lawyer's legal services, specifically identifying the date, payor, and description of each item deposited as well as the date, payee, and purpose of each disbursement;

(3) Copies of all written communications setting forth the basis or rate for the fees charged by the lawyer as required by Rule 1.5(b), and copies of all writings, if any, stating other terms of engagement for legal services;

(4) Copies of all statements to clients and third persons showing the disbursement of funds or the delivery of property to them or on their behalves;

(5) Copies of all bills issued to clients;

(6) Records showing payments to any persons, not in the lawyer's regular employ, for services rendered or performed; and

(7) Paper copies or electronic copies of all bank statements and of all canceled checks.

(b) The records required by this Rule shall be maintained in accordance with one or more of the following recognized accounting methods: the accrual method, the cash basis method, or the income tax method. All such accounting methods shall be consistently applied. Bookkeeping records may be maintained by computer provided they otherwise comply with this Rule and provided further that printed copies can be made on demand in accordance with this Rule. They shall be located at the principal Colorado office of the lawyer or of the lawyer's law firm.

(c) Upon the dissolution of a law firm, the lawyers who rendered legal services through the law firm shall make appropriate arrangements for the maintenance or disposition of records and client files in accordance with this Rule and Rule 1.16A. Upon the departure of a lawyer from a law firm, the departing lawyer and the lawyers remaining in the law firm shall make appropriate arrangements for the maintenance or disposition of records and client files in accordance with this Rule and Rule 1.16A.

(d) Any of the records required to be kept by this Rule shall be produced in response to a subpoena duces tecum issued by the Regulation Counsel in connection with proceedings pursuant to C.R.C.P. 251. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege of the lawyer's

client.

Cite as RPC 1.15D

History. Rule 1.15 Repealed and Readopted by the Court, En Banc, June 17, 2014, effective immediately; amended November 3, 2016, effective immediately.

Note:

See comments following Rule 1.15A.

Rule 1.15E. Approved Institutions.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.15E. Approved Institutions

(a) This Rule applies to each trust account that is subject to Rule 1.15B, other than a trust account that is maintained in other than an approved financial institution pursuant to the second sentence of Rule 1.15B(d).

(b) Each trust account shall be maintained at a financial institution that is approved by the Regulation Counsel, pursuant to the provisions and conditions contained in this Rule. The Regulation Counsel shall maintain a list of approved financial institutions, which it shall renew not less than annually. Offering a trust account or a COLTAF account is voluntary for financial institutions.

(d) The Regulation Counsel shall approve a financial institution for use for lawyers' trust accounts, including COLTAF accounts, if the financial institution files with the Regulation Counsel an agreement, in a form provided by the Regulation Counsel, with the following provisions and on the following conditions:

(1) The financial institution does business in Colorado;

(2) The financial institution agrees to report to the Regulation Counsel in the event a properly payable trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored. That agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty-days notice in writing to the Regulation Counsel.

(3) The financial institution agrees that all reports made by the financial institution shall be in the following format: (i) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (ii) in the case of an instrument that is presented against insufficient funds but that is honored, the report shall identify the financial institution, the lawyer or law firm for whom the account is maintained, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Report of a dishonored instrument shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If no such time is provided by law for notice of dishonor, or if the financial institution has honored an instrument presented against insufficient funds, then the report shall be made within five banking days of the date of presentation of the instrument.

(4) The financial institution agrees to cooperate fully with the Regulation Counsel and to produce any trust account records on receipt of a subpoena for the records issued by the Regulation Counsel in connection with any proceeding pursuant to C.R.C.P. 251. Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule, but such charges shall not be a transaction cost to be charged against funds payable to the COLTAF program.

(5) The financial institution agrees to cooperate with the COLTAF program and shall offer a COLTAF account to any lawyer or law firm who wishes to open one.

(6) With respect to COLTAF accounts, the financial institution agrees:

(A) To remit electronically to COLTAF monthly interest or dividends, net of allowable reasonable COLTAF fees as defined in subparagraph (c)(10) of this Rule, if any; and

(B) To transmit electronically with each remittance to COLTAF a statement showing, as to each COLTAF account, the name of the lawyer or law firm on whose account the remittance is sent; the account number; the remittance period; the rate or rates of interest or dividends applied; the account balance or balances on which the interest or dividends are calculated; the amount of interest or dividends paid; the amount and type of fees, if any, deducted; the amount of net earnings remitted; and such other information as is reasonably requested by COLTAF.

(7) The financial institution agrees to pay on any COLTAF account not less than (i) the highest interest or dividend rate generally available from the financial institution on non- COLTAF accounts when the COLTAF account meets the same eligibility requirements, if any, as the eligibility requirement for non-COLTAF accounts; or (ii) the rate set forth in subparagraph (c)(9) below. In determining the highest interest

or dividend rate generally available from the financial institution to its non-COLTAF customers, the financial institution may consider factors customarily considered by the financial institution when setting interest or dividend rates for its non-COLTAF accounts, including account balances, provided that such factors do not discriminate between COLTAF accounts and non-COLTAF accounts. The financial institution may choose to pay on a COLTAF account the highest interest or dividend rate generally available on its comparable non-COLTAF accounts in lieu of actually establishing and maintaining the COLTAF account in the comparable highest interest or dividend rate product.

(8) A COLTAF account may be established by a lawyer or law firm and a financial institution as:

(A) A checking account paying preferred interest rates, such as market-based or indexed rates;

(B) A public funds interest-bearing checking account, such as an account used for other non- profit organizations or government agencies;

(C) An interest-bearing checking account, such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or

(D) A business checking account with an automated investment feature in overnight daily financial institution repurchase agreements or money market funds. A daily financial institution repurchase agreement shall be fully collateralized by U.S. Government Securities (meaning U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States government) and may be established only with an approved institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. A "money market fund" is a fund maintained as a money market fund by an investment company registered under the Investment Company Act of 1940, as amended, which fund is qualified to be held out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in U.S. Government Securities, or repurchase agreements fully collateralized by U.S. Government Securities, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

(9) In lieu of a rate set forth in paragraph (c)(7)(i), the financial institution may elect to pay on all deposits in its COLTAF accounts, a benchmark rate, which COLTAF is authorized to set periodically, but not more frequently than every six months, to reflect an overall comparable rate offered by financial institutions in Colorado net of

allowable reasonable COLTAF fees. Election of the benchmark rate is optional, and financial institutions may choose to maintain their eligibility by paying the rate set forth in paragraph (c)(7)(i).

(10) "Allowable reasonable COLTAF fees" are per-check charges, per-deposit charges, fees in lieu of minimum balances, federal deposit insurance fees, sweep fees, and reasonable COLTAF account administrative fees. The financial institution may deduct allowable reasonable COLTAF fees from interest or dividends earned on a COLTAF account, provided that such fees (other than COLTAF account administrative fees) are calculated and imposed in accordance with the approved institution's standard practice with respect to comparable non-COLTAF accounts. The financial institution agrees not to deduct allowable reasonable COLTAF fees accrued on one COLTAF account in excess of the earnings accrued on the COLTAF account for any period from the principal of any other COLTAF account or from interest or dividends accrued on any other COLTAF account. Any fee other than allowable reasonable COLTAF fees are the responsibility of, and the financial institution may charge them to, the lawyer or law firm maintaining the COLTAF account.

(11) Nothing contained in this Rule shall preclude the financial institution from paying a higher interest or dividend rate on a COLTAF account than is otherwise required by the financial institution's agreement with the Regulation Counsel or from electing to waive any or all fees associated with COLTAF accounts.

(12) Nothing in this Rule shall be construed to require the Regulation Counsel or any lawyer or law firm to make independent determinations about whether a financial institution's COLTAF account meets the comparability requirements set forth in paragraph (c)(7). COLTAF will make such determinations and at least annually will inform Regulation Counsel of the financial institutions that are in compliance with the comparability provisions of this Rule.

(13) Each approved financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule. The agreement entered into by a financial institution with the Regulation Counsel shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

Cite as RPC 1.15E

History. Rule 1.15 Repealed and Readopted by the Court, En Banc, June 17, 2014, effective immediately.

Note:

See comments following Rule 1.15A.

Rule 1.16. Declining or Terminating Representation.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Cite as RPC 1.16

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4]. Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3. Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should

be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14. Permissive Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation. Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.16(d).

Case Notes:

ANNOTATION

Law reviews. For article, "Am I My Brother's Keeper? Redefining the Attorney-Client Relationship", see 32 Colo. Law. 11 (April 2003). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "New Rule on Retaining Client Files--How to Avoid Potential Pitfalls", see 41 Colo. Law. 69 (June 2012). For article, "Repugnant Objectives", see 41 Colo. Law. 51 (December 2012).

Annotator's note. Rule 1.16 is similar to Rule 1.16 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Attorney discharged without cause may not recover damages under a non-contingency contract for services not rendered before the discharge. It is important to balance the attorney-client relationship and the attorney's right to receive fair and adequate compensation. interests. Olsen & Brown v. City of Englewood, 889 P.2d 673 (Colo. 1995).

The decision as to whether defense counsel should be permitted to withdraw lies within the sound discretion of the court. If the trial court has a reasonable basis for concluding that the attorney-client relationship has not deteriorated to the point at which counsel is unable to give effective assistance in the presentation of a defense, then the court is justified in refusing to appoint new counsel. People v. Rocha, 872 P.2d 1285 (Colo. App. 1993).

Disagreement concerning the refusal of defense counsel to call certain witnesses is not sufficient per se to require the trial court to grant a motion to withdraw. People v. Rocha, 872 P.2d 1285 (Colo. App. 1993).

Among the factors a trial court must consider in determining whether withdrawal is warranted is the possibility that any new counsel will be confronted with the same irreconcilable conflict. People v. Rocha, 872 P.2d 1285 (Colo. App. 1993).

Public censure instead of private censure was appropriate where attorney failed to respond to discovery requests and motions for summary judgment and the findings of the board did not support the applicability of ABA Standard 9.32(i) as a mitigating factor since there was no medical evidence that attorney was affected by chemical dependency or that alcohol contributed to or caused the misconduct. People v. Brady, 923 P.2d 887 (Colo. 1996).

Attorney's restitution agreement was neither an aggravating nor mitigating factor since the attorney did not propose or attempt any form of restitution until after a request for investigation had been filed with the office of disciplinary counsel. People v. Brady, 923 P.2d 887 (Colo. 1996).

Attorney's argument that public discipline is not appropriate because it would stigmatize a recovering alcoholic was rejected since overriding concern in discipline proceedings is to protect the public through the enforcement of professional standards of conduct. People v. Brady, 923 P.2d 887 (Colo. 1996).

Attorney's professional misconduct involving the improper collection of attorney's fees in six instances, and the failure to withdraw upon client's request in one instance justified 45-day suspension. People v. Peters, 849 P.2d 51 (Colo. 1993).

An attorney is entitled only to compensation for the reasonable value of the services rendered if the attorney is employed under a fixed fee contract to render specific legal services and is discharged by the client without cause. The client was entitled to discharge the attorneys without cause and without incurring any further liability, other than payment for services rendered on a quantum meruit theory. Olsen & Brown v. City of Englewood, 867 P.2d 96 (Colo. App. 1993).

Any contractual provision that constrains a client from exercising the right freely to discharge his or her attorney is unenforceable. A client has an unfettered right to discharge freely its attorney without incurring liability under ordinary breach of contract principles. Olsen & Brown v. City of Englewood, 867 P.2d 96 (Colo. App. 1993).

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

1321 (Colo. 1995).

Previously disbarred attorney who violated this rule would be forced to pay restitution to clients as a condition of readmission. People v. Vigil, 945 P.2d 1385 (Colo. 1997).

Conduct violating this rule, in conjunction with other disciplinary rules, sufficient to justify disbarment where the attorney continued to practice law while on suspension, repeatedly neglecting his clients and failing to take reasonable steps to protect clients' interests. People v. Fager, 938 P.2d 138 (Colo. 1997).

Suspension for one year and one day appropriate where attorney violated section (d) by not returning or accounting for client funds held for emergencies after the clients fired the attorney and for negligently converting other client funds to the attorney's own use. People v. Johnson, 944 P.2d 524 (Colo. 1997).

Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. People v. Henderson, 967 P.2d 1038 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Williams, 936 P.2d 1289 (Colo. 1997); People v. Barr, 957 P.2d 1379 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Kuntz, 908 P.2d 1110 (Colo. 1996); People v. Johnson, 946 P.2d 469 (Colo. 1997); People v. Rishel, 956 P.2d 542 (Colo. 1998); In re Corbin, 973 P.2d 1273 (Colo. 1999); People v. Staab, 287 P.3d 122 (Colo. O.P.D.J. 2012).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Damkar, 908 P.2d 1113 (Colo. 1996); People v. Jamrozek, 921 P.2d 725 (Colo. 1996); People v. Steinman, 930 P.2d 596 (Colo. 1997); People v. Wallace, 936 P.2d 1282 (Colo. 1997); People v. Mannix, 936 P.2d 1285 (Colo. 1997); People v. Madigan, 938 P.2d 1162 (Colo. 1997); People v. Holmes, 951 P.2d 477 (Colo. 1998); People v. Holmes, 955 P.2d 1012 (Colo. 1998); People v. Valley, 960 P.2d 141 (Colo. 1998); People v. Skaalerud, 963 P.2d 341 (Colo. 1998); People v. Rasure, 212 P.3d 973 (Colo. O.P.D.J. 2009); People v. Sweetman, 218 P.3d 1123 (Colo. O.P.D.J. 2008); People v. Edwards, 240 P.3d 1287 (Colo. O.P.D.J. 2010); People v. Rozan, 277 P.3d 942 (Colo. O.P.D.J. 2011); People v. Tolentino, 285 P.3d 340 (Colo. O.P.D.J. 2012).

Cases Decided Under Former DR 2-104.

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

Rule 1.16A. Client File Retention.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.16A. Client File Retention

(a) A lawyer in private practice shall retain a client's files respecting a matter unless:

(1) the lawyer delivers the file to the client or the client authorizes destruction of the file in a writing signed by the client and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter; or

(2) the lawyer has given written notice to the client of the lawyer's intention to destroy the file on or after a date stated in the notice, which date shall not be less than thirty days after the date of the notice, and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter.

(b) At any time following the expiration of a period of ten years following the termination of the representation in a matter, a lawyer may destroy a client's files respecting the matter without notice to the client, provided there are no pending or threatened legal proceedings known to the lawyer that relate to the matter and the lawyer has not agreed to the contrary.

(c) Notwithstanding paragraphs (a) and (b) above, a lawyer in a criminal matter shall retain a client's file for the following time periods:

(1) for the life of the client, if the matter resulted in a conviction and a sentence of death, life without parole, or an indeterminate sentence, including a sentence pursuant to the Colorado Sex Offender Lifetime Supervision Act of 1998, 18-1.3-1001 et seq., C.R.S.

(2) for eight years from the date of sentencing, if the matter resulted in a conviction for any other felony and the conviction and/or sentence was appealed;

(3) for five years from the date of sentencing, if the matter resulted in a conviction for any other felony and neither the conviction nor the sentence was appealed.

(d) A lawyer may satisfy the notice requirements of paragraph (a)(2) of this Rule by establishing a written file retention policy consistent with this Rule and by providing a

notice of the file retention policy to the client in a fee agreement or a in writing delivered to the client not later than thirty days before destruction of the client's file or incorporated into a fee agreement.

(e) This Rule does not supersede or limit a lawyer's obligations to retain a client's file that are imposed by law, court order, or rules of a tribunal.

Cite as RPC 1.16A

History. Entire rule and comment added and effective February 10, 2011.

Note:

COMMENT

[1] Rule 1.16A is not intended to impose an obligation on a lawyer to preserve documents that the lawyer would not normally preserve, such as multiple copies or drafts of the same document. A client's files, within the meaning of Rule 1.16A, consist of those things, such as papers and electronic data, relating to a matter that the lawyer would usually maintain in the ordinary course of practice. A lawyer's obligations with respect to client "property" are distinct. Those obligations are addressed in Rules 1.15A and 1.16(d). "Property" generally refers to jewelry and other valuables entrusted to the lawyer by the client, as well as documents having intrinsic value or directly affecting valuable rights, such as securities, negotiable instruments, deeds, and wills.

[2] A lawyer may comply with Rule 1.16A by maintaining a client's files in, or converting the file to, electronic form, provided the lawyer is capable of producing a paper version if necessary. Rule 1.16A does not require multiple lawyers in the same law firm to retain duplicate client files or to retain a unitary file located in one place. "Law firm" is defined in Rule 1.0 to include lawyers employed in a legal services organization or the legal department of a corporation or other organization. Rule 5.1(a) addresses the responsibility of a partner in a law firm to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Generally, lawyers employed by a private corporation or other entity as in-house counsel represent such corporation or entity as employees and the client's files are considered to be in the possession of the client and not the lawyer, such that Rule 1.16A would be inapplicable. Where lawyers are employed as public defenders or by a legal services organization or a government agency to represent third parties under circumstances where the third-party client's files are considered to be files and records of the organization or agency, the lawyer must take reasonable measures to ensure that the client's files are maintained by the organization or agency in accordance with this rule.

[3] Rule 1.16A does not supersede obligations imposed by other law, court order or rules of a tribunal. The maintenance of law firm financial and accounting records is governed exclusively by Rules 1.15A and 1.15D. Similarly, Rule 1.16A does not supersede specific retention requirements imposed by other rules, such as Rule 5.5(d)(2) (two-year retention of written notification to client of utilization of services of suspended or disbarred lawyer), Rule 4, Chapter 23.3 C.R.C.P. (six-year retention of contingent fee agreement and proof of mailing following completion or settlement of the case) and C.R.C.P. 121, 1-26(7) (two year retention of signed originals of e-filed documents). A document may be subject to more than one retention requirement, in which case the lawyer should retain the

document for the longest applicable period. Rule 1.16A does not prohibit a lawyer from maintaining a client's files beyond the periods specified in the Rule.

[4] A lawyer may not destroy a client's file when the lawyer has knowledge of pending or threatened proceedings relating to the matter. The Rule does not affect a lawyer's obligations under Rule 1.16(d) with respect to the surrender of papers and property to which the client is entitled upon termination of the representation. A client's receipt of papers forwarded from time to time by the lawyer during the course of the representation does not alleviate the lawyer's obligations under Rule 1.16A.

[5] The destruction of a client's files under paragraph (a) of Rule 16A is subject to two sets of preconditions. First, the lawyer must have given written notice to the client of the lawyer's intention to destroy the files on or after a date certain, which date is not less than thirty days after the date the notice was given or the client has authorized the destruction of the files in a writing signed by the client. As provided in paragraph (d), the notice requirement in paragraph (a) can be satisfied by timely giving the client a written statement of the applicable file retention policy; for example, that policy could be contained in a written fee agreement. A lawyer should make reasonable efforts to locate a client for purposes of giving written notice when such notice was not provided during the representation. If the lawyer is unable to locate the client, written notice sent to the client's last known address is sufficient under paragraph (a) Rule 1.16A. Second, the lawyer may not destroy the files if the lawyer knows that there are legal proceedings pending or threatened that relate to the matter for which the lawyer created the files, if the file is subject to paragraph (c) of this Rule, or if the lawyer has agreed otherwise. If these preconditions are satisfied, the lawyer may destroy the files in a manner consistent with the lawyer's continuing obligation to maintain the confidentiality of information relating to the representation under Rules 1.6 and 1.9. Nothing in this Rule is intended to mandate that a lawyer destroy a file in the absence of a client's instruction to do so. Notwithstanding a client's instruction to destroy or return a file, a lawyer may retain a copy of the file or any document in the file.

Rule 1.17. Sale of Law Practice.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) the seller ceases to engage in the private practice of law in Colorado, or in the area of practice in Colorado that has been sold;

(b) the entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) the seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within sixty (60) days of mailing of the notice to the client at the client's last known address; and

(d) the fees charged clients shall not be increased by reason of the sale.

Cite as RPC 1.17

History. Entire rule added June 12, 1997, effective July 1, 1997; (i) added and adopted and comment amended and adopted April 18, 2001, effective July 1, 2001; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [5] amended and effective November 6, 2008.

Note:

COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6. Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the

jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state.

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(d). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold. Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest. Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser written notice must be mailed to the client at the client's last known address. The notice must include the identity of the purchaser, and the client must be told that the decision to consent or make other arrangements must be made within 60 days of the mailing of the notice. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] [No Colorado comment.]

[9] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice. Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards

applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16). Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Rule 1.18. Duties to Prospective Client.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 1.18. Duties to Prospective Client

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially

adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to the prospective client, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Cite as RPC 1.18

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 200; (a) and (b) amended effective April 6, 20168.

Note:

COMMENT

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person communicates information unilaterally to a lawyer,

without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a "prospective client." Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rules 1.15A and 1.15D.

Rule 2.1. Advisor.

Colorado Court Rules

Colorado Rules of Professional Conduct

Counselor

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 2.1. Advisor

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

Cite as RPC 2.1

History. Comment [2] amended and adopted by the Court, En Banc, December 1, 2016, effective immediately.

Note:

COMMENT

Scope of Advice

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

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

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a

client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts. Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Rule 2.2. Intermediary.

Colorado Court Rules

Colorado Rules of Professional Conduct

Counselor

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 2.2. Intermediary

Repealed April 12, 2007, effective January 1, 2008.

Cite as RPC 2.2

Rule 2.3. Evaluation for Use by Third Persons.

Colorado Court Rules

Colorado Rules of Professional Conduct

Counselor

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 2.3. Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Cite as RPC 2.3

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available. Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may

not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings. Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1. Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6(a) and 1.0(e). Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Rule 2.4. Lawyer Serving as Third-party Neutral.

Colorado Court Rules

Colorado Rules of Professional Conduct

Counselor

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 2.4. Lawyer Serving as Third-party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Cite as RPC 2.4

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate,

the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

Rule 3.1. Meritorious Claims and Contentions.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Cite as RPC 3.1

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule. See A.L.L. v. People ex rel. C.Z., 226 P.3d 1054, 1060 (Colo. 2010) (addressing obligations of court-approved counsel for a respondent parent in a termination of parental rights appeal).

Case Notes:

ANNOTATION

Annotator's note. Rule 3.1 is similar to Rule 3.1 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

The constitutional right to petition the government for a redress of grievances protects appeals from court decisions unless the sham exemption applies. Therefore, an attorney may not be disciplined unless the filing of an appeal is objectively without merit and the attorney subjectively intended an ulterior motive. In re Foster, 253 P.3d 1244 (Colo. 2011).

Public censure was appropriate where the attorney failed to cooperate in a disciplinary investigation, made frivolous motions, and made a statement with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. People v. Thomas, 925 P.2d 1081 (Colo. 1996).

A violation of this rule must be proved by clear and convincing evidence in a disciplinary proceeding. Therefore, the fact that a district court had found by a preponderance of the evidence that an attorney had made a frivolous motion did not preclude the hearing board from determining that the attorney had not violated this rule. In re Egbune, 971 P.2d 1065 (Colo. 1999).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Robinson, 853 P.2d 1145 (Colo. 1993); People v. Maynard, 238 P.3d 672 (Colo. O.P.D.J. 2009).

Cases Decided Under Former DR 1-102.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law. 880 (1982). For article, "The Ethical Obligation to Disclose Attorney Negligence", see 13 Colo. Law. 232 (1984). For article, "Indemnification or Contribution Among Counsel in Legal Malpractice Actions", see 14 Colo. Law. 563 (1985). For article, "The Lawyer's Duty to Report Ethical Violations", see 18 Colo. Law. 1915 (1989). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part I", see 19 Colo. Law. 465 (1990). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part II", see 19 Colo. Law. 647 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Use of Subpoenas in Civil Proceedings, see 19 Colo. Law. 1556 (1990). For article, "Punishing Ethical Violations: Aggravating and Mitigating Factors", see 20 Colo. Law. 243 (1991). For article, "Sex, Lawyers and Vilification", see 21 Colo. Law. 469 (1992).

Constitutionality upheld. This rule is not unconstitutionally vague on its face or as applied. People v. Morley, 725 P.2d 510 (Colo. 1986).

Standards used in determining a constitutional challenge to a statute are used in determining a constitutional challenge to this rule. People v. Morley, 725 P.2d 510 (Colo. 1986).

Presumption of constitutionality attaches to such enactment, and the burden is on the party challenging an enactment to demonstrate its unconstitutionality beyond a reasonable doubt. People v. Morley, 725 P.2d 510 (Colo. 1986).

Since a disciplinary rule is promulgated for the purpose of guiding lawyers in their professional conduct, and is not directed to the public at large, the central consideration in resolving a vagueness challenge should be whether the nature of the proscribed conduct encompassed by the rule is readily understandable to a licensed lawyer. People v. Morley, 725 P.2d 510 (Colo. 1986).

Attorney's psychological problems considered as aggravating and mitigating circumstances in arriving at a recommendation for discipline. The presence of psychological problems, however, does not automatically prevent the attorney from assisting in his own defense where evidence is shown to the contrary. People v. Belina, 765 P.2d 121 (Colo. 1988).

Attorney's conduct was so careless or reckless as to constitute sufficient showing of knowledge for violation of subsection (A)(4) of this disciplinary rule. People v. Rader, 822 P.2d 950 (Colo. 1992).

In order to find that attorney engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of this disciplinary rule, it must be shown that attorney had culpable mental state greater than simple negligence. People v. Rader, 822 P.2d 950 (Colo. 1992).

Failure to respond to inquiries from referral service, to pay consultation charges and forwarding fees to service, and to return case status reports to service constitutes a violation of sections (A)(1), (A)(4), and (A)(6). People v. Taylor, 799 P.2d 930 (Colo. 1990).

Attorney's conduct violated section (A)(4), (A)(5), (A)(6), and DR 2-106(A), where the attorney's multiple billing practice resulted in the charging or collection of a clearly excessive fee because the compensation claimed bore no rational relationship to the work performed and exceeded the compensation authorized by law. People v. Walker, 832 P.2d 935 (Colo. 1992).

Attorney's conduct violated sections (A)(4) and (A)(5) where the attorney failed to file applications for approval of fees in a bankruptcy case, did not seek court approval of compensation after the bankruptcy petition was filed, and left the state while the case was pending without providing his client means of contacting him. These actions, aggravated by a previous public censure, warranted a 60-day suspension. People v. Mills, 923 P.2d 116 (Colo. 1996).

Hearing board should not have found violations of sections (A)(4) and (A)(5) where board absolved attorney of the charges the complaint advised him to defend. By failing to find a violation for the failure to disclose certain payments until ordered to do so, the board should not have proceeded with finding that attorney committed misconduct in not detailing the sources of the disputed income. In re Quiat, 979 P.2d 1029 (Colo. 1999).

Board erred in concluding that attorney's representation of individual client with whom he had a business relationship constituted conduct adversely reflecting on attorney's fitness to practice law. Neither complainant's expert nor hearing board paid sufficient attention to the specific and unusual facts of the general and limited partnerships' actual or potential liabilities. The record does not support the board's findings that an actual conflict existed among the general and limited partners, including the attorney, or that potential for conflict was likely. In re Quiat, 979 P.2d 1029 (Colo. 1999).

An attorney's appearance as counsel of record in numerous court proceedings following an order of suspension constituted a violation of DR 1-102(A)(4). People v. Kargol, 854 P.2d 1267 (Colo. 1993).

Attorney's effort to cause suppression of relevant evidence at driver license revocation proceeding in a manner not authorized by statute or other law constitutes conduct prejudicial to administration of justice and contrary to DR 1-102 (A)(5). People v. Attorney A., 861 P.2d 705 (Colo. 1993).

Attorney's effort to condition settlement of a malpractice claim upon client's agreement not to file a grievance against him constituted conduct prejudicial to the administration of justice in violation of paragraph (A)(5). People v. Moffitt, 801 P.2d 1197 (Colo. 1990).

Adopting a conscious scheme to take ownership of homes, collect rents from tenants, make virtually no efforts to sell the homes, and permit foreclosures to occur on which the department of housing and urban development (HUD) would absorb the losses constituted equity skimming in violation of § 18-5-802 and constitutes a violation of sections (A)(4) and (A)(6) for which suspension for one year is appropriate. People v. Phelps, 837 P.2d 755 (Colo. 1992).

As officers of the court, lawyers are charged with obedience to the laws of this state and to the laws of the United States, and intentional violation by them of these laws subjects them to the severest discipline. People v. Wilson, 176 Colo. 389, 490 P.2d 954 (1971).

The crime with which an attorney is charged is one of serious consequences denoting moral turpitude and he is found guilty of such a crime, he cannot, in good conscience, be permitted to practice law in this state. People v. Wilson, 176 Colo. 389, 490 P.2d 954 (1971).

It is unprofessional conduct and dishonorable to deal other than candidly with the facts in drawing affidavits and other documents. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

By filing false documents, an attorney perpetrates a fraud upon the court. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

Where an attorney receives as a fee from one of his clients stolen property, then even though he does ask the client whether the item was stolen and receives a negative answer from him, he should make further inquiry as to the actual source of the item, and failure to do so constitutes a breach of his obligations as a member of the bar. People v. Zelinger, 179 Colo. 379, 504 P.2d 668 (1972).

License to practice law assures public that the lawyer who holds the license will perform basic legal tasks honestly and without undue delay, in accordance with the highest standards of professional conduct. People v. Witt, 200 Colo. 522, 616 P.2d 139 (1980); People v. Dixon, 621 P.2d 322 (Colo. 1981); People v. Kendrick, 646 P.2d 337 (Colo. 1982).

An attorney must adhere with dedication to the highest standards of honesty and integrity in order that members of the public are assured that they may deal with attorneys with the knowledge that their matters will be handled with absolute propriety. People v. Golden, 654 P.2d 853 (Colo. 1982).

Client has right to expect competency and integrity from lawyer. A client has every right to expect that conduct taken on its behalf will be carried out with that competence and integrity ideally shared by every lawyer who is licensed to practice law in the jurisdiction. Williams v. Burns, 463 F. Supp. 1278 (D. Colo. 1979); People v. Pooley, 774 P.2d 239 (Colo. 1989).

Public expects appropriate discipline for misconduct. The public has a right to expect that one who engages in professional misconduct will be disciplined appropriately. People v. Witt 200 Colo. 522, 616 P.2d 139 (1980); People v. Dixon, 621 P.2d 322 (Colo. 1981).

Most severe punishment is required when a lawyer disregards his professional obligations and converts his clients' funds to his own use. People v. Kluver, 199 Colo. 511, 611 P.2d 971 (1980); People v. Kendrick, 646 P.2d 337 (Colo. 1982); People v. Bealmear, 655 P.2d 402 (Colo. 1982).

Conversion of client funds is conduct warranting disbarment because it destroys the trust essential to the attorney-client relationship, severely damages the public's perception of attorneys, and erodes public confidence in our legal system. People v. Radosevich, 783 P.2d 841 (Colo. 1989).

Where attorney, as trustee, withdrew $13,100 from the trust without the client-settlor's knowledge and refused to repay the money when given the opportunity by the client-settlor, attorney's conduct was sufficient to warrant disbarment. People v. Whitcomb, 819 P.2d 493 (Colo. 1991).

Conversion of client funds cannot be tolerated regardless of the apparent fact that the attorney did not use such funds for personal gain but to pay the costs and expenses incident to handling a large practice that included many non-paying clients. People v. Franco, 698 P.2d 230 (Colo. 1985).

Fitness to practice law adversely reflected upon by attorney's business judgment and violations of the code of professional responsibility although his legal competence was not questioned. People v. Franco, 698 P.2d 230 (Colo. 1985).

Failure to represent a client also adversely reflects upon an attorney's fitness to practice law. People v. Coca, 732 P.2d 640 (Colo. 1987).

Attorney should never obstruct justice or judicial process. An attorney has a high duty as an officer of the court to

never participate in any scheme to obstruct the administration of justice or the judicial process. People v. Kenelly, 648 P.2d 1065 (Colo. 1982); People v. Haase, 781 P.2d 80 (Colo. 1989).

Submission of false transcript to obtain admission to law school and to qualify for admission as a member of the bar is a violation of this rule and requires that respondent's admission to the bar be voided. People v. Culpepper, 645 P.2d 5 (Colo. 1982).

Failure to disclose a misdemeanor conviction in another state when applying for the bar and subsequent disbarment from the other state constitutes conduct involving fraud, deceit, and misrepresentation prejudicial to the administration of justice. People v. Mattox, 639 P.2d 397 (Colo. 1982).

Lawyer owes obligation to client to act with diligence in handling his client's legal work and in his representation of his client in court. People v. Bugg, 200 Colo. 512, 616 P.2d 133 (1980).

Failure to take any action on behalf of his client after he was retained and entrusted with work and in making representations to his client which were false, an attorney violates the code of professional responsibility and C.R.C.P. 241.6. People v. Southern, 638 P.2d 787 (Colo. 1982).

Fact that attorney informed client that workers' compensation hearing was cancelled due to attorney's illness when attorney was actually abandoning practice constituted conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of this rule. People v. Felker, 770 P.2d 402 (Colo. 1989).

Fabricating documents to justify conduct breaches attorney's ethical obligations to his client and to the bar. People v. Yost, 729 P.2d 348 (Colo. 1986).

Falsification of an adoption decree with the original intent to use it for a fraudulent purpose is forgery in violation of § 18-5-103 and is a violation of DR 1-102 and DR 7-102 whether of not the attorney who falsified the decree actually used or attempted to use the decree. People v. Marmon, 903 P.2d 651 (Colo. 1995).

Absence of contempt finding by trial court concerning attorney's willful failure to pay child support is a non-dispositive factor to be considered when imposing discipline. People v. Kolenc, 887 P.2d 1024 (Colo. 1994).

Trial court's finding in child support hearing that attorney willfully violated child support order should be accorded collateral estoppel effect before the hearing board as long as court makes finding by clear and convincing evidence or beyond a reasonable doubt. People v. Kolenc, 887 P.2d 1024 (Colo. 1994).

Attorney violated this rule and C.R.P.C. 1.1 when he prepared and filed child support worksheets that failed to properly reflect the new stipulation concerning custody. People v. Davies, 926 P.2d 572 (Colo. 1996).

Lawyer may not secretly record any conversation he has with another lawyer or person. People v. Selby, 198 Colo. 386, 606 P.2d 45 (1979).

Telephone conversation, which attorney initiated and recorded without the permission of other party to conversation

established unethical conduct on attorney's part. People v. Wallin, 621 P.2d 330 (Colo. 1981).

Inherent in the undisclosed use of a recording device is an element of deception, artifice, and trickery which does not comport with the high standards of candor and fairness by which all attorneys are bound. People v. Selby, 198 Colo. 386, 606 P.2d 45 (1979); People v. Smith, 778 P.2d 685 (Colo. 1989).

Suspension from practice in tax court is a determination of misconduct in another jurisdiction constituting grounds for discipline under these rules. People v. Hartman, 744 P.2d 482 (Colo. 1987).

Unfounded assertion of attorney's lien violates professional code. The assertion of an attorney's lien in circumstances where the attorney has no statutory or legal foundation for a lien and, in fact, has only an uncertain claim to the fee on which the purported lien is founded violates the code of professional responsibility. People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982).

Willful and knowing failure to make a federal income tax return is an offense involving moral turpitude. People v. Emeson, 638 P.2d 293 (Colo. 1981).

Both the charges and the well pleaded complaint are deemed admitted by the entry of a default judgment. People v. Richards, 748 P.2d 341 (Colo. 1987).

Continued representation of clients with conflicting interests violates this rule and warrants discipline. People v. Awenius, 653 P.2d 740 (Colo. 1982).

Attorney's representation of two estates where the beneficiaries of the estates had conflicting interests and the attorney fails to obtain waivers from the beneficiaries is a violation of this rule. People v. Gebauer, 821 P.2d 782 (Colo. 1991).

Attorney violated this rule by lying to grievance committee counsel regarding the return of client's files. People v. Felker, 770 P.2d 402 (Colo. 1989).

Conduct found to violate disciplinary rules. People v. Bugg, 635 P.2d 881 (Colo. 1981); People v. Sachs, 732 P.2d 633 (Colo. 1987); People v. Ross, 810 P.2d 659 (Colo. 1991).

Conduct held to violate this rule. People v. Goss, 646 P.2d 334 (Colo. 1982).

Applied in People v. Spiegel, 193 Colo. 161, 567 P.2d 353 (1977); People v. Schermerhorn, 193 Colo. 364, 567 P.2d 799 (1977); People v. Pittam, 194 Colo. 104, 572 P.2d 135 (1977); People v. Good, 195 Colo. 177, 576 P.2d 1020 (1978); People v. McMichael, 1 96 Colo. 128, 586 P.2d 1 (1978); People v. Susman, 196 Colo. 458, 587 P.2d 782 (1978); People v. Harthun, 197 Colo. 1, 593 P.2d 324 (1979); People v. Cameron, 197 Colo. 330, 595 P.2d 677 (1979); People ex rel. Aisenberg v. Young, 198 Colo. 26, 599 P.2d 257 (1979); People v. Pacheco, 198 Colo. 455, 608 P.2d 333 (1979); People ex rel. Gallagher v. Hertz, 1 98 Colo. 522, 608 P.2d 335 (1979); People ex rel. Silverman v. Anderson, 200 Colo. 76, 612 P.2d 94 (1980); People v. Hilgers, 200 Colo. 211, 612 P.2d 1134 (1980); People v. Lanza, 200 Colo. 241, 613 P.2d 337 (1980); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People v. Hurst,

200 Colo. 537, 618 P.2d 1113 (1980); People v. Kendrick, 619 P.2d 65 (Colo. 1980); People v. Gottsegen, 623 P.2d 878 (Colo. 1981); People v. Luxford, 626 P.2d 675 (Colo. 1981); People v. Rotenberg, 635 P.2d 220 (Colo. 1981); People v. Wright, 638 P.2d 251 (Colo. 1981); People v. Kane, 638 P.2d 253 (Colo. 1981); People v. Archuleta, 638 P.2d 255 (Colo. 1981); Law Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.2d 1215 (Colo. 1982); People v. Whitcomb, 676 P.2d 11 (Colo. 1983); People v. Tucker, 676 P.2d 680 (Colo. 1983); People v. Bollinger, 681 P.2d 950 (Colo. 1984); People v. Underhill, 683 P.2d 349 (Colo. 1984); People v. Simon, 698 P.2d 228 (Colo. 1985); People v. McDowell, 718 P.2d 541 (Colo. 1986); People v. Smith, 778 P.2d 685 (Colo. 1989).

II. DISCIPLINARY ACTIONS.

A. Public Censure.

Violation of election laws sufficient to justify public censure. People v. Casias, 646 P.2d 391 (Colo. 1982).

Bigamy, an offense of moral turpitude, warrants public censure. People v. Tucker, 755 P.2d 452 (Colo. 1988).

An attorney's inaction in response to the grievance committee's request concerning informal complaint filed, considered with other circumstances, justified public censure. People v. Moore, 681 P.2d 480 (Colo. 1984).

Where an attorney repeatedly issued checks from his law office account knowing that they would not be paid by the bank, such conduct, considered with other circumstances, justified public censure. People v. Moore, 681 P.2d 480 (Colo. 1984).

Public censure warranted where attorney kept the first lump sum check obtained in settlement as a lump sum payment of his contingency fee and reimbursement of costs even though he knew the settlement might later be reduced by the social security disability award and the client's union award. People v. Maceau, 910 P.2d 692 (Colo. 1996).

Adjudicating, as a judge, the criminal case of a person who is his client in a divorce proceeding warrants public censure because it is the duty of an attorney-judge to promptly disclose conflicts of interest and to disqualify himself without suggestion from anyone. People v. Perrott, 769 P.2d 1075 (Colo. 1989).

Conduct was prejudicial to the administration of justice and warranted public censure where, during the course of criminal proceedings, attorney made an offer to the deputy district attorney to dismiss a related civil action if the criminal charges against his client were dismissed. People v. Silvola, 888 P.2d 244 (Colo. 1995).

Use of racial epithet by prosecutor in discussing case with defense counsel for two Hispanic defendants constituted a violation of this section warranting public censure. People v. Sharpe, 781 P.2d 659 (Colo. 1989).

Neglect of a legal matter ordinarily warranting a letter of admonition by way of reprimand requires imposition of public censure when such conduct is repeated after three letters of admonition. People v. Goodwin, 782 P.2d 1 (Colo. 1989).

Public censure was appropriate where an already suspended attorney was the subject of prior discipline for misdemeanor convictions of assault and driving while impaired and where an additional period of suspension would have little, if any, practical effect and would not have afforded a meaningful measure of protection for the public. People v. Flores, 871 P.2d 1182 (Colo. 1994).

Evidence sufficient to justify public censure. People v. Hertz, 638 P.2d 794 (Colo. 1982).

Public censure was appropriate where lawyer's actions involving criminal activity did not seriously affect the lawyer's fitness to practice law and mitigating factors were present in the absence of any aggravating factors. People v. Fahselt, 807 P.2d 586 (Colo. 1991).

Public censure was appropriate where multiple representations and neglect caused no actual harm and attorney was cooperative during disciplinary proceedings, had no prior discipline, and was relatively inexperienced at the time the misconduct occurred. People v. Ramseur, 897 P.2d 1391 (Colo. 1995).

Threatening to invoke disciplinary proceedings against judge in anticipation of adverse ruling warrants public censure. People v. Tatum, 814 P.2d 388 (Colo. 1991).

Failure to timely file a paternity action constitutes neglect of a legal matter that warrants public censure. People v. Good, 790 P.2d 331 (Colo. 1990).

Public censure was warranted where attorney made false statements in the course of discovery in cases where the attorney was the plaintiff. Evidence showed that the attorney was suffering from a psychiatric condition at the time, and the assistant disciplinary counsel could not prove that the attorney's false statements were knowing, but only that they were negligent. People v. Dillings, 880 P.2d 1220 (Colo. 1994).

Public censure was appropriate where attorney failed to provide a critical document to opposing counsel after agreeing to do so and failed to reveal relevant information at the time of trial. People v. Wilder, 860 P.2d 523 (Colo. 1993).

Failure to inform arbitrators of errors in expert witness' testimony constituted violation of DR 7-102 warranting public censure because attorney did not disclose that expert had informed attorney of mistakes in writing, and attorney made closing arguments based on uncorrected expert conclusions. People v. Bertagnolli, 861 P.2d 717 (Colo. 1993) (decided under DR 7-102).

Public censure was appropriate where attorney's failure to appear at three hearings violated subsection (A)(5) and, in aggravation, there was a pattern of misconduct. People v. Cabral, 888 P.2d 245 (Colo. 1995).

Public censure warranted where attorney engaged in sexual relations with client attorney represented in dissolution of marriage action even though client suffered no actual harm. People v. Zeilinger, 814 P.2d 808 (Colo. 1991).

Discharging firearm in direction of spouse while intoxicated, although not a crime involving dishonesty, goes

beyond mere negligence and public censure is appropriate. Mitigating factors, although present, were insufficient to warrant making censure private. People v. Senn, 824 P.2d 822 (Colo. 1992).

Public censure is appropriate for attorney's negligence in closing estates in an untimely manner and for representing two estates where the beneficiaries of the estates have conflicting interests and the attorney fails to obtain waivers from the beneficiaries. People v. Gebauer, 821 P.2d 782 (Colo. 1991).

Attorney's unlawful assertion of charging lien against client's share of estate proceeds following client's demand for return of property is subject to public censure. People v. Mills, 861 P.2d 708 (Colo. 1993) (decided under DR 1-102 (A)(5)).

Public censure is appropriate where lawyer's predominant mental state was one of negligence and there was an absence of actual harm to the client. People v. Hickox, 889 P.2d 47 (Colo. 1995).

Public censure is appropriate if attorney's course of behavior exhibits a serious error in judgment going beyond simple negligence. People v. Blundell, 901 P.2d 1268 (Colo. 1995).

Public censure was appropriate where the attorney failed to cooperate in a disciplinary investigation, made frivolous motions, and made a statement with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. People v. Thomas, 925 P.2d 1081 (Colo. 1996).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Ashley, 796 P.2d 962 (Colo. 1990); People v. Mulvihill, 814 P.2d 805 (Colo. 1991); People v. Smith, 819 P.2d 497 (Colo. 1991); People v. Richardson, 820 P.2d 1120 (Colo. 1991); People v. Dalton, 840 P.2d 351 (Colo. 1992); People v. Vsetecka, 893 P.2d 1309 (Colo. 1995); People v. Wollrab, 909 P.2d 1093 (Colo. 1996); People v. Fitzgibbons, 909 P.2d 1098 (Colo. 1996); People v. Cohan, 913 P.2d 523 (Colo. 1996).

Conduct violating this rule sufficient to justify public censure. People v. Bollinger, 648 P.2d 620 (Colo. 1982); People v. Driscoll, 716 P.2d 1086 (Colo. 1986); People v. Mayer, 716 P.2d 1094 (Colo. 1986); People v. Carpenter, 731 P.2d 726 (Colo. 1987); People v. Schaiberger, 731 P.2d 728 (Colo. 1987); People v. Horn, 738 P.2d 1186 (Colo. 1987); People v. Stauffer, 745 P.2d 240 (Colo. 1987); People v. Barr, 748 P.2d 1302 (Colo. 1988); People v. Dowhan, 759 P.2d 4 (Colo. 1988); People v. Fieman, 778 P.2d 830 (Colo. 1990); People v. Stayton, 798 P.2d 903 (Colo. 1990); People v. Brinn, 801 P.2d 1195 (Colo. 1990); People v. Moffitt, 801 P.2d 1197 (Colo. 1990); People v. Barr, 805 P.2d 440 (Colo. 1991); People v. Shunneson, 814 P.2d 800 (Colo. 1991); People v. Reichman, 819 P.2d 1035 (Colo. 1991); People v. Gebauer, 821 P.2d 782 (Colo. 1991); People v. Dillings, 880 P.2d 1220 (Colo. 1994); People v. Wollrab, 909 P.2d 1093 (Colo. 1996).

B. Suspension.

Preparing false carbon copies of correspondence to a client and testifying falsely to grievance committee of the supreme court concerning these letters warrants suspension from practice of law for period of at least three years, but not disbarment. People v. Klein, 1 79 Colo. 408, 500 P.2d 1181 (1972).

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court, or that material information is improperly being withheld, takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding, or when a lawyer knows that he is violating a court order or rule and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. People v. Walker, 832 P.2d 935 (Colo. 1992).

One-year suspension warranted where attorney failed to promptly respond to discovery requests, failed to inform client of case progress after custody hearing, failed to withdraw upon client's request, failed to advise client of child support modification hearing, misrepresented to the court that he was unable to contact client, and had been previously suspended for similar misconduct. People v. Regan, 871 P.2d 1184 (Colo. 1994).

Fraud, jury tampering, and excessive fees are basis for indefinite suspension. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

Attorney suspended for three years for repeated neglect and delay in handling legal matters, failure to comply with the directions contained in a letter of admonition, failure to answer letter of complaint from the grievance committee, and conviction of a misdemeanor. People v. Hebenstreit, 764 P.2d 51 (Colo. 1988).

By commingling trust funds with his own, failing to maintain complete records of his client's funds, and failure to render appropriate accounts to his client, the attorney's conduct adversely reflected on his fitness to practice law, justifying suspension from practice. People v. Wright, 698 P.2d 1317 (Colo. 1985).

For commingling of funds in trust account warranting suspension from practice, see People v. Calvert, 721 P.2d 1189 (Colo. 1986).

Recommendation of prosecution without legitimate interest warrants suspension. Where an attorney took advantage of his position of respect and status in a district attorney's office by repeatedly urging criminal prosecution in matters where his only legitimate professional interest could be in related civil matters, such actions are prejudicial to the administration of justice in violation of paragraph (A) (5). People ex rel. Gallagher v. Hertz, 1 98 Colo. 522, 608 P.2d 335 (1979).

Actions taken by attorney contrary to court order violate this rule and justify suspension. People v. Awenius, 653 P.2d 740 (Colo. 1982).

Suspension is appropriate discipline given number and severity of instances of misconduct, including pattern of neglect over clients' affairs over lengthy period and in variety of circumstances and misrepresentation in dissolution case to client who wished to remarry concerning the filing of a dissolution petition. Considering proper mitigating factors such as attorney's lack of experience, absence of prior discipline, attorney's willingness to undergo psychiatric evaluation and accept transfer to disability inactive status, suspension without credit for time on disability inactive status is appropriate. People v. Griffin, 764 P.2d 1166 (Colo. 1988).

Suspension is appropriate for a lawyer addicted to alcohol and cocaine and who neglected a client's case resulting in the entry of default judgment, but who entered into an uncompelled restitution agreement and successfully completed substance abuse treatment. People v. Richtsmeier, 802 P.2d 471 (Colo. 1990).

Attorney misconduct of neglecting a guardianship matter and engaging in conduct prejudicial to the administration of justice warrant 90-day suspension when aggravated by history of five prior instances of disciplinary offenses for neglect, pattern of misconduct, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, and substantial experience in the practice of law. People v. Dolan, 813 P.2d 733 (Colo. 1991).

Conduct manifesting gross carelessness in representation of clients is sufficient to justify suspension. People v. Roehl, 655 P.2d 1381 (Colo. 1983); People v. Fahrney, 782 P.2d 743 (Colo. 1989).

Attorney's neglect of dissolution case and misrepresentation to client concerning the filing of dissolution petition was especially egregious in view of client's desire to remarry. Such conduct in addition to number and severity of other instances of misconduct, taking into account mitigating factors, is sufficient for suspension. People v. Griffin, 764 P.2d 1166 (Colo. 1988).

Felony theft held sufficient grounds for suspension. People v. Petrie, 642 P.2d 519 (Colo. 1982).

Photocopying another attorney's securities opinion letter and presenting it as one's own, refusing to comply with discovery rules and court orders in litigation to which one is a party, and continuously failing to answer grievance complaint without good cause warrants suspension. People v. Spangler, 676 P.2d 674 (Colo. 1983).

An attorney's conduct in borrowing money from his former clients and in failing to record deeds of trust on their behalf to be used as security constitutes professional misconduct and justifies his suspension. People v. Brackett, 667 P.2d 1357 (Colo. 1983).

Where attorney engaged in a pattern of neglect, obvious conflict, and caused injury to his clients, suspension is warranted. People v. Belina, 765 P.2d 121 (Colo. 1988).

Evidence sufficient to justify suspension from the practice of law. People v. Belfor, 197 Colo. 223, 591 P.2d 585 (1979); People v. Stineman, 716 P.2d 1079 (Colo. 1986).

Both the charges and the well pleaded complaint are deemed admitted by the entry of a default judgment. People v. Richards, 748 P.2d 341 (Colo. 1987); People v. McMahill, 782 P.2d 336 (Colo. 1988).

Suspended attorney must demonstrate rehabilitation for readmittance to bar. Actions of a suspended attorney who took part in a complex real estate transaction and engaged in the practice of law by representing, counseling, advising, and assisting a former client warranted suspension until he demonstrates by clear and convincing evidence that (1) he has been rehabilitated; (2) he has complied with and will continue to comply with all applicable disciplinary orders and rules; and (3) he is competent and fit to practice law. People v. Belfor, 200 Colo. 44, 611 P.2d 979 (1980).

Where a practicing attorney breached fiduciary duties to his client in misrepresenting his dealings and in handling of

funds given to him in trust, his conduct warranted disbarment, and before he may seek readmittance to the state bar association, he must first demonstrate to the grievance committee that rehabilitation has occurred and that he is entitled to a new start. People ex rel. Buckley v. Beck, 199 Colo. 482, 610 P.2d 1069 (Colo. 1980).

Attorney's payment to inmates for referrals to attorney for the provision of legal services justifies 60-day suspension. People v. Shipp, 793 P.2d 574 (Colo. 1990); People v. Whitaker, 814 P.2d 812 (Colo. 1991).

Three-month suspension appropriate where attorney intentionally misrepresented that he possessed automobile insurance coverage to automobile accident victim, police officer, and grievance committee investigator, and where attorney was previously publicly censured for engaging in lengthy delay tactics. People v. Dowhan, 814 P.2d 822 (Colo. 1991).

Reckless disregard for the propriety of submitting multiple and duplicative billing in court-appointed cases constitutes knowing conduct warranting a 90-day suspension. People v. Walker, 832 P.2d 935 (Colo. 1992).

Repeated drawings of checks upon insufficient funds and misuse of trust account moneys constituted grounds for suspension. People v. Lamberson, 802 P.2d 1098 (Colo. 1990).

Attorney's failure to file personal state and federal income tax returns and to pay withholding taxes for federal income taxes and FICA, and use of cocaine and marijuana constitute conduct warranting suspension for one year and one day. People v. Holt, 832 P.2d 948 (Colo. 1992).

Suspension for one year and one day warranted where attorney misrepresented to client that a trial had been scheduled, that continuances and new trial settings had been made, that a settlement had been reached, and where the attorney's previous, similar discipline, was a significant aggravating factor. People v. Smith, 888 P.2d 248 (Colo. 1995).

Suspension for one year and one day warranted for attorney who "represented" client for a period of 19 months without that person's knowledge or consent, even asserting a counterclaim on his behalf without talking to him; who did not communicate with him in any manner for an extended period of time and then did not withdraw within a reasonable time after being unable to contact him; and who failed to answer discovery requests, resulting in the entries of default and then a default judgment against him. People v. Silvola, 915 P.2d 1281 (Colo. 1996).

Suspension for one year and one day is warranted for commingling and misuse of client funds. The hearing board found that the respondent acted recklessly, rather than knowingly, in misappropriating client funds. People v. Zimmermann, 922 P.2d 325 (Colo. 1996).

Suspension of one year and one day necessary where lawyer engaged in sexual relationship with client, had been previously disciplined, and submitted false evidence to the hearing board concerning the sexual relationship. People v. Good, 893 P.2d 101 (Colo. 1995).

Suspension of one year and one day warranted in light of the seriousness of attorney's misconduct in conjunction

with his noncooperation in the disciplinary proceedings and his substantial experience in the practice of law. People v. Clark, 900 P.2d 129 (Colo. 1995).

Suspension for one year and one day warranted where attorney billed for time that was not actually devoted to work contemplated by contract and for time not actually performed. People v. Shields, 905 P.2d 608 (Colo. 1995).

Suspension for one year and one day was warranted for attorney who violated this rule and C.R.P.C. 1.1 by preparing and filing child support worksheets that failed to properly reflect the new stipulation concerning custody and where aggravating factors included a previous disciplinary history and failure to appear in the grievance proceedings. People v. Davies, 926 P.2d 572 (Colo. 1996).

Mental disability that caused misconduct is a mitigating factor which, when considered in conjunction with other factors, justifies suspension of attorney for conversion of funds that would otherwise warrant disbarment. People v. Lujan, 890 P.2d 109 (Colo. 1995).

District attorney's failure to prosecute personal friend for possession of marijuana violates paragraphs (A)(1), (A)(5), and (A)(6) of this rule and warrants three-year suspension. People v. Larsen, 808 P.2d 1265 (Colo. 1991).

Suspension of lawyer for three years, which is the longest possible period for suspension, is appropriate where there was extensive pattern of client neglect and intentional deception in client matters over a period of years. Anything less would be too lenient. People v. Hellewell, 811 P.2d 386 (Colo. 1991).

Suspension justified where respondent violated federal and state laws by failing to file personal income tax returns, failing to pay withholding taxes, using cocaine, and using marihuana. People v. Holt, 832 P.2d 948 (Colo. 1992).

The fact that no specific client of the respondent was actually harmed by the respondent's misconduct misses the point in proceeding for suspension of an attorney. While the primary purpose of attorney discipline is the protection of the public and not to mete punishment to the offending lawyer, lawyers are, nonetheless, charged with obedience to the law, and intentional violation of those laws subjects an attorney to the severest discipline. People v. Holt, 832 P.2d 948 (Colo. 1992).

Felony convictions warrant suspension for attorney convicted of violating California Tax Code where numerous mitigating factors were found to exist. People v. Mandell, 813 P.2d 732 (Colo. 1991).

Three-year suspension appropriate where attorney was convicted for felony distribution of cocaine, but had no record of prior discipline, there was no selfish or dishonest motive associated with crime, and the attorney successfully participated in interim rehabilitation programs. People v. Rhodes, 829 P.2d 850 (Colo. 1992).

Failure to communicate with clients, court, and opposing counsel, misrepresentation of the status of the proceedings to client, and failure to investigate clients' case justifies three-year suspension. People v. Wilson, 814 P.2d 791 (Colo. 1991).

Abusive, insulting, and unprofessional conduct towards deponent and opposing counsel during deposition and repeated instances of using health as an excuse for continuances when respondent was ill-prepared for trial warrants six-month suspension. People v. Genchi, 824 P.2d 815 (Colo. 1992).

Adopting a conscious scheme to take ownership of homes, collect rents from tenants, make virtually no efforts to sell the homes, and permit foreclosures to occur on which HUD would absorb the losses constituted equity skimming in violation of § 18-5-802 and constitutes a violation of sections (A)(4) and (A)(6) for which suspension for one year is appropriate. People v. Phelps, 837 P.2d 755 (Colo. 1992).

Attorney who employed devices to defraud, made untrue statements of material fact, and engaged in acts which operated as fraud or deceit upon persons in violation of the Securities and Exchange Act violated DR 1-102 (A)(4) and DR 1-102 (A)(6) for which suspension of two years is appropriate, considering mitigating factors. People v. Hanks, 967 P.2d 141 (Colo. 1998).

Attorney who conveyed real property to defraud creditors suspended from the practice of law. In mitigation, the attorney had fully cooperated with the board. People v. Koller, 873 P.2d 761 (Colo. 1994).

Respondent's multiple acts of violence are indicative of a dangerous volatility which might well prejudice his ability to effectively represent his client's interests. Although respondent had taken major steps towards rehabilitation the acts committed were of such gravity as to require a public censure and a three-month suspension. People v. Wallace, 837 P.2d 1223 (Colo. 1992).

Third-degree sexual assault of wife adequate basis for one-year and one day suspension. People v. Brailsford, 933 P.2d 592 (Colo. 1997).

Suspension for 180 days is warranted based upon conviction of third degree assault charges. People v. Knight, 883 P.2d 1055 (Colo. 1994).

Willful nonpayment of child support and failure to pay arrearages after ordered by court to do so are violations of subsections (A)(5) and (A)(6) and constitute adequate basis for six-month suspension. People v. Tucker, 837 P.2d 1225 (Colo. 1992).

Where deputy district attorney was convicted of possession of cocaine under federal law, one-year suspension is appropriate due to seriousness of offense and fact that attorney had higher responsibility to the public by virtue of engaging in law enforcement. People v. Robinson, 839 P.2d 4 (Colo. 1992).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Murphy, 778 P.2d 658 (Colo. 1989); People v. Hodge, 782 P.2d 25 (Colo. 1989); People v. Masson, 782 P.2d 335 (Colo. 1989); People v. Chappell, 783 P.2d 838 (Colo. 1989); People v. Moya, 793 P.2d 1154 (Colo. 1990); People v. Creasey, 793 P.2d 1159 (Colo. 1990); People v. Schmad, 793 P.2d 1162 (Colo. 1990); People v. Wilbur, 796 P.2d 976 (Colo. 1990); People v. Baptie, 796 P.2d 978 (Colo. 1990); People v. Schubert, 799 P.2d 388 (Colo. 1990); People v. Taylor, 799 P.2d 930 (Colo. 1990); People v. Barber, 799 P.2d 936 (Colo. 1990); People v. Garrett,

802 P.2d 1082 (Colo. 1990); People v. Sullivan, 802 P.2d 1091 (Colo. 1990); People v. Rhodes, 803 P.2d 514 (Colo. 1991); People v. Flores, 804 P.2d 192 (Colo. 1991); People v. Crimaldi, 804 P.2d 863 (Colo. 1991); People v. Dunsmoor, 807 P.2d 561 (Colo. 1991); People v. Bennett, 810 P.2d 661 (Colo. 1991); People v. Hall, 810 P.2d 1069 (Colo. 1991); People v. Koeberle, 810 P.2d 1072 (Colo. 1991); People v. Gaimara, 810 P.2d 1076 (Colo. 1991); People v. Dash, 811 P.2d 36 (Colo. 1991); People v. Honaker, 814 P.2d 785 (Colo. 1991); People v. Anderson, 817 P.2d 1035 (Colo. 1991); People v. Redman, 819 P.2d 495 (Colo. 1991); People v. Rader, 822 P.2d 950 (Colo. 1992); People v. Hyland, 830 P.2d 1000 (Colo. 1992); People v. Smith, 830 P.2d 1003 (Colo. 1992); People v. Driscoll, 830 P.2d 1019 (Colo. 1992); People v. Raubolt, 831 P.2d 462 (Colo. 1992); People v. Regan, 831 P.2d 893 (Colo. 1992); People v. Southern, 832 P.2d 946 (Colo. 1992); People v. Denton, 839 P.2d 6 (Colo. 1992); People v. Hindorff, 860 P.2d 526 (Colo. 1993); People v. Brown, 863 P.2d 288 (Colo. 1993); People v. Cole, 880 P.2d 158 (Colo. 1994); People v. Smith, 880 P.2d 763 (Colo. 1994); People v. Swan, 893 P.2d 769 (Colo. 1995); People v. Davis, 893 P.2d 775 (Colo. 1995); People v. Miller, 913 P.2d 23 (Colo. 1996); People v. Calvert, 915 P.2d 1310 (Colo. 1996); People v. Sigley, 917 P.2d 1253 (Colo. 1996); People v. Boyer, 934 P.2d 1361 (Colo. 1997).

Conduct violating this rule sufficient to justify suspension. People v. Yaklich, 646 P.2d 938 (Colo. 1982); People v. Craig, 653 P.2d 1115 (Colo. 1982); People v. Kane, 655 P.2d 390 (Colo. 1982); People v. Vernon, 660 P.2d 879 (Colo. 1982); People v. Pilgrim, 698 P.2d 1322 (Colo. 1985); People v. Convery, 704 P.2d 296 (Colo. 1985); People v. Doolittle, 713 P.2d 834 (Colo. 1985); People v. Foster, 716 P.2d 1069 (Colo. 1986); People v. Coca, 716 P.2d 1073 (Colo. 1986); People v. Barnett, 716 P.2d 1076 (Colo. 1986); People v. Fleming, 716 P.2d 1090 (Colo. 1986); People v. Larson, 716 P.2d 1093 (Colo. 1986); People v. McPhee, 728 P.2d 1292 (Colo. 1986); People v. Yost, 729 P.2d 348 (Colo. 1986); People v. Holmes, 731 P.2d 677 (Colo. 1987); People v. Proffitt, 731 P.2d 1257 (Colo. 1987); People v. May, 745 P.2d 218 (Colo. 1987); People v. Turner, 746 P.2d 49 (Colo. 1987); People v. Susman, 747 P.2d 667 (Colo. 1987); People v. Richards, 748 P.2d 341 (Colo. 1987); People v. Geller, 753 P.2d 235 (Colo. 1988); People v. Convery, 758 P.2d 1338 (Colo. 1988); People v. Lustig, 758 P.2d 1342 (Colo. 1988); People v. Preblud, 764 P.2d 822 (Colo. 1988); People v. Goldberg, 770 P.2d 408 (Colo. 1989); People v. Goens, 770 P.2d 1218 (Colo. 1989); People v. Kaemingk, 770 P.2d 1247, (Colo. 1989); People v. Fahrney, 782 P.2d 743 (Colo. 1989); People v. Bottinelli, 782 P.2d 746 (Colo. 1989); People v. Barnthouse, 775 P.2d 545 (Colo. 1989), cert. denied, 493 U.S. 1026, 110 S. Ct. 734, 107 L. Ed. 2d 752 (1990); People v. Gregory, 788 P.2d 823 (Colo. 1990); People v. Macy, 789 P.2d 188 (Colo. 1990); People v. Lopez, 796 P.2d 957 (Colo. 1990); People v. Abelman, 804 P.2d 859 (Colo. 1991); People v. Heilbrunn, 814 P.2d 819 (Colo. 1991); People v. Barr, 818 P.2d 761 (Colo. 1991); People v. Nulan, 820 P.2d 111 (Colo. 1991); People v. Dieters, 825 P.2d 478 (Colo. 1992); People v. Larson, 828 P.2d 793 (Colo. 1992); People v. Tisdel, 828 P.2d 795 (Colo. 1992); People v. Rhodes, 829 P.2d 850 (Colo. 1992); People v. Walker, 832 P.2d 935 (Colo. 1992); People v. Koller, 873 P.2d 761 (Colo. 1994); People v. Dickinson, 903 P.2d 1132 (Colo. 1995); People v. Kolbjornsen, 917 P.2d 277 (Colo. 1996); People v. Pierson, 917 P.2d 275 (Colo. 1996).

C. Disbarment.

Disbarment is discipline for lawyer guilty of crimes of moral turpitude. People v. Wilson, 176 Colo. 389, 490 P.2d 954 (1971).

Attorney disbarred for continued pattern of conduct involving neglect and misrepresentation and for failure to cooperate in investigation by grievance committee. People v. Young, 673 P.2d 1003 (Colo. 1984); People v. Coca,

732 P.2d 640 (Colo. 1987); People v. Johnston, 759 P.2d 10 (Colo. 1988).

Continuing pattern of neglect, including failure to timely file tax returns on behalf of personal representative of estate, failure to file timely notice of alibi, failure to notify opposing counsel, and failure to be adequately prepared for argument, coupled with similar behavior resulting in previous suspension, warrants disbarment. People v. Stewart, 752 P.2d 528 (Colo. 1987).

Misappropriation of funds, failure to account, and deceit and fraud in handling the affairs of a client necessitate that an attorney be disbarred. People v. Bealmear, 655 P.2d 402 (Colo. 1982).

A lawyer's knowing misappropriation of funds, whether belonging to a client or third party, warrants disbarment except in the presence of extraordinary factors of mitigation. People v. Lavenhar, 934 P.2d 1355 (Colo. 1997).

Lawyer's encouragement of a client to enter into a business transaction with said lawyer in which the two had differing interests and lawyer's failure to disclose relevant facts warrant disbarment. People v. Martinez, 739 P.2d 838 (Colo. 1987), cert. denied, 484 U.S. 1054, 108 S. Ct. 1003, 98 L. Ed. 2d 970 (1988).

Convictions for crimes of theft, theft-receiving, and conspiracy to commit theft are serious, involve moral turpitude, and are grounds for disbarment as opposed to an indefinite suspension. People v. Silvola, 195 Colo. 74, 575 P.2d 413 (1978).

Conviction of two counts of sexual assault on a child warrants no less a sanction than disbarment. People v. Grenemyer, 745 P.2d 1027 (Colo. 1987).

Disbarment warranted by attorney's conviction of conspiracy to deliver counterfeited federal reserve notes, serious neglect of several legal matters, unjustified retention of clients' property, failure to respond to the grievance committee, and previous disciplinary record. People v. Mayer, 752 P.2d 537 (Colo. 1988).

False testimony and counselling of such conduct warrant disbarment. When a lawyer counsels his client to testify falsely at a hearing on a bankruptcy petition and the client does so, and the lawyer gives a false answer to a question asked of him by the bankruptcy judge, his misconduct warrants disbarment. People v. McMichael, 199 Colo. 433, 609 P.2d 633 (1980).

Misrepresenting the status of a dissolution of marriage action with knowledge of impending remarriage and then forging the purported decree of dissolution is conduct involving moral turpitude deserving of disbarment. People v. Belina, 782 P.2d 26 (Colo. 1989).

Where an attorney demonstrates an extreme indifference to the welfare of his clients and the status of their cases and an extreme insensitivity to his professional duties in the face of adverse judgments due to neglect, client complaints, and repeated disciplinary proceedings, disbarment is the appropriate sanction. People v. Wyman, 782 P.2d 339 (Colo. 1989).

Abandoning clients sufficient to justify disbarment. People v. Sanders, 713 P.2d 837 (Colo. 1985).

Abandoning clients without notice, causing them financial losses, and failing to cooperate with grievance committee justified disbarment despite lack of any prior professional misconduct. People v. Lovett, 753 P.2d 205 (Colo. 1988).

Abandoning law practice, engaging in multiple acts of misconduct involving dishonesty, fraud, deceit, and misrepresentation grounds for disbarment. People v. Greene, 773 P.2d 528 (Colo. 1989).

Converting estate or trust funds for one's personal use, overcharging for services rendered, neglecting to return inquiries relating to client matters, failing to make candid disclosures to grievance committee, and attempting to conceal wrongdoing during disciplinary proceedings warrants the severe sanction of disbarment. People v. Gerdes, 782 P.2d 2 (Colo. 1989).

Use of license to practice law for the purpose of bringing into being an illegal prostitution enterprise renders disbarment the only possible form of discipline. People v. Morley, 725 P.2d 510 (Colo. 1986).

Theft of client's money, misrepresentations, representation of multiple clients with adverse interests, and failure to respond to informal complaints warrants disbarment. People v. Quick, 716 P.2d 1082 (Colo. 1986).

Felony theft held sufficient grounds for disbarment in Colorado where respondent was convicted of crime and disbarred in another jurisdiction. Unless the disciplinary proceedings conducted in the foreign jurisdiction involved a denial of due process or other infirmity, or the imposition of the same discipline would result in a grave injustice, or the attorney's conduct warrants a substantially different discipline, the court is required to impose the same discipline. People v. Bradbury, 772 P.2d 46 (Colo. 1989).

Altering authentic dissolution decrees coupled with past attorney misconduct sufficient to warrant disbarment. People v. Blanck, 713 P.2d 832 (Colo. 1985).

Continuing to practice while suspended is conduct justifying disbarment. People v. James, 731 P.2d 698 (Colo. 1987).

Disbarment in another state warrants disbarment. People v. Montano, 744 P.2d 480 (Colo. 1987); People v. Brunn, 764 P.2d 1165 (Colo. 1988).

Attorney's failure to disclose felony conviction and subsequent disbarment in another state is sufficient for disbarment. People v. Brunn, 764 P.2d 1165 (Colo. 1988).

Facts sufficient to justify disbarment of attorney for failure to comply with registration requirements of C.R.C.P. 227, misappropriation of funds, and improper withdrawal from employment. People v. Scudder, 197 Colo. 99, 590 P.2d 493 (1979).

A lawyer who enters into a conspiracy to violate the law by importing narcotic drugs for distribution should be disbarred. People v. Unruh, 621 P.2d 948 (Colo. 1980).

Where a lawyer's conduct not only constitutes a violation of the code of professional responsibility, but also involves felonious conduct, clearly and convincingly proven by testimony of sheriff's officers, the grievance committee is justified in requiring disbarment. People v. Harfmann, 638 P.2d 745 (Colo. 1981).

Total disregard of obligation to protect a client's rights and interests over an extended period of time in conjunction with the violation of a number of disciplinary rules and an extended prior record of discipline requires most severe sanction of disbarment. People v. O'Leary, 783 P.2d 843 (Colo. 1989).

Attorney's continued practice of law while under an order of suspension, with no efforts to wind up the legal practice, and the failure to take action to protect the legal interests of the attorney's clients, warrants disbarment. People v. Wilson, 832 P.2d 943 (Colo. 1992).

Convictions for conspiring to commit fraud against the United States and impeding an officer of a United States court warrant disbarment. People v. Pilgrim, 802 P.2d 1084 (Colo. 1990).

Disbarment was the proper remedy where the attorney was afforded multiple opportunities including two suspensions and court ordered rehabilitation and where attorney's conduct demonstrated (a) neglect of legal matters entrusted to him; (b) misrepresentation to the client and the grievance committee; and (c) a pattern of neglect followed by the respondent that had the potential of causing serious injury to his clients. People v. Susman, 787 P.2d 1119 (Colo. 1990).

A lawyer's continued practice of law while under an order of suspension, with no efforts to wind up the legal practice, and failure to take action to protect the legal interests of the lawyer's clients, warrants disbarment. People v. Wilson, 832 P.2d 943 (Colo. 1992).

Likewise, disbarment was appropriate where attorney removed $5,000 from a client's trust account, refused to return money upon several requests by the client which ultimately resulted in a suit against the attorney, and the attorney lied about the transaction to the attorney with whom he shared office space. Factors in aggravation included a history of prior discipline, including suspension for conversion of client funds, the dishonest motive of the attorney in removing and not returning the client's funds, the attorney's refusal to acknowledge the wrongful nature of his conduct, the vulnerability of the client, and the attorney's legal experience. Mitigating factors were insufficient for disciplinary action short of disbarment. People v. McGrath, 833 P.2d 731 (Colo. 1992).

Disbarment is essentially automatic when a lawyer converts funds or property and there are no significant factors in mitigation. People v. Lujan, 890 P.2d 109 (Colo. 1995).

Entering guilty pleas to multiple counts of bank fraud evidences serious criminal conduct warranting disbarment. People v. Vidakovich, 810 P.2d 1071 (Colo. 1991).

Payment of restitution required prior to petition for readmission. Where, in proceedings to enforce a debt, attorney fails to pay debt, appear for deposition, produce documents requested by subpoena duces tecum or appear at an examination pursuant to C.R.C.P. 69 and on separate occasions writes insufficient funds checks and fails to

comply with requests for investigation, restitution is a proper condition of readmission and is to be made prior to petition for readmission. People v. Koransky, 830 P.2d 490 (Colo. 1992).

Where money was accepted for investment plans which were false, fictitious, and fraudulent and the presence of aggravating factors, including substantial experience by attorney, prior disciplinary offenses, dishonest or selfish motive, presence of multiple offenses, refusal to acknowledge the wrongful nature of conduct, and an indifference to making restitution, disbarment of attorney for violation of legal ethics was proper. People v. Kramer, 819 P.2d 77 (Colo. 1991).

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

Disbarment warranted where attorney was convicted of two separate sexual assaults on a client and a former client and attorney's previous dishonest conduct was an aggravating factor as well as findings of the attorney's selfish motive in engaging in the sexual misconduct, the two clients' vulnerability, the attorney's more than 20 years practicing law, and the attorney's failure to acknowledge the wrongful nature of his conduct. People v. Bertagnolli, 922 P.2d 935 (Colo. 1996).

Notwithstanding the entry of attorney's "Alford" plea in sexual assault proceedings, for purpose of disciplinary proceeding, the attorney was held to have actually committed the acts necessary to accomplish third degree sexual assault and therefore the attorney knowingly had sexual contact with a former client and with a current client without either woman's consent. People v. Bertagnolli, 922 P.2d 935 (Colo. 1996).

Disbarment appropriate when attorney engages in conduct prejudicial to client and the administration of justice and neglects numerous legal matters. People v. Theodore, 926 P.2d 1237 (Colo. 1996).

Notwithstanding financial stress and serious and costly medical problems, intentional conversion of law firm funds required disbarment. People v. Guyerson, 898 P.2d 1062 (Colo. 1995).

Propounding interrogatories to harass parties to a case and falsely accusing judicial officers and others of conspiracy warranted disbarment where respondent had been previously suspended for similar conduct. People v. Bottinelli, 926 P.2d 553 (Colo. 1996).

Failure to respond to discovery and motions, failure to attend case management hearing, and failure to inform client of progress of a civil case is grounds for disbarment. People v. Hebenstreit, 823 P.2d 125 (Colo. 1992).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Lyons, 762 P.2d 143 (Colo. 1988); People v. Costello, 781 P.2d 85 (Colo. 1989); People v. Nichols, 976 P.2d 966 (Colo. 1990); People v. Bergmann, 807 P.2d 568 (Colo. 1991); People v. Rhodes, 814 P.2d 787 (Colo. 1991); People v. Vermillion, 814 P.2d 795 (Colo. 1991); People v. Bannister, 814 P.2d 801 (Colo. 1991); People v.

Grossenbach, 814 P.2d 810 (Colo. 1991); People v. Ashley, 817 P.2d 965 (Colo. 1991); People v. Rouse, 817 P.2d 967 (Colo. 1991); People v. Calt, 817 P.2d 969 (Colo. 1991); People v. Mulligan, 817 P.2d 1028 (Colo. 1991); People v. Margolin, 820 P.2d 347 (Colo. 1991); People v. Koransky, 824 P.2d 819 (Colo. 1992); People v. Bradley, 825 P.2d 475 (Colo. 1992); People v. Mullison, 829 P.2d 382 (Colo. 1992); People v. Tanquary, 831 P.2d 889 (Colo. 1992); People v. Southern, 832 P.2d 946 (Colo. 1992); People v. McGrath, 833 P.2d 731 (Colo. 1992); People v. Brown, 840 P.2d 348 (Colo. 1992); People v. Walsh, 880 P.2d 766 (Colo. 1994); People v. Tyler, 884 P.2d 694 (Colo. 1994); People v. Kolenc, 887 P.2d 1024 (Colo. 1994); People v. Fritsche, 897 P.2d 805 (Colo. 1995); People v. Sims, 913 P.2d 526 (Colo. 1996); People v. Allbrandt, 913 P.2d 532 (Colo. 1996); People v. McDowell, 942 P.2d 486 (Colo. 1997); People v. Singer, 955 P.2d 1005 (Colo. 1998).

Conduct violating this rule sufficient to justify disbarment. People v. Kendrick, 646 P.2d 337 (Colo. 1982); People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Golden, 654 P.2d 853 (Colo. 1982); People v. Buckles, 673 P.2d 1008 (Colo. 1984); People v. Loseke, 698 P.2d 809 (Colo. 1985); People v. Fitzke, 716 P.2d 1065 (Colo. 1986); People v. Rice, 728 P.2d 714 (Colo. 1986); People v. Young, 732 P.2d 1208 (Colo. 1987); People v. Foster, 733 P.2d 687 (Colo. 1987); People v. Franco, 738 P.2d 1174 (Colo. 1987); People v. Quintana, 752 P.2d 1059 (Colo. 1988); People v. Brooks, 753 P.2d 208 (Colo. 1988); People v. Cantor, 753 P.2d 238 (Colo. 1988); People v. Turner, 758 P.2d 1335 (Colo. 1988); People v. Danker, 759 P.2d 14 (Colo. 1988); People v. Score, 760 P.2d 1111 (Colo. 1988); People v. Hanneman, 768 P.2d 709 (Colo. 1989); People v. Kengle, 772 P.2d 605 (Colo. 1989); People v. Vernon, 782 P.2d 745 (Colo. 1989); People v. Frank, 782 P.2d 769 (Colo. 1989); People v. Johnston, 782 P.2d 1195 (Colo. 1989); People v. Hedicke, 785 P.2d 918 (Colo. 1990); People v. Dulaney, 785 P.2d 1302 (Colo. 1990); People v. Franks, 791 P.2d 1 (Colo. 1990); People v. Gregory, 797 P.2d 42 (Colo. 1990); People v. Broadhurst, 803 P.2d 478 (Colo. 1990); People v. Goens, 803 P.2d 480 (Colo. 1990); People v. Hansen, 814 P.2d 816 (Colo. 1991); People v. Schwartz, 814 P.2d 793 (Colo. 1991); People v. Whitcomb, 819 P.2d 493 (Colo. 1991); People v. Kinkade, 831 P.2d 892 (Colo. 1992); People v. Marmon, 903 P.2d 651 (Colo. 1995); People v. Gilbert, 921 P.2d 48 (Colo. 1996).

Rule 3.2. Expediting Litigation.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Cite as RPC 3.2

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Case Notes:

ANNOTATION

Law reviews. For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (March 2004).

Annotator's note. Rule 3.2 is similar to Rule 3.2 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Robinson, 853 P.2d 1145 (Colo. 1993); People v. Barr, 855 P.2d 1386 (Colo. 1993); People v. Maynard, 238 P.3d 672 (Colo. O.P.D.J. 2009); People v. Staab, 287 P.3d 122 (Colo. O.P.D.J. 2012).

Rule 3.3. Candor Toward the Tribunal.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Cite as RPC 3.3

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary

proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false. Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b). Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case. Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot

ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7]. Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperates in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court. Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding. Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed

on appeal or the time for review has passed. Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision. Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Case Notes:

ANNOTATION

Law reviews. For article, "The Attorney, the Client and the Criminal History: A Dangerous Trio", see 23 Colo. Law. 569 (1994). For article, "Exculpatory Evidence and Grand Juries", see 28 Colo. Law. 47 (April 1999). For article, "Ethical Considerations and Client Identity", see 30 Colo. Law. 51 (April 2001). For article, "Policing the Legal System: The Duty to Report Misconduct", see 30 Colo. Law. 85 (September 2001). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005).

Annotator's note. Rule 3.3 is similar to Rule 3.3 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

It was inappropriate for counsel to file a motion and not mention contrary legal authority that was decided by the chief judge when the existence of the authority was readily available to counsel. United States v. Crumpton, 23 F. Supp. 2d 1218 (D. Colo. 1998).

An attorney will not be held responsible for failing to inform the court of material information of which the attorney is unaware. Waters v. District Ct., 935 P.2d 981 (Colo. 1997).

An attorney cannot close her eyes to obvious facts, however, the duty to inform the court concerning her

client's financial status does not obligate the attorney to undertake an affirmative investigation of her client's financial status. Waters v. District Ct., 935 P.2d 981 (Colo. 1997).

An attorney is not responsible for informing the court of every known change in a client's financial circumstances but she must inform the court of material changes that not disclosing to the court would work a fraud on the court. For the purpose of determining eligibility for court appointed counsel, material changes are those which clearly render the client capable, on a practical basis, of securing competent representation or reimbursing some or all of the expenses of court-appointed counsel and costs. Waters v. District Ct., 935 P.2d 981 (Colo. 1997).

Public censure is appropriate discipline for attorney who submitted falsified response to grievance committee's request for investigation, violated prohibition against engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and revealed client confidences to district attorney without client's consent. People v. Lopez, 845 P.2d 1153 (Colo. 1993).

Public censure is appropriate discipline where attorney falsely testified that he had automobile insurance at the time of an accident, but outcome of case was not thereby affected. People v. Small, 962 P.2d 258 (Colo. 1998).

Attorney signing substitute counsel's name to pleadings in a style different from his own signature, without authority to sign in a representative capacity and without any indication that he was signing in a representative capacity, violated this rule and warranted a six-month suspension. People v. Reed, 955 P.2d 65 (Colo. 1998).

Thirty-day suspension appropriate where attorney failed to inform U.S. bankruptcy court in Colorado, in a hearing on a motion to remand the matter to U.S. bankruptcy court in Massachusetts, that an order of dismissal of the bankruptcy proceeding between the same parties had been entered in California. People v. Farry, 927 P.2d 841 (Colo. 1996).

Attorney conduct violating this rule, in conjunction with other rules, sufficient to justify suspension when violation did not arise from neglect or willingness to take advantage of client's vulnerability and is mitigated by her inexperience in the practice of law, her lack of any prior disciplinary record, the fact that she had already been held in contempt and punished by the district court, and the fact that there is no suggestion of selfish motivation. Attorney's failure to appreciate the serious nature of conduct and the jurisdiction of the hearing board to discipline her is a serious matter meriting a period of suspension and a redetermination of her fitness before being permitted to practice law again. In re Roose, 69 P.3d 43 (Colo.), cert. denied, 540 U.S. 1053, 124 S. Ct. 815, 157 L. Ed. 2d 705 (2003).

Aiding client to violate custody order sufficient to justify disbarment. People v. Chappell, 927 P.2d 829 (Colo. 1996).

Attorney who knowingly violated rule but without intent to deceive court is justifiably sanctioned. People v. Trogani, 203 P.3d 643 (Colo. O.P.D.J. 2008).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Rolfe, 962 P.2d 981 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Mason, 938 P.2d 133 (Colo. 1997); People v. Trogani, 203 P.3d 643 (Colo. O.P.D.J. 2008); People v. Maynard, 219 P.3d 430 (Colo. O.P.D.J. 2008).

Cases Decided Under Former DR 7-106.

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Use of Subpoenas in Civil Proceedings, see 19 Colo. Law. 1556 (1990).

Lawyers, as officers of the court, must maintain the respect due to courts and judicial officers. Losavio v. District Court, 182 Colo. 180, 512 P.2d 266 (1973).

License to practice law assures public that the lawyer who holds the license will perform basic legal tasks honestly and without undue delay, in accordance with the highest standards of professional conduct. People v. Dixon, 621 P.2d 322 (Colo. 1981).

Public expects appropriate discipline for misconduct. The public has a right to expect that one who engages in professional misconduct will be disciplined appropriately. People v. Dixon, 621 P.2d 322 (Colo. 1981).

Actions taken by attorney contrary to court order violate this rule and justify suspension. People v. Awenius, 653 P.2d 740 (Colo. 1982); People v. Belina, 765 P.2d 121 (Colo. 1988).

Willful nonpayment of child support and failure to pay arrearages after ordered by court to do so is a violation of subsection (A). People v. Tucker, 837 P.2d 1225 (Colo. 1992).

Threatening to invoke disciplinary proceedings against judge in anticipation of adverse ruling warrants public censure. People v. Tatum, 814 P.2d 388 (Colo. 1991).

Prosecutor engaged in professional misconduct where references to the defense theory as "insulting" or a "lie" and to the defense's challenge to the credibility of a prosecution witness as "cheap innuendos" were made for the obvious purpose of denigrating defense counsel. People v. Jones, 832 P.2d 1036 (Colo. App. 1991).

Prosecutor made argument of a highly improper nature by implying to jurors that opposing counsel did not have a good faith belief in the innocence of her client and such an argument served no legitimate purpose but had the function only of erroneously diverting the attention of the jurors from the factual issues concerning defendant's guilt. People v. Jones, 832 P.2d 1036 (Colo. App. 1991).

An attorney's personal belief in the veracity of a witness' testimony is not a proper subject of closing argument. Consequently, the law requires that the prosecutor's personal opinion as to the truth or falsity of any testimony or as to guilt shall not be outwardly indicated nor presented to the jury as an interpretation based upon legitimate inferences which might be drawn from the evidence adduced at trial. People v. Jones, 832 P.2d 1036 (Colo. App. 1991).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Dalton, 840 P.2d 351 (Colo. 1992).

Conduct violating this rule sufficient to justify public censure. People v. Fieman, 788 P.2d 830 (Colo. 1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Creasey, 793 P.2d 1159 (Colo. 1990); People v. Taylor, 799 P.2d 930 (Colo. 1990); People v. Hyland, 830 P.2d 1000 (Colo. 1992); People v. Cohan, 913 P.2d 523 (Colo. 1996); People v. Wotan, 944 P.2d 1257 (Colo. 1997); People v. Porter, 980 P.2d 536 (Colo. 1999); In re Bobbitt, 980 P.2d 538 (Colo. 1999).

Conduct violating this rule sufficient to justify suspension. People v. Kane, 655 P.2d 390 (Colo. 1982); People v. Barnthouse, 775 P.2d 545 (Colo. 1989), cert. denied, 493 U.S. 1026, 110 S. Ct. 734, 107 L. Ed. 2d 752 (1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Schaefer, 944 P.2d 78 (Colo. 1997).

Applied in People ex rel. Aisenberg v. Young, 198 Colo. 26, 599 P.2d 257 (1979); People v. Kane, 638 P.2d 253 (Colo. 1981); People v. Harfmann, 638 P.2d 745 (Colo. 1981); Wilson v. People, 743 P.2d 415 (Colo. 1987).

Cases Decided Under Former DR 7-107.

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990).

Trial judge has power to punish summarily for contempt any lawyer who in his presence wilfully contributes to disorder or disruption in the courtroom. Losavio v. District Court, 182 Colo. 180, 512 P.2d 266 (1973).

News releases by counsel held contrary to good practice. Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972).

The participation of the district attorney and his deputy in an ill-timed radio interview which suggested a connection between the condominium fires and organized crime is not condoned. People v. Mulligan, 193 Colo. 509, 568 P.2d 449 (1977).

Rule 3.4. Fairness to Opposing Party and Counsel.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client and the lawyer is not prohibited by other law from making such a request; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Cite as RPC 3.4

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay an expert or non-expert's expenses or to compensate an expert witness on terms permitted by law. It is improper to pay any witness a contingent fee for testifying. A lawyer may reimburse a non-expert witness not only for expenses incurred in testifying but also for the reasonable value of the witness's time expended in testifying and preparing to testify, so long as such reimbursement is not prohibited by law. The amount of such compensation must be reasonable based on all relevant circumstances, determined on a case-by-case basis.

[4] Paragraph (f) permits a lawyer to advise relatives and employees of a client to refrain from giving information to another party because the relatives or employees may identify their interests with those of the client. See also Rule 4.2. However, other law may preclude such a request. See Rule 16, Colorado Rules of Criminal Procedure.

Case Notes:

ANNOTATION

Law reviews. For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (March 2004).

Annotator's note. Rule 3.4 is similar to Rule 3.4 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Expressions of personal opinion, personal knowledge, or inflammatory comments violate ethical standards. A prosecutor cannot communicate his or her opinion on the truth or falsity of witness testimony during final argument. The use of any form of the word "lie" is improper. However, an attorney may argue from reasonable inferences anchored in the facts in evidence about the truthfulness of a witness's testimony. Domingo-Gomez v. People, 125 P.3d 1043 (Colo. 2005); Crider v. People, 186 P.3d 39 (Colo. 2008).

Attorney violated section (c) when he knowingly violated orders of Colorado supreme court suspending him from practice of law for failing to comply with continuing legal education (CLE) requirements and for failing to pay attorney registration fees. People v. Swarts, 239 P.3d 441 (Colo. O.P.D.J. 2010).

Thirty-day suspension, petition for reinstatement requirement, and requirement of payment of costs of prior disciplinary proceedings justified where aggravating factors include attorney's previous public censure, refusal to acknowledge the wrongfulness of his conduct, substantial experience in the practice of law, and indifference to making restitution. In re Bauder, 980 P.2d 507 (Colo. 1999).

Ninety-day suspension justified where attorney's failure to respond to discovery requests resulted in default and entry of judgment against client for $816,613. People v. Clark, 927 P.2d 838 (Colo. 1996).

Ninety-day suspension and order of restitution as a condition of reinstatement was justified where attorney failed to pay court-ordered award of attorney's fees resulting from his filing of a frivolous motion, without regard to whether this debt was subsequently discharged in attorney's bankruptcy proceedings. People v. Huntzinger, 967 P.2d 160 (Colo. 1998).

Attorney who knowingly violated rule but without intent to deceive court is justifiably sanctioned. People v. Trogani, 203 P.3d 643 (Colo. O.P.D.J. 2008).

Attorney conduct violating this rule, in conjunction with other rules, sufficient to justify suspension when violation did not arise from neglect or willingness to take advantage of client's vulnerability and is mitigated by her inexperience in the practice of law, her lack of any prior disciplinary record, the fact that she had already been held in contempt and punished by the district court, and the fact that there is no suggestion of selfish motivation. Attorney's failure to appreciate the serious nature of conduct and the jurisdiction of the hearing board to discipline her is a serious matter meriting a period of suspension and a redetermination of her fitness before being permitted to practice law again. In re Roose, 69 P.3d 43 (Colo.), cert. denied, 540 U.S. 1053, 124 S. Ct. 815, 157 L. Ed. 2d 705 (2003).

Attorney conduct violating this rule, in conjunction with other rules, sufficient to justify disbarment when attorney failed to comply with court orders applicable to his child support payments until after contempt citation was issued and attorney was ordered to report to jail to begin serving his sentence, and also committed numerous other violations consisting of knowingly commingling and misappropriating clients' funds, and neglecting multiple cases resulting in the entry of default judgments against attorney's clients. People v. Gonzalez, 967 P.2d 156 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules, where mitigating factors were present, warrants public censure. People v. Davis, 950 P.2d 586 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Barr, 855 P.2d 1386 (Colo. 1993); People v. Babinski, 951 P.2d 1240 (Colo. 1998); People v. Blunt, 952 P.2d 356 (Colo. 1998); People v. Hanks, 967 P.2d 144 (Colo. 1998); People v. Harding, 967 P.2d 153 (Colo. 1998); In re Demaray, 8 P.3d 427 (Colo. 1999); In re Fischer, 89 P.3d 817 (Colo. 2004); People v. Edwards, 201 P.3d 555 (Colo. 2008); People v. Trogani, 203 P.3d 643 (Colo. O.P.D.J. 2008); People v. Maynard, 238 P.3d 672 (Colo. O.P.D.J. 2009); People v. McNamara, 275 P.3d 792 (Colo. O.P.D.J. 2011); People v. Duggan, 282 P.3d 534 (Colo. O.P.D.J. 2012).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Singer, 955 P.2d 1005 (Colo. 1998); In re Hugen, 973 P.2d 1267 (Colo. 1999); People v. Mason, 212 P.3d 141 (Colo. O.P.D.J. 2009); People v. Zodrow, 276 P.3d 113 (Colo. O.P.D.J. 2011).

Cases Decided Under Former DR 7-104.

Rule held inapplicable to district attorney's communications with defendant when communications are unrelated to pending charges for which defendant had retained counsel. People v. Hyun Soo Son, 723 P.2d 1337 (Colo. 1986).

Evidence sufficient to justify suspension from the practice of law. People v. Belfor, 197 Colo. 223, 591 P.2d 585 (1979); People v. Zinn, 746 P.2d 970 (Colo. 1987).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Crews, 901 P.2d 472 (Colo. 1995).

Applied in People ex rel. MacFarlane v. Boyls, 197 Colo. 242, 591 P.2d 1315 (1979); In re East Nat'l Bank, 517 F. Supp. 1061 (D. Colo. 1981).

Rule 3.5. Impartiality and Decorum of the Tribunal.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order, or unless a judge initiates such a communication and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge's authority under a rule of judicial conduct;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate;

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(4) the communication is intended to or is reasonably likely to demean, embarrass, or criticize the jurors or their verdicts; or

(d) engage in conduct intended to disrupt a tribunal.

Cite as RPC 3.5

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; (b) and Comment [2] amended and effective July 11, 2012.

Note:

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Colorado Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, subject to two exceptions: (1) when a law or court order authorizes the lawyer to engage in the communication, and (2) when a judge initiates an ex parte communication with the lawyer and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge's authority to engage in the communication under a rule of judicial conduct. Examples of ex parte communications authorized under the first exception are restraining orders, submissions made in camera by order of the judge, and applications for search warrants and wiretaps. See also Cmt. [5]. Colo. RPC 4.2 (discussing communications authorized by law or court order with persons represented by counsel in a matter). With respect to the second exception, Rule 2.9(A)(1) of the Colorado Code of Judicial Conduct, for example, permits judges to engage in ex parte communications for scheduling, administrative, or emergency purposes not involving substantive matters, but only if "circumstances require it," "the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication," and "the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond." Code of Jud. Conduct, Rule 2.9(A)(1). See also Code of Judicial Conduct for United States Judges, Canon 3(A)(4)(b)("A judge may. . . (b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication[.]"). The second exception does not authorize the lawyer to initiate such a communication. However, a judge will be deemed to have initiated a communication for purposes of this Rule if the judge or the court maintains a regular practice of allowing or requiring lawyers to contact the judge for administrative matters such as scheduling a hearing and the lawyer communicates in compliance with that practice. When a judge initiates a communication, the lawyer must discontinue the communication if it exceeds the judge's authority under the applicable rule of judicial

conduct. For example, if a judge properly communicates ex parte with a lawyer about the scheduling of a hearing, pursuant to Rule 2.9(A)(1) of the Colorado Code of Judicial Conduct, but proceeds to discuss substantive matters, the lawyer has an obligation to discontinue the communication.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Case Notes:

ANNOTATION

Law reviews. For article, "Ex Parte Communications with a Tribunal: From Both Sides", see 29 Colo. Law. 55 (April 2000).

Annotator's note. Rule 3.5 is similar to DR 7-101, DR 7-106, DR 7-108, DR 7-109, DR 7-110, and DR 8-101 as they existed prior to the 1992 repeal and reenactment of the code of professional responsibility. Relevant cases construing DR 7-108, DR 7-109, DR 7-100, and DR 8-101 have been included in the annotations to this rule. Cases construing DR 7-101 have been included under Rule 1.2 and cases construing DR 7-106 have been included under Rule 3.3.

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension for one year and one day. People v. Brennan, 240 P.3d 887 (Colo. O.P.D.J. 2009).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Maynard, 238 P.3d 672 (Colo. O.P.D.J. 2009).

Cases Decided Under Former DR 7-108.

Jury tampering is basis for indefinite suspension of attorney. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

Cases Decided Under Former DR 7-109.

Evidence sufficient to justify suspension from the practice of law. People v. Belfor, 197 Colo. 223, 591 P.2d 585 (1979).

Cases Decided Under Former DR 7-110.

Suggesting that witness contact chief justice for attorney's benefit justifies public censure. Where an attorney suggested to a principal witness in a pending grievance proceeding against that attorney that he write a letter on behalf of the attorney to the chief justice of the state supreme court, substantially recanting his testimony in the grievance proceeding, the attorney's conduct violated the code of professional responsibility and C.R.C.P. 241.6. Public censure is the appropriate discipline for this breach of professional obligations. People v. Hertz, 638 P.2d 794 (Colo. 1982).

The imposition of a one-year suspension in Illinois for the loaning of money to a judge warrants imposition of the same sanction in Colorado. People v. Chatz, 788 P.2d 157 (1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Bannister, 814 P.2d 801 (Colo. 1991).

Cases Decided Under Former DR 8-101.

District attorney not tribunal. It is not the intent of paragraph (A)(2) to treat a district attorney or those acting under him as a tribunal. People ex rel. Gallagher v. Hertz, 1 98 Colo. 522, 608 P.2d 335 (1979).

Rule 3.6. Trial Publicity.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.6. Trial Publicity

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

(b) Notwithstanding paragraph (a) and Rule 3.8(f), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the

identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a) and Rule 3.8(f), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Cite as RPC 3.6

History. Entire rule and comment replaced and adopted June 12, 1997, effective January 1, 1998; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; IP(b) and (c) amended and effective Febraury 10, 2011.

Note:

COMMENT

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the

result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining

that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Rule 3.7. Lawyer as Witness.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Cite as RPC 3.7

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client. Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest. Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who

might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Case Notes:

ANNOTATION

Law reviews. For Formal Opinion No. 78 of the CBA Ethics Committee, "Disqualification of the Advocate/Witness", see 23 Colo. Law. 2087 (1994).

Annotator's note. Rule 3.7 is similar to Rule 3.7 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

A violation of section (a) of this rule ordinarily will require disqualification because the very purpose of the rule is to avoid the taint to a trial that results from jury confusion when a lawyer acts as both witness and advocate. Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell, 239 F. Supp. 2d 1170 (D. Colo. 2003).

Section (a) is a prohibition only against acting as an advocate at trial. It does not automatically require that a lawyer be disqualified from pretrial activities, such as participating in strategy sessions, pretrial hearings, settlement conferences, or motions practice. Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell, 239 F. Supp. 2d 1170 (D. Colo. 2003).

Disqualification from pretrial matters may be appropriate, however, where that activity includes obtaining evidence which, if admitted at trial, would reveal the attorney's dual role. Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell, 239 F. Supp. 2d 1170 (D. Colo. 2003).

Subsection (a)(1) allows an attorney to testify only regarding an uncontested issue and does not allow an attorney to testify to undisputed facts to support a disputed issue. People v. Pasillas-Sanchez, 214 P.3d 520 (Colo. App. 2009).

A party seeking disqualification of any attorney as "likely to be a necessary witness" must show that "the advocate's testimony is necessary, and not merely cumulative". Religious Tech. Ctr. v. F.A.C.T. Net, Inc., 945 F.

Supp. 1470 (D. Colo. 1996).

This rule does not mandate a hearing where there is a possibility of a conflict of interest on the part of an attorney called as a witness against his or her client. Taylor v. Grogan, 900 P.2d 60 (Colo. 1995).

Rule requires that plaintiffs' counsel who is also their son be disqualified from appearing as an advocate because he is likely to be called as a witness at trial. Determining whether the moving party has demonstrated that opposing counsel is "likely to be a necessary witness" involves a consideration of the nature of the case, with emphasis on the subject of the lawyer's testimony, the weight the testimony might have in resolving disputed issues, and the availability of other witnesses or documentary evidence which might independently establish the relevant issues. The moving party's burden is complete if he proves that opposing counsel is "likely to be a witness" at trial. Here, the facts and circumstances demonstrate that plaintiffs' son who is also their counsel and who was endorsed by plaintiffs as a fact witness is likely to be a necessary witness on his clients' and parents' behalf. The statements of plaintiffs' counsel and son is that he spoke with the defendant-doctor after the procedure performed on his plaintiff father and that the defendant made certain admissions against interest. Fognani v. Young, 115 P.3d 1268 (Colo. 2005).

Rule permits a lawyer to maintain a dual role in the same proceeding if "disqualification would work substantial hardship on the client". Even if there is a risk of prejudice to both parties if the attorney is permitted to testify, court must balance the competing interests, affording "due regard" to the effect of disqualification on his clients. When determining whether disqualification would impose a substantial hardship on the client, court should consider all relevant factors in light of the specific facts before it, including the nature of the case, financial hardship, giving weight to the stage in the proceedings, the time at which the attorney became aware of the likelihood of his testimony, and whether the client has secured alternate representation. Here, considering the specific facts and circumstances, trial court did not abuse its discretion in rejecting plaintiffs' substantial hardship claim. In light of ample justification in the record, trial court did not abuse its discretion in disqualifying plaintiffs' counsel and son from his representation of his parents at trial. Fognani v. Young, 115 P.3d 1268 (Colo. 2005).

But trial court did not abuse discretion in disqualifying a lawyer where the lawyer was the sole source, other than the defendant, of potentially critical and outcome determinative information to be used to establish the defendant's defense and the court determined that allowing the lawyer to continue the representation would undermine the public's interest in maintaining the integrity in the judicial system. People v. Pasillas-Sanchez, 214 P.3d 520 (Colo. App. 2009).

Court declines to issue a rule that would permit automatic participation by disqualified attorney in all pretrial litigation. Upon assuring that the client has consented to pretrial representation by the disqualified attorney, trial court has discretion to determine whether participation by the attorney in a particular pretrial activity would undermine the purpose of the rule. If, for example the attorney's dual role in a deposition proceeding would likely be revealed at trial, trial court may properly limit attorney's role in that activity. Here, trial court was given opportunity on remand to fashion its orders in a way dictated by facts of the case. Fognani v. Young, 115 P.3d 1268 (Colo. 2005).

Rule does not impose automatic vicarious disqualification of the disqualified attorney's law firm. As such, the trial court must consider whether the requirements of C.R.C.P. 1.7 and 1.9 have been met. The inquiry is two-fold: (1)

Whether the firm reasonably believes its representation of the plaintiffs will not be materially limited by its responsibilities to the attorney; and (2) the client's consent to the ongoing representation and whether that consent is objectively reasonable under the circumstances. The trial court has the authority to decline to honor the client's choice if the court concludes that the client should not agree to the representation under the circumstances of the case. In making that determination, the court may balance the clients' interests in the continuing representation against the nature of the anticipated testimony and the credibility issues that the testimony may pose. Here, record does not permit supreme court to determine whether trial court abused its discretion in disqualifying the law firm of plaintiffs' son from representing plaintiffs. Accordingly, remand is necessary to determine whether the requirements of C.R.C.P. 1.7 have been met. Fognani v. Young, 115 P.3d 1268 (Colo. 2005).

Trial court's conclusion that defendant would likely have a compelling need to call his attorney to testify within its discretion. Although prosecution failed to demonstrate a compelling need for testimony of defendant's attorney, thus creating a conflict under this rule and need for disqualification, the trial court did not rule arbitrarily, unreasonably, or unfairly when it ruled to disqualify defendant's attorney. People v. Hagos, 250 P.3d 596 (Colo. App. 2009).

Court of appeals uses abuse of discretion standard to review trial court's decision to disqualify counsel under this rule. Haralampopoulos v. Kelly, __ P.3d __ (Colo. App. 2011).

Court did not abuse discretion in disqualifying counsel from representing plaintiff at trial but allowing counsel to participate in pretrial preparation and allowing counsel's firm to represent plaintiff at trial. Counsel had been deposed and could be called as a witness but exclusion of counsel from pretrial preparation could create a substantial hardship for plaintiff. Haralampopoulos v. Kelly, __ P.3d __ (Colo. App. 2011).

Rule 3.8. Special Responsibilities of a Prosecutor.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and

the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused unless such comments are permitted under Rule 3.6(b) or 3.6(c), and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

(1) disclose that evidence to an appropriate court or prosecutorial authority, and

(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority

(A) disclose the evidence to the defendant, and

(B) if the defendant is not represented, move the court in which the defendant was convicted to appoint counsel to assist the defendant concerning the evidence.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant

was convicted in a court in which the prosecutor exercises prosecutorial authority, of an offense that the defendant did not commit, the prosecutor shall take steps in the appropriate court, consistent with applicable law, to set aside the conviction.

Cite as RPC 3.8

History. (f) and comment amended and adopted and (2) deleted, effective February 19, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; (g) and (h) added and adopted, comment [1] amended and adopted, and comment [3A], [7], [7A], [8], [8A], [9], and [9A] added and adopted June 17, 2010, effective July 1, 2010; (f) and comment [5] amended and effective February 10, 2011.

Note:

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence and that special precautions are taken to prevent and to address the conviction of innocent persons. The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Competent representation of the sovereign may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented defendants. Paragraph (c) does not apply, however, to a defendant appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[3A] A prosecutor's duties following conviction are set forth in sections (g) and (h) of this rule.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements the prohibition in Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding, but does not limit the protection of Rule 3.6(b) or Rule 3.6(c). In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional

problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public condemnation of the accused. Nevertheless, a prosecutor shall not be subject to disciplinary action on the basis that the prosecutor's statement violated paragraph (f), if the statement was permitted by Rule 3.6(b) or Rule 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires disclosure to the court or other prosecutorial authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, the prosecutor must take the affirmative step of making a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[7A] What constitutes "within a reasonable time" will vary according to the circumstances presented. When considering the timing of a disclosure, a prosecutor should consider all of the circumstances, including whether the defendant is subject to the death penalty, is presently incarcerated, or is under court supervision. The prosecutor should also consider what investigative resources are available to the prosecutor, whether the trial prosecutor who prosecuted the case is still reasonably available, what new investigation or testing is appropriate, and the prejudice to an on-going investigation.

[8] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of either an offense that the defendant did not commit or of an offense that involves conduct of others for which the defendant is legally accountable (see C.R.S. §18-1-601 et seq. and 18 U.S.C. § 2), but which those others did not commit, then the prosecutor must take steps in the appropriate court. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[8A] Evidence is considered new when it was unknown to a trial prosecutor at the time the conviction was entered or, if known to a trial prosecutor, was not disclosed to the defense, either deliberately or inadvertently. The reasons for the evidence being unknown (and therefore new) are varied. It may be new because: the information was not available to a trial prosecutor or the prosecution team at the time of trial; the police department investigating the case or other agency involved in the prosecution did not provide the evidence to a trial prosecutor; or recent testing was

performed which was not available at the time of trial. There may be other circumstances when information would be deemed new evidence.

[9] A prosecutor's reasonable judgment made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h), although subsequently determined to have been erroneous, does not constitute a violation of this Rule.

[9A] Factors probative of the prosecutor's reasonable judgment that the evidence casts serious doubt on the reliability of the judgment of conviction include: whether the evidence was essential to a principal issue in the trial that produced the conviction; whether the evidence goes beyond the credibility of a witness; whether the evidence is subject to serious dispute; or whether the defendant waived the establishment of a factual basis pursuant to criminal procedural rules.

Case Notes:

ANNOTATION

Annotator's note. Rule 3.8 is similar to Rule 3.8 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Paragraph (f)(1) is inconsistent with federal law and thus is invalid as applied to federal prosecutors practicing before the grand jury. As applied to proceedings other than those before the grand jury, paragraph (f)(1) is not inconsistent with federal law and does not violate the supremacy clause. Thus, paragraph (f)(1) is valid and enforceable except as it pertains to federal prosecutors practicing before the grand jury. U.S. v. Colo. Supreme Court, 988 F. Supp. 1368 (D. Colo. 1998), aff'd, 189 F.3d 1281 (10th Cir. 1999).

Paragraph (d) should be read as containing a requirement that a prosecutor disclose exculpatory, outcome-determinative evidence that tends to negate the guilt or mitigate the punishment of the accused in advance of the next critical stage of the proceeding, consistent with the materiality standard adopted with respect to the rules of criminal procedure. In re Attorney C, 47 P.3d 1167 (Colo. 2002).

Violation of paragraph (d) requires mens rea of intent. In re Attorney C, 47 P.3d 1167 (Colo. 2002).

Cases Decided Under Former DR 7-103.

While the prosecutor may strike hard blows, he is not at liberty to strike foul ones, for it is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. People v. Walker, 1 80 Colo. 184, 504 P.2d 1098 (1972).

Prosecutor's zealous prosecution of a case is not improper. People v. Marin, 686 P.2d 1351 (Colo. App. 1983).

A prosecutor's duty is to seek justice, not merely to convict. People v. Walker, 1 80 Colo. 184, 504 P.2d 1098

(1972); People v. Drake, 841 P.2d 364 (Colo. App. 1992).

If the prosecution witness advises prosecutor that he or she knows or recognizes one of the jurors, the prosecutor has an affirmative duty immediately to notify the court and opposing counsel of the witness' statement. People v. Drake, 841 P.2d 364 (Colo. App. 1992).

There was no prosecutorial misconduct when the district attorney and police had no knowledge of any evidence that would negate the defendant's guilt or reduce his punishment. People v. Wood, 844 P.2d 1299 (Colo. App. 1992).

Prosecutor should see that justice is done by seeking the truth. The duty of a prosecutor is not merely to convict, but to see that justice is done by seeking the truth of the matter. People v. Elliston, 1 81 Colo. 118, 508 P.2d 379 (1973).

No evidence proving defendant's innocence shall be withheld from him. It is the duty of both the prosecution and the courts to see that no known evidence in the possession of the state which might tend to prove a defendant's innocence is withheld from the defense before or during trial. People v. Walker, 1 80 Colo. 184, 504 P.2d 1098 (1972).

A prosecutor must be careful in his conduct to ensure that the jury tries a case solely on the basis of the facts presented to it. People v. Elliston, 1 81 Colo. 118, 508 P.2d 379 (1973).

The district attorney has the duty to prevent conviction on misleading or perjured evidence. The duty of the district attorney extends not only to marshalling and presenting evidence to obtain a conviction, but also to protecting the court and the accused from having a conviction result from misleading evidence or perjured testimony. DeLuzio v. People, 177 Colo. 389, 494 P.2d 589 (1972).

Rule 3.9. Advocate in Nonadjudicative Proceedings.

Colorado Court Rules

Colorado Rules of Professional Conduct

Advocate

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity. Further, in such a representation, the lawyer:

(a) shall conform to the provisions of Rules 3.3(a)(1), 3.3(a)(3), 3.3(b), 3.3(c), and 3.4(a) and (b);

(b) shall not engage in conduct intended to disrupt such proceeding unless such conduct is protected by law; and

(c) may engage in ex parte communications, except as prohibited by law.

Cite as RPC 3.9

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it and on the candor of the lawyer. For this reason the lawyer must conform to Rules 3.3(a)(1), 3.3(a)(3), 3.3(b), 3.3(c), and 3.4(a) and (b) in such representation.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

[4] This Rule recognizes that the lawyer's conduct and communications described in Rules 3.9(b) and (c) may be protected by constitutional or other legal principles.

Rule 4.1. Truthfulness in Statements to Others.

Colorado Court Rules

Colorado Rules of Professional Conduct

Transactions with Persons Other Than Clients

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Cite as RPC 4.1

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT False Statements

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A false statement can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Omissions or partially true but misleading statements can be the equivalent of affirmative false statements. For dishonest conduct generally see Rule 8.4. Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation. Crime or Fraud by Client

[3] Under Rule l.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the

lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

Case Notes:

ANNOTATION

Law reviews. For article, "Ethical Considerations and Client Identity", see 30 Colo. Law. 51 (April 2001).

Annotator's note. Rule 4.1 is similar to Rule 4.1 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Attorneys are responsible for ethical violation when their investigator failed to disclose to an employee of the defendant prior to an interview that the investigator worked for the attorneys. McClelland v. Blazin' Wings, Inc., 675 F. Supp. 2d 1074 (D. Colo. 2009).

Suspension stayed, in view of respondent's cooperation and remorse, conditioned upon successful completion of six-month probationary period and ethics refresher course. People v. Rosen, 199 P.3d 1241 (Colo. O.P.D.J. 2007).

Conduct violating this rule in conjunction with other rules of disciplinary conduct sufficient to justify public censure. People v. Newman, 925 P.2d 783 (Colo. 1996).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Mason, 938 P.2d 133 (Colo. 1997); In re Meyers, 981 P.2d 143 (Colo. 1999); People v. Rosen, 199 P.3d 1241 (Colo. O.P.D.J. 2007).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Jackson, 943 P.2d 450 (Colo. 1997); In re Hugen, 973 P.2d 1267 (Colo. 1999).

Rule 4.2. Communication with Person Represented by Counsel.

Colorado Court Rules

Colorado Rules of Professional Conduct

Transactions with Persons Other Than Clients

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Cite as RPC 4.2

History. Comment amended and adopted June 17, 1999, effective July 1, 1999; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person, such as a contractually-based right or obligation to give notice, is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a

criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

[9A] A pro se party to whom limited representation has been provided in accordance with C.R.C.P. 11(b) or C.R.C.P. 311(b), and Rule 1.2, is considered to be unrepresented for purposes of this Rule unless the lawyer has knowledge to the contrary.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on Ex Parte Contacts with Government Officials, see 23 Colo. Law. 329 (1994). For formal opinion of the Colorado Bar Association on Ex Parte Communications With Represented Persons During Criminal and Civil Regulatory/Investigations and Proceedings, see 23 Colo. Law. 2297 (1994). For article, "Discrete Task Representation a/k/a Unbundled Legal Services", see 29 Colo. Law. 5 (January 2000). For article, "Policing the Legal System: The Duty to Report Misconduct", see 30 Colo. Law. 85 (September 2001). For article, "Settlement Ethics", see 30 Colo. Law. 53 (December 2001). For article, "Investigative Tactics: They May Be Legal, But Are They Ethical?", see 35 Colo. Law. 43 (January 2006). For article, "The New Rules of

Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For formal opinion of the Colorado Bar Association on Propriety of Communicating With Employee or Former Employee of an Adverse Party, see 39 Colo. Law. 21 (October 2010).

Annotator's note. Rule 4.2 is similar to Rule 4.2 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

The protections of this rule attach only once an "adversarial relationship" sufficient to trigger an organization's right to counsel arises. Johnson v. Cadillac Plastic Group, Inc., 930 F. Supp. 1437 (D. Colo. 1996).

The fact that an employee is a management level employee alone does not make him a "party" for purposes of this rule. Johnson v. Cadillac Plastic Group, Inc., 930 F. Supp. 1437 (D. Colo. 1996).

Attorneys are responsible for ethical violation when their investigator, without the defendant's permission, contacted an employee of the defendant whose statements about the events surrounding a fight may constitute admissions by the defendant. McClelland v. Blazin' Wings, Inc., 675 F. Supp. 2d 1074 (D. Colo. 2009).

This rule does not require any greater or more specific limitations on the communications of government lawyers with suspects, or with indigent suspects in particular, than apply to attorney communications in general. The fact that the defendant was appointed counsel in a different matter does not automatically prohibit certain communications with prosecution investigators relating to a different matter. An assessment of compliance with this rule requires facts concerning the matters for which the public defender had already been appointed to represent the defendant and the subject of the subsequent interviews with the investigators. People v. Wright, 196 P.3d 1146 (Colo. 2008).

Public censure was warranted for attorney who prepared motions to dismiss for his client's wife to sign when proceedings had been brought by the client's wife against the client and the client's wife was represented by counsel and was not advised that she should contact her own lawyer before signing the motions, nor asked if she wished to discuss the motions with her lawyer before signing. Three letters of admonition for unrelated misconduct also were an aggravating factor for purposes of determining the appropriate level of discipline. People v. McCray, 926 P.2d 578 (Colo. 1996).

Thirty-day suspension warranted where lawyer, who represented an individual accused of first-degree murder, communicated with co-defendant who also was charged with first-degree murder and whose interests were adverse to the lawyer's client, without the knowledge or consent of the co-defendant's lawyers. The potential for harm was high in a first-degree murder case and the number of unauthorized contacts demonstrated more than negligence on the lawyer's part. People v. DeLoach, 944 P.2d 522 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Wotan, 944 P.2d 1257 (Colo. 1997); In re Tolley, 975 P.2d 1115 (Colo. 1999).

Rule 4.3. Dealing with Unrepresented Person.

Colorado Court Rules

Colorado Rules of Professional Conduct

Transactions with Persons Other Than Clients

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Cite as RPC 4.3

History. Comment amended and adopted June 17, 1999, effective July 1, 1999; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an

adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

[2A] The lawyer must comply with the requirements of this Rule for pro se parties to whom limited representation has been provided, in accordance with C.R.C.P. 11(b), C.R.C.P. 311(b), Rule 1.2, and Rule 4.2. Such parties are considered to be unrepresented for purposes of this Rule.

Case Notes:

ANNOTATION

Law reviews. For article, "Discrete Task Representation a/k/a Unbundled Legal Services", see 29 Colo. Law. 5 (January 2000). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007).

Annotator's note. Rule 4.3 is similar to Rule 4.3 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

A noble motive does not justify departure from any rule of professional conduct. A prosecutor trying to protect public safety is not immune from the code of professional conduct when he or she chooses deception as means for protecting public safety. In re Pautler, 47 P.3d 1175 (Colo. 2002).

There is no imminent public harm, duress, or choice of evils exception or defense for a prosecutor to the rules of professional conduct. In re Pautler, 47 P.3d 1175 (Colo. 2002).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. In re Meyers, 981 P.2d 143 (Colo. 1999).

Rule 4.4. Respect for Rights of Third Persons.

Colorado Court Rules

Colorado Rules of Professional Conduct

Transactions with Persons Other Than Clients

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

(c) Unless otherwise permitted by court order, a lawyer who receives a document relating to the representation of the lawyer's client and who, before reviewing the document, receives notice from the sender that the document was inadvertently sent, shall not examine the document and shall abide by the sender's instructions as to its disposition.

Cite as RPC 4.4

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

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

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. A document is inadvertently sent when it is accidentally transmitted, such as when an e-mail or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Paragraph (c) imposes an additional obligation on lawyers under limited circumstances. If a lawyer receives a document and also receives notice from the sender prior to reviewing the document that the document was inadvertently sent, the receiving lawyer must refrain from examining the document and also must abide by the sender's instructions as to the disposition of the document, unless a court otherwise orders. Whether a lawyer is required to take additional steps beyond those required by paragraphs (b) and (c) is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been inappropriately wrongfully obtained by the sending person.

For purposes of this Rule, "document" includes, in addition to paper documents, e-mail and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving

lawyer.

[3] In the circumstances of paragraph (b), some lawyers may choose to return an inadvertently sent document. Where a lawyer is not required by applicable law or paragraph (c) to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Case Notes:

ANNOTATION

Law reviews. For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (March 2004). For article, "Inadvertent Disclosure of Confidential or Privileged Information", see 40 Colo. Law. 65 (January 2011).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Beecher, 224 P.3d 442 (Colo. O.P.D.J. 2009).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Bennett, 843 P.2d 1385 (Colo. 1993) (decided prior to 2007 repeal and readoption of the Colorado rules of professional conduct).

Rule 4.5. Threatening Prosecution.

Colorado Court Rules

Colorado Rules of Professional Conduct

Transactions with Persons Other Than Clients

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 4.5. Threatening Prosecution

(a) A lawyer shall not threaten criminal, administrative or disciplinary charges to obtain an advantage in a civil matter nor shall a lawyer present or participate in presenting criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter.

(b) It shall not be a violation of Rule 4.5 for a lawyer to notify another person in a civil matter that the lawyer reasonably believes that the other's conduct may violate criminal, administrative or disciplinary rules or statutes.

Cite as RPC 4.5

History. Entire rule and comment amended and adopted June 19, 1997, effective July 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal, disciplinary and some administrative processes are designed for the protection of society as a whole. For purposes of this Rule, a civil matter is a controversy or potential controversy over rights and duties of two or more persons under the law whether or not an action has been commenced.

[2] Threatening to use, or using the criminal, administrative or disciplinary process to coerce adjustment of private civil matters is a subversion of that process; further, the person against whom the criminal, administrative or disciplinary process is so misused may be deterred from asserting valid legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal, administrative or disciplinary process tends to diminish public confidence in our legal system.

[3] The Rule distinguishes between threats to bring criminal, administrative or disciplinary charges and the actual filing or presentation of such charges. Threats to file such charges are prohibited if a purpose is to obtain any advantage in a civil matter while the actual presentation of such charges is proscribed by this Rule only if the sole purpose for presenting the charges is to obtain an advantage in a civil matter.

[4] This distinction is appropriate because the abuse of the judicial process is at its greatest when a threat of filing charges is used as a lever to obtain an advantage in a collateral, civil proceeding. This leverage is either eliminated or greatly reduced when the charge actually is presented.

[5] Moreover, this Rule does not prohibit a lawyer from notifying another person involved in a civil matter that such person's conduct may violate criminal, administrative or disciplinary rules or statutes where the notifying lawyer reasonably believes that such a violation has taken place.

[6] While it may be difficult in certain circumstances to distinguish between a notification and a threat, public policy is served by allowing a lawyer to notify another person of a perceived violation without subjecting the notifying lawyer to discipline. Many minor violations can be eliminated, rectified or minimized if there is frank dialogue among participants to a dispute.

[7] Rule 4.5(b) provides a safe harbor for notifications of this type. Other factors that should be considered to differentiate threats from notifications in difficult cases include (a) an absence of any suggestion by the notifying lawyer that he or she could exert any improper influence over the criminal, administrative or disciplinary process, (b) consideration of whether any monetary recovery or other relief sought by the notifying lawyer is reasonably related to the harm suffered by the lawyer's clients. Where no such reasonable relation exists, the communication likely constitutes a proscribed threat. For example, a lawyer violates Rule 4.5 if the lawyer threatens to file a charge or

complaint of tax fraud against another party where issues of tax fraud have nothing to do with the dispute. It is not a violation of Rule 4.5 for a lawyer to notify another party that the other person's writing of an insufficient funds check may have criminal as well as civil ramifications in a civil action for collection of the bad check.

Case Notes:

ANNOTATION

Law reviews. For article, "Policing the Legal System: The Duty to Report Misconduct", see 30 Colo. Law. 85 (September 2001). For article, "Settlement Ethics", see 30 Colo. Law. 53 (December 2001). For article, "Colo. RPC 4.5: The Ethical Prohibition Against Threatening Prosecution", see 35 Colo. Law. 99 (May 2006). For article, "Litigating Disputes Involving the Medical Marijuana Industry", see 41 Colo. Law. 103 (August 2012).

Annotator's note. Rule 4.5 is similar to Rule 4.5 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Threatening client with criminal prosecution to obtain attorney fees violates this rule. People v. Farrant, 852 P.2d 452 (Colo. 1993).

Attorney threatened to present disciplinary charges to obtain an advantage in a civil action where the attorney, in response to a legal malpractice action, threatened to file a grievance against the attorney filing the action unless the action was dismissed. People v. Gonzales, 922 P.2d 933 (Colo. 1996).

Applied in People v. Sigley, 951 P.2d 481 (Colo. 1998).

Cases Decided Under Former DR 7-105.

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Bannister, 814 P.2d 801 (Colo. 1991).

Applied in People ex rel. Gallagher v. Hertz, 1 98 Colo. 522, 608 P.2d 335 (1979).

Rule 5.1. Responsibilities or a Partner of Supervisory Lawyer.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 5.1. Responsibilities or a Partner of Supervisory Lawyer

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved;

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Cite as RPC 5.1

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

Case Notes:

ANNOTATION

Law reviews. For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007).

Rule 5.2. Responsibilities of a Subordinate Lawyer.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 5.2. Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Cite as RPC 5.2

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict

under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Case Notes:

ANNOTATION

Annotator's note. Rule 5.2 is similar to Rule 5.2 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

The protection afforded by subsection (b) for a subordinate who acts in accordance with a supervisory lawyer's direction is not available to an attorney who failed to disclose his client's true identity in violation of Rule 3.3(b). However, a good-faith but unsuccessful attempt to bring an ethical problem to a superior's attention to receive guidance may be a mitigating factor in superior's determining punishment. People v. Casey, 948 P.2d 1014 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Bennett, 843 P.2d 1385 (Colo. 1993).

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants

With respect to nonlawyers employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Cite as RPC 5.3

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority, over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the

circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility, as between the client and the lawyer, for the supervisory activities described in Comment [3] above relative to that provider. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Case Notes:

ANNOTATION

Law reviews. For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Investigative Tactics: They May Be Legal, But Are They Ethical?", see 35 Colo. Law. 43 (January 2006). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008).

This rule does not apply to attorney special advocates. In re Redmond, 131 P.3d 1167 (Colo. App. 2005) (decided prior to 2007 repeal and readoption of the Colorado rules of professional conduct).

Attorney violated section (b) by failing to supervise non-attorney employee's work on a bankruptcy case to ensure that it was sufficient to satisfy his professional obligations and to generally be aware of the work the employee was doing regarding other matters. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Rule 5.4. Professional Independence of a Lawyer.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(4) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommend employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

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

(d) A lawyer shall not practice with or in the form of a professional company that is authorized to practice law for a profit, if

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer shall not practice with or in the form of a professional company that is authorized to practice law for a profit except in compliance with C.R.C.P. 265.

(f) For purposes of this Rule, a "nonlawyer" includes (1)a lawyer who has been disbarred, (2)a lawyer who has been suspended and who must petition for reinstatement, (3)a lawyer

who has been immediately suspended pursuant to C.R.C.P. 251.8 or 251.20(d), (4) a lawyer who is on inactive status pursuant to C.R.C.P. 227(A)(6), or (5) a lawyer who, for a period of six months or more, has been (i) on disability inactive status pursuant to C.R.C.P. 251.23 or (ii)suspended pursuant to C.R.C.P. 251.8.5, 227(A)(4), 260.6, or 251.8.6.

Cite as RPC 5.4

History. Entire rule amended and adopted June 12, 1997, effective July 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; (d) amended and (e) and (f) added and Comment amended and effective February 26, 2009; amended February 22, 2018, effective February 22, 2018.

Note:

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment on behalf of the lawyer's client. Moreover, since a lawyer should not aid or encourage a nonlawyer to practice law, the lawyer should not practice law or otherwise share legal fees with a nonlawyer. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in the lawyer's firm or practice may not be paid to the lawyer's estate or specified persons such as the lawyer's spouse or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include nonlawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with nonlawyers are permissible since they do not aid or encourage nonlawyers to practice law. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c) such arrangements should not interfere with the lawyer's professional judgment on behalf of the lawyer's client. A lawyer should, however, make full disclosure of such arrangements to the client; and if the lawyer or client believes that the effectiveness of lawyer's representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of the client.

[2] To assist a lawyer in preserving independence, a number of courses are available, For example, a lawyer may practice law in the form of a professional company, if in doing so the lawyer complies with all applicable rules of the Colorado Supreme Court. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of the lawyer's professional judgment from any nonlawyer. Various types of legal aid offices are administered by boards of directors composed of lawyers and nonlawyers. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client the lawyer serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between the. Lawyer and the organization and provides for the lawyer's independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain the lawyer's professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

[3] As part of the legal profession's commitment to the principle that high quality legal services should be available to all, lawyers are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence, and devotion to the interests of individual clients. A lawyer so participating should make certain that a relationship with a qualified legal assistance organization in no way interferes with the lawyer's independent professional representation of the interests of the individual client. A lawyer should avoid situations in which officials of the organization who are not lawyers attempt to direct lawyers concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the lawyers employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. A lawyer interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess those factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

Case Notes:

ANNOTATION

Annotator's note. Rule 5.4 is similar to Rule 5.4 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Transferring various ownership interests to lawyer employees of firm who did not receive profits and were not managers warranted suspension of one year and a day. Suspension appropriate because attorney made misrepresentations and was dishonest in such transfers. People v. Reed, 942 P.2d 1204 (Colo. 1997).

Motion to dismiss should have been denied on the basis that a joint venturer cannot shield itself from liability on the grounds that the joint venture was prohibited by this rule of professional conduct. Bebo Constr. Co. v. Mattox & O'Brien, 998 P.2d 475 (Colo. App. 2000).

An attorney's attempt to share legal fees with nonlawyers is professional misconduct. People v. Easley, 956 P.2d 1257 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules sufficient to justify suspension. People v. Easley, 956 P.2d 1257 (Colo. 1998).

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not:

(1) practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by C.R.C.P. 204 or C.R.C.P. 205 or federal or tribal law;

(2) practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction;

(3) assist a person who is not authorized to practice law pursuant to subpart (a) of this Rule in the performance of any activity that constitutes the unauthorized practice of law; or

(4) allow the name of a disbarred lawyer or a suspended lawyer who must petition for reinstatement to remain in the firm name.

(b) A lawyer shall not employ, associate professionally with, allow or aid a person the lawyer knows or reasonably should know is a disbarred, suspended, or on disability inactive status to perform the following on behalf of the lawyer's client:

(1) render legal consultation or advice to the client;

(2) appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

(3) appear on behalf of a client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of the client with third parties;

(5) otherwise engage in activities that constitute the practice of law; or

(6) receive, disburse or otherwise handle client funds.

(c) Subject to the limitation set forth below in paragraph (d), a lawyer may employ, associate professionally with, allow or aid a lawyer who is disbarred, suspended (whose suspension is partially or fully served), or on disability inactive status to perform research, drafting or clerical activities, including but not limited to:

(1) legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; and

(3) accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing assistance to the lawyer who will appear as the representative of the client.

(d) A lawyer shall not allow a person the lawyer knows or reasonably should know is disbarred, suspended, or on disability inactive status to have any professional contact with clients of the lawyer or of the lawyer's firm unless the lawyer:

(1) prior to the commencement of the work, gives written notice to the client for whom the work will be performed that the disbarred or suspended lawyer, or the lawyer on disability inactive status, may not practice law; and

(2) retains written notification for no less than two years following completion of the work.

(e) Once notice is given pursuant to C.R.C.P. 251.28 or this Rule, then no additional notice is required.

Cite as RPC 5.5

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Rule 5.5(a) amended effective April 6, 2016..

Note:

COMMENT

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. In order to protect the public, persons not admitted to practice law in Colorado cannot hold themselves out as lawyers in Colorado or as authorized to practice law in Colorado. Rule 5.5(a)(1) recognizes that C.R.C.P. 204 and C.R.C.P. 205 permit lawyers to practice law in accordance with their terms in Colorado without a license from the Colorado Supreme Court. Lawyers may also be permitted to practice law within the physical boundaries of the State, without such a license, where they do so pursuant to Federal or tribal law. Such practice does not constitute a violation of the general proscription of Rule 5.5(a)(1).

[2] Paragraph (a)(3) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See

Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in governmental agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[3] A lawyer may employ or contract with a disbarred, suspended lawyer or a lawyer on disability inactive status, to perform services that a law clerk, paralegal or other administrative staff may perform so long as the lawyer directly supervises the work. Lawyers who are suspended but whose entire suspension has been stayed may engage in the practice of law, and the portion of the Rule limiting what suspended lawyers may do does not apply.

[4] The name of a disbarred lawyer or a suspended lawyer who must petition for reinstatement must be removed from the firm name. A lawyer will be assisting in the unauthorized practice of law if the lawyer fails to remove such name.

[5] Disbarred, suspended lawyers or lawyers on disability inactive status may have contact with clients of the licensed lawyer so long as such lawyer and the licensed lawyer provide written notice to the client that the lawyer may not practice law. Written notice to the client shall include an advisement that the person may not give advice or engage in any other conduct considered the practice of law. Proof of service shall be maintained in the licensed lawyer's file for a minimum of two years.

[6] Separate and apart from the disbarred, suspended or disabled lawyer's obligation not to practice law, the licensed lawyer who employs or hires such person has an obligation to directly supervise that individual.

Case Notes:

ANNOTATION

Law reviews. For article, "Negotiations and the Unauthorized Practice of Law", see 23 Colo. Law. 361 (1994). For comment, "Increasing Access to Justice: Expanding the Role of Nonlawyers in the Delivery of Legal Services to Low-Income Coloradans", see 72 U. Colo. L. Rev. 459 (2001). For article, "Avoiding the Unauthorized Practice of Law by Non-lawyer Assistants", see 32 Colo. Law. 27 (March 2003). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007).

Annotator's note. Rule 5.5 is similar to Rule 5.5 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

An attorney's appearance as counsel of record in numerous court proceedings following an order of suspension constituted conduct involving the unauthorized practice of law. People v. Kargol, 854 P.2d 1267 (Colo. 1993).

An attorney who is suspended for failure to comply with CLE requirements is barred from practicing law under this rule and C.R.C.P. 241.21 (d), the same as if the attorney had been suspended following a disciplinary

proceeding. Continuing to practice law after such an administrative suspension warranted an additional 18-month suspension. People v. Johnson, 946 P.2d 469 (Colo. 1997).

Public censure justified where, although the attorney failed to notify opposing counsel and appeared in one hearing after imposition of the suspension, the attorney's involvement was minimal, it occurred only upon request by the client, it did not result in any harm to the client, and the attorney did not receive any benefit from the appearance. People v. Pittam, 917 P.2d 710 (Colo. 1996).

Public censure appropriate for practicing law while suspended where 90-day suspension ended four years before the unauthorized practice and where the attorney never applied for reinstatement. People v. Cain, 9 57 P.2d 346 (Colo. 1998).

Suspension of one year and one day warranted in light of the seriousness of attorney's misconduct in conjunction with his noncooperation in the disciplinary proceedings and his substantial experience in the practice of law. People v. Clark, 900 P.2d 129 (Colo. 1995).

Conduct violating this rule, in conjunction with other disciplinary rules, sufficient to justify disbarment where the attorney continued to practice law while on suspension, repeatedly neglecting his clients and failing to take reasonable steps to protect clients' interests. People v. Fager, 938 P.2d 138 (Colo. 1997).

Conduct violating this rule in conjunction with other rules of professional conduct is sufficient to justify public censure. People v. Newman, 925 P.2d 783 (Colo. 1996).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Johnson, 946 P.2d 469 (Colo. 1997); People v. Swarts, 239 P.3d 441 (Colo. O.P.D.J. 2010).

Conduct violating this rule sufficient to justify disbarment where attorney continued to practice law when under suspension. People v. Redman, 902 P.2d 839 (Colo. 1995); People v. Ebbert, 925 P.2d 274 (Colo. 1996).

Counsel violated this rule by allowing his non-lawyer wife to conduct initial client interviews and to counsel clients concerning appropriate actions to take while in bankruptcy proceedings. This in conjunction with violation of other disciplinary rules was sufficient to justify disbarment. People v. Steinman, 930 P.2d 596 (Colo. 1997).

Conduct violating this rule in conjunction with other disciplinary rules sufficient to justify disbarment. People v. Steinman, 930 P.2d 596 (Colo. 1997); People v. Holmes, 955 P.2d 1012 (Colo. 1998); In re Hugen, 973 P.2d 1267 (Colo. 1999); People v. Mason, 212 P.3d 141 (Colo. O.P.D.J. 2009); People v. Zodrow, 276 P.3d 113 (Colo. O.P.D.J. 2011); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Cases Decided Under Former DR 3-101.

Law reviews. For article, "Potential Liability for Lawyers Employing Law Clerks", see 12 Colo. Law. 1243 (1983). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

License to practice law assures public that the lawyer who holds the license will perform basic legal tasks honestly and without undue delay, in accordance with the highest standards of professional conduct. People v. Dixon, 621 P.2d 322 (Colo. 1981).

Public expects appropriate discipline for professional misconduct. The public has a right to expect that one who engages in professional misconduct will be disciplined appropriately. People v. Dixon, 621 P.2d 322 (Colo. 1981).

Services of an attorney not licensed in Colorado are compensable as attorney fees where no court appearances made and the work performed consisted of obtaining a variance from a municipal zoning code. Catoe v. Knox, 709 P.2d 964 (Colo. App. 1985).

Consulting services performed by an out-of-state lawyer do not constitute unauthorized practice of law and therefore may be compensated as attorney fees. Dietrich Corp. v. King Res. Co., 596 F.2d 422 (10th Cir. 1979).

Evidence sufficient to justify one-year suspension. People ex rel. MacFarlane v. Boyls, 197 Colo. 242, 591 P.2d 1315 (1979).

Suspended attorney must demonstrate rehabilitation. The actions of a suspended attorney who took part in a complex real estate transaction and engaged in the practice of law by representing, counseling, advising, and assisting a former client warranted suspension until he demonstrates by clear and convincing evidence that (1) he has been rehabilitated; (2) he has complied with and will continue to comply with all applicable disciplinary orders and rules; and (3) he is competent and fit to practice law. People v. Belfor, 200 Colo. 44, 611 P.2d 979 (1980).

Permitting law clerk to render legal advice to clients constitutes aiding a nonlawyer in the unauthorized practice of law. People v. Felker, 770 P.2d 402 (Colo. 1989).

Lawyer's review of living trusts which were sold by nonlawyers constituted aiding a nonlawyer in the unauthorized practice of law. Although suspension is generally prescribed for this type of conduct, weighing factors in mitigation against the seriousness of the conduct, public censure is an appropriate sanction in this case. People v. Volk, 805 P.2d 1116 (Colo. 1991); People v. Laden, 893 P.2d 771 (Colo. 1995).

The counseling and sale of living trusts by nonlawyers constitutes the unauthorized practice of law. Lawyer's review of living trusts that were sold by nonlawyers constituted aiding a nonlawyer in the unauthorized practice of law. Six-month suspension held justified in this case because of aggravating factors including selfish motive, multiple offenses, and refusal to acknowledge the wrongful nature of such conduct. People v. Cassidy, 884 P.2d 309 (Colo. 1994).

Attorney's practice of law while on inactive status constituted unauthorized practice of law. People v. Cassidy, 884 P.2d 309 (Colo. 1994).

Attorney's continued practice of law while under an order of suspension, with no efforts to wind up the legal practice, and the failure to take action to protect the legal interests of the attorney's clients, warrants disbarment.

People v. Wilson, 832 P.2d 943 (Colo. 1992).

Public censure justified where attorney failed to attend to bankruptcy proceeding and scheduled meetings, failed to timely file pleadings and responses, and allowed his paralegal to engage in unauthorized practice of law. People v. Fry, 875 P.2d 222 (Colo. 1994).

Attorney who continued to practice law while under suspension but did not harm any client was suspended. Attorney had been suspended from practice for three years when the court imposed an additional three-year suspension. People v. Ross, 873 P.2d 728 (Colo. 1994).

Conduct violating this rule sufficient to justify suspension. People v. Macy, 789 P.2d 188 (Colo. 1990).

Continuing to practice law while suspended is conduct justifying disbarment. People v. James, 731 P.2d 698 (Colo. 1987).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Pilgrim, 802 P.2d 1084 (Colo. 1990); People v. Mannix, 936 P.2d 1285 (Colo. 1997); People v. Madigan, 938 P.2d 1162 (Colo. 1997).

Conduct violating this rule sufficient to justify disbarment. People v. Bealmear, 655 P.2d 402 (Colo. 1982); People v. Rice, 728 P.2d 714 (Colo. 1986).

Rule 5.6. Restrictions on Right to Practice.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Cite as RPC 5.6

History. (a) and Comment amended and adopted June 12, 1997, effective July 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Practice Restrictions in Settlement Agreements, see 22 Colo. Law. 1673 (1993). For article, "Settlement Ethics", see 30 Colo. Law. 53 (December 2001). For article, "Non-Compete Agreements in Colorado", see 40 Colo. Law. 63 (June 2011).

Rule 5.7. Responsibilities Regarding Law-related Services.

Colorado Court Rules

Colorado Rules of Professional Conduct

Law Firms and Associations

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 5.7. Responsibilities Regarding Law-related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of

legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Cite as RPC 5.7

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [9] amended and effective November 6, 2008.

Note:

COMMENT

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer

provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients maybe served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that

regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4 (Misconduct).

Case Notes:

ANNOTATION

Law reviews. For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007).

Rule 6.1. Voluntary Pro Bono Publico Service.

Colorado Court Rules

Colorado Rules of Professional Conduct

Public Service

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 6.1. Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the fifty hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional legal or public services through:

(1) delivery of legal services at no fee or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Where constitutional, statutory or regulatory restrictions prohibit government and public sector lawyers or judges from performing the pro bono services outlined in paragraphs (a)(1) and (2), those individuals should fulfill their pro bono publico

responsibility by performing services or participating in activities outlined in paragraph (b).

Cite as RPC 6.1

History. Entire rule repealed and readopted November 2, 1999, effective January 1, 2000; Comment amended and effective November 23, 2005; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay. Indeed, the oath that Colorado lawyers take upon admittance to the Bar requires that a lawyer will never "reject, from any consideration personal to myself, the cause of the defenseless or oppressed." In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono under paragraph (a) if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remain unfulfilled, the lawyer may satisfy the remaining commitment in a variety of ways as set forth in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate is encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[8A] Government organizations are encouraged to adopt pro bono policies at their discretion. Individual government attorneys should provide pro bono legal services in accordance with their respective organizations' internal rules and policies. For further information, see the Colorado Bar Association Voluntary Pro Bono Public Service Policy for Government Attorneys, Suggested Program Guidelines, 29 Colorado Lawyer 79 (July 2000).

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. However, in special circumstances, such as death penalty cases and class action cases, it is appropriate to allow collective satisfaction by a law firm of the pro bono responsibility. There may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Recommended Model Pro Bono Policy for Colorado Licensed Attorneys and Law Firms

Preface. Providing pro bono legal services to persons of limited means and organizations serving persons of limited means is a core value of Colorado licensed attorneys enunciated in Colorado Rule of Professional Conduct 6.1. Adoption of a law firm pro bono policy will commit the firm to this professional value and assure attorneys of the firm that their pro bono work is valued in their advancement within the firm.

The Colorado Supreme Court has adopted the following recommended Model Pro Bono Policy that can be modified to meet the needs of individual law firms. References are made to provisions that may not apply in a small firm setting. Adoption of such a policy is entirely voluntary.

At the least, a pro bono policy would:

(1) clearly set forth an aspirational goal for attorneys, as well as the number of hours for which billable credit will be awarded for firms that operate on a billable hour system (the attached model policy uses the figure of at least 50 hours per attorney per year, which mirrors the aspirational goal set out in Rule 6.1);

(2) demonstrate that pro bono service will be positively considered in evaluation and compensation decisions; and

(3) include a description of the processes that will be used to match attorneys with projects and monitor pro bono service, including tracking pro bono hours spent by lawyers and others in the firm.

The Colorado Supreme Court will recognize those firms that make a strong commitment to pro bono work by adopting a policy that includes:

(1) an annual goal of performing 50 hours of pro bono legal service by each Colorado licensed attorney in the firm, pro-rated for part-time attorneys, primarily for persons of limited means and/or organizations serving persons of limited means consistent with the definition of pro bono services as set forth in this Model Pro Bono Policy; and

(2) a statement that the firm will value at least 50 hours of such pro bono service per year by each Colorado licensed attorney in the firm, for all purposes of attorney evaluation, advancement, and compensation in the firm as the firm values compensated client representation.

The Colorado Supreme Court will also recognize on an annual basis those Colorado law firms that voluntarily advise the Court by February 15 that their attorneys, on average, during the previous calendar year, performed 50 hours of pro bono legal service, primarily for persons of limited means or organizations serving persons of limited means consistent with the definition of pro bono services as set forth in this Model Pro Bono Policy.

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I.Introduction

The firm recognizes that the legal community has a unique responsibility to ensure that all citizens have access to a fair and just legal system. In recognizing this responsibility, the firm encourages each of its attorneys to actively participate in some form of pro bono legal representation.

This commitment mirrors the core principles enunciated in the Colorado Rules of Professional Conduct: A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest . . . A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service. Preamble, Colorado Rules of Professional Conduct.

The firm understands there are various ways to provide pro bono legal services in our community. In selecting among the various pro bono opportunities, the firm encourages and expects that attorneys (both partners and associates or other designation) will devote a minimum of fifty (50) hours each year to pro bono legal services, or a proportional amount of pro bono hours by attorneys on alternative work schedules. In fulfilling this responsibility, firm attorneys should provide a substantial majority of the fifty (50) hours of pro bono legal services to (1) persons of limited means, or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means. Rule 6.1. The firm strongly believes that this level of participation lets our attorneys make a meaningful contribution to our legal community, and provides important opportunities to further their professional development.

II.Firm Pro Bono Committee/Coordinator (see suggested change for small firms below)

The firm has established a Pro Bono Committee responsible for implementing and administering the firm's pro bono policies and procedures. The Pro Bono Committee consists of a representative group of attorneys of the firm. In addition, the firm has designated a Pro Bono Coordinator. The Pro Bono Committee/Pro Bono Coordinator has the following principal responsibilities:

1 encouraging and supporting pro bono legal endeavors;

2 reviewing, accepting and/or rejecting pro bono legal projects;

3 coordinating and monitoring pro bono legal projects, ensuring, among other things, that appropriate assistance, supervision and resources are available;

4 providing periodic reports on the firm's pro bono activities; and

5 creating and maintaining a pro bono matter tracking system.

Attorneys are encouraged to seek out pro bono matters that are of interest to them.

*** * [Small firms may wish to designate only a Pro Bono Coordinator and can introduce the above paragraph as follows:** "The firm has designated a Pro Bono Coordinator responsible for implementing and administering the firm's pro bono policies and procedures" and then delete the next two sentences.]

III.Pro Bono Services Defined

The foremost objective of the firm pro bono policy is to provide legal services to persons of limited means and the nonprofit organizations that assist them, in accordance with Rule 6.1. The firm recognizes there are a variety of ways in which the firm's attorneys and paralegals can provide pro bono legal services in the community. The following, while not intended to be an exhaustive list, reflects the types of pro bono legal services the firm credits in adopting this policy:

A. Representation of Low Income Persons. Representation of individuals who cannot afford legal services in civil or criminal matters of importance to a client;

B. Civil Rights and Public Rights Law. Representation or advocacy on behalf of individuals or organizations seeking to vindicate rights with broad societal implications (class action suits or suits involving constitutional or civil rights) where it is inappropriate to charge legal fees; and

C. Representation of Charitable Organizations. Representation or counseling to charitable, religious, civic, governmental, educational, or similar organizations in matters where the payment of standard legal fees would significantly diminish the resources of the organization, with an emphasis on service to organizations designed primarily to meet the needs of persons of limited income or improve the administration of justice.

D. Community Economic Development. Representation of or counseling to micro-entrepreneurs and businesses for community economic development purposes, recognizing that business development plays a critical role in low income community development and provides a vehicle to help low income individuals to escape poverty;

E. Administration of Justice in the Court System. Judicial assignments, whether as pro bono counsel, or a neutral arbiter, or other such assignment, which attorneys receive from courts on a mandatory basis by virtue of their membership in a trial bar;

F. Law-related Education. Legal education activities designed to assist individuals who are low-income, at risk, or vulnerable to particular legal concerns or designed to prevent social or civil injustice.

G. Mentoring of Law Students and Lawyers on Pro Bono Matters. Colorado Supreme Court Rule 260.8 provides that an attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. However, mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means.

Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, the firm

will not count them toward fulfillment of any attorney's, or the firm's, goal to provide pro bono legal services to persons of limited means or to nonprofits that serve such persons' needs: participation in a non-legal capacity in a community or volunteer organization; services to non-profit organizations with sufficient funds to pay for legal services as part of their normal expenses; client development work; non-legal service on the board of directors of a community or volunteer organization; bar association activities; and non-billable legal work for family members, friends, or members or staff of the firm who are not eligible to be pro bono clients under the above criteria.

IV.Firm Recognition of Pro Bono Service (see suggested change for small firms below).

A. Performance Review and Evaluation. The firm recognizes that the commitment to pro bono involves a personal expenditure of time. In acknowledgment of this commitment and to support firm goals, an attorney's efforts to meet this expectation will be considered by the firm in measuring various aspects of the attorney's performance, such as yearly evaluations and bonuses where applicable. An attorney's pro bono legal work will be subject to the same criteria of performance review and evaluation as those applied to client-billable work. As with all client work, there should be an emphasis on effective results for the client and the efficient and cost-effective use of firm resources.

B. Credit for Pro Bono Legal Work. The firm will give full credit for at least fifty (50) hours of pro bono legal services, and additional hours as approved by the Pro Bono Committee and/or Coordinator, in considering annual billable hour goals, bonuses and other evaluative criteria based on billable hours.

*** * [Small firms may wish to only include the following paragraph in lieu of the above provisions:** The firm recognizes that the commitment to pro bono involves a personal expenditure of time. In acknowledgment of this commitment and to support firm goals, your pro bono service will be considered a positive factor in performance evaluations and compensation decisions and will be subject to the same criteria of performance review and evaluation as those applied to client-billable work. As with all client work, there should be an emphasis on effective results for the client and the efficient and cost-effective use of firm resources.]

V.Administration of Pro Bono Service (see suggested change for small firms below).

A. Approval of Pro Bono Matters. The Pro Bono Committee/Coordinator will review all proposed pro bono legal matters to ensure that:

1. there is no client or issue conflict or concern;

2. the legal issue raised is not frivolous or untenable;

3. the client does not have adequate funds to retain an attorney; and

4. the matter is otherwise appropriate for pro bono representation.

All persons seeking approval of a pro bono project must: (1) submit a request identifying the client and other entity involved; (2) describe the nature of the work to be done; and (3) identify who will be working on the matter. Once the firm undertakes a pro bono matter, the matter is treated in the same manner as the firm's regular paying work.

B. Opening a Pro Bono Matter. It is the responsibility of the attorney seeking to provide pro bono legal services to complete the conflicts check and open a new matter in accordance with regular firm procedures.

C. Pro Bono Engagement Letter. After a matter has received initial firm approval, the principal attorney on a pro bono legal matter must send an engagement letter to the pro bono client. Typically, the engagement letter should be sent after the initial client meeting during which the nature and terms of the engagement are discussed.

D. Staffing of Pro Bono Matters. Pro bono legal matters are initially staffed on a voluntary basis. It may become necessary to assign additional attorneys to the matter if the initial staffing arrangements prove to be inadequate, and the firm reserves the right to make such assignments.

E. Supervision of Pro Bono Matters. As appropriate, partner shall supervise any associate working on a pro bono legal matter and the supervising partner shall remain informed of the status of the matter to ensure its proper handling. In addition, it may be appropriate to use assistance or resources from outside the firm. The firm will assist attorneys in finding a supervisor if necessary.

F. Professional Liability Insurance. Attorneys may provide legal assistance through those pro bono organizations that provide professional liability insurance for their volunteers. The firm also carries professional liability insurance for its attorneys in instances where no coverage is available on a pro bono matter through a qualified legal aid organization. Before undertaking any pro bono legal commitments, the professional liability implications should be reviewed with the Pro Bono Committee or the Pro Bono Coordinator.

G. Paralegal Pro Bono Opportunities. Approved pro bono legal work for paralegals includes: (1) work taken on in conjunction with and under the supervision of an attorney working on a specific pro bono legal matter, or (2) work handled independently for an organization that provides pro bono legal opportunities, provided, however, that such participation does not create an attorney-client relationship and/or involve the paralegal's provision of legal advice.

H. Disbursements in Pro Bono Matters. The firm can and should bill and collect disbursements in pro bono legal matters where it is appropriate to do so based on the client's resources. The firm encourages attorneys to pursue petitions for the waiver of filing fees in civil matters (Chief Justice Directive 98-01) when applicable, and to use pro bono experts, court reporters, investigators and other vendors when available to minimize expenses in pro bono legal matters. The firm may advance or guarantee payment of incidental litigation expenses, and may agree that the repayment of such expenses may be contingent upon the outcome of the matter in accordance with Rule 1.8(e). The Pro Bono Committee/Pro Bono Coordinator must approve in advance any expense of a non-routine, significant nature, such as expert fees or translation costs. The supervising partner in a pro bono legal matter should participate in decisions with respect to disbursements.

I. Attorney Fees in Pro Bono Matters. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters where possible. In the event of a recovery of attorney fees, the firm encourages the donation of these fees to an organized non-profit entity whose purpose is or includes the provision of pro bono representation to persons of limited means.

J. Departing Attorneys. When an attorney handling a pro bono case leaves the firm, he or she should work with the Pro Bono Committee/Coordinator to (1) locate another attorney in the firm to take over the representation of the pro bono client, or (2) see if the referring organization can facilitate another placement.

*** * [Small firms may wish to title this section "Pro Bono Procedures" and include only the following paragraph in lieu of the above provisions:** All pro bono legal matters will be opened in accordance with regular firm procedures, including utilization of a conflicts check and a client engagement letter. Pro bono matters should be supervised by a partner, as appropriate. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters whenever possible.]

VI.CLE Credit for Pro Bono Work

C.R.C.P. 260.8 provides that attorneys may be awarded up to nine (9) hours of CLE credit per three-year reporting period for: (1) performing uncompensated pro bono legal representation on behalf of clients of limited means in a civil legal matter, or (2) mentoring another lawyer or law student providing such representation.

A. Amount of CLE Credit. Attorneys may earn one (1) CLE credit hour for every five (5) billable-equivalent hours of pro bono representation provided to the client of limited means. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means. An attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student.

B. How to Obtain CLE Credit. An attorney who seeks CLE credit under C.R.C.P. 260.8 for work on an eligible matter must submit the completed Form 8 to the assigning court, program or law school. The assigning entity must then report to the Colorado Board of Continuing Legal and Judicial Education its recommendation as to the number of general CLE credits the reporting pro bono attorney should receive.

Recommended Model Pro Bono Policy for Colorado In-House Legal Departments

Preface. Providing pro bono legal services to persons of limited means and organizations serving persons of limited means is a core value of Colorado licensed attorneys enunciated in Colorado Rule of Professional Conduct 6.1. Colorado lawyers who work in in-house legal departments have, historically, been an untapped source of pro bono volunteers. Rule 6.1 applies equally to in-house lawyers; however, the Court recognizes that the work environment for in-house lawyers is distinct from that of lawyers in private law firms, and may limit the amount of pro bono work lawyers can accomplish while working in-house.

To encourage Colorado in-house lawyers to commit to providing pro bono legal services to persons and organizations of limited means, the Court has adopted rules to overcome some of the barriers impeding in-house counsel from performing pro bono legal work. For example, an in-house attorney who is not licensed to practice in Colorado may obtain a license to perform pro bono legal work, as a pro bono attorney under Rule 204.6. of Chapter 18, the Colorado Court Rules Governing Admission to the Bar. The attorney must pay a one-time fee of $50, and must act under the

auspices of a Colorado nonprofit entity whose purpose is or includes the provision of pro bono legal representation to persons of limited means.

The following Model Pro Bono Policy can be modified to meet the needs of individual in-house legal departments. Adoption of such a policy is entirely voluntary. The model policy below is designed to serve as a starting point for in-house legal departments within Colorado that would like to put in place a structured program to encourage their lawyers to engage in pro bono service. The model policy should be adapted as needed to reflect the culture and values of the company or organization and legal department. No formal pro bono policy is needed to launch an in-house pro bono program (indeed, many of the most successful in-house pro bono programs have no policy at all); however, the model below reflects some of the issues that an in-house legal department may wish to consider before launching a program. In a few instances below alternative language is suggested. Additional resources and model policies are available from the Pro Bono Institute, Corporate Pro Bono Project: http://www.probonoinst.org/projects/corporate-pro-bono.html.

Recommended Model Pro Bono Policy for Colorado In-House Legal Departments

I. Introduction

II. Mission Statement

III. Pro Bono Service Defined

IV. Pro Bono Service Participation

V. Pro Bono Committee/Coordinator

VI. Pro Bono Projects

VII. Insurance Coverage

VIII. Expenses and Resources

IX. Expertise

X. Company Affiliation

XI. Conflict of Interest

References

A. Preamble to the Colorado Rules of Professional Conduct

B. Colorado Rule of Professional Conduct 6.1

C. Chief Justice Directive 98-01, Costs for Indigent Persons Civil Matters

D. Colorado Rule of Civil Procedure, Chapter 18, Rule 204.6.

I. Introduction

Company recognizes the importance of good corporate citizenship, and supporting the communities in which it does business. Performing pro bono services benefits both the professionals who undertake the work as well as the individuals and organizations served. Pro bono work allows legal professionals to sharpen their existing skills, learn new areas of the law, connect more fully with their communities, and achieve a measure of personal fulfillment.

Rule 6.1 of the Colorado Rules of Professional Conduct sets forth an aspirational goal that each lawyer render at least 50 hours of pro bono public legal services per year, with a substantial majority of those hours without fee to (1) persons of limited means or (2) governmental or non-profit organization matters designed primarily to address the needs of persons of limited means.

[*Insert statement about Company's existing or planned community service work*]

Company encourages every member of the Legal Department to assist in providing pro bono legal services. Company aspires to attain the goal of each Company attorney devoting a minimum of 50 hours per year to pro bono legal services, or a proportional amount of pro bono hours by attorneys on alternative work schedules.

II. Mission Statement

Through its pro bono program, the Legal Department intends to serve Company's communities by providing pro bono legal services to individuals and organizations that otherwise might not have access to them. In addition, the Legal Department seeks to provide opportunities for rewarding and satisfying work, to spotlight Company's position as a good corporate citizen, for Legal Department professional skills and career development, and for collaboration and teamwork across Company's Legal Department and within the community in general for our attorneys and other professionals.

III. Pro Bono Service Defined

Pro bono service is the rendering of professional legal services to persons or organizations with limited means, without the expectation of compensation, regardless of whether such services are performed during regular work hours or at other times. It is this provision of volunteer legal services that is covered by this pro bono policy. Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, they are not pro bono services under this policy: participation in a non-legal capacity in a community or volunteer organization; services to non-profit organizations with sufficient funds to pay for legal services as part of their normal expenses; non-legal service on the board of directors of a community or volunteer organization; services provided to a political campaign; and legal work for family members, friends, or Company employees who are not eligible to be pro bono clients under an approved pro bono project.

IV. Pro Bono Service Participation

Every member of Company Legal Department is encouraged to provide pro bono legal services. The pro bono legal services should not interfere with regular work assignments and must be approved by the Pro Bono Committee/Coordinator. No attorney will be adversely affected by a decision to participate in the program; conversely, no attorney will be penalized for not participating in the program.

***Optional language*:** The Legal Department encourages each member to devote up to 50 hours of regular work time per year toward providing pro bono services. Legal Department members may need to use paid time off for any pro bono services provided in excess of 50 hours per year. [Insert language for process of tracking those hours.]

V. Pro Bono Committee/Coordinator

To support Company's efforts to provide pro bono services, Company Legal Department has established a Pro Bono Coordinator/Committee. The Committee/Coordinator oversees the pro bono program, supervises and approves all pro bono matters, ensures that conflicts are identified and processes are followed, and ensures that all pro bono matters are adequately supervised. The Pro Bono Coordinator/Committee encourages all employees within the Legal Department to bring to the Coordinator's/Committee's attention any pro bono projects of interest.

VI. Pro Bono Projects

All pro bono projects must be pre-approved by the Pro Bono Coordinator/Committee. Individuals may not begin their pro bono representations in a particular matter until Coordinator/Committee approval is received. Individuals must obtain the approval of their supervisors to perform pro bono services during scheduled work hours. The Pro Bono Coordinator/Committee plans to offer, from time to time, group projects that have already been approved. In addition, members of the Legal Department may seek approval for a new project by submitting to the Coordinator/Committee a project approval request that contains: the name of the proposed client, the name of the opposing parties and other entities (e.g. opposing attorney or law firm) involved, a description of the project including the scope of work to be done, the names of the Law Department members who would work on the project, an estimate of the time required from each person, an estimate of any anticipated costs associated with the project, anticipated schedule of the project and/or deadlines; supervision or training needs, whether malpractice coverage is provided by the project sponsor, and any other relevant information.

VII. Insurance Coverage

Company's insurance carrier provides insurance coverage for employees in the Legal Department for work performed on approved pro bono projects. Members of the Legal Department must advise the Pro Bono Coordinator/Committee immediately should they learn that a complaint or disciplinary complaint may be filed concerning a pro bono matter.

OR

Company does not have malpractice insurance to cover pro bono work of its Legal Department members; however,

many of the organizations that sponsor pre-approved pro bono projects carry malpractice insurance for their volunteer attorneys. The Pro Bono Coordinator/Committee will reject any project that does not provide malpractice coverage for the legal services provided. Members of the Legal Department must advise the Pro Bono Coordinator/Committee immediately should they learn that a complaint or disciplinary complaint may be filed concerning a pro bono matter.

[*Note: The Pro Bono Institute has outlined additional options, such as self-insurance through the purchase of a policy from NLADA, in a paper available here: http://www.cpbo.org/wp-content/uploads/2012/09/Insurance-Paper.pdf*]

VIII. Expenses and Resources

As with any other Company work assignment, individuals doing pro bono work may engage Legal Department legal assistants, paralegals and other support staff in a manner consistent with their job responsibilities. Legal Department members may use Company facilities, such as telephones, copiers, computers, printers, library materials, research materials, and mail, as appropriate to carry out pro bono work; however, in accordance with the section entitled "Company Affiliation" below, use of Company resources should not convey the impression that Company is providing the pro bono services. Ordinary expenses (e.g., parking, mileage, etc.) may be submitted for reimbursement. Expenses exceeding $250 should be submitted to the Pro Bono Coordinator/Committee for prior approval. Legal Department members should make every effort to control expenses related to pro bono work just as they would for any other legal matter.

IX. Expertise

Legal Department members providing pro bono services should exercise their best judgment regarding their qualifications to handle the issues necessary to provide pro bono services. Those providing pro bono services should obtain training on the legal issues they will handle. Training is available through various pro bono organizations, bar associations, law firms, and CLE offerings.

OR

Because pro bono work may require Legal Department members to work outside of their areas of expertise and skill, the Legal Department will make available to all pro bono volunteers substantive support services, if requested on an approved project, to enable them to provide effective and efficient representation in pro bono matters.

X. Company Affiliation

Although Company strongly endorses participation in the pro bono program, participants are not acting as Company representatives or employees with respect to the matters they undertake, and Company does not necessarily endorse positions taken on behalf of pro bono clients. Therefore, Company Legal Department members participating in such activities do so individually and not as representatives of Company. Individuals who take on pro bono matters must identify themselves to their clients as volunteers for the non-profit organization and not as attorneys for Company.

Individuals providing pro bono services should not use Company's stationery for pro bono activities or otherwise

engage in any other acts that may convey the impression that Company is providing legal services. Individuals should use the stationery provided by the pro bono referral organization, or if no stationery is provided, blank stationery (i.e. no Company letterhead). Similarly Company business cards must not be distributed to pro bono clients.

***Optional Language*:** Most client interviews or other meetings should take place at the offices of a partner organization. If this is not suitable, members of the Legal Department may host pro bono client meetings at a Company location with the prior approval of the Coordinator/Committee. The Company attorney hosting the meeting should take care to remind the pro bono client that, although the meeting is taking place at a Company location, the client is represented by the attorney and not Company.

XI. Conflict of Interest

Legal Department members may not engage in the provision of any pro bono service which would create a conflict of interest or give the appearance of a conflict of interest. This includes, but is not limited to, direct conflicts, business/public relations conflicts, and politically sensitive issues. Conflicts analysis must be ongoing throughout the course of any representation as an issue raising a conflict may present itself at any time during the course of representation. The Pro Bono Coordinator/Committee will review and resolve any potential conflict issues.

Case Notes:

ANNOTATION

Law reviews. For article, "Like It or Not, Colorado Already Has 'Mandatory' Pro Bono", see 29 Colo. Law. 35 (April 2000). For article, "Repugnant Objectives", see 41 Colo. Law. 51 (December 2012).

Rule 6.2. Accepting Appointments.

Colorado Court Rules

Colorado Rules of Professional Conduct

Public Service

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial or otherwise oppressive burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Cite as RPC 6.2

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services. Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Case Notes:

ANNOTATION

Law reviews. For article, "Repugnant Objectives", see 41 Colo. Law. 51 (December 2012).

Rule 6.3. Membership in Legal Services Organization.

Colorado Court Rules

Colorado Rules of Professional Conduct

Public Service

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7 ; or

(b) where the decision or action could have a material adverse effect on the representation of a client of a lawyer provided by the organization whose interests are adverse to a client of the lawyer.

Cite as RPC 6.3

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is a director, officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Rule 6.4. Law Reform Activities Affecting Client Interests.

Colorado Court Rules

Colorado Rules of Professional Conduct

Public Service

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact to the organization but need not identify the client.

Cite as RPC 6.4

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure to the organization when the lawyer knows a private client might be materially benefited.

Rule 6.5. Nonprofit and Court-annexed Limited Legal Services Programs.

Colorado Court Rules

Colorado Rules of Professional Conduct

Public Service

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 6.5. Nonprofit and Court-annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Cite as RPC 6.5

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Rule 7.1. Communications Concerning a Lawyer's Services.

Colorado Court Rules

Colorado Rules of Professional Conduct

Information about Legal Services

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 7.1. Communications Concerning a Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(3) is likely to create an unjustified expectation about results the lawyer can achieve;

(b) No lawyer shall, directly or indirectly, pay all or a part of the cost of communications concerning a lawyer's services by a lawyer not in the same firm unless the communication discloses the name and address of the non-advertising lawyer, the relationship between the advertising lawyer and the non-advertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the non-advertising lawyer.

(c) Unsolicited communications concerning a lawyer's services mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery, and shall not resemble legal pleadings or other legal documents.

(d) Any communication that states or implies the client does not have to pay a fee if there is no recovery shall also disclose that the client may be liable for costs. This provision does not apply to communications that only state that contingent or percentage fee arrangements are available, or that only state the initial consultation is free.

(e) A lawyer shall not knowingly permit, encourage or assist in any way employees, agents or other persons to make communications on behalf of the lawyer or the law firm in violation of this Rule or Rules 7.2 through 7.4.

(f) In connection with the sale of a private law practice under Rule 1.17, an opinion of the purchasing lawyer's suitability and competence to represent existing clients shall not violate this Rule if the lawyer complies with Rule 1.17(d).

Cite as RPC 7.1

History. (f) added and adopted June 12, 1997, effective July 1, 1997; entire rule and comment amended and adopted June 12, 1997, effective January 1, 1998; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2 and solicitations governed by Rule 7.3.

[2] The touchstone of this Rule, as well as Rules 7.2 through 7.4, is that all communications regarding a lawyer's services must be truthful. Truthful communications regarding a lawyer's services provide a valuable public service and, in any event, are constitutionally protected. False and misleading statements regarding a lawyer's services do not serve any valid purpose and may be constitutionally proscribed.

[3] It is not possible to catalog all types and variations of communications that are false or misleading. Nevertheless, certain types of statements recur and deserve special attention.

[4] One of the basic covenants of a lawyer is that the lawyer is competent to handle those matters accepted by the lawyer. Rule 1.1. It is therefore false and misleading for a lawyer to advertise for clients in a field of practice where the lawyer is not competent within the meaning of Rule 1.1.

[5] Characterizations of a lawyer's fees such as "cut-rate", "lowest" and "cheap" are likely to be misleading if those statements cannot be factually substantiated. Similarly, characterizations regarding a lawyer's abilities or skills have the potential to be misleading where those characterizations cannot be factually substantiated. Equally problematic are factually unsubstantiated characterizations of the results that a lawyer has in the past obtained. Such statements often imply that the lawyer will be able to obtain the same or similar results in the future. This type of statement, due to the inevitable factual and legal differences between different representations, is likely to mislead prospective clients.

[6] Statements that a law firm has a vast number of years of experience, by aggregating the experience of all members of the firm, provide little meaningful information to prospective clients and have the potential to be misleading.

[7] Statements such as "no recovery, no fee" are misleading if they do not additionally mention that a client may be obligated to pay costs of the lawsuit. Any communication that states or implies the client does not have to pay a fee if there is no recovery shall also disclose that the client may be liable for costs.

[8] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances

of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[9] Finally, Rule 7.1(c) proscribes unsolicited communications sent by restricted means of delivery. It is misleading and an invasion of the recipient's privacy for a lawyer to send advertising information to a prospective client by registered mail or other forms of restricted delivery. Such modes falsely imply a degree of exigence or importance that is unjustified under the circumstances.

Case Notes:

ANNOTATION

Annotator's note. Rule 7.1 is similar to Rule 7.1 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

The relevant portions of the Colorado Consumer Protection Act are not inconsistent with the prohibition on misleading communications in C.R.P.C. 7.1. Attorney conduct that constitutes deceptive or unfair trade practices is not in compliance with the rules of professional conduct and is not exempted from CCPA liability. Crowe v. Tull, 126 P.3d 196 (Colo. 2006).

Lawyer advertisement containing false, misleading, deceptive, or unfair statements in violation of the rule warrants public, rather than private, censure. Respondent terminated referral service being advertised after the initial request for investigation was filed and cooperated in disciplinary proceedings but had received a past letter of admonition and had substantial experience in the practice of law. Respondent's conduct involved dishonesty and misrepresentation and, in conjunction with prior discipline, foreclosed a private sanction. People v. Carpenter, 893 P.2d 777 (Colo. 1995).

Cases Decided Under Former DR 2-101.

Law reviews. For comment, "A Consumers' Rights Interpretation of the First Amendment Ends Bans on Legal Advertising", see 55 Den. L.J. 103 (1978). For article, "Lawyer Advertising", see 15 Colo. Law. 1819 (1986). For article, "Marketing Your Practice", see 16 Colo. Law. 259 (1987). For article, "Reading Beyond the Labels: Effective Regulation of Lawyers' Targeted Direct Mail Advertising", see 58 U. Colo. L. Rev. 255 (1987). For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990). For comment, "After Shapero v. Kentucky Bar Association: Much Remains Unresolved About the Allowable Limits of Restrictions on Attorney Advertising", see 61 U. Colo. L. Rev. 115 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Smith, 830 P.2d 1003 (Colo. 1992).

Conduct violating this rule sufficient to justify suspension. People v. Roehl, 655 P.2d 1381 (Colo. 1983).

Cases Decided Under Former DR 2-102.

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Listing Support Personnel Names on Letterhead and Business Cards, see 19 Colo. Law. 629 (1990).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Smith, 830 P.2d 1003 (Colo. 1992).

Rule 7.2. Advertising.

Colorado Court Rules

Colorado Rules of Professional Conduct

Information about Legal Services

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 7.2. Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization.

(3) pay for a law practice in accordance with Rule 1.17 ; and

(4) refer clients to another lawyer or a nonlawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Cite as RPC 7.2

History. (c)(1), (2), and (3) amended and adopted June 12, 1997, effective July 1, 1997; entire rule and comment amended and adopted June 12, 1997, effective January 1, 1998; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [8] amended and effective November 6, 2008.

Note:

COMMENT

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, e-mail address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communications are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. See Rule 7.3 (a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation. Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for recommending the

lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4 (a) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public . See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service).

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the

lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(d), a lawyer who receives referrals from a lawyer or nonlawyer must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on the Applicability of Colo. RPC 7.2 to Internet-Based Lawyer Marketing Programs, see 39 Colo. Law. 65 (August 2010).

Public censure was appropriate where attorney continued to advertise with an unapproved, for-profit attorney referral service and where attorney had previously been disciplined with regard to use of client funds and was on suspension at the time of censure. People v. Mason, 938 P.2d 133 (Colo. 1997) (decided prior to 2007 repeal and readoption of the Colorado rules of professional conduct).

Rule 7.3. Solicitation of Clients.

Colorado Court Rules

Colorado Rules of Professional Conduct

Information about Legal Services

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 7.3. Solicitation of Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic

contact even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) A lawyer shall not solicit professional employment from a prospective client believed to be in need of legal services which arise out of the personal injury or death of any person by written, recorded, or electronic communication. This Rule 7.3(c) shall not apply if the lawyer has a family or prior professional relationship with the prospective client or if the communication is issued more than 30 days after the occurrence of the event for which the legal representation is being solicited. Any such communication must comply with the following:

(1) no such communication may be made if the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter; and

(2) if a lawyer other than the lawyer whose name or signature is contained in the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any such communication shall include a statement so advising the prospective client.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall:

(1) include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2);

(2) not reveal on the envelope or on the outside of a self-mailing brochure or pamphlet the nature of the prospective client's legal problem.
A copy of or recording of each such communication and a sample of the envelopes, if any, in which the communications are enclosed shall be kept for a period of four years from the date of dissemination of the communication.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Cite as RPC 7.3

History. Entire rule and comment amended and adopted and committee comment deleted by amendment June 12,

1997, effective January 1, 1998; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Rule 7.3(b) and (d) amended effective April 6, 2016; amended February 22, 2018, effective February 22, 2018.

Note:

COMMENT

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by e-mail or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone, or real-time electronic persuasion that may overwhelm a person's judgment.

[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not

applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal- service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. . Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] The requirement in Rule 7.3(d)(1) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

Rule 7.4. Communication of Fields of Practice.

Colorado Court Rules

Colorado Rules of Professional Conduct

Information about Legal Services

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 7.4. Communication of Fields of Practice

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law or that the lawyer is a specialist in particular fields of law. Such communication shall be in accordance with Rule 7.1.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

(e) In any advertisement in which a lawyer affirmatively claims to be certified in any area of the law, such advertisement shall contain the following disclosure: "Colorado does not certify lawyers as specialists in any field." This disclaimer is not required where the information concerning the lawyer's services is contained in a law list, law directory or a publication intended primarily for use of the legal profession.

Cite as RPC 7.4

History. (g) added and adopted June 12, 1997, effective July 1, 1997; entire rule and comment amended and adopted and committee comment deleted June 12, 1997, effective January 1, 1998; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's

services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[4] A claim of certification contained in a lawyer's letterhead does not require the disclaimer in Rule 7.4(e) unless the letterhead is used in an advertisement.

Case Notes:

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association Ethics Committee on Lawyer Advertising, Solicitation and Publicity, see 19 Colo. Law. 25 (1990).

Rule 7.5. Firm Names and Letterheads.

Colorado Court Rules

Colorado Rules of Professional Conduct

Information about Legal Services

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that

violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Cite as RPC 7.5

History. (b) amended October 17, 1996, effective January 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Case Notes:

ANNOTATION

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension.

People v. Reed, 955 P.2d 65 (Colo. 1998) (decided prior to 2007 repeal and readoption of the Colorado rules of professional conduct).

Rule 7.6. Political Contributions to Obtain Legal Engagements or Appointments by Judges.

Colorado Court Rules

Colorado Rules of Professional Conduct

Information about Legal Services

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 7.6. Political Contributions to Obtain Legal Engagements or Appointments by Judges

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

Cite as RPC 7.6

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. Political contributions in initiative and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated

services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term "lawyer or law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated.

Rule 8.1. Bar Admission and Disciplinary Matters.

Colorado Court Rules

Colorado Rules of Professional Conduct

Maintaining the Integrity of the Profession

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission, readmission, or reinstatement to the bar, or a lawyer in connection with an application for admission, readmission, or reinstatement to the bar or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Cite as RPC 8.1

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. Rule 8.1(b) does not prohibit a good faith challenge to the demand for such information. A person relying on such a provision or challenge in response to a question, however, should do so

openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

Case Notes:

ANNOTATION

Annotator's note. Rule 8.1 is similar to Rule 8.1 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Recklessly making a false statement of material fact in a disciplinary matter, in conjunction with violation of other disciplinary rules, sufficient to justify suspension. People v. Porter, 980 P.2d 536 (Colo. 1999).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. In re Demaray, 8 P.3d 427 (Colo. 1999); People v. Edwards, 201 P.3d 555 (Colo. 2008); People v. Duggan, 282 P.3d 534 (Colo. O.P.D.J. 2012); People v. Staab, 287 P.3d 122 (Colo. O.P.D.J. 2012).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Mannix, 936 P.2d 1285 (Colo. 1997); People v. Tolentino, 285 P.3d 340 (Colo. O.P.D.J. 2012).

Cases Decided Under Former DR 1-101.

Law reviews. For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part I", see 19 Colo. Law. 465 (1990). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part II", see 19 Colo. Law. 647 (1990).

Submission of false transcript to obtain admission to law school and to qualify for admission as a member of the bar is a violation of this rule and requires that respondent's admission to the bar be voided. People v. Culpepper, 645 P.2d 5 (Colo. 1982).

Failure to disclose a misdemeanor conviction in another state when applying for the bar and subsequent disbarment from the other state constitutes conduct involving fraud, deceit, and misrepresentation prejudicial to the administration of justice. People v. Mattox, 639 P.2d 397 (Colo. 1982).

Bar reinstatement requires demonstration of possession of moral and professional qualifications. Where a state attorney had been convicted of failing to file his federal income tax return and making false representations to a special agent of the Internal Revenue Service regarding the filing of income tax returns, and where the attorney was later found to have made a false statement in his application to the Arizona State Bar by answering in the negative an inquiry as to whether he had ever been questioned regarding the violation of any law, he was suspended from the

practice of law in Colorado for three years, and was required to demonstrate upon application for reinstatement that he possessed moral and professional qualifications for admission to the bar of this state. People v. Gifford, 199 Colo. 205, 610 P.2d 485 (1980).

Public censure appropriate where attorney acted recklessly in failing to disclose prior investigations for alleged criminal conduct on his application to the bar, but where attorney had practiced law in Colorado for five years without any other discipline and had cooperated in the disciplinary proceedings. People v. North, 964 P.2d 510 (Colo. 1998).

Rule 8.2. Judicial and Legal Officials.

Colorado Court Rules

Colorado Rules of Professional Conduct

Maintaining the Integrity of the Profession

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer or of a candidate for election, or appointment to, or retention in, judicial or legal office.

(b) A lawyer who is a candidate for retention in judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Cite as RPC 8.2

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Case Notes:

ANNOTATION

Respondent's motion to recuse was not supported by an affidavit as required by C.R.C.P. 97, thus the statements made therein were made with reckless disregard as to their truth or falsity. People v. Thomas, 925 P.2d 1081 (Colo. 1996) (decided prior to 2007 repeal and readoption of the Colorado rules of professional conduct).

Cases Decided Under Former DR 8-102.

Falsely accusing judicial officers and others of conspiracy warranted disbarment where respondent violated other disciplinary rules and had been previously suspended for similar conduct. People v. Bottinelli, 926 P.2d 553 (Colo. 1996).

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

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Bannister, 814 P.2d 801 (Colo. 1991).

Applied in People v. Harfmann, 638 P.2d 745 (Colo. 1981).

Rule 8.3. Reporting Professional Misconduct.

Colorado Court Rules

Colorado Rules of Professional Conduct

Maintaining the Integrity of the Profession

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of

Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of a lawyers' peer assistance program that has been approved by the Colorado Supreme Court initially or upon renewal, to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.

Cite as RPC 8.3

History. Entire rule amended and adopted June 19, 2003, effective July 1, 2003; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

Case Notes:

ANNOTATION

Law reviews. For article, "Policing the Legal System: The Duty to Report Misconduct", see 30 Colo. Law. 85 (September 2001). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007).

Rule 8.4. Misconduct.

Colorado Court Rules

Colorado Rules of Professional Conduct

Maintaining the Integrity of the Profession

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, or investigators, who participate in lawful investigative activities;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to

achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process; or

(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law.

Cite as RPC 8.4

History. Committee comment amended October 17, 1996, effective January 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; paragraph (c) amended and Adopted by the Court, En Banc, September 28, 2017, effective immediately.

Note:

COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by word or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (g) and also may violate paragraph (d). Legitimate advocacy respecting the foregoing factors does not violate paragraphs (d) or (g). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Case Notes:

ANNOTATION

Law reviews. For article, "Settlement Ethics", see 30 Colo. Law. 53 (December 2001). For article, "Improper Recording of an Attorney's Charging Lien", see 32 Colo. Law. 61 (February 2003). For article, "Discipline Against Lawyers for Conduct Outside the Practice of Law", see 32 Colo. Law. 75 (April 2003). For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (March 2004). For article, "Metadata: Hidden Information Microsoft Word Documents Its Ethical Implications", see 33 Colo. Law. 53 (October 2004). For comment, "Should a Lawyer Ever Be Allowed to Lie? People v. Pautler and a Proposed Duress Exception", see 75 U. Colo. L. Rev. 301 (2004). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Investigative Tactics: They May Be Legal, But Are They Ethical?", see 35 Colo. Law. 43 (January 2006). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "Litigating Disputes Involving the Medical Marijuana Industry", see 41 Colo. Law. 103 (August 2012).

Annotator's note. Rule 8.4 is similar to Rule 8.4 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

A hearing board always has discretion in determining the appropriate sanction for attorney misconduct and may impose any of the forms of discipline listed in C.R.C.P. 251.6, which range from private admonition to disbarment. In re Attorney F, 2012 CO 57, 285 P.3d 322.

Hearing board erred, therefore, in concluding that it was compelled by case law to impose a public censure instead of private admonition. In re Attorney F, 2012 CO 57, 285 P.3d 322.

Attorney's refusal to return documents belonging to client's parents and assertion of a retaining lien constitute conduct which is prejudicial to the administration of justice. People v. Brown, 840 P.2d 1085 (Colo. 1992).

Lawyer violated section (c) when he represented loan documents to be investment agreements to circumvent a provision in the Colorado Liquor Code that restricts the cross-ownership of businesses holding liquor

licenses. In re Lopez, 980 P.2d 983 (Colo. 1999).

Attorneys are responsible for ethical violation when their investigator surreptitiously recorded his telephone interview with employee of defendant. Even if lawyers had no prior knowledge of the investigator's recording, once they learned that the interview was done without the employee's consent, they should not have listened to or used the recording without the employee's consent. McClelland v. Blazin' Wings, Inc., 675 F. Supp. 2d 1074 (D. Colo. 2009).

Attorney violated sections (a) and (c) by failing to notify a client that he never paid two medical bills that he had promised to pay, recording a false deed of trust memorializing a purported loan from two married clients to another client even though the clients had unequivocally refused to make the loan, and attempting to enter into a business transaction with clients without making disclosures required by rule 1.8. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Lawyer violated section (c) when he failed to disclose the fact of his client's death during settlement negotiations. People v. Rosen, 199 P.3d 1241 (Colo. O.P.D.J. 2007).

Failure of former district attorney to make ordered child support payments constitutes conduct prejudicial to the administration of justice and conduct that adversely reflects upon a lawyer's fitness to practice law. People v. Primavera, 904 P.2d 883 (Colo. 1995).

Attorney who conditioned settlement agreement on plaintiffs not pursuing a grievance against him violated section (d) and constituted conduct prejudicial to the administration of justice. In re Lopez, 980 P.2d 983 (Colo. 1999).

When a public defender gave his client the impression that he would provide better representation if the client hired him as private counsel, his conduct prejudiced the administration of justice under section (d), for which public censure was warranted. People v. Casias, 279 P.3d 667 (Colo. O.P.D.J. 2012).

Attorney signing substitute counsel's name to pleadings in a style different from his own signature, without authority to sign in a representative capacity and without any indication that he was signing in a representative capacity, violated this rule and warranted a six-month suspension. People v. Reed, 955 P.2d 65 (Colo. 1998).

A noble motive does not justify departure from any rule of professional conduct. A prosecutor trying to protect public safety is not immune from the code of professional conduct when he or she chooses deception as means for protecting public safety. In re Pautler, 47 P.3d 1175 (Colo. 2002).

There is no imminent public harm, duress, or choice of evils exception or defense for a prosecutor to the rules of professional conduct. In re Pautler, 47 P.3d 1175 (Colo. 2002).

Suspension appropriate where prosecutor engaged in intentional deception in order to secure a suspect's arrest. The prosecutor's conduct violated the public and professional trust, was intentional, created potential harm, and involved aggravating factors, thus, justifying suspension. In re Pautler, 47 P.3d 1175 (Colo. 2002).

When considering discipline of attorneys who criticize judges, the New York Times standard should be applied because of the interests in protecting attorney speech critical of judges. Under the New York Times standard (New York Times Co. v. Sullivan, 376 U.S. 254(1964)), a two-part inquiry applies in determining whether an attorney may be disciplined for statements criticizing a judge: (1) Whether the disciplinary authority has proven that the statement was a false statement of fact (or a statement of opinion that necessarily implies an undisclosed false assertion of fact); and (2) assuming the statement is false, whether the attorney uttered the statement with actual malice--that is, with knowledge that it was false or with reckless disregard as to its truth. In re Green, 11 P.3d 1078 (Colo. 2000).

Public censure was appropriate for attorney who violated this rule by simultaneously representing, as defendants in a quantum meruit and lis pendens suit initiated by a subcontractor, the homeowners, the general contractor, the bank holding deed of trust on homeowners property, and two other parties who had contracted with contractor. Balancing the seriousness of the misconduct with the factors in mitigation, and taking into account the respondent's mental state when he entered into the conflicts in representation, public censure is appropriate. People v. Fritze, 926 P.2d 574 (Colo. 1996).

Public censure warranted where, although respondent did not notify his clients and opposing counsel of his suspension, he did notify the court early in proceedings, did not go forward with court proceedings while on suspension and no actual harm was demonstrated to any of his clients. People v. Dover, 944 P.2d 80 (Colo. 1997).

Stipulated agreement and recommendation of public censure with certain conditions and monitoring based upon conditional admission of misconduct were warranted for attorney who required that his associates sign a covenant that hindered a client's right to choose his or her own lawyer by interfering with the client's right to discharge his or her lawyer at any time, with or without cause. People v. Wilson, 953 P.2d 1292 (Colo. 1998).

Public censure was appropriate where attorney falsely testified that he had automobile insurance at the time of an accident, but outcome of case was not thereby affected. People v. Small, 962 P.2d 258 (Colo. 1998).

Knowingly deceiving a client by altering a settlement check generally would warrant a 30-day suspension, however, because the client was uninjured by the deception and the respondent had no previous discipline in 13 years of practice, public censure was adequate. People v. Waitkus, 962 P.2d 977 (Colo. 1998).

One-year and one-day suspension warranted where respondent failed to serve a cross-claim, failed to respond to several motions, failed to keep client informed, advanced defense that was not warranted by the facts and existing law, and misrepresented to client the basis for the judgment in favor of the opposing party. People v. Genchi, 849 P.2d 28 (Colo. 1993).

Six-month penalty justified for attorney pleading guilty to making and altering a false and forged prescription for a controlled substance and of criminal attempt to obtain a controlled substance by forgery and alteration, where mitigating factors included: (1) No prior disciplinary history; (2) personal or emotional problems at time of misconduct; (3) full and free disclosure by attorney to grievance committee; (4) imposition of other penalties and sanctions resulting from criminal proceeding; (5) demonstration of genuine remorse; and (6) relative inexperience in

the practice of law. People v. Moore, 849 P.2d 40 (Colo. 1993).

Six-month suspension appropriate for respondent convicted of drunken driving offense and assault. People v. Shipman, 943 P.2d 458 (Colo. 1997); People v. Reaves, 943 P.2d 460 (Colo. 1997).

Multiple criminal and traffic convictions demonstrate a pattern of misconduct, and the presence of multiple offenses warrants suspension for six months with the requirement of reinstatement proceedings. People v. Van Buskirk, 962 P.2d 975 (Colo. 1998).

Demonstration of four conditions required for attorney publicly censured after conviction of driving while ability impaired: Continue psychotherapy, remain on antabuse, submit monthly reports regarding progress on antabuse, and execute written authorization to therapist to release medical information regarding status on antabuse. People v. Rotenberg, 911 P.2d 642 (Colo. 1996).

Thirty-day suspension warranted where lawyer, who represented an individual accused of first-degree murder, communicated with co-defendant who also was charged with first-degree murder and whose interests were adverse to the lawyer's client, without the knowledge or consent of the co-defendant's lawyers. The potential for harm was high in a first-degree murder case and the number of unauthorized contacts demonstrated more than negligence on the lawyer's part. People v. DeLoach, 944 P.2d 522 (Colo. 1997).

Stipulated agreement and recommendation of suspension for 30 days based upon conditional admission of misconduct were warranted for attorney who committed unfair insurance claim settlement practices and tortious conduct in handling insurance investigation of fire claim that he was not competent to handle. People v. McClung, 953 P.2d 1282 (Colo. 1998).

Forty-five-day suspension warranted for attorney's professional misconduct involving the improper collection of attorney's fees in six instances. People v. Peters, 849 P.2d 51 (Colo. 1993).

Suspension of three months is appropriate when attorney engaged in sexual intercourse with dissolution of marriage client on one occasion, had a history of disciplinary sanctions, but cooperated with the disciplinary investigation. People v. Barr, 929 P.2d 1325 (Colo. 1996).

Suspension for one year and one day, with conditional stay of all but 60 days, warranted for attorney's backdating of brief and certificate of service, after which attorney voluntarily reported misconduct, attempted to rectify the violation, cooperated in disciplinary proceedings, and showed genuine remorse. People v. Maynard, 219 P.3d 430 (Colo. O.P.D.J. 2008).

Suspension for one year and one day appropriate where attorney, among other disciplinary rule violations, violated section (d) by failing to pay attorney fees until two years after a malpractice action against the attorney and section (h) by engaging in two non-sufficient funds transactions involving his "special" account, and twenty-two non-sufficient funds transactions in his personal account. People v. Johnson, 944 P.2d 524 (Colo. 1997).

Suspension for one year and one day appropriate where attorney had a selfish or dishonest motive in retaining fees he received from clients that rightfully belonged to his law firm, but had no prior disciplinary record and made a timely good faith effort to provide restitution. People v. Bronstein, 964 P.2d 514 (Colo. 1998) (overruled in In the Matter of Thompson, 991 P.2d 820 (Colo. 1999)).

Suspension for one year and one day warranted where attorney violated section (c) by knowingly submitting a false statement to the small business administration for the purpose of obtaining a loan. People v. Mitchell, 969 P.2d 662 (Colo. 1998).

Suspension of one year and one day appropriate where attorney committed offense of third-degree sexual assault on a client and recklessly accused a lawyer and judge of having an improper ex parte communication. In re Egbune, 971 P.2d 1065 (Colo. 1999).

It is appropriate to condition reinstatement, after suspension for a year and a day, upon the attorney's submission to an independent medical examination by a qualified psychiatrist, where the attorney's belief in a conspiracy to remove her from the practice of law was both ingrained and illogical. The suspension is warranted because the attorney violated section (d) by threatening to sue witnesses if they testified at a hearing over an award of attorney fees and section (c) by secretly negotiating with opposing litigants for additional attorney fees when the attorney's contingency fee contract with her former clients gave them a potentially valid claim to a portion of the fees. People v. Maynard, 275 P.3d 780 (Colo. O.P.D.J. 2010).

Two-year suspension warranted when attorney entered Alford plea to defer judgment on a charge of soliciting for child prostitution. People v. Gritchen, 908 P.2d 70 (Colo. 1995).

Driving while under the influence of alcohol with an expired driver's license and no proof of insurance, and accepting one ounce of cocaine as payment for legal services from a person believed to be a client facing drug charges, warranted a three-year suspension. People v. Madrid, 967 P.2d 627 (Colo. 1998).

Suspension for three years was appropriate in case involving violation of this rule and others, together with attorney's breach of his duty as client's trustee to protect his client, who was a particularly vulnerable victim that was recuperating from a serious head injury. People v. DeRose, 945 P.2d 412 (Colo. 1997).

Suspension of three years was appropriate for attorney who drove a vehicle on at least four occasions after his driver's license was revoked and who also failed to appear in two cases involving his illegal driving. People v. Hughes, 966 P.2d 1055 (Colo. 1998).

Suspension for one year and one day warranted where attorney failed to appear in county court on a charge of driving under the influence. People v. Myers, 969 P.2d 701 (Colo. 1998).

A long period of suspension, rather than disbarment, is warranted when acts complained of occurred before an earlier disciplinary action against the attorney and mitigating factors exist. Attorney's actions were more properly viewed as a pattern of misconduct. In re Van Buskirk, 981 P.2d 607 (Colo. 1999).

Thirty-day suspension appropriate where attorney overdrew his Colorado Lawyer Trust Account Foundation (COLTAF) account but shortly thereafter deposited sufficient funds to cure the deficiency, negligently failed to keep adequate trust account records, knowingly and repeatedly failed to respond to several requests for information from the office of attorney regulation counsel, eventually provided bank records that revealed no further misconduct on his part, and faced a number of challenges in his personal life at the time he knowingly failed to cooperate with the office of attorney regulation counsel. People v. Edwards, 201 P.3d 555 (Colo. 2008).

Behavior toward client that precipitated conflict on day of client's criminal trial, forcing client's newly appointed public defender to seek a continuance to have adequate time to prepare violates this rule. People v. Brenner, 852 P.2d 456 (Colo. 1993).

Pushing another attorney in the courtroom, resulting in a conviction for third-degree assault, warranted a 30-day suspension. People v. Nelson, 941 P.2d 922 (Colo. 1997).

Lawyer who imposed unauthorized charging lien and subsequently failed to release such lien, and who testified at grievance proceedings that he kept documents belonging to third parties in order to protect his client's financial interests, which was the first instance at which such a theory was raised, violated this rule. Although the attorney's motives were dishonest and selfish, the grievance against the attorney involved in multiple offenses, the attorney violated a disciplinary rule at the grievance proceedings, and the attorney failed to acknowledge wrongful nature of his conduct, the mitigating factors included the fact that the attorney had not been subject to prior grievances and the attorney was relatively inexperienced. Thus, the appropriate sanction is public censure. People v. Brown, 840 P.2d 1085 (Colo. 1992).

In determining appropriate sanction, it is not important whether injured party was attorney's client, when attorney-respondent was appointed conservator. People v. Vigil, 929 P.2d 1311 (Colo. 1996).

Conduct warranted one-year extension of attorney's suspension. People v. Silvola, 933 P.2d 1308 (Colo. 1997).

Disbarment warranted for respondent who continued to practice law while under suspension. Respondent was suspended based upon conviction for possession of cocaine, a class 3 felony, and upon release from prison represented to several persons that he was a licensed attorney and provided legal services to those persons. Board's finding that respondent had a history of prior discipline, a dishonest or selfish motive, displayed a pattern of misconduct, had committed multiple offenses, had engaged in a bad faith obstruction of the disciplinary process, had refused to acknowledge any wrongful conduct on his part, had substantial experience in law, and could offer no mitigating factors warranted disbarment. People v. Stauffer, 858 P.2d 694 (Colo. 1993).

Disbarment appropriate remedy where attorney neglected a legal matter, misappropriated funds and property, abandoned client, engaged in fraud, evaded process, and failed to cooperate in disciplinary investigation. People v. Hindman, 958 P.2d 463 (Colo. 1998).

Disbarment is the presumed sanction for knowing misappropriation of funds from clients or one's law firm, barring significant mitigating circumstances. People v. Guyerson, 898 P.2d 1062 (Colo. 1995); People v. Varallo, 913

P.2d 1 (Colo. 1996); In the Matter of Thompson, 991 P.2d 820 (Colo. 1999) (overruling People v. Bronstein, 964 P.2d 514 (Colo. 1998)); People v. Sweetman, 218 P.3d 1123 (Colo. O.P.D.J. 2008).

Disbarment appropriate when attorney accepted legal fees, performed limited services, abandoned the client, and then misappropriated the unearned fees. People v. Kuntz, 942 P.2d 1206 (Colo. 1997).

Aiding client to violate custody order sufficient to justify disbarment. People v. Chappell, 927 P.2d 829 (Colo. 1996).

Structuring financial transaction to enable client to avoid reporting requirements, a felony under federal law, warranted disbarment. In re DeRose, 55 P.3d 126 (Colo. 2002).

Conduct violating this rule sufficient to justify disbarment where attorney continued to practice law when under suspension. People v. Redman, 902 P.2d 839 (Colo. 1995).

One-year and one-day suspension plus payment of restitution and costs proper for attorney who induced a loan through misrepresentations, assigned a promissory note obtained with proceeds of such loan without lender's knowledge or consent, and misrepresented that sufficient funds were in trust account to cover check. People v. Kearns, 843 P.2d 1 (Colo. 1992).

False statements by attorney in connection with an accident in which the attorney was at fault adversely reflects on attorney's fitness to practice law. People v. Dieters, 935 P.2d 1 (Colo. 1997).

Pleading guilty to a single count of bank fraud evidences serious criminal conduct warranting disbarment. People v. Terborg, 848 P.2d 346 (Colo. 1993).

Attorney's repeated assurances to client that he would file a motion for reconsideration, his failure to do so, and his neglect of a legal matter entrusted to him constitute disciplinary violations warranting suspension for 30 days where there are mitigating factors. People v. LaSalle, 848 P.2d 348 (Colo. 1993).

Attorney's neglect resulting in an untimely filing of an inadequate certificate of review and dismissal of his client's case, combined with fact that certificate contained false statements of material fact that attorney later repeated to an investigative counsel with the office of disciplinary counsel, constituted disciplinary violations warranting a 45-day suspension, despite mitigating factors. People v. Porter, 980 P.2d 536 (Colo. 1999).

Ninety-day suspension justified where attorney's failure to respond to discovery requests resulted in default and entry of judgment against client for $816,613. People v. Clark, 927 P.2d 838 (Colo. 1996).

Ninety-day suspension and order of restitution as a condition of reinstatement was justified where attorney failed to pay court-ordered award of attorney's fees resulting from his filing of a frivolous motion and then failed to appear at a deposition. People v. Huntzinger, 967 P.2d 160 (Colo. 1998).

Thirty-day suspension appropriate where attorney failed to inform U.S. bankruptcy court in Colorado, in a

hearing on a motion to remand the matter to U.S. bankruptcy court in Massachusetts, that an order of dismissal of the bankruptcy proceeding between the same parties had been entered in California. People v. Farry, 927 P.2d 841 (Colo. 1996).

Suspension stayed, in view of respondent's cooperation and remorse, conditioned upon successful completion of six-month probationary period and ethics refresher course. People v. Rosen, 199 P.3d 1241 (Colo. O.P.D.J. 2007).

Lawyer advertisement containing false, misleading, deceptive, or unfair statements violates this rule and warrants public censure where respondent terminated referral service being advertised after the initial request for investigation was filed and cooperated in disciplinary proceedings but had received a past letter of admonition and had substantial experience in the practice of law. People v. Carpenter, 893 P.2d 777 (Colo. 1995).

Public censure appropriate where attorney misrepresented the status of a dismissed case to his client, the resultant actual harm to the client was only the cost of hiring a new lawyer to pursue an appeal of the dismissal, the attorney's law firm reimbursed the client for all fees it had collected, the attorney reimbursed the firm for such fees, the only aggravating factor was a 1994 letter of admonition given to the attorney for improperly communicating with a represented person, and mitigating factors included the absence of a dishonest or selfish motive, remorse, and full and free disclosure in the disciplinary proceedings. People v. Johnston, 955 P.2d 1051 (Colo. 1998).

Public censure appropriate where harm suffered by attorney's client was speculative, attorney retracted his misrepresentations and admitted to his client before the institution of disciplinary proceedings that he had done nothing on the client's appeal, attorney had no prior discipline, he made full and free disclosure of his misconduct to the grievance committee, and he expressed remorse for his misconduct. People v. Nelson, 848 P.2d 351 (Colo. 1993).

Public censure appropriate where attorney neglected and made misrepresentations in two separate legal matters. People v. Eagan, 902 P.2d 841 (Colo. 1995).

Public censure appropriate in light of mitigating circumstances for possession of cocaine in violation of state and federal controlled substance laws. People v. Gould, 912 P.2d 556 (Colo. 1996).

Public censure appropriate where respondent was convicted of driving while ability impaired and had also appeared in court while intoxicated on two consecutive days. People v. Coulter, 950 P.2d 176 (Colo. 1998).

Public censure appropriate for attorney who had been reprimanded in Connecticut for failure to file federal income tax return and attorney had not been disciplined before in Colorado. People v. Perkell, 969 P.2d 703 (Colo. 1998).

Public censure was warranted where attorney twice requested arresting officers in driving under the influence cases not to appear at license revocation hearings before the department of motor vehicles. People v. Carey, 938 P.2d 1166 (Colo. 1997).

Public censure was appropriate where significant mitigating factors were present. Attorney was convicted of

vehicular assault, a class 4 felony, and two counts of driving under the influence of alcohol. The crimes are strict liability offenses for which attorney must serve three years in the custody of the department of corrections, followed by a two-year mandatory period of parole. Section 18-1-105(3) provides that, while he is serving his sentence, attorney is disqualified from practicing as an attorney in any state courts. The sentence and disqualification from practicing law are a significant "other penalty[] or sanction[]" and therefore a mitigating factor in determining the level of discipline. In re Kearns, 991 P.2d 824 (Colo. 1999) (decided under former C.R.C.P. 241.6(5)).

Public censure was warranted for attorney who prepared motions to dismiss for his client's wife to sign when proceedings had been brought by the client's wife against the client and the client's wife was represented by counsel and was not advised that she should contact her own lawyer before signing the motions, nor asked if she wished to discuss the motions with her lawyer before signing. Three letters of admonition for unrelated misconduct also were an aggravating factor for purposes of determining the appropriate level of discipline. People v. McCray, 926 P.2d 578 (Colo. 1996).

Public censure warranted for attorney's solicitation of prostitution during telephone call with wife of client whom he was representing in a dissolution of marriage proceeding. People v. Bauder, 941 P.2d 282 (Colo. 1997).

Public censure was warranted where attorney made inappropriate, harmful, offensive, harassing, and sexually abusive comments to potential client. The mitigating factors found by the hearing board do not compel a different result. People v. Meier, 954 P.2d 1068 (Colo. 1998).

Chief deputy district attorney's theft of less than $50 constitutes conduct warranting public censure where significant mitigating factors exist. People v. Buckley, 848 P.2d 353 (Colo. 1993).

Two-year suspension was an adequate sanction where attorney neglected client matters by representing that he would file a lawsuit and neglected to do so, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by agreeing to represent client and thereafter failing to advise the client of attorney's suspension, and where attorney further engaged in misrepresentation by collecting legal fees and costs from client while attorney was under suspension. People v. de Baca, 948 P.2d 1 (Colo. 1997).

Transferring various ownership interests to lawyer employees of firm who did not receive profits and were not managers warranted suspension of one year and a day. Suspension appropriate because attorney made misrepresentations and was dishonest in such transfers. People v. Reed, 942 P.2d 1204 (Colo. 1997).

Thirty-day suspension was appropriate discipline where attorney advised client to take action in violation of child custody order but failed to warn her of criminal consequences of such action. People v. Aron, 962 P.2d 261 (Colo. 1998).

Depositing personal funds into a COLTAF account to hide personal assets from creditors supports a 90-day suspension with conditions of reinstatement. People v. Alster, 221 P.3d 1088 (Colo. O.P.D.J. 2009).

Suspension of one year and one day was appropriate based on evidence of three separate incidents in which

the attorney physically assaulted his girlfriend. It was immaterial that no charges had been filed in any of the incidents, because the acts alone reflected adversely on the attorney's fitness to practice law. The fact that the attorney's behavior was not directly related to his practice of law was a factor to be considered, but was not conclusive. The attorney had failed to take any steps toward rehabilitation following the incidents, and the three separate assaults showed a pattern of misconduct. Therefore, it was appropriate to suspend the attorney and require him to demonstrate rehabilitation and completion of a certified domestic violence treatment program as a condition of reinstatement. People v. Musick, 960 P.2d 89 (Colo. 1998).

Attorney conduct violating this rule, in conjunction with other rules, sufficient to justify suspension when violation did not arise from neglect or willingness to take advantage of client's vulnerability and is mitigated by her inexperience in the practice of law, her lack of any prior disciplinary record, the fact that she had already been held in contempt and punished by the district court, and the fact that there is no suggestion of selfish motivation. Attorney's failure to appreciate the serious nature of conduct and the jurisdiction of the hearing board to discipline her is a serious matter meriting a period of suspension and a redetermination of her fitness before being permitted to practice law again. In re Roose, 69 P.3d 43 (Colo.), cert. denied, 540 U.S. 1053, 124 S. Ct. 815, 157 L. Ed. 2d 705 (2003).

Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. People v. Henderson, 967 P.2d 1038 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules, where mitigating factors were present, warrants public censure. People v. Davis, 950 P.2d 586 (Colo. 1998).

Pleading guilty to one count of bribery evidences conduct warranting disbarment. People v. Viar, 848 P.2d 934 (Colo. 1993).

Disbarment is warranted where attorney was convicted of felony offense of forging a federal bankruptcy judge's signature and had engaged in multiple types of other dishonest conduct and where there was an insufficient showing of mental disability. People v. Goldstein, 887 P.2d 634 (Colo. 1994).

Disbarment is warranted where attorney was convicted in Hawaii of second-degree murder. People v. Draizen, 941 P.2d 280 (Colo. 1997).

Disbarment appropriate sanction for attorney who intentionally killed another person. Despite a lack of prior discipline in this state, giving full faith and credit to another state's law and its jury finding that attorney intentionally took her husband's life by shooting him 10 times with a firearm, disbarment is an appropriate sanction. People v. Sims, 190 P.3d 188 (Colo. O.P.D.J. 2008).

Disbarment is warranted for attorney convicted of one count of sexual assault on a child, notwithstanding lack of a prior record of discipline. People v. Espe, 967 P.2d 159 (Colo. 1998).

Disbarment was appropriate, despite existence of mitigating factors, where attorney violated section (c) of this rule by misappropriating bar association funds for his personal use and where such misappropriation was knowing. People v. Motsenbocker, 926 P.2d 576 (Colo. 1996).

Disbarment was appropriate for knowing misappropriation of funds despite fact respondent had not been previously disciplined. People v. Dice, 947 P.2d 339 (Colo. 1997).

Disbarment is appropriate when a lawyer knowingly misappropriates client funds in the absence of extraordinary mitigating factors. Mitigating factors such as stress due to prolonged divorce, personal financial losses, a serious motor vehicle accident, filing for bankruptcy, a deteriorating law practice, and alcohol abuse were insufficient to deviate from the rule that a clear and convincing showing of a knowing misappropriation of client funds warrants disbarment. People v. Torpy, 966 P.2d 1040 (Colo. 1998).

Disbarment is warranted where attorney knowingly converted funds belonging to law firm and where attorney knowingly acted dishonestly toward the firm and the disciplinary board investigator. People v. Bardulis, 203 P.3d 632 (Colo. O.P.D.J. 2009).

Disbarment is only appropriate remedy for knowingly misappropriating client funds, unless significant extenuating circumstances are present. In re Cleland, 2 P.3d 700 (Colo. 2000).

Disbarment warranted for knowingly abandoning clients, converting their funds, and causing actual financial and emotional harm to them. Attorney violated duty to preserve clients' property, to diligently perform services on their behalf, to be candid with them during the course of the professional relationship, and to abide by the legal rules of substance and procedure that affect the administration of justice. People v. Martin, 223 P.3d 728 (Colo. O.P.D.J. 2009).

Disbarment warranted for attorney convicted of conspiracy to commit tax fraud, tax evasion, and aiding and assisting in the preparation of a false income tax return. People v. Evanson, 223 P.3d 735 (Colo. O.P.D.J. 2009).

Attorney conduct violating this rule, in conjunction with other rules, sufficient to justify disbarment when attorney knowingly commingled and misappropriated clients' funds for his personal use, neglected filing a complaint in a case until it was barred by the statute of limitations, failed to comply with court orders applicable to his child support payments, and neglected two other cases causing default judgments to be entered against his client, despite fact that one of the judgments was subsequently set aside. People v. Gonzalez, 967 P.2d 156 (Colo. 1998).

Attorney who was the trustee of client's trust violated section (h) by utilizing the trust's funds to loan money to his daughter and to purchase his son-in-law's parents' former residence for the purpose of leasing it back to them, and by then failing to take any legal action against them when they did not make lease payments. People v. DeRose, 945 P.2d 412 (Colo. 1997).

Previously disbarred attorney who violated this rule would be forced to pay restitution to clients as a condition of readmission. People v. Vigil, 945 P.2d 1385 (Colo. 1997).

Prior discipline for conduct violating this rule is an important factor in determining the proper level of discipline, therefore disbarment is merited where attorney continues to engage in misconduct. In re C de Baca, 11 P.3d 426 (Colo. 2000).

Court erred when it ordered special advocate to refund fees without determining whether conduct violated section (c). In re Redmond, 131 P.3d 1167 (Colo. App. 2005).

Conduct violating this rule, in conjunction with other disciplinary rules, sufficient to justify disbarment where the attorney continued to practice law while on suspension, repeatedly neglecting his clients and failing to take reasonable steps to protect clients' interests. People v. Fager, 938 P.2d 138 (Colo. 1997).

Conduct found to violate disciplinary rules. People v. Brenner, 852 P.2d 452 (Colo. 1993).

Attorney who knowingly violated rule but without intent to deceive court is justifiably sanctioned. People v. Trogani, 203 P.3d 643 (Colo. O.P.D.J. 2008).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Doherty, 908 P.2d 1120 (Colo. 1996); People v. Woodrum, 911 P.2d 640 (Colo. 1996); People v. Pooley, 917 P.2d 712 (Colo. 1996); People v. Newman, 925 P.2d 783 (Colo. 1996); People v. Yates, 952 P.2d 340 (Colo. 1998); People v. Barr, 957 P.2d 1379 (Colo. 1998); People v. Rolfe, 962 P.2d 981 (Colo. 1998).

Conduct violating this rule sufficient to justify public censure. People v. Gonzalez, 933 P.2d 1306 (Colo. 1997); People v. Meier, 954 P.2d 1068 (Colo. 1998); In re Wilson, 982 P.2d 840 (Colo. 1999).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Barr, 855 P.2d 1386 (Colo. 1993); People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Kuntz, 908 P.2d 1110 (Colo. 1996); People v. Sigley, 917 P.2d 1253 (Colo. 1996); People v. McCaffrey, 925 P.2d 269 (Colo. 1996); People v. Fager, 925 P.2d 280 (Colo. 1996); People v. Hohertz, 926 P.2d 560 (Colo. 1996); People v. Bates, 930 P.2d 600 (Colo. 1997); People v. Reynolds, 933 P.2d 1295 (Colo. 1997); People v. White, 935 P.2d 20 (Colo. 1997); People v. McGuire, 935 P.2d 22 (Colo. 1997); People v. Mason, 938 P.2d 133 (Colo. 1997); People v. Kotarek, 941 P.2d 925 (Colo. 1997); People v. Primavera, 942 P.2d 496 (Colo. 1997); People v. Field, 944 P.2d 1252 (Colo. 1997); People v. Wotan, 944 P.2d 1257 (Colo. 1997); People v. Johnson, 946 P.2d 469 (Colo. 1997); People v. Barnthouse, 948 P.2d 534 (Colo. 1997); People v. Blunt, 952 P.2d 356 (Colo. 1998); People v. Easley, 956 P.2d 1257 (Colo. 1998); People v. Hanks, 967 P.2d 144 (Colo. 1998); People v. Harding, 967 P.2d 153 (Colo. 1998); In re Nangle, 973 P.2d 1271 (Colo. 1999); In re Corbin, 973 P.2d 1273 (Colo. 1999); In re Bobbitt, 980 P.2d 538 (Colo. 1999); In re Meyers, 981 P.2d 143 (Colo. 1999); In re Demaray, 8 P.3d 427 (Colo. 1999); In re Hickox, 57 P.3d 403 (Colo. 2002); In re Fischer, 89 P.3d 817 (Colo. 2004); People v. Rosen, 199 P.3d 1241 (Colo. O.P.D.J. 2007); People v. Beecher, 224 P.3d 442 (Colo. O.P.D.J. 2009); People v. Maynard, 238 P.3d 672 (Colo. O.P.D.J. 2009); People v. Brennan, 240 P.3d 887 (Colo. O.P.D.J. 2009); People v. Albani, 276 P.3d 64 (Colo. O.P.D.J. 2011); People v. Culter, 277 P.3d 954 (Colo. O.P.D.J. 2011); People v. Duggan, 282 P.3d 534 (Colo. O.P.D.J. 2012); People v. Staab, 287 P.3d 122 (Colo. O.P.D.J. 2012).

Conduct violating this rule sufficient to justify suspension. People v. Farrant, 852 P.2d 452 (Colo. 1993); People v. Graham, 933 P.2d 1321 (Colo. 1997); People v. Dieters, 935 P.2d 1 (Colo. 1997); People v. Rudman, 948 P.2d 1022 (Colo. 1997); In re Van Buskirk, 981 P.2d 607 (Colo. 1999); In re Sather, 3 P.3d 403 (Colo. 2000); People v. Trogani, 203 P.3d 643 (Colo. O.P.D.J. 2008).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Kelley, 840 P.2d 1068 (Colo. 1992); People v. Walsh, 880 P.2d 766 (Colo. 1994); People v. Marsh, 908 P.2d 1115 (Colo. 1996); People v. Jenks, 910 P.2d 688 (Colo. 1996); People v. Jamrozek, 921 P.2d 725 (Colo. 1996); People v. Ebbert, 925 P.2d 274 (Colo. 1996); People v. Steinman, 930 P.2d 596 (Colo. 1997); People v. Wallace, 936 P.2d 1282 (Colo. 1997); People v. Mannix, 936 P.2d 1285 (Colo. 1997); People v. Madigan, 938 P.2d 1162 (Colo. 1997); People v. Odom, 941 P.2d 919 (Colo. 1997); People v. McDowell, 942 P.2d 486 (Colo. 1997); People v. Sousa, 943 P.2d 448 (Colo. 1997); People v. Jackson, 943 P.2d 450 (Colo. 1997); People v. Schaefer, 944 P.2d 78 (Colo. 1997); People v. Clyne, 945 P.2d 1386 (Colo. 1997); People v. Crist, 948 P.2d 1020 (Colo. 1997); People v. Roybal, 949 P.2d 993 (Colo. 1997); People v. Holmes, 951 P.2d 477 (Colo. 1998); People v. Singer, 955 P.2d 1005 (Colo. 1998); People v. Holmes, 955 P.2d 1012 (Colo. 1998); People v. Valley, 960 P.2d 141 (Colo. 1998); People v. Skaalerud, 963 P.2d 341 (Colo. 1998); In re Bilderback, 971 P.2d 1061 (Colo. 1999); In re Hugen, 973 P.2d 1267 (Colo. 1999); In re Tolley, 975 P.2d 1115 (Colo. 1999); In re Lopez, 980 P.2d 983 (Colo. 1999); In re Haines, 177 P.3d 1239 (Colo. 2008); People v. Rasure, 212 P.3d 973 (Colo. O.P.D.J. 2009); People v. Sweetman, 218 P.3d 1123 (Colo. O.P.D.J. 2008); People v. Gallegos, 229 P.3d 306 (Colo. O.P.D.J. 2010); People v. Edwards, 240 P.3d 1287 (Colo. O.P.D.J. 2010); People v. Zodrow, 276 P.3d 113 (Colo. O.P.D.J. 2011); People v. Rozan, 277 P.3d 942 (Colo. O.P.D.J. 2011); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011); People v. Alexander, 281 P.3d 496 (Colo. O.P.D.J. 2012); People v. Tolentino, 285 P.3d 340 (Colo. O.P.D.J. 2012).

Conduct violating this rule sufficient to justify disbarment. People v. Kelly, 840 P.2d 1068 (Colo. 1992); People v. Townshend, 933 P.2d 1327 (Colo. 1997); People v. Sichta, 948 P.2d 1018 (Colo. 1997); People v. Nearen, 952 P.2d 371 (Colo. 1998).

Rule 8.5. Disciplinary Authority; Choice of Law.

Colorado Court Rules

Colorado Rules of Professional Conduct

Maintaining the Integrity of the Profession

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 8.5. Disciplinary Authority; Choice of Law

(a) A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer

provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Cite as RPC 8.5

History. Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

[1A] The second sentence of Rule 8.5(a) does not preclude prosecution for the unauthorized practice of law of a lawyer who is not admitted in this jurisdiction, and who does not comply with C.R.C.P. 204 or C.R.C.P. 205, but who provides or offers to provide any legal services in this jurisdiction. Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

Case Notes:

ANNOTATION

Law reviews. For article, "Negotiations and the Unauthorized Practice of Law", see 23 Colo. Law. 361 (1994). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Temporal and Substantive Choice of Law Under the Colorado Rules of Professional Conduct", see 39 Colo. Law. 35 (April 2010).

Applied in People v. Rozan, 277 P.3d 942 (Colo. O.P.D.J. 2011).

Colorado Court Rules

Colorado Rules of Professional Conduct

Maintaining the Integrity of the Profession

As amended through Rule Change 2018(4), effective March 15, 2018

Rule 9. Title - How Known and Cited

These rules shall be known and cited as the Colorado Rules of Professional Conduct or Colo. RPC.

Cite as RPC 9

History. Entire rule amended and adopted April 10, 1997, effective July 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.