8.3 Reporting Professional Misconduct: (a) If we have knowledge of a Rules violation that raises substantial question as to an attorney’s honesty, trustworthiness, or fitness to practice, we shall inform the appropriate authority or, (b) if we have knowledge of a Judicial Rules violation that raises a substantial question as to a judge’s fitness for office, we shall notify the appropriate authority, (c) unless disclosure would violate Rule 1.6 (Confidentiality) or the information came from a peer assistance program (including the Ethics Hotline) and would similarly be confidential.

8.4 Misconduct: We can’t (a) get some one else to do what we can’t do, (b) commit a crime that reflects adversely on our honesty, trustworthiness, or fitness to practice, (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, (d) prejudice the administration of justice, (e) state or imply an ability to improperly influence a judicial officer or government agency or imply we can “achieve results” by breaking the Rules or “other law”, (f) knowingly assist a judicial officer to break the Judicial Rules or “other law”, (g) engage in conduct, during representation, that appeals to or engenders bias as to race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (h) engage in any other conduct that wrongfully harms others and adversely reflects on the lawyer’s fitness to practice law.

8.5 Jurisdiction: (a) If we are licensed here, we are subject to discipline even if we are working in Tuscaloosa. A lawyer not admitted here subjects himself to jurisdiction by offering “to provide any legal services in this jurisdiction.” We can be disciplined in more than one place. (ethical double-judiciary) (b) The applicable rules are (1) for conduct in court, where the court sits, unless that court’s rules say differently, (2) but otherwise where the conduct occurred or where the predominant effect occurred. We won’t be disciplined if we reasonably believed we were complying with the rules where the predominant effect would occur. (ethical choice of law)

9.0 How Known and Cited. You didn’t know there was a Rule 9, did you? Don’t worry. It has no substance… similarly perhaps to these materials by
Phil James Phil@Lawyer.com
Monday, July 13, 2015

Original Art 2013 by
Teresa Castaneda
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Summary Ethics Rules Summary
A handy and dandy summary (and annotation) of
The Colorado Rules of Professional Conduct.

Part 1—Client-Lawyer Relationship

1.0 Terminology: This section defines (a) belief as “actually supposing the fact in question to be true”. Belief may be inferred. (b) Confirmed in writing means a writing sent to the client confirming informed consent (and does not mean the client signed or returned anything). (c) Law firm includes most everything other than government employment, (d) fraud is illegal and deceptive behavior, (e) informed consent is “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct,” (so disclosure and agreement) (f) knowingly means actual knowledge and may be inferred, (g) partner, (h) reasonable is the prudent and competent lawyer, (i) reasonable belief means actual, reasonable belief, (j) reasonably should know means “ascertained by” the reasonably prudent and competent lawyer, (k) screened (ethical wall) means reasonably adequate, timely isolation from any participation, to protect confidential information, (l) substantial means material, clear, and weighy, (m) tribunal includes a broad range of adjudicative bodies, and (n) a writing and signed writing includes any media with a broad range of “signatures.”. This section has useful comments.

1.1 Competence: Don’t be incompetent for your client. Have the knowledge, skill, thoroughness, and preparation reasonably necessary.

1.2 Scope of Representation and Allocation of Authority between Client and Lawyer: (a) We must abide by the client’s scope and objectives. We must consult as to the means. We have apparent authority. The civil client decides whether to settle. The criminal client decides whether to plead, go to jury, and testify. See Opinion 114, footnotes 14 & 15. (b) Our representation, including appointments, is not an endorsement. (c) We can reasonably limit representation after informed consent. (See C.R.C.P. 11(b) and 311(b) — Federal Rules contra.) (d) We shall not knowingly counsel or assist clients as to criminal or fraudulent conduct, but we may counsel and assist as to consequences and help analyze the law.

1.3 Diligence: Be diligent and prompt.

1.4 Communication: (a)(1) Promptly inform the client about “informed consent” decisions. (2) Reasonably consult about means. (3) Reasonably inform about status. (4) Promptly comply with
6.2 Accepting Appointments: Don’t try to duck court appointments unless (a) it would likely break the Rules or the law, or (b) be unreasonably financially or oppressively burdensome or, or (c) is repugnant. See Stern v. Court, 773 P.2d 1074 (Colo. 1989).

6.3 Membership in Legal Services Organization: A lawyer may serve in a legal services organization even if it serves people’s interests that are adverse to clients. But the lawyer can’t participate in decisions or actions if (a) it breaks Rule 1.7 or (b) it would materially cause the staff attorney to break Rule 1.7.

6.4 Law Reform Activities Affecting Client Interests: We may serve in a reform organization despite client effects. If there are positive client effects, we have to disclose to the organization but don’t have to identify the client.

6.5 Nonprofit and Court-Annexed Limited Legal Services Program: (a) We may perform short-term limited legal services without either we or the client expecting continuing representation. (1) We are subject to Rules 1.7 and 1.9(a) only if we know of a conflict, and (2) to Rule 1.10 only if we know our partner is 1.7 or 1.9(a) disqualified. (b) Rule 1.10 only applies as in (a)(2) to these short-term limited legal services.

Part 7—Information About Legal Services

7.1 Communications Concerning a Lawyer’s Services: (a) We may not make false or misleading statements about our services or ourselves. (1) No material misrepresentation of fact or law. No leaving out important stuff. (2) Don’t compare ourselves to other attorneys, unless we can prove it. (2) Don’t create an unjustifiable expectation. (b) We can’t pay anything for another non-firm attorney’s advertising unless we disclose our relationship. (c) Don’t send registered mail to new clients. Don’t make it look like legal documents. (d) Don’t tout contingent fees without mentioning costs. It’s okay to just say contingent fees are available, or that the first meeting is free. (e) We may not knowingly get someone else to break this rule or Rules 7.2 through 7.4. (See Rule 8.4(a)) (f) We may tout the attorney buying our practice if we comply with Rule 1.17(d).

7.2 Advertising: (a) We may advertise in any media. (b) We can’t give money or value to others to recommend us except for the (1) reasonable costs of advertisements, (2) the usual non-profit referral services costs, (3) buying a law practice under Rule 1.17, and, (4) reciprocally refer clients with another attorney if (i) the agreement isn’t exclusive, and (ii) the client is informed. (c) The ad must contain a content-responsive attorney’s or firm’s name and address.

7.3 Direct Contact with Prospective Clients: (a) We shall not in person, by phone, or email solicit new clients with profit as our significant motive, unless the communication is to a (1) lawyer, or (2) a relative, friend, or existing client. (b) We shall not solicit in those manners OR in and reasonable time to consult another attorney. (i) Don’t take a proprietary interest in the lawsuit, except for (1) a legal fee-lier or (2) a reasonable contingency agreement. (j) Don’t sleep with clients who you weren’t sleeping with before they were clients. (k) This Rule 1.8 (except a & j) is subject to vicarious prohibition in your firm.

1.9 Duties to Former Clients: (a) Don’t represent a new client against an old client in a substantially related matter in which the parties are materially adverse, without old client consultation and informed consent, “confirmed in writing.” (b) Don’t switch firms and then knowingly represent a new client in the same or a substantially related case in which your old firm represented a client, if (1) the old client’s interests are materially adverse, and (2) you acquired from the old client material 1.6 and 1.9(c) information, unless you get old client informed consent, “confirmed in writing.” (See 1.10(b)) (c) Don’t use prior-client representation-related information about the client, unless it becomes public. (2) Don’t reveal any information about the prior-client except as Rules (such as 1.6 or 3.3) would permit or require.

1.10 Imputation of Conflicts of Interest: General Rule: (a) If we can’t represent, our partner can’t knowingly represent either, except for one-lawyer, personal-interest, non-significant risk conflicts. This rule is limited to Rules 1.7 and 1.9. But see 1.6(b). (b) If we leave the firm, the firm may then represent adverse clients unless the matter is (1) the same or substantially related and (2) any remaining lawyer has material 1.6 (confidentiality) or 1.9(c)(client information). (c) Rule 1.10 disqualification can be Rule 1.7 waived. (d) Look at Rule 1.11 for government lawyer disqualification. (e) If a new lawyer to our firm is 1.9-disqualified, everybody is disqualified, unless: (1) the new lawyer didn’t substantially participate, (2) the new lawyer is timely screened and gets no part of the fee, (3) the new lawyer gives prompt written notice with screening details to the old client and his lawyers, and, (4) then new lawyer and partners reasonably believe the screen will work.

1.11 Successive Government and Private Employment: (Revoking door). Except as law may otherwise expressly permit, (a) [1] A former government attorney is subject to Rule 1.9(c), (former client information) (2) If he participated personally and substantially in a matter, he can’t go private and back to the other side, without government consent. (b) Our new partners can’t begin or continue to be adverse, unless (1) the new lawyer is timely screened and gets no part of the fee, (2) the new lawyer gives prompt written notice with screening details to the old client and his lawyers, and, (3) then new lawyer and partners reasonably believe the screen will work. (c) Except as law may otherwise expressly permit, if we have confidential government information (defined here) from government employment about a person, we can’t use it against them to their material harm, for our private client. Our partners can’t represent that private client unless the new lawyer is timely screened and gets no part of the fee. (d) Except as law may otherwise expressly permit, (1) a current government attorney is subject to Rules 1.7 and 1.9, and (2) can’t (c) participate in a matter where we had substantial, personal, private participation unless the government gives informed consent, confirmed in writing. (e) We can’t negotiate for private work with a party or party attorney if we have substantial, personal participation in their case, unless we are a law clerk and fit under Rule 1.12. (Former judge). (e)

1.12 Former Judge, Arbitrator, Mediator, or other Third-Party Neutral: (a) Expect as in (d) below, if we were personally and substantially the judge or mediator or arbitrator we can’t become the same-case attorney, without all-party, informed consent, confirmed in writing (b)
proceeding unless with reasonable belief, (1) the information is not privileged, (2) is essential to prosecution or investigation, and (3) there’s no feasible alternative. (1) A prosecutor may inform the public of the nature and extent of the prosecution, if necessary to serve “a legitimate law enforcement purpose.” Outside the courtroom, the prosecutor can’t make comments substantially likely to “heighten public condemnation,” and must reasonably prevent employees and others from violating Rule 3.6 or this rule.

3.9 Advocate in Nonadjudicative Proceedings: In legislative or administrative tribunals we must disclose our role as advocate. We must comply with Rules (3.3(a)(1), 3.3(a)(3), 3.3(b), and 3.4(a) and (b).

Part 4—Transactions With Persons Other Than Clients

4.1 Truthfulness in Statements to Others: When representing clients (a) we shan’t knowingly lie to a third party about facts or law. (b) We must disclose material facts to third persons so as to not knowingly assist our client’s crime or fraud, unless the facts are confidential under Rule 1.6. (c.f. Rule 3.3, which does not except Rule 1.6 confidentiality for undue to the court.)

4.2 Communication with Person Represented by Counsel: Without consent or legal authority, and during representation of a client, we can’t talk to a person if they are attorney-represented in the matter, unless authorized by law or court order. (Ethics Opinion 69—The other side’s employee)

4.3 Dealing with Unrepresented Persons: On behalf of a client, we can’t imply to pro se persons that we are interested, we must reasonably correct the person’s misunderstanding of our role, and we may not offer them legal advice except to get an attorney, if the pro se person’s interests are reasonably in conflict.

4.4 Respect for Rights of Third Persons: (a) In representation, we may not act merely to embarrass, delay, burden, or violate the legal rights of third persons, without substantial purpose. (b) If we reasonably should know a received document about our client was mis-sent, we shall promptly notify the sender. (c) Unless permitted by court order, if we haven’t read it and the sender says it was mis-sent, we don’t read it and follow the sender’s instructions.

4.5 Threatening Prosecution: (a) In civil matters, we can’t threaten criminal, administrative, or disciplinary charges to gain an advantage or participate in presenting criminal, administrative, or disciplinary charges solely to gain an advantage. (b) It’s okay to tell the other side, reasonably, that their behavior violates rules or statutes. (safe harbor add 1997 – Colorado-only rule)

Part 5—Law Firms and Associations

5.1 Responsibilities of a Partner of Supervisory Lawyer: (a) Partners and (b) direct supervisors must reasonably ensure ethical conformity in the firm. (c) The lawyer is ethically responsible if (1) he or she orders or knowingly ratifies the unethical conduct or (2) is a partner or supervisor, knows of the conduct in time, and doesn’t mitigate.

account where interest or dividends are paid to the client or 3rd party, less service charges or fees. (i) if interest or dividends on funds do exceed costs of a client-paid, interest-bearing account, we may apply for a refund from COLTAF. (j) We consent to COLTAF’s bank reporting requirements and hold the bank harmless. (Can’t use our bank for reporting us.)

1.15(C) Use of Trust Accounts (a) No debit cards or ATM withdrawals. No cash withdrawals or cash back on deposits. The deposit slip must be detailed and duplicate. (b) Only a California licensed lawyer or a person lawyer supervised may transfer or withdraw or be a signatory. Withdrawals may only be by check or bank or wire transfer. (c) The lawyer or supervised must reconcile in detail quarterly.

1.15(D) Required Records (a) We or our firms shall retain for 7 years (1) separate client records containing: (A) & (B) (detailed records) (2) on all business bank accounts (3), (4), (5), (6), & (7) and billing records and payment records and bank records. (very detailed) (b) sets our accounting methods and consistency of computer records, kept at principal office (c) We shall maintain our own records if the firm dissolves or we or another attorney leaves. (d) We shall disclose the records when ARC sends a subpoena duces tecum. Those records will remain confidential.

1.15(E) Approved Institutions (Very detailed rule about the approval of banks, ARC’s obligations about banks, the banks obligations, the form of the accounts, rate of interest, amount of bank account fees, and bank immunity from suit)

1.16 Declining or Terminating Representation: (a) Except as in (c) below, we must not represent a client, or continue to represent. (1) if that breaks an Ethics Rule or the law, or (2) if our physical or mental condition materially impairs our representation, or (3) if we are fired. (b) We may withdraw or request the court to permit withdrawal (1) if there’s no material adverse client effect, (2) using our services, the client’s breaking the law or committing fraud, (3) the client did that in the past, (4) the client insists on repugnant or fundamentally disagreeable action, (5) the client doesn’t pay after warning, (6) the employment becomes impossibly burdensome or the client makes the employment unreasonably difficult. (7) there is other good cause. (c) We can’t withdraw if the judge says no. (d) After termination protect the client’s interests; giving reasonable notice, giving reasonable time for new counsel, surrendering papers/property, and refunding unearned fees. The attorney’s lien is okay.

1.16A Client File Retention: (a) A private practice attorney shall retain client files unless, (1) she gives the file to the client or she has client-signed permission to destroy and there are no legal proceedings set or threatened. (2) she gives the client written 30-day notice and there are no legal proceedings set or threatened. (b) She may destroy the file without notice after ten years after termination of the legal matter, if she hasn’t agreed otherwise. (c) But criminal attorneys shall keep files (1) for the client’s life if sentenced to death, life without parole, or indeterminate, including a life sex abuse sentence, (2) for 8 years from sentencing if it’s a felony sentence and it was appealed, (3) for 5 years if a felony isn’t appealed. (d) Written 30-day notice may be either in the fee agreement if she has a rule-consistent file retention policy or in a client-delivered notice. (e) Legal obligations, court orders, and tribunal rules trump this rule. (Detailed Comment 1 first requires reasonable efforts to find the client, then allows notice to the last-known addressee).

1.17 Sale of Law Practice: We may sell or purchase a business or area of practice, including good will, if: (a) the seller quits the law or the area of law, (b) the whole business or area of practice is