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-jeopardy*) (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

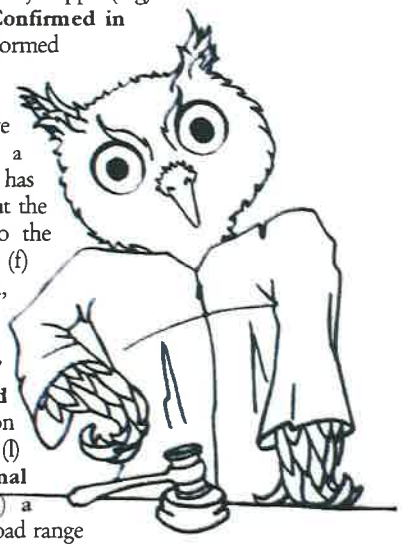
Monday, July 13, 2015

Original Art 2013 by **Teresa Castaneda**
www.Paintbru.sh

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 suppos(ing) 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 weighty, (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

reasonable information requests. (5) Explain relevant ethical limitations. (b) Explain to the client "to the extent reasonably necessary for informed decisions."

1.5 Fees: (a) Fees and expenses must be **reasonable.** Consider (1) the time and labor required, novelty and difficulty, and skill, and (2) if the client understands, the likelihood that the work will limit our other work, (3) the local customary fee, (4) the amount involved and the results (5) the time limitations, (6) the client relationship, (7) the lawyer's experience, reputation, and ability, and (8) if the fee is contingent or fixed. (b) A **writing** must **get to the client** in a **reasonable** time, describing the fee and expenses. Any **change** must be promptly **communicated in writing.** (c) Contingent fees are okay unless they aren't. *(Chapter 23.3)* (d) Except in a rule 1.17 law-practice sale, we can't **split** a fee with a non-firm attorney, unless the split is proportional to services or responsibility, the "client's agreement is confirmed in writing", and the total fee is reasonable. (e) **Referral fees** are prohibited. (f) Fees are **earned** when we "confer a benefit" or perform a service. Unearned, advance fees are client property and must be in a Rule 1.15(f)(1) trust account, or non-cash property held separately. *(Rule 1.15(a) COLTAF).* (g) **Nonrefundable** fees and retainers are prohibited. *(Sather case)* We can't restrict a client's right to terminate, and can't unreasonably restrict a refund.

1.6 Confidentiality of Information: (a) We **shall not** reveal information **relating to representation,** unless the client gives **informed consent,** or the disclosure is implicit. (b) We **may** disclose (1) to prevent **reasonably certain death or substantial bodily harm** (client threat of suicide), (2) the client's **criminal intent** and information necessary to prevent a crime, (3) to circumvent a client who used our services to **commit fraud** reasonably certain to cause **substantial financial injury,** (4) when we find out after the crime or fraud has been committed, (5) to get **ethical or legal advice** for ourselves, (6) to **protect ourselves**, or (7) to "comply with **other law or a court order**." (Only to the extent necessary.)

1.7 Conflict of Interest: Current Clients (a) No concurrent conflicts, meaning: (1) We can't represent **adverse clients**. (2) Nor if there's a significant risk representation will be materially limited by a client, a former client, a third party, or our personal interest. (b) But concurrent conflicts are okay if (1) we reasonably believe we can be competent and diligent to all, (2) there's no law against it, (3) one client isn't claiming against another in that litigation, and (4) everybody gives informed consent "confirmed in writing."

1.8 Conflict of Interest: Current Client: Specific Rules: (a) We can't have client **business partners** or buy client-adverse property, unless (1) it's fair and disclosed in writing, (2) we inform in writing "the desirability" of talking to another attorney, and (3) the client gives written informed consent. (b) We can't use client information to her disadvantage without informed consent. (See Rules 1.6 Confidentiality and 3.3 Candor) (c) We can't solicit a substantial gift or draft a non-related **client will** or gift agreement to our or our relatives' substantial benefit. (d) We can't negotiate **media rights** for ourselves during employment. (e) We can't provide **up-front money** (*champerty*) except to advance litigation costs and expenses, which may be contingent on success. If the client's indigent, we ***may*** **pay** litigation costs and expenses. (f) If we are **paid by a third party**, (1) the client must give informed consent, (2) there can be no interference, and (3) we can't reveal confidences. (g) Settling one claim for **two clients** requires informed consent, a client-signed writing, and much disclosure. (h)(1) Don't **prospectively limit malpractice** unless the client has another attorney. (2) Don't **settle a claim** without written notice about consulting

writing if (1) they've told us not to, or (2) our solicitation involves coercion, duress or harassment. (c) We shall not solicit **new personal injury or wrongful death work** unless it's to family or an existing client or if it is made after the first **30 days** after the injury or death. (1)We still can't communicate if we reasonably should know an attorney is representing, (2) and we must disclose if a different attorney or firm will handle the case. (d) Solicitations must (1) include the words "Advertising Material" on the envelope or at the beginning and end of any non-letter communication, unless it's to an attorney, to family, a friend, or an existing client. (2) The outside of a mailing can't reveal the nature of the legal problem. We must keep copies, including envelopes, for 4 years. (e) Prepaid legal or group legal services plans which aren't run by the attorney are okay even if they solicit in-person or by phone for memberships or subscriptions, if it's not targeted.

7.4 Communication of Fields of Practice: (a) We may say we are **specialists** and that we do or don't practice in specific fields. (b)(c) We may say we are **Patent** Attorneys or **Admiralty** if it's true, (d) We can't say we are **certified as a specialist** unless (1) we've been certified by an organization that is state-approved or ABA certified and (2) we put the organization's name on our communication. (e) If we say we are **certified** we must also say "Colorado does not certify lawyers as specialists in any field" unless it's in a lawyer-directed law list, law directory, or publication.

7.5 Firm Names and Letterheads: (a) In firm names, letterheads, or **"other professional designations",** we may not violate or participate in violating Rule 7.1. We may use **trade names** in private practice if we don't imply a government or public-or-charitable-organization connection and don't violate 7.1. (b) Multi-state firms can use the same name, but have to designate who is licensed where. (c) We may not use the names of attorneys in **public office,** during the substantial period of the office. (d) Only say you are in a PC or partnership if that is so.

7.6 Political Contributions to Obtain Legal Engagements or Appointments by Judges: We can't get government work or a "appointment by a judge" if we make or solicit political contributions for the purpose of getting the work or appointment.

Part 8—Maintaining the Integrity of the Profession

8.1 Bar Admission and Disciplinary Matters: If we apply to the bar or reapply for reinstatement, or make statements concerning an application, we can't (a) knowingly make a **false statement of material fact** (b) or fail to correct a **known misapprehension** or **fail to respond** to lawful admission or regulatory authority, except to protect Rule 1.6 (*Confidentiality*) information.

8.2 Judicial and Legal Officials: (a) We shall not knowingly make **false statements** or statements with **reckless disregard** about the qualifications or integrity of **judges,** adjudicatory officers, public legal officers, or candidates for judicial or legal-office election, appointment or retention. (b) A lawyer who is a candidate for judicial retention shall comply with the judicial conduct code.

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).

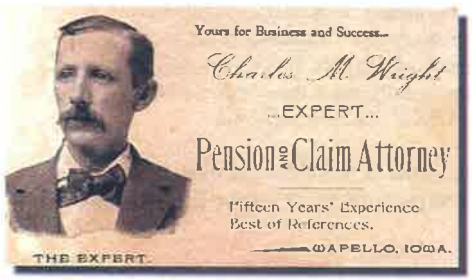
6.3 **Membership in Legal Services Organization:** A lawyer may serve in a legal services organization even if it serves people's interests that are **adverse to clients**. But the lawyer can't participate in decisions or actions if (a) it breaks **Rule 1.7** or (b) it would materially cause the **staff 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-responsible **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-lien 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)(1) Don't use prior-client representation-related information against 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 1.8(k).* (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)(*former 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: *(Revolving 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 switch sides, 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 (i) participate in a matter where we had **substantial, personal, private participation** unless the government gives informed consent, confirmed in writing. (ii) 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)

As the judge, we can't ask parties or their lawyers for a **job. Law clerks** can if the judge knows. (c) If we were formerly the judge, our **law partners** may also not **knowingly** represent unless (1) we are timely screened and get no part of the fee, (2) we give prompt written notice with screening details to the other parties, and, (3) we and our partners reasonably believe the screen will work. (d) A multi-member arbitration panel member/arbitrator representing a client can later represent the client.

1.13 Organization as Client: (a) If we work for a company we represent the company. (b) If we catch an officer, shareholder, or etc. violating a legal obligation to the company or violating a law the company reasonably could be blamed for, and which will likely cause substantial company injury, we shall "proceed as is **reasonably necessary** in the best interest of the organization." Unless we "reasonably believe that it is not necessary in the best interest of the organization", we bump the information up the ladder, to the top if necessary. (c) Except as in (d) below, (1) if the problem is not resolved at the top and it's a clear legal violation (2) and will reasonably certain to cause the company substantial injury, we may reveal information in addition to the Rule 1.6 (*confidences*) permissive disclosures, but only that information sufficient to prevent the substantial injury. (d) This doesn't apply to internal legal-violation investigations, or to criminal defense of the company or its agents. (e) If we are fired or quit because of (b) or (c) above, we shall act reasonably to assure that the information get to the top. (f) We shall **disclose** to shareholders, officers, etc. who have adverse interests, **that our client is the company.** (g) We may **represent an officer,** shareholder, etc. in other matters, but see Rule 1.7. If that representation requires company consent, get consent from somebody other than the new client.

1.14 Client with Diminished Capacity: (a) If our client's capacity to make adequately-considered representation-decisions is diminished we **shall, as far as is reasonably possible,** act as usual. (b) If our diminished-capacity client is at risk of any harm if there's no action, and he can't adequately act, we may take reasonable protective action. That includes consulting with helping agencies and seeking a guardian ad litem, conservator, or guardian. (c) This implies Rule 1.6-exception release of client information, but only to the extent necessary.

1.15 Safekeeping Property (COLTAF Rule – longest rule -- amended 2014)

1.15(A) General Duties of Lawyers Regarding Property of Clients and Third Parties (a) We must hold client property **separate**, hold client funds in a **trust account,** and keep complete records. (b) Upon receipt of client or 3rd party property, deliver it to them and do an accounting if asked. (c) If there's a **dispute**, keep it separate until resolution. (d) This rule applies to a broad range of client or third party property.

1.15(B) Account Requirements (a) Every **private-practice lawyer** shall, in our name, maintain (1) a separate **trust account** where we keep entrusted funds and unearned fees and expenses, but only if we have such funds, and. (2) a **business account** containing all funds received for legal services. That account shall be **called a business account** or a similar name. (b) The trust account may be **COLTAF.** (c) The trust account shall be called a trust account or COLTAF trust account, plus any further designation that's not misleading. (d) Trust accounts shall be in **approved banks** unless we get informed consent from our clients our overdrafts won't be reported to ARC. (e) Trust accounts shall be **interest** or dividend bearing and federally **insured,** unless the client gives informed consent. (f) We may keep **service charge amounts** in the trust account. We shall designate those amounts in our records. (g) We shall deposit entrusted funds in a COLTAF account if feasible, unless (h) the funds are deposited in a interest bearing

5.2 Responsibilities of a Subordinate Lawyer: (a) The subordinate is bound by the rules regardless. *(No "just following orders" defense.)* (b) but it's okay if he or she relies on a supervisor's **reasonable resolution** of an **arguable question.**

5.3 Responsibilities Regarding Nonlawyer Assistants: (a) A partner or (b) a supervisor shall reasonably ensure employees conform to ethical obligations. (c) The lawyer is ethically responsible if he or she (1) **orders or knowingly ratifies** the unethical conduct or (2) is a partner or supervisor, knows of the conduct in time, and **doesn't mitigate.**

5.4 Professional Independence of a Lawyer: (a) We can't **split fees with non-lawyers** except (1)(2)(3) to a partner or associate or attorney-seller's estate, (4) toward **employees' retirement,** or (5) court-awarded legal fees with the employing, retaining, or recommending non-profit. (b) We can't **practice** law with **non-attorneys.** (c) **Referring persons** can't direct our work. (d) **Professional corporations** must comply with Rule 265.

5.5 Unauthorized Practice of Law: (a) We can't (1) **practice law here** without a Colorado license, unless permitted by federal or tribal law, (2) practice **somewhere else** if it violate their rules, (3) **aid or abet** someone who does, or (4) have **disbarred** or seriously **suspended attorneys in the firm** name. (b) We can't let a **disbarred,** seriously suspended, or disability inactive attorney (1) **give legal advice** to our clients, (2) **appear at a hearing** (3) or **deposition** for our clients, (4) **negotiate** with others for our clients, (5) otherwise **practice law,** or (6) handle **clients funds.** (c) Subject to (d) below, we may employ a disbarred, seriously suspended, or disability inactive attorney be a **clerk, drafter, or researcher,** including: (1) drafting, (2) scheduling with clients or others, or (3) assisting an attorney at a deposition. (d) If the disbarred, seriously suspended, or disability inactive attorney has any contact with clients, we must first (1) give client notice that the attorney can't practice law and (2) retain the notice for two years after completion. (e) One-time notice under this rule or CRCP 251.28 is sufficient.

5.6 Restrictions on Right to Practice: We can't offer or make an agreement (a) restricting an **attorney's right to practice,** except retirement benefits, or (b) **settle a case** that restricts our practice.

5.7 Responsibilities Regarding Law-Related Services: (a) These ethics rules apply to law-related services if done by (1) the lawyer and are **indistinct from his legal practice** or (2) by a **lawyer-controlled entity,** unless the lawyer reasonably assures that the customer knows the services aren't legal services and that the customer-protections of the ethics rules don't apply. (b) A service is **law-related** if they **"might reasonably be performed with and in substance are related to the provision of legal services"** and wouldn't be unauthorized practice if a non-lawyer did them.

Part 6—Voluntary Pro Bono Public Service

6.1 Voluntary Pro Bono Publico Service: We are obliged to do *pro bono.* We should do **50 hours pro bono** annually, (a) doing a **substantial majority without a fee,** for (1) poor folks and (2) charities, and (b) the rest at low or no fee for (1) organizations that need help or (2) poor folks, or (3) by participating in pro-law activities. We also should **send money to legal services.** If our jobs won't allow free legal work, then we should do the services or follow paragraph (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. (f) 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 out Rule 1.6 confidentiality for candor 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 employees)*

4.3 Dealing with Unrepresented Persons: On behalf of a client, we can't imply to *pro se* persons that we are disinterested, we must reasonably correct the person's misunderstanding of our role, and we may not give 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 added 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 conformance 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 sue 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 Colorado 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 person 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 out accounting methods and consistency; computer records okay, 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 unreasonably financially 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 address.)

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

sold, (c) the seller gives notice to the client (at the last known address) regarding (1) the proposed sale, (2) the client's right to hire other counsel or take the file, and (3) that the client has to act within 60 days. (d) The fees can't go up.

1.18 Duties to Prospective Clients: (a) A prospective client is **anybody who talks to you** about possibly hiring you. (b) **Even if she doesn't hire you, you can't use or reveal** her consultation information, except under Rule 1.9 *(former clients)* (c) You then can't represent other clients with materially adverse interests in the same or substantially related matter. The lawyer's **partners are similarly prohibited.** (d) **But the intake lawyer may still represent** if, (1) **both** the prospective client and the adverse client give **informed consent,** confirmed in writing, or, (2) the firm may still represent if the **intake lawyer reasonably took only the minimum information** on intake, and (i) the intake lawyer is timely screened and gets no part of the fee, and (ii) written notice "is promptly given to the prospective client."

Part 2—Counselor

2.1 Advisor: We shall use **independent judgment** and be **candid.** We may explore **moral, economic, social,** etc. considerations. We should advise about **ADR.**

2.2 Intermediary: (Repealed)

2.3 Evaluation for Use by Third Persons: (Opinion Letter) (a) We may do such an evaluation if we reasonably believe it is compatible with our client responsibilities. (b) If we reasonably should know our letter will materially affect the client, the client must give informed consent. (c) Except for disclosure in the report, we must otherwise protect Rule 1.6 **confidentiality.**

2.4 Lawyer Serving as Third-Party Neutral: (a) That's defined as assisting two or more parties who are not clients. This may include being an arbitrator or mediator. (b) We must inform the parties they aren't our clients. If we reasonably should know they don't understand, we shall explain the difference between a third party neutral and attorney-client relationships.

Part 3—Advocate

3.1 Meritorious Claims and Contentions: We shall not bring or defend, assert or controvert, **proceedings or issues** without a **non-frivolous basis,** unless we have a good faith argument for extension, modification, or reversal. In a **criminal or incarceration** case, we may defend to make the elements be proven.

3.2 Expediting Litigation: But only consistently with our **client's interests.**

3.3 Candor Toward the Tribunal: (a) We shall not **knowingly to a tribunal,** (1) falsely state material facts or law or fail to correct what we previously said, (2) fail to **disclose directly adverse, local legal authority** not disclosed by our opponents, (3) offer false evidence or **fail to reasonably remediate,** including telling the judge, whether previously offered by the lawyer, the client, or a client's witness. We **may** refuse to offer evidence we **reasonably believe** is false, **other than a criminal defendant's testimony.** (b) If we do a "adjudicative proceeding" we must remediate the proceeding-related criminal or fraudulent conduct of **anybody,** including telling the judicial officer. (c) These duties continue to **proceeding's conclusion** regardless of **Rule 1.6.** *(confidentiality)* (d) In an ***ex parte* hearing,** we shall disclose all material facts to the court, including adverse facts.

3.4 Fairness to Opposing Party and Counsel: We shall not (a) **unlawfully obstruct** a party's access to evidence or **alter, conceal, or destroy** evidence or get another to do that, (b) falsify evidence, **counsel or assist** witness perjury, or bribe a witness, (c) knowingly disobey a tribunal rule, except openly, (d) frivolously request discovery or fail to diligently comply with legal, proper discovery requests, (e) in trial, raise irrelevant evidence, assert personal knowledge except when a witness, or state our opinion as to the justness of a cause, witness credibility, or the culpability, guilt, or innocence of a litigant, or, (f) ask a non-client person to not talk to others unless (1) the person is a client relative, employee or agent and no other law prohibits, and (2) not talking won't harm the person's interests.

3.5 Impartiality and Decorum of the Tribunal: We shall not (a)(b) illegally seek to **influence,** or without legal or court authority **communicate *ex parte*** during a proceeding, with judges, jurors, prospective jurors, or officials. We may communicate *ex parte* with a judge who initiates the communication if it's reasonably within her authority. (c) We shall not communicate with **jurors after trial** if (1) prohibited by law or order, (2) the juror says no, (3) our communication involves misrepresentation, coercion, duress, or harassment, or (4) the communication is reasonably likely to demean, embarrass or criticize. (d) We shall not intentionally **disrupt a tribunal.**

3.6 Trial Publicity: (a) We and our **associates** can't talk outside of court to the **media** if we know or **reasonably should know** that talking will **very likely materially prejudice** an adjudicative proceeding. (b) (There are many specific exceptions.) (c) We may, if required, speak to protect our client against substantial, undue, prejudicial detriment of publicity we didn't cause, but no more than that. (d) Our associates can't either.

3.7 Lawyer as Witness: (a) We can't be **advocates at the trial** if we are a likely, necessary **witness,** unless (1) the testimony is **uncontested,** (2) is about **billing** in the case, or (3 disqualification would be a **substantial hardship** to the client. (b) Our other **firm attorneys** may be advocates in the matter unless prohibited by Rules 1.7 (*current client loyalty*) or 1.9 (*former client loyalty.*

3.8 Special Responsibilities of a Prosecutor: Criminal prosecutors shall (a) require **probable cause** and (b) reasonably assure the defendant's been advised of procedures for and has had time to **obtain counsel.** (c) a prosecutor shall not try to obtain waiver of **important pretrial rights** from a ***pro se*** defendant. (d) The prosecutor shall timely disclose offense-**adverse or mitigating,** and sentence-**mitigating** evidence unless there's a protective order and (e) The prosecutor shall not **subpoena an attorney** to disclose confidential client information in a grand jury or criminal