

Colorado Sole Practitioner Business Manual and Risk Management Checklist

A written manual of your policies is an important tool for managing risk. It enables you and your staff to know of and put into action the necessary preventative and curative steps when issues of professional conduct arise. You should ensure that each employee receives a copy of the manual. New hires should be trained to follow every procedure that applies to that person’s position. In addition, all staff should attend a regular “refresher course” on policies listed in the manual. By fostering awareness in this way, the policies become an organic part of the firm’s operation.

The following checklist details topics that this business manual might cover. It also provides practitioners with guidance in the form of citations to the Colorado Rules of Professional Conduct and other resources to consider when developing or refining a business manual to manage risk.

<u>Topics for the Business Manual to Cover</u>	<u>Resources and Ethical Considerations</u>
Client intake?	<ul style="list-style-type: none"> • Colo. RPC 1.4
Engagement letters?	<ul style="list-style-type: none"> • Engagement letters establish the scope of the engagement and the fees to be charged, avoiding disputes later. • Colo. RPC 1.4, 1.5(f)
<ul style="list-style-type: none"> • Does the engagement letter make clear your check cashing policy? 	
Declination letters, which explain why you can’t take the case?	<ul style="list-style-type: none"> • Declination letters prevent confusion about whether an attorney-client relationship exists. • Colo. RPC 1.4 • See Assessment #2, Communicating in an Effective, Timely, Professional Manner and Maintaining Professional Relations
Dis-engagement letters, which explain why you are withdrawing?	<ul style="list-style-type: none"> • Dis-engagement letters confirm that the attorney-client relationship has ended, and explain why it ended. • Colo. RPC 1.4
Warning letters, which explain the serious consequences that could result from the client’s announced intention to disregard your advice?	<ul style="list-style-type: none"> • Warning letters make clear what the firm’s advice has been, a defense to a potential later claim of malpractice, if the client pursues some other course. • Colo. RPC 1.4
Informational letters, explaining what you have done for the client recently and what you plan to do in the near future?	<ul style="list-style-type: none"> • An informational letter that accompanies the fee billing helps the client understand the work the client is paying for. • Colo. RPC 1.4 • See Assessment #2, Communicating in an Effective, Timely, Professional Manner and Maintaining Professional Relations
<ul style="list-style-type: none"> • Are these informational letters sent to the client on a 	

regular basis, e.g., monthly/bi-monthly?	
Do all firm communications identify the author's and sender's title and contact information?	<ul style="list-style-type: none"> • Communication is enhanced if the client has a direct dial number or email access.
File retention?	<ul style="list-style-type: none"> • Colo. RPC 1.16A • CBA Formal Opinion 104, Surrender of File to the Client Upon Termination of the Representation • Mark Bassingthwaighte, How Long Do We Need to Keep Our Closed Files? ALPS Corp., May 17, 2016. • See Assessment #5, Maintaining Appropriate File and Records Management Systems
Where to find a list of bank accounts and numbers (and passwords, etc.)?	<ul style="list-style-type: none"> • If the sole practitioner is on vacation, sick, or otherwise unavailable, staff may need access to this information.
Policy for returning phone calls within a certain period of time?	<ul style="list-style-type: none"> • Communication with the client should be timely to avoid client anxiety, confusion, or uncertainty. • Colo. RPC 1.4; 1.3 • See Assessment #2, Communicating in an Effective, Timely, Professional Manner and Maintaining Professional Relations
Trust and Operating Accounts?	<ul style="list-style-type: none"> • Colo. RPC 1.15A; 1.15B; 1.15C; 1.15D • See Assessment #8, Ensuring that Reliable Trust Account Practices Are in Use
<ul style="list-style-type: none"> • Are there checks and balances to ensure bookkeeper and accountant integrity? 	<ul style="list-style-type: none"> • Checks and balances prevent embezzlement of client and law firm funds.
<ul style="list-style-type: none"> • Do you understand that you may not pass on credit card processing fees to clients? 	<ul style="list-style-type: none"> • Colo. RPC 1.15B(f) (permitting a lawyer to deposit funds into a trust account to cover bank charges)
<ul style="list-style-type: none"> • Are you the only signer for the trust account? 	<ul style="list-style-type: none"> • A sole practitioner should control the trust account and client funds therein. • See Assessment #8, Ensuring that Reliable Trust Account Practices Are in Use
<ul style="list-style-type: none"> • Is the trust account statement sent to you at a confidential (e.g. residential) address, so that staff are not able to intercept the account statement? 	
<ul style="list-style-type: none"> • Do you have a rule that two employees must sign on all disbursements over \$500? 	<ul style="list-style-type: none"> • This provides a check and balance system against improper disbursements.

<ul style="list-style-type: none"> Do you make sure that the issuer bank has cleared a check (for example, settlement funds) before it is deposited into the trust account? 	<ul style="list-style-type: none"> Following this rule will avoid the issuance of insufficient funds from the trust account.
Avoiding unauthorized practice of law?	<ul style="list-style-type: none"> Colo. RPC 5.5; C.R.C.P. 228 <i>People v. Adams</i>, 243 P.3d 256, 265 (Colo. 2010).
Confidentiality agreement signed by vendors?	<ul style="list-style-type: none"> Vendors include process servers, IT maintenance companies, etc. Colo. RPC 1.6 See Assessment #3, Ensuring that Confidentiality Requirements Are Met
Office sharing with other lawyers/firms?	<ul style="list-style-type: none"> Colo. RPC 1.6 CBA Formal Opinion 89 See Assessment #3, Ensuring that Confidentiality Requirements Are Met
Do you minimize shared staff?	
Are confidentiality protections in place with regard to telephone and computer systems?	<ul style="list-style-type: none"> Colo. RPC 1.6
Conflict checks?	<ul style="list-style-type: none"> Colo. RPC 1.7 CBA Formal Opinion 57 See PMBP Assessment #4, Avoiding Conflicts of Interest
Time recording and billing?	<ul style="list-style-type: none"> Colo. RPC 1.4; 1.5 See Assessment #7, Charging Appropriate Fees and Making Appropriate Disbursements
Calendaring deadlines?	<ul style="list-style-type: none"> Missed deadlines can result in malpractice claims Colo. RPC 1.1; 1.3 See Assessment # 1, Developing Competent Practices
Response to court-imposed sanctions?	<ul style="list-style-type: none"> Colo. RPC 3.4(c)
Response to regulatory investigations?	<ul style="list-style-type: none"> Use of experienced counsel Colo. RPC 8.1 C.R.C.P. 251.10(a)
Response to malpractice claims?	<ul style="list-style-type: none"> Includes timely notifying the malpractice carrier Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), chapters 27, 49.
Maintaining malpractice coverage?	<ul style="list-style-type: none"> C.R.C.P. 265(a)(3) for the minimum requirements For a directory of professional liability insurers in Colorado, see ABA LPL Insurance Directory (Colorado).
Engaging in business with a client?	<ul style="list-style-type: none"> Colo. RPC 1.8 CBA Formal Opinion 109

	<ul style="list-style-type: none"> • See Assessment #4, Avoiding Conflicts of Interest
Communications with media	<ul style="list-style-type: none"> • Colo. RPC 1.6
Disaster recovery	<ul style="list-style-type: none"> • Colo. RPC 1.16(a) • See Assessment #5, Maintaining Appropriate File and Records Management Systems
Advertising	<ul style="list-style-type: none"> • Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), chapter 17.
Is there a disclaimer on the firm's website to the effect that: "We are not representing you unless and until you sign a retainer agreement with the firm."?	<ul style="list-style-type: none"> • CBA Formal Opinion 76 • Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), chapter 17.3.1.
Succession plan (in case of death or disability)	<ul style="list-style-type: none"> • This can preclude the need for appointment of inventory counsel. • C.R.C.P. 251.32(b) • Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (One of Which Is Inevitable), Office of Attorney Regulation Counsel (2007).
Is the business manual given to all staff?	<ul style="list-style-type: none"> • The manual should be a ready reference tool.
Are workshops held at least annually to educate and remind staff of the policies in the business manual?	<ul style="list-style-type: none"> • Refreshing familiarity with firm policies will make policies a part of firm culture.