# Colorado Consolidated Lawyer Self-Assessment
# Proactive Management-Based Program Subcommittee

The Colorado Lawyer Self-Assessment Program is a voluntary program created to help lawyers with their professional development. It is designed to mitigate risk, elevate competence, and enhance the quality of legal services delivered to clients. It gives you the chance to see what is working and what could be improved when it comes to law firm management and meeting professional obligations. The goal is to prevent problems before they arise. This should allow you to spend more time on cases. While not every question applies to every law practice, and it is ok to skip a question if it does not apply, collectively the following questions give you the opportunity to see how you can better serve clients and run your practice more efficiently. After completing this consolidated self-assessment, you may use the affidavit available on the Lawyer Self-Assessment Program homepage to claim CLE credit for your participation in this program. You can access the program's homepage through www.coloradosupremecourt.com. Choose the "Lawyer Self-Assessment Program" link on the right. Please note that this consolidated self-assessment references certain educational resources more than once because they address a variety of professionalism topics.


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## SELF-ASSESSMENT #1 — DEVELOPING COMPETENT PRACTICES

Colo. RPC 1.1 requires lawyers to provide clients competent representation. This includes the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A lawyer should consider issues of competence when accepting a new matter and when substantively or procedurally expanding an existing matter, *e.g.*, whenever the lawyer addresses a new claim, files counterclaims, identifies other issues not previously considered, when unforeseen issues develop, when interpreting a contract previously drafted or negotiated by the lawyer, or at any point when the procedural course or substantive nature of the matter deviates from that which the lawyer initially envisioned. This self-assessment form provides examples of issues to consider and resources to explore.

| Question | Yes | No | Ethical Implications | Sample Resources |
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| **When taking on new matters or expanding the scope of representation, do you assess whether you have the legal knowledge and education to handle the matters?** | | | | |
| **Does your assessment include:**<br>• Whether you are familiar with the applicable governing statutes, rules, regulations, and case law? | | | • A lawyer must understand the form and substance of the disclosure required to be made to the client to obtain informed consent. Colo. RPC 1.4.<br>• A lawyer cannot delegate the duty of competence to the client. *See In re Shipley,* 135 S. Ct. 1589-90 (2015).<br>• A lawyer must not charge a client fees for time spent achieving competence. Colo. RPC 1.5. A lawyer should ask, "Can I afford this obligation to get up-to-speed for which I will not be compensated by the client?"<br>• Colo. RPC 1.1 cmt. 6.<br>• Colo. RPC 1.1 cmt. 2.<br>• A lawyer who realizes that he or she has a competence problem should immediately seek assistance: covering up incompetence often results in far graver charges of misconduct. | Alan Gutterman, *Practical Challenges of Meeting Your Duties of Competence and Diligence to Your Clients*, Legal Solutions Blog (Thomson Reuters), July 18, 2016.<br><br>Christopher Sabis and Daniel Webert, *Understanding the "Knowledge" Requirement of Attorney Competence: A Roadmap for Novice Attorneys*, 15 GEO. J. LEGAL ETHICS 915 (2002). |
| • Whether you are familiar with the governing rules of procedure and court or applicable tribunal rules? | | | | |
| • Whether you are familiar with any recent changes in applicable substantive or procedural law? | | | | |
| • Whether you are familiar with the factual context and subject matter? | | | | |
| • Whether you are familiar with any recent changes in applicable substantive or procedural law? | | | | |
| • Whether you are familiar with the governing Rules of Professional Conduct? | | | | |
| **If you find that you do not have the legal knowledge to handle a matter, do you assess whether you can:** | | | | |
| • Timely acquire the knowledge or education to handle the case and whether you have resources available to do so? | | | | |
| • Learn from, associate with, or seek supervision or mentoring from a lawyer with established knowledge in the relevant field? | | | | |
| • Limit the scope of representation to work within your current knowledge base or within the reasonably-expandable scope of your knowledge base? | | | | |

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| • Possibly handle the matter depending on whether the required proficiency is that of a general practitioner, or whether expertise in a particular field of law is required? | | | | |
| • Have the client provide informed consent in writing to a limited scope of representation and use an engagement letter to communicate the limited scope of representation? | | | | |
| **When taking on new matters, do you assess whether you have sufficient expertise, training, or access to mentoring or other assistance such that you have the legal skills to handle the cases? (application of skills to black letter law)** | | | | |
| **Does your assessment include:**<br>• Whether you have handled matters in the same practice area before? | | | • The scope of a matter will affect the competence that the lawyer will need to possess.<br>• A lawyer must understand the form and substance of the full disclosure to be made to the client to obtain informed consent. Colo. RPC 1.4.<br>• A lawyer must not charge a client fees for time spent achieving competence. Colo. RPC 1.5. The lawyer should ask: can I afford this burden for which I will not be compensated by the client?<br>• If a lawyer contracts with or retains other lawyers outside the lawyer's own firm to assist in the representation, the lawyer must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. Colo. RPC 1.1 cmt. 6.<br>• If lawyers from more than one firm are providing legal services in the same matter, the lawyers should consult with the client and each other about the scope of the representation and the allocation of responsibility. Colo. RPC 1.1 cmt. 7.<br>• Colo. RPC 1.1 cmts. 2, 5, 8.<br>• *See* Colo. RPC 1.2(c) concerning limitation on the scope of representation. | Mark Bassingthwaighte, *Getting It Right with Client Selection* (ALPS Corp.), Aug. 26, 2014.<br><br>Ivy Grey, *How to Meet The Duty of Technology Competence*, L. TECH. TODAY, June 29, 2017. |
| • Whether you have handled client matters of similar complexity in the past? | | | | |
| • Whether the representation involves any special licenses or authorizations? | | | | |
| • Whether you can analyze precedent, issue spot, evaluate evidence, and draft legal documents in the new matters? | | | | |
| • Whether you are familiar with and can employ relevant technologies and modes of communication necessary for the representation? | | | | |
| • Whether you understand unique technological issues in the underlying matter so that you are sufficiently informed to talk about these issues with experts, opposing parties or counsels, and a judge or jury? | | | | |
| • Whether the new matters involve compliance with different rules, regulations, or procedures than those with which you have had prior experience? | | | | |
| **If you do not have the skills-based competence to handle a new matter, do you assess whether you can:** | | | | |
| • Timely acquire the skills necessary to handle the matter? | | | | |

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| • Limit the scope of your representation to work within your current skill set or within the reasonably expandable scope of your skill set? | | | | |
| • Learn from, associate with, or seek mentoring/supervision from a lawyer with established skills in this field? | | | | |
| **Before taking on new matters, do you ask whether you have the necessary resources (time, finances, staffing, infrastructure, outside advice, and willingness) available to prepare, adequately, and offer thorough representation?** | | | | |
| **Does your assessment include:**<br>**<u>Time</u>**<br>• Whether you have the time to handle a potential new matter without neglecting existing professional or personal obligations? Conversely, whether other obligations impede providing adequate representation? | | | • Lawyers may not have in hand or have reasonable access to the documentation necessary to make appropriate factual assertions and legal arguments. Therefore, lawyers will need to devote the time to develop what is necessary to perform, adequately, the representation.<br>• Failure to spend time investigating the factual and legal bases for an action could result in an adverse finding that a matter is frivolous under Colo. RPC 3.1 or could expose a lawyer to sanctions under C.R.C.P. 11.<br>• Making representations without due diligence or expressing insufficiently qualified opinions may violate duties to third parties under the Rules of Professional Conduct and other sources of legal authority.<br>• Colo. RPC 3.1 (lawyers are required to "inform themselves about the facts of their clients' cases and the applicable law"). | Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation* (2006).<br><br>*In re Nunnery*, 725 N.W. 2d 613 (Wis. 2007) (suspending lawyer for two months because he did not conduct a meaningful inquiry into the veracity of documents presented by his client).<br><br>*Omnicare v. Laborers,* 135 S.Ct. 1318 (2015) (the accuracy of "expressions of opinion [depends on] considering the foundation [an investor] would expect an issuer to |
| • Whether you have time to investigate and develop the factual aspects of the cases you undertake? | | | | |
| • Whether you have time to investigate and develop all legal aspects of the cases? | | | | |
| • Whether the new clients have needs or preferences that require additional time? If so, whether you have the time, patience, or resources to handle the cases properly? | | | | |

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| • Whether it would be prudent to refer the matter (or matters) to a lawyer with the skill set and time to investigate and handle the representation should circumstances, including your time to handle the representation, make referral a good idea? | | | • C.R.C.P. 11(a) (the signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact . . . ) | have before making the statement").<br><br>Frank T. Lockwood, *Reinventing Client Selection and Case Management*, GP SOLO, July/Aug. 2014. |
| **Does your assessment include:**<br>**<u>Financial Resources and Reserves</u>**<br>• Whether your fees will support developing both the factual bases and the legal aspects of the matters you undertake? | | | | Mark Bassingthwaighte, *Getting It Right with Client Selection* (ALPS Corp.), Aug. 26, 2014. |
| • Whether your business model allows you to assume the financial risk involved if problems arise in the representation? | | | | |
| • Whether your business model supports access to the professional advice of others who can assist you to understand the technical aspects of the matters you take on, be they attorneys, accountants, engineers, or other experts? | | | | |
| • Whether you have sufficient financial liquidity to support the fee structure or payment timing of the representation? | | | | |
| • Whether, if necessary, you can modify your fee structure so that you can provide adequate representation? | | | | |
| **Does your assessment include:**<br>**<u>Staffing</u>**<br>• Whether you have sufficient staff-hours available as well as competent staff to handle the new matters? | | | • Lawyers with supervisory authority over non-lawyers must make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. Colo. RPC 5.3(b).<br>• Lawyers must take into account that non-lawyers do not have legal training and are not subject to professional discipline. Colo. RPC 5.3 cmt. 1. | Mark Bassingthwaighte, *Getting It Right with Client Selection* (ALPS Corp.), Aug. 26, 2014. |
| • Whether staff has the knowledge and training to handle the cases? | | | | |
| • Whether those staff members have the skills to handle the cases? | | | | |
| • Whether, if your staff lacks competency to handle a case, you can:<br>  ○ Timely hire the necessary staff?<br>  ○ Timely train existing staff to ensure that they have adequate knowledge or skills to handle the matter?<br>  ○ Appropriately supervise the necessary staff? | | | | |

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| **Does your assessment include:**<br>**<u>Infrastructure</u>**<br>• Whether you have access to research resources to answer legal questions presented by cases? | | | • Colo. RPC 1.1 cmt. 8 (lawyers must keep abreast of "changes in communications and other relevant technologies"). | Ellie Margolis, *Surfin' Safari – Why Competent Lawyers Should Research on the Web*, 10 YALE J. L. & TECH. 82 (2007) (noting that rules of professional conduct, read together, "create an ethical obligation to perform sufficient research to effectively advocate on behalf of a client"). |
| • Whether you have systems in place to handle the electronic data involved in the matters you accept? | | | | |
| • Whether you could contract with or retain other lawyers, if necessary, who have the infrastructure to handle matters for which you do not have adequate infrastructure? | | | | |
| **Does your assessment include:**<br>**<u>Advice</u>**<br>• Whether you have a relationship with at least one other lawyer whom you could consult for advice or assistance as to substance, procedure, or questions of judgment if needed? | | | • Without a sounding board or someone who can offer a different perspective, lawyers can fall prey to bad judgment and echo-chamber thinking. | |
| • Whether you receive regular, honest, and relevant feedback on your work product? | | | | |
| **Does your assessment include:**<br>**<u>Willingness</u>**<br>• Whether the cases are sufficiently interesting to develop the factual bases and legal theories? | | | | |
| • Whether you are constrained in providing competent representation by your personal circumstances (including medical issues) or your personal feelings about the client or the matter? | | | | |
| • Whether the representation create any peer pressure or image issues with which you are not able to reasonably cope? | | | | |
| • Whether, if you lack the willingness in one way or the other to take a case, it would be prudent to refer the matter to a lawyer with the requisite skill set and interest to investigate and handle the matter? | | | | |
| • Whether, if you lack the willingness to take a case, what form and substance should the communication(s) declining the representation take? | | | | |

## SELF-ASSESSMENT #2 — COMMUNICATING IN AN EFFECTIVE, TIMELY, PROFESSIONAL MANNER

Communication problems are a common client complaint seen in the Office of Attorney Regulation Counsel. And when you are the subject of a complaint, your practice suffers. Communicating clearly with your client contributes to a healthy, thriving law practice. Communicating clearly with a client includes ensuring that you receive client communications and engage in mandatory duties of communication.

Colo. RPC 1.4 addresses a lawyer's duties to communicate with the client. The rule is mandatory, not permissive. Lawyers must communicate with clients about certain things related to the representation and do so in a timely manner. Notably, Colo. RPC 1.4(a) requires the communication of information concerning fees charged, costs, expenses, and disbursements to the client. Moreover, effective January 1, 2022, Colo. RPC 1.5(b) now requires lawyers to communicate the scope of representation in writing to clients. Other communications procedures not mandated by the Rules can nonetheless help prevent client misunderstandings that often lead to ethics complaints. Creating written policies establishing minimum communication standards expected of you, your employees, and your clients goes a long way toward this goal.

| Questionnaire | Yes | No | N/A | Ethical Considerations | Other Resources |
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| **Communication Regarding the Scope of the Representation** | | | | | |
| Do you have or steps you take to ensure that you and your clients share the same understanding of the terms and scope of the engagement letter and fee agreement? | | | | • It is essential both the client and the attorney understand the terms of the representation as well as fees to be charged for services.<br>• Colo. RPC 1.5(b). | Charles Mortimer, *Know When to Hold 'Em, Know When to Fold 'Em*, OFF. OF ATT'Y REG. COUNSEL (2014). |
| **Client Communication Policies / Procedures** | | | | | |
| Do you have a written policy regarding communication with clients?<br>• *Even if your practice does not have a written communication policy, you should evaluate whether you address with clients the communication issues raised in the five following questions. You may want to consider developing a policy that addresses these issues.* | | | | • Colo. RPC 1.4 cmt. 4: "regular communication . . . will minimize the occasions on which a client will need to request information . . . ."<br>• Communicating clearly with your client contributes to a healthy, thriving law practice.<br>• A communication policy promotes regular and timely client contact. You may want to consider providing clients with a copy of your policy to | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., HIRING AND WORKING WITH AN ATTORNEY.<br>CBA Ethics Op. 90, Preservation of Client Confidences in View of Modern Communication Technology |

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| | | | | avoid confusion over communication expectations and timeframes. | Mark Bassingthwaighte, *Manage Client Relationships in Addition to Client Matters* (ALPS Corp.), 2016.<br><br>Mark Bassingthwaighte, *Communication – It's All in The Details* (ALPS Corp.), 2015. |
| • Does the policy include addressing with clients their appropriate and preferred methods of communication such as phone, mail, email, and text? | | | | • Colo. RPC 1.4 cmt. 4: "[a] lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation." | Teresa Matich, *Six Best Practices for Effective Client Communication*, L. PRACTICE TODAY, Oct. 15, 2019. |
| • Does the policy address the expected response time for client-initiated phone calls, emails, or texts, and is that response time communicated to clients? | | | | • Colo. RPC 1.4(a)(3) | Teresa Matich, *Six Best Practices for Effective Client Communication*, L. PRACTICE TODAY, Oct. 15, 2019. |
| • Does the policy establish when changes/status updates in cases will be relayed to clients and have you communicated this to your clients? | | | | • Colo. RPC 1.4(a)(1) | |
| • Does the policy address the expected frequency of lawyer-initiated updates on the case when there is no activity? | | | | • Colo. RPC 1.4 cmt. 6. | |
| • Does the policy ensure that clients receive copies of important correspondence sent and received? | | | | • Colo. RPC 1.4. | Peter Norman, *BCC'ing Your Clients: Not Just a Bad Idea, But Unethical?*, Law360.com, June 6, 2016. |
| Do you have a process to ensure continued compliance with client communication expectations or any written client communication policy by your associates and staff? | | | | • Staff compliance with client communication policies promotes your compliance with Colo. RPC 1.4. If you have a policy, consider whether you: (1) require staff to read and sign the policy, (2) regularly review it with staff, (3) assess compliance as part of performance reviews. | |

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| Do you assess your own compliance with client communications expectations set out for your practice or in a written communication policy? | | | | • You should assess your compliance with the policy to meet your professional obligations. | |
| Do you have a policy or system in place that confirms in writing any text or phone-based client communication? | | | | • The use of texting to communicate with clients has become more common but creates its own set of issues. For example, some mobile phone companies retain texts for only a short period of time. It is important to maintain a record of text communications independent of relying upon the ability to subpoena them. | |
| Do you have a policy or system to reduce to a saved writing any text or phone-based client communication, and if prudent, do you follow-up with the client in writing about any actions taken in reliance on that communication? | | | | • Archiving emails documents client instructions to the lawyer and lawyer instructions to the client. It also provides evidence of case updates sent to the client. *See* Colo. RPC 1.4. | |
| Do you have clients confirm their instructions to you in writing? | | | | • Confirming instructions in writing reduces confusion over whether the client authorized a course of action. Colo. RPC 1.2 & 1.4. | Mark Bassingthwaighte, *If You Failed to Document It, It Never Happened* (ALPS Corp.), Jan. 18, 2017. |
| **General Considerations for Communications with Clients** | | | | | |
| Do you communicate in a manner that is respectful of clients and their needs? | | | | • Colo. RPC 1.6<br>• Colo. RPC 8.4(g) | |
| Do you address language barriers, if any, in agreeing to represent a client? | | | | | |
| Do clients need to designate someone else with whom you can communicate on their behalf about the matter? | | | | • If the client grants permission for you to communicate with someone else on his/her behalf, you should discuss any limitations on | LAWYERS' PROFESSIONAL LIABILITY IN COLORADO, 2016 ED. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 2.7. |

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| | | | | those communications, potential confidentiality issues that may arise, and confirm in writing. | |
| Do you have a standard engagement letter that communicates:<br>• Expected fees?<br>• Billing policies?<br>• Services covered?<br>• How and when the relationship will be terminated?<br>• A disclaimer that no specific outcome is guaranteed?<br>• A section discussing the scope of representation that can be tailored to each unique matter? | | | | • Colo. RPC 1.5(b) requires attorneys to provide clients with a written "basis or rate of the fee and expenses" within a reasonable time of beginning the representation. The rule also requires communicating the scope of representation in writing. | LAWYERS' PROFESSIONAL LIABILITY IN COLORADO, 2016 ED. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 2.9<br>ALPS CORP., SAMPLE ENGAGEMENT LETTERS WITH OPTIONAL NOTICES.<br>CNA PROF'L COUNS., LAWYERS' TOOLKIT 4.0: A GUIDE TO MANAGING THE ATT'Y-CLIENT RELATIONSHIP, CNA (2018) (sample engagement letters and engagement clauses). |
| Do you have a termination of engagement letter? | | | | • A closing letter prevents confusion as to whether the attorney still represents the client if there is subsequent litigation. | LAWYERS' PROFESSIONAL LIABILITY IN COLORADO, 2016 ED. (Michael T. Mihm, ed., CLE in Colo., Inc.), Ex. 2A (Sample Closing Letter).<br>ALPS CORP., SAMPLE CLOSING LETTERS<br>CNA PROF'L COUNS., LAWYERS' TOOLKIT 4.0: A GUIDE TO MANAGING THE ATT'Y-CLIENT RELATIONSHIP, CNA (2018) (sample closing letter). |
| If a client refuses to follow your advice, do you document your recommendations that the client refused to follow, the reason(s) you made the recommendations, and your explanation to the client of the risks of not following the advice? | | | | • Colo. RPC 1.4(b) | Mark Bassingthwaighte, *If You Failed to Document It, It Never Happened* (ALPS Corp.), Jan. 18, 2017. |

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| Do you provide clients with regular cost updates at a frequency and in a form that suits their needs? | | | | | |
| Are clients informed of what is expected of them during the course of the representation? | | | | • Clients need to understand their obligations in the attorney-client relationship. This includes truthful information, timely communication and responses to lawyer contacts, and updated contact information. | OFFICE OF ATT'Y REG. COUNSEL, HIRING AND WORKING WITH AN ATTORNEY |
| **Communication with Prospective Clients** | | | | | |
| Are your advertisements, including your website, free of false or misleading statements? | | | | • Statements about you/the firm must be independently verifiable. *See* Colo. RPC 7.1 & 7.2 | BETTER BUSINESS BUREAU, CODE OF ADVERTISING |
| Do your advertisements contain statements likely to create an unjustified expectation of results? Remember using superlatives ("the most" or "the best") in advertising can be misleading and, therefore, such statements should be avoided. | | | | • Colo. RPC 7.1 & 7.2 | MINDING YOUR PS AND QS IN ADVERTISING AND SOLICITATION, OARC UPDATE, July 2021.<br><br>BETTER BUSINESS BUREAU, CODE OF ADVERTISING |
| **Client Feedback** | | | | | |
| Do you or your firm conduct client surveys, interview clients, or otherwise seek feedback to assess client satisfaction with the representation? | | | | • Client surveys and interviews allow you to identify what is working well for clients and what is not. They may also reveal areas where your practice can improve compliance with professional obligations. | *Best Practices: Solicit and Respond to Client Feedback*, FindLaw.com, Feb. 9, 2017.<br><br>Lynn Luong, *Law Firm Client Relations: How to Get Client Feedback That You Can Use*, AboveTheLaw.com, Nov. 9, 2016. |
| Do you or your firm have policies and procedures in place for addressing client complaints? | | | | • Addressing complaints improves attorney-client relations and may avoid professional responsibility or liability complaints. | |

## SELF-ASSESSMENT #3 — ENSURING THAT CONFIDENTIALITY REQUIREMENTS ARE MET

Colo. RPC 1.6 addresses confidentiality of client information and when disclosure is prohibited or permitted. Confidentiality applies not only to matters communicated in confidence by the client, but 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. [Cmt. 3 to Rule 1.6]. Confidentiality survives the conclusion of the attorney-client relationship.

Many issues regarding disclosure of confidential information are preventable; thus, written policies to educate lawyers and staff, and review of such policies through the following form, will aid in preventing such disclosures. If you do not have a written policy, you still must consider whether you are taking appropriate steps to protect confidences. Technology presents additional issues, which are not always as obvious, and therefore, while preventable, must first be identified as an area of concern.

| Questionnaire | Yes | No | N/A | Ethical Considerations | Other Resources |
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| **CONFIDENTIALITY POLICY FOR EMPLOYEES** | | | | • Misunderstanding the breadth of Colo. RPC 1.6.<br>• Inadvertent disclosure such as including the wrong parties in a confidential client email (*see also* Colo. RPC 4.4).<br>• Perils of utilizing social media to discuss work.<br>• Discussing "hypotheticals" with another lawyer where confidential information is provided (*see* Colo. RPC 1.6, cmt. 4).<br>• Posting responses to online reviews of the lawyer's services.<br>• Inadvertently providing other client files or client information when returning client files.<br>• Improperly disposing of or storing client information.<br>• Posting client names and case results on law firm website without client authorization. | Grace Giesel, *The Duty of Confidentiality and the Attorney-Client Privilege: Sorting Out the Concepts*, KY. BENCH & BAR MAG., Jan. 2015, republished by Lawyerist.com, March 19, 2015.<br><br>Allison Shields, *Prevent Confidentiality Leaks in Your Firm*, Lawyerist.com, March 5, 2010. |
| Do you have written policies for lawyers and support staff explaining duties to preserve client confidences? If not, you may want to develop written policies that include the criteria discussed below. If you do have policies, you may nonetheless wish to consider the following criteria to build practices that protect client confidences. | | | | | |
| • Do you present your policies regarding client confidences at new employee orientation? Do you have new employees sign that they have reviewed these policies? | | | | | |
| • Do such policies address office structure, such as public access to and visibility of client files, computer monitors, and files? | | | | Colo. RPC 1.6(c) | Colo. RPC 1.6, cmt. 18<br><br>Mark Bassingthwaighte, *Why Be Concerned About Law Firm Housekeeping Apathy?* (ALPS Corp.), May 13, 2014. |

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| • Do such policies address where confidential discussions within the office may occur? | | | | Colo. RPC 1.6(c) | |
| • Do such policies address the security of the law office, such as who has keys to the office, who is responsible for locking the office at night, and who has off-hours access? | | | | Colo. RPC 1.6(c) | |
| • Do such policies address file storage either onsite or offsite? | | | | Colo. RPC 1.6(c) | |
| • Do such policies address file disposal, such as using secure recycle or destruction of confidential materials? | | | | Colo. RPC 1.6(c) | |
| **GENERAL CONSIDERATIONS** | | | | | |
| Do you have procedures and practices for obtaining client consent to disclosure of information related to the representation? | | | | • Colo. RPC 1.6(a)<br>• Lawyers may want to memorialize a client's consent to disclosure so that both parties are clear as to the scope of authorization and when it was made. | Colo. RPC 1.6, cmt. 2 |
| If you work in a law firm, that you may disclose information about the representation to other attorneys and staff at the firm? | | | | If you work in a law firm, you may wish to consult other attorneys about a client matter. You should inform the client of your intention to consult other attorneys in the firm and obtain consent to do so. | Colo. RPC 1.6, cmt. 5 |
| Do your policies address avoiding disclosure of confidential information in a motion to withdraw? | | | | • A motion to withdraw that discusses the reason for the attorney's request to withdraw may reveal confidential information. It should be carefully drafted.<br>• Colo. RPC 1.16. | David Hudson, *When Withdrawing Over a Client's Failure to Pay, What Do You Say to Protect Confidentiality?*, ABA J., Dec. 19, 2016. |
| If you share information online related to the representation of a client, such as a brief or transcript, do you obtain client consent to share the information? | | | | Colo. RPC 1.6(a) | CBA Ethics Op. 130, Online Posting and Other Sharing of Materials Relating to the Representation of a Client (2017, rev'd 2018). |
| Have you developed language you can use to respond to any negative online reviews your practice receives that is professional and does not disclose confidential information? | | | | Colo. RPC 1.6(a) and (c) | CBA Ethics Op. 136, A Lawyer's Response to a Client's Online Public Commentary Concerning the Lawyer (2019). |

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| | | | | | Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 496, Responding to Online Criticism (2021). |
| **INADVERTENT DISCLOSURE** | | | | | |
| Have you considered implementing a policy designed to avoid inadvertent disclosures? | | | | Colo. RPC 1.6, cmt. 18. "The unauthorized access to, or inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation . . . if the lawyer has made reasonable efforts to prevent the access or disclosure." | |
| Do you have a policy regarding what actions to take following notification of an inadvertent disclosure? Does this include a policy to notify and explain such disclosure to the client? | | | | Colo. RPC 1.6(c) | CBA Ethics Op. 108: Inadvertent Disclosure of Privileged or Confidential Documents<br><br>Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 06-440: *Unsolicited Receipt of Privileged or Confidential Materials* (2006).<br><br>*See also* Colo. RPC 4.4. |
| Does the practitioner/firm have written policies regarding technology and avoiding inadvertent disclosure of confidential information? | | | | • Colo. RPC 1.6(c)<br>• To promote compliance with the Rules of Professional Conduct, you should review these policies with staff. | CNA, SMART CYBER PRACTICES IN LAW FIRMS (2016).<br><br>David G. Ries, *Cybersecurity for Attorneys: Addressing the Legal and Ethical Duties*, L. PRACTICE TODAY, Nov. 14, 2019. |
| Is it your practice to 'scrub' metadata in documents before transmitting them to opposing parties or third parties? | | | | | CBA Ethics Op. 119 Disclosure, Review and Use of Metadata<br><br>Standing Comm. On Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 06-442 Review and Use of Metadata (2006). |
| **OUTSIDE VENDORS** | | | | | |

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| Do you have a confidentiality policy for vendors, such as cleaning staff, contract staff and computer maintenance vendors? | | | | Outside vendors could come into contact with confidential information as part of their services. Attorneys should consider confidentiality agreements with these vendors. | |
| **SHARED OFFICE SPACE / DEVICES** | | | | | |
| If you share space with another practitioner/firm, are there policies in place to segregate files and other confidential client information? | | | | • Colo. RPC 1.6(a): "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent . . . ."<br>• Colo. RPC 1.6, cmt. 18. | CBA Ethics Op. 89, Office Sharing and Virtual Offices (2018 rev.).<br><br>Kathryn Thompson, *Keeping Your Office Sharing Arrangements with Other Lawyers Squeaky Clean Under the Ethics Rules*, ABA CTR. FOR PROF'L RESP., May 2007. |
| Are you careful to avoid storing client confidential information on a device (computer, laptop, tablet) that others may use? For example, do you store confidential client information on a home computer used by other family members? | | | | | TBA Law Blog, *Is Your Client Information Safe?*, TENN. BAR ASS'N (2016). |
| **SOCIAL MEDIA** | | | | | |
| Do you or your firm have a social media presence? | | | | | Nick Graf, *Social Media Risks for Lawyers*, CNA, Sept. 8, 2016. |
| If so, have you or your firm designated a person to update social media? | | | | | |
| Have you designated a lawyer to review and approve content and updates to ensure no confidential information is posted? | | | | Colo. RPC 1.6 | Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 480: *Confidentiality Obligations for Lawyer Blogging and Other Commentary* (2018). |
| Do you or your firm have written policies regarding employee use of social media? If so, do such policies address what information can be posted as it relates to the firm? | | | | Colo. RPC 1.6 | |
| **EMAIL** | | | | Colo. RPC 1.6, cmt. 19: "When transmitting a communication that includes information related to the representation of a client, the lawyer must take reasonable precautions to prevent the | Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Formal Op. 477R: *Securing Communication of Protected Client Information* (2017). |
| If you use email to communicate with clients, do you advise clients regarding the potential risks of email communication? | | | | | |

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| Have you considered whether encryption should be used to protect confidential information sent via email? | | | | information from coming into the hands of unintended recipients." | Robert Barrer, *Ethical Implications and Best Practices for Use of Email*, N. Y. LEGAL ETHICS REPORTER, Mar. 1, 2015.<br><br>Judith Rosenblum, *An Ethical Practice In Today's Electronic World*, THE DOCKET, June 23, 2014.<br><br>Holly Urban, *Prioritizing Cybersecurity to Protect Client Information from Data Breaches*, L. TECH. TODAY, Jan. 3, 2019. |

## SELF-ASSESSMENT #4 — AVOIDING CONFLICTS OF INTEREST

Why should you care about conflicts? Consider:

*Fee forfeiture
*Malpractice claims
*Disqualification from litigation
*Discipline

| Questionnaire | Yes | No | N/A | Ethical Implications | Other Resources |
|---|---|---|---|---|---|
| **Do you have a process by which you identify conflicts?** | | | | Colo. RPC 1.7 cmt. 2 | |
| Have you clearly identified who is, and who is not, the client – particularly for clients who are business entities? | | | | Colo. RPC 1.7 & cmts. 2, 27, 34; Colo. RPC 1.13(a) & cmts. 1-2, 10-11 | CBA Formal Ethics Op. 120 |
| Do you have a system for detecting conflicts? Does it include: | | | | Colo. RPC 1.7 cmt. 3; Colo. RPC 5.1(a) & cmt. 2 | Mark Bassingthwaighte, *Watch Out for These Common Conflict of Interest Traps* (ALPS Corp.), Mar. 3, 2015. |
| • Names of clients & matters | | | | | |
| • Names of adverse parties | | | | | |
| • Names of related parties (witnesses, experts, insurance carriers, family members, co-counsel, opposing counsel, related entities, owners of business entities) | | | | | Josh Camson, *Making a List: The Conflicts Check*, Lawyerist.com, Oct. 8, 2013. |
| • Names of potential/rejected clients & matters | | | | | |
| • Dates matters were active/closed/rejected | | | | | |
| • Names of timekeepers who worked on particular matters | | | | | |
| Does an attorney (as opposed to a staff person) review each new matter to identify conflicts? | | | | A thorough conflict detection system includes both attorney and staff review of new matters. | |
| Is the conflicts check updated regularly as new parties are identified and new names are added to the system? | | | | Colo. RPC 1.7 cmts. 4, 5 | |

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| Does the firm use engagement letters and disengagement letters appropriately? | | | | Engagement and disengagement letters clarify whether an attorney-client relationship exists and can help identify potential conflicts of interest with current and former clients. | Mark Bassingthwaighte, *Watch Out for These Common Conflict of Interest Traps* (ALPS Corp.), Mar. 3, 2015.<br><br>Mark Bassingthwaighte, *Don't Kiss Off the Importance of Closure Letters* (ALPS Corp.), Jan. 26, 2015. |
| Are you engaged in any of the following common conflict situations? | | | | | |
| • Being adverse to a current client in any matter, however unrelated | | | | Colo. RPC 1.7(a)(1) & cmt. 6-7 | LAWYERS' PROFESSIONAL LIABILITY IN COLO., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.5.1. |
| • Being adverse to a former client in a substantially related matter | | | | Colo. RPC 1.9(a) & cmts. 1-3 | Lawyers' Professional Liability in Colo., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.7. |
| • Representing multiple clients in a single matter | | | | Colo. RPC 1.7(a)(2) & cmts. 23, 27-33; Colo. RPC 1.8(g) & cmt. 13; Colo. RPC 1.13(g) & cmt. 12 | CBA Formal Ethics Ops. 58, 68, 134, 135<br><br>Mark Bassingthwaighte, *You Don't Get It Both Ways, the Downside of Joint Representation*, VA. LAW., Oct. 2015. |
| • Conflicts resulting from dealings with prospective clients that do not mature into engagements | | | | Colo. RPC 1.18 | |
| • Personal interest conflicts, including but not limited to: business transactions with clients; gifts from clients; providing financial assistance to clients; sexual relationships with clients? | | | | Colo. RPC 1.7(a)(2) & cmts. 8, 10; Colo. RPC 1.8 and all related comments | CBA Formal Ethics Ops. 82, 110 |
| Do any of your cases involve payment of fees by a third party, including insurance carriers? | | | | Colo. RPC 1.7(a)(2) & cmt. 13; Colo. RPC 1.8(f) & cmts. 11-12 | CBA Formal Ethics Ops. 43, 91, 107, 129 |
| Are you working on any cases in which you might be called as a witness? | | | | Colo. RPC 3.7 & cmts. | |
| Are you engaged in any matter in which you might have a positional conflict? | | | | Colo. RPC 1.7 cmt. 24 | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.9. |
| Have you considered conflicts that might arise from your use of contract attorneys, outsourcing, or office-sharing? | | | | Colo. RPC 1.9(b) & cmts. 4-9; Colo. RPC 1.10(b), (e) & cmts. 4-5 | CBA Formal Ethics Ops. 13, 89, 105, 116, 121 |

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| Are you engaged in any representation in which conflicts are imputed to you? | | | | Colo. RPC 1.10(a) & cmts. 1-2; *see also* Colo. RPC 1.8(k) & cmt. 20 | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.11. |
| **If you have a matter involving a conflict, or potential conflict, is the conflict consentable?** | | | | Colo. RPC 1.7, cmts. 2, 14-15; Colo. RPC 1.9(a) & cmt. 9; Colo. RPC 1.10(c) & cmt. 6 | |
| Is the conflict a type that is absolutely non-consentable: | | | | | |
| • Representing two clients on opposing sides in a litigation matter | | | | Colo. RPC 1.7(b)(3) & cmts. 17, 23 | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.10.3. |
| • Representations prohibited by law | | | | Colo. RPC 1.7(b)(2) & cmt. 16 | |
| • Ordinarily, representing criminal co-defendants | | | | Colo. RPC 1.7 cmt. 23 | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.5.4. |
| If not, in your judgment: | | | | | |
| • Do you "reasonably believe[] that [you] will be able to provide competent and diligent representation" despite the conflict? [Colo. RPC 1.7(b)(1)] | | | | Colo. RPC 1.7(b)(1) & cmt. 15 | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.12. |
| • Have you given serious consideration to what could go wrong due to the conflict? | | | | | |
| • Have you resisted the natural desire to accept new work, thus, the natural inclination to minimize conflicts? | | | | | |
| **If you have a conflict, but it is consentable, have you obtained valid consent?** | | | | Colo. RPC 1.7 cmt. 2 | |
| Have you obtained "informed" consent, in which the prospective client has agreed to the conflict "after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct"? | | | | Colo. RPC 1.7(b)(4) & cmt. 18 and 19; Colo. RPC 1.9(a); Colo. RPC 1.10(e); Colo. RPC 1.7 cmts. 22, 30-31 | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), §§ 4.10.1 – 4.10.4. |
| • Does the prospective client have the capacity to consent? | | | | | |
| • Were you able to provide adequate information to obtain an informed consent while complying with Colo. RPC 1.6? | | | | Colo. RPC 1.7 cmts. 18 and 19 | |

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| • In dual representation, have you explained the effect of the consent on the attorney-client privilege and confidentiality of client information? | | | | Colo. RPC 1.7 cmts. 29-33 | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 4.5.3. |
| • Was the consent "confirmed in writing"? | | | | Colo. RPC 1.7(b)(4) & cmt. 20 | |
| **If you have a conflict, but it is consentable, and you have obtained consent, do you need to erect a confidentiality wall?** | | | | Colo. RPC 1.10(e); Colo. RPC 1.11(b) | |
| **Are you continuing to assess potential conflicts as the representation progresses?** | | | | | |
| Are there new circumstances, including: a change in the fee structure; your acquisition of an interest in the client's property; new parties, witnesses, counsel, etc.; or divergence of interests in multi-party representation, that create a new conflict that did not exist at the start? | | | | Colo. RPC 1.7 cmts. 4, 5 | |
| • Is the new conflict consentable?<br>• If it is consentable, have you obtained informed consent? | | | | If the new conflict is consentable, you still need to consider informed consent. If it is non-consentable, you should take steps to withdraw. | |
| If the new conflict is not consentable or consent cannot be obtained: | | | | | |
| • Have you taken steps to withdraw? | | | | Colo. RPC 1.7 cmt. 4; Colo. RPC 1.16(a)(1) & cmt. [2] | |
| • In a litigation matter, have you obtained court approval? | | | | Colo. RPC 1.16(c) & cmt. 3 | |

## SELF-ASSESSMENT #5 — FILE MANAGEMENT, SECURITY, AND RETENTION

How you organize, manage, and secure client files directly impacts your efficiency and ability to get results for a client. This matters whether it is preparing for trial or timely responding to a client inquiry. Moreover, files often contain confidential client information, critical records, and client-lawyer communications about the objectives of the representation. You need to consider best practices for file management, security, and retention as part of a proactive assessment of your firm's ethical infrastructure. This is particularly so in today's digital age where client files are stored and portions shared and transmitted electronically.

| Questionnaire | Yes | No | N/A | Ethical Considerations | Other Resources |
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| **Client Files** | | | | | |
| Do you have a standardized filing system for all client files? | | | | "A lawyer's management of her records must protect the client's interests . . . must protect the client's confidences and secrets, and must be governed by the lawyer's professional judgment . . . ." George C. Cunningham & John C. Montana, *The Lawyer's Guide to Records Management and Retention*, AM. BAR ASS'N (2006) at 39 | *Top 5 Reasons a Document Management Program Is Critical to Law Practice*, FindLaw.com, Feb. 10, 2017. |
| Do you have a file-naming convention for paper and electronic files? | | | | "In the absence of a well-defined and well-executed structure [for file naming], poorly named files . . . are effectively lost." Cunningham and Montana, *supra* at 172. | Best Practices for File Naming Conventions in Law Practice, Mass. Law Office Mgmt. Assistance Program, Aug. 13, 2019.<br><br>Sam Glover, *How to Organize Paperless Client Files*, Lawyerist.com, Nov. 25, 2013. |
| Do you have a policy to ensure electronic and paper copies of files are consistent? | | | | Organized file management comports with an attorney's duty to safeguard client property. | |
| Do you have a policy (or is it your practice) to ensure all email or text communication with your client is copied to your paper/electronic files? | | | | Copying communications to the file demonstrates your adherence to Colo. RPC Rule 1.4 in communicating with your clients. | Beverly Michaelis, *Documenting Email as Part of a Client's File, Part I*, OR. STATE BAR BULLETIN, April 2013. |

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| Do you have a policy for handling originals received from clients? | | | | A log should kept that complies with Colo. RPC 1.15A&D and 1.16A whenever an attorney receives property from a client. | |
| Do you log or document receipt of original documents from a client? | | | | Documenting receipt of original documents is consistent with an attorney's fiduciary obligations under Colo. RPC 1.15A, D & 1.16A. | |
| Do you scan and return originals or retain them? | | | | If you retain originals, you should consider a policy for their eventual return to the client. Colo. RPC 1.15A & D; and Rule 1.16A. | |
| Do you have a file-retention policy that complies with Colo. RPC 1.16A? | | | | Written policies and fee agreements should contain terms that comply with the notice requirements of Colo. RPC 1.16A. | *See* Comment to Colo. RPC 1.16A |
| Does your policy also account for your obligations under C.R.C.P. 121, § 1-26(7)? | | | | Attorneys must maintain a signed original for 2 years for all E-filed documents per C.R.C.P. 121, § 1-26(7). | |
| **Maintaining File Security** | | | | | |
| Do you have a system to track or limit access to files by members of your staff? | | | | Tracking or limiting access protects client confidentiality. | Christopher Anderson & Dan Barahona, *When "Secure Enough" Isn't Enough: A Law Firm Guide to Protecting the Confidentiality of Client Files* (LexisNexis), 2013, at p. 13. |
| Is your office secure?<br>○ Are your paper files kept in a secured cabinet or secured within your office?<br>○ Are they protected from flood/fire/vermin? | | | | | |

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| Does your firm have adequate data back-up procedures for all firm and all client data? | | | | Data back-up is essential to avoiding losing a file or your work product in the event of a cyber-security breach, fires, flood, etc. | |
| Do you have encryption policies in place to address transmission via email of medical records, financial records, or other highly confidential materials? | | | | • Colo. RPC 1.6(c)<br>• Colo. RPC 1.6, cmt. 19 | Standing Comm. on Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 11-459 Duty to Protect the Confidentiality of E-mail Communications with One's Client (2011).<br><br>Holly Urban, *Prioritizing Cybersecurity to Protect Client Information from Data Breaches*, L. TECH. TODAY, Jan. 3, 2019. |
| Do you have the time and expertise to oversee technology, including security, in order to properly maintain files? | | | | • "It is the responsibility of the lawyer delivering legal services online—not the hosting company, the software provider . . . or any other entity—to ensure that . . . the practice complies with the high ethical standards required by the lawyer's law license." Stephanie L. Kimbro, *Virtual Law Practice*, AM. BAR ASS'N, 2010, p. 133.<br>• If you do not have a designated technology compliance officer, you may consider hiring someone to assist with this task. | Kendra Albert, *Computer Security Tools & Concepts for Lawyers*, 20 GREEN BAG 2D 127 (2017).<br><br>Mary Ellen Egan, *Cyberthreats 101: The Biggest Computer Crime Risks Lawyers Face*, ABA J., Mar. 1, 2018. |
| Do you have a training system in place for employees and staff with respect to file systems, computer usage, email, and internet usage? | | | | • Staff training should emphasize that proper file management is critical to protecting client confidences and property. | |
| **Network / Hardware Security** | | | | | |
| Do you have adequate physical security protection for the computer hardware used in the operation of your firm's network? | | | | • Secure hardware reduces the chance that confidential information stored or accessed electronically will be compromised.<br>• Colo. RPC 1.6(c) | |

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| Do you enforce software updates, including updating patches and antivirus software? | | | | Client information and files stored electronically receive better protection from viruses and potential cybersecurity breaches through regular software updates. | Holly Urban, *Prioritizing Cybersecurity to Protect Client Information from Data Breaches*, L. TECH. TODAY, Jan. 3, 2019. |
| Do you utilize a wireless computer network or "open" or "wi-fi" networks not controlled by your firm? If so, have you taken adequate steps to protect the confidentiality of client information through those networks? | | | | Client information that you transmit or access through open networks could be vulnerable to inadvertent disclosure. | |
| Do you make sure your own firm internet is secure through the use of an encrypted in-house wi-fi and encrypted guest wi-fi network? | | | | Allowing guests to freely use your internal wi-fi network could compromise client confidences. | |
| Do you use smart phones or other portable digital devices in your practice? If so, are those devices adequately configured to protect from a loss or breach the confidentiality of information stored on or accessible through the phone or other digital device (such as USB drives, portable storage devices)? | | | | Colo. RPC 1.6(c) | Pem Guerry, *Why Remote Security Is a Must*, L. TECH. TODAY, Jan. 12, 2017. |
| Do you or your firm conduct periodic cyber-security testing? | | | | Periodic testing, such as conducting vulnerability assessments, identifies cyber security procedures that need improvement. | Tom Kulik, *Cybersecurity, Confidentiality, and Your Ethical Obligations to Your Clients (Part II)*, ABOVE THE LAW, Nov. 26, 2018.<br><br>Sherri Davidoff, *Law Firm Cybersecurity Audits: Getting to Good*, L. PRACTICE TODAY, Feb. 12, 2016. |

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| Is your network configured to log data in the event of a cyber-security breach? | | | | | Standing Comm. On Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 483 Lawyers' Obligations After an Electronic Data Breach or Cyberattack (2018).<br><br>Ed Tittel & Earl Follis, *How Better Log Monitoring Can Prevent Data Breaches*, CIO.com, Feb. 24, 2015. |
| **Cloud Services** | | | | | |
| If you use cloud services, where do the cloud servers reside? In the U.S., or elsewhere? If elsewhere, have you considered how the laws of that jurisdiction impact confidentiality? | | | | | Jason Tashea, *Lawyers Have an Ethical Duty to Safeguard Confidential Information in the Cloud*, ABA J., April 2018.<br><br>Sharon Nelson & John Simek, *Selecting a Law Firm Cloud Provider*, MICH. BAR J., Mar. 2014. |
| Does the contract with the cloud provider address confidentiality of the information? Does it address whether the information will remain confidential should the contract end? | | | | | ILLINOIS STATE BAR ASS'N PROFESSIONAL CONDUCT ADVISORY OPINION NO. 16-06 (Oct. 2016). |
| Does your cloud service have regular and adequate data backup policies? | | | | | |
| Is data in the cloud encrypted and do you and your firm have sole control of the encryption key? | | | | | Heidi Alexander, *How to Vet Cloud Technology Providers*, MASS. L. OFF. MGMT. PROGRAM, 2018.<br><br>Linda Musthaler, *Encrypted Data In the Cloud? Be Sure to Control Your Own Keys*, NETWORK WORLD, Sept. 5, 2014. |

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| Do you advise clients of the risk that client files stored in the cloud could be hacked and do you obtain client consent to cloud file storage? | | | | | Judith Rosenblum, *Ethical Dilemmas or A No Good, Terrible, Bad Day*, THE DOCKET, Oct. 26, 2014. |
| **Disaster Plan / Continuity of Operations** | | | | | |
| Do you have a disaster recovery plan in place for paper files and electronic files? | | | | | Standing Comm. On Ethics & Prof'l Resp., Am. Bar Ass'n, Ethics Op. 482 Ethical Obligations Related to Disasters (2018). |
| Do you or your firm have a continuity of operations plan so that the firm may continue to operate in the event of a natural disaster or security breach? | | | | A natural disaster or technological breach presents multi-faceted ethical issues related to confidentiality and diligence. | SURVIVING A DISASTER: A LAWYER'S GUIDE TO DISASTER PLANNING, ABA SPECIAL COMM. ON DISASTER RESPONSE AND PREPAREDNESS, AUG. 2011. |

## SELF-ASSESSMENT #6 — MANAGING THE LAW FIRM/LEGAL ENTITY AND STAFF APPROPRIATELY

Responsible office management is indispensable to competent, ethical representation. It also pays dividends in the form of client satisfaction and repeat business and referrals. This self-assessment examines office and staff management procedures to help attorneys build an ethical infrastructure.

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| **Firm Structure** | | | | • Managing risk starts with the law firm's ownership. You as the sole proprietor are the one who will benefit most from anticipating problems and reducing mistakes. It is up to the owner to shape the firm's culture in ways that promote the firm's long term profitability.<br>• It is consistent with an attorney's fiduciary responsibilities to obtain insurance coverage up to the full amount of the possible harm, not including the cost of defense.<br>• The limitations to liability provided by C.R.C.P. 265(a)(2) and 265(a)(3), if the firm has professional liability insurance. | C.R.C.P. 265(a) and (e) (describing how a licensed attorney can practice law through a professional company).<br><br>Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), §6.2 (discussing available forms of organization for the practice of law). |
| **Sole Practitioner** | | | | | |
| • Do you practice as a sole proprietor or through an entity (*e.g.*, a professional corporation or a single-member professional limited liability company)? | | | | | |
| • Have you considered the advantages that practicing through an entity can provide, particularly with regard to liability? | | | | | |
| **Firm Structure** | | | | • Good law office management – which includes managing risk – results in money for the firm. The partners, shareholders, or members are the ones who will benefit most from anticipating problems and reducing mistakes. It is up to the owners to shape the firm's culture in ways that promote long-term profitability.<br>• The limitations to liability provided by C.R.C.P. 265(c)(2) and 265(a)(3), if the firm has professional liability insurance. | C.R.C.P. 265(a) and (e) (describing how licensed attorneys can practice law through a professional company.<br><br>Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), §6.2 (discussing available forms of organization for the practice of law). |
| **Small Firm (2-5 attorneys)** | | | | | |
| • Is the structure of the firm memorialized in a written agreement which forms and governs the law firm, *e.g.*, partnership agreement, corporate bylaws, articles of organization? | | | | | |
| • Are these governing documents reviewed at least annually by the partners, shareholders, or members? | | | | | |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| • Do you revise them to reflect changes in ownership?<br>• Is the firm a professional service company? | | | | | |
| **Compensation**<br>**Sole Practitioner**<br>• Is your net income enough to give you time apart from practicing law to handle management of risks to the practice? | | | | • Although maintaining the appropriate balance between earning fees and managing risk can be challenging, the long-term detriment of an unmanaged risk can far outweigh short-term income from fees.<br>• Colo. RPC 1.5(a) (regarding the reasonableness of attorney's fees). | |
| **Compensation**<br>**Small Firm (2-5 attorneys)**<br>• Are partners, shareholders or members compensated in a manner conducive to cooperation with and participation in management of risks to the firm? | | | | • Compensation packages that encourage taking on questionable clients in order to maximize billable hours in the near term may later result in unpaid accounts receivable or, even worse, a lawsuit.<br>• When conducting client intake, the desire of the lawyer introducing the client to increase his or her book of business must be balanced against the best interests of the firm as a whole.<br>• Compensation should be structured so that the firm can say "no" to an unsuitable prospective client. | |
| **Insurance and Compliance Counsel**<br>**Sole Practitioner**<br>• Do you have malpractice insurance?<br>• Have you put in place the risk management policies required or recommended by the insurer? | | | | • The policies discussed in this part #6 also are useful to diminish risk.<br>• It is consistent with an attorney's fiduciary responsibilities to obtain insurance coverage up to the full amount of the possible harm, not including the cost of defense. | *See* C.R.C.P. 265(a)(3) for the minimum requirements for insurance; the 2017 attorney registration form will include a list of malpractice insurance carriers.<br><br>COLO. SUP. CT., OFF. OF ATT'Y REG. COUNS., A WORD ABOUT PROFESSIONAL LIABILITY (MALPRACTICE) INSURANCE.<br><br>AM. BAR. ASS'N, MATERIALS FOR PURCHASERS OF PROFESSIONAL LIABILITY INSURANCE |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| | | | | | Alec Rothrock, *Check Your Policy: Disciplinary Defense Insurance "Coverage,"* THE DOCKET, Nov. 23, 2015. |
| • Do you have cyber insurance for protection in the event of a cyberattack? | | | | • Obtaining coverage to protect against potential cyberattacks and any associated loss to your firm or clients is consistent with fiduciary responsibilities. | |
| **Insurance and Compliance Counsel** | | | | • To protect the firm from problems, it may make sense to appoint one of the owners as "Compliance Counsel," in charge of risk management. This lawyer must be given the authority to implement, maintain, monitor and improve policies and procedures that reduce risk, e.g. a comprehensive conflicts checking system. Compliance Counsel should be given enough time in his or her schedule to accomplish the necessary tasks and compensation for the hours spent on them.<br>• Compliance Counsel may also be a resource for ensuring attorneys remain compliant with CLE requirements.<br>• Colo. RPC 5.1 and 5.3 | *See* C.R.C.P. 265(a)(3) for the minimum requirements for insurance; the 2017 attorney registration form will include a list of malpractice insurance carriers.<br><br>MATERIALS FOR PURCHASERS OF PROF'L LIAB. INS., AM. BAR. ASS'N. |
| **Small Firm (2-5 attorneys)** | | | | | |
| • Has the firm appointed one of its lawyers to represent the firm in litigation, obtain malpractice insurance, promote professional responsibility and guide and monitor the implementation of risk management policies ("Compliance Counsel")? | | | | | |
| • Does the firm have cyber insurance for protection in the event of a cyber attack? | | | | • Obtaining coverage to protect against potential cyberattacks and any associated loss to the firm or clients is consistent with an attorney's fiduciary responsibilities. | |
| **Business Manual** | | | | | |
| **Sole Practitioner**<br>• Do you have a manual of risk management policies? | | | | • A written manual of firm policies enables you and your staff to know of and put into action preventative and curative steps for risk management. You should ensure that each employee receives a copy of the manual. New hires should be trained to follow each procedure | *See* Sole Practitioner Business Manual and Risk Management Checklist. |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
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| | | | | 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. | |
| **Small Firm (2-5 attorneys)**<br>• Does the firm have written risk management policies? | | | | • A written manual of firm 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. Each employee should receive a copy of the manual. New hires should be trained to follow each procedure that applies to that person's position. In addition, all staff should attend a regular "refresher course" on policies listed in the manual. The policies should become an organic part of the firm's operation. | *See* Small Firm Business Manual and Risk Management Checklist. |
| **Reporting** | | | | • Risk cannot be reduced unless problems are timely reported. The sooner problems are disclosed, the more likely they are to be resolved without serious adverse consequences. The firm's culture must foster an appreciation that each employee owes his or her loyalty to the firm's clients and the firm's reputation, not to an individual who might prefer to hide a mistake. You must assure employees that reporting problems is appreciated and will not result in retaliation.<br>• These areas of potential concern implicate multiple Rules of Professional Conduct including, Colo. RPC 1.1, Colo. RPC 1.3, Colo. RPC 1.4, Colo. RPC 1.5(a), Colo. RPC 3.4(c), Colo. RPC 5.5, Colo. RPC 8.3, Colo. RPC 8.1.<br>• Additionally, C.R.C.P. 228 [unauthorized practice of law] and C.R.C.P. 251.23 [disability inactive status].<br>• *People v. Adams*, P.3d 256, 265 (Colo. 2010). | Colorado Bar Association Ethics Hotline (303) 860-1115 |
| **Sole Practitioner** | | | | | |
| Are your staff aware of the requirement to timely report to you:<br>• Ethics violations?<br>• Court-ordered sanctions for litigation misconduct?<br>• Regulatory investigations?<br>• Client allegations of malpractice or wrongdoing by firm lawyers or staff?<br>• Billing disputes?<br>• Alcohol, drug, or other employee problems?<br>• Over-charging expenses to clients?<br>• Incompetence? | | | | | |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| • Unauthorized practice of law?<br>• Harassment?<br>• Any other matters that impede client satisfaction? | | | | | |
| Are staff supported in making such reports? | | | | • If feasible, allowing such reports to be made confidentially may encourage greater reporting. | |
| **Reporting** | | | | • Risk cannot be reduced unless problems are timely reported. The sooner problems are disclosed, the more likely they are to be resolved without serious adverse consequences. The firm's culture must foster an appreciation that each employee owes his or her loyalty to the firm's clients and the firm's reputation, not to an individual who might prefer to hide a mistake. You must assure employees that reporting problems is appreciated and will not result in retaliation. | Colorado Bar Association Ethics Hotline (303) 860-1115 |
| **Small Firm (2-5 attorneys)** | | | | | |
| Are the lawyers and staff aware of the requirement to timely report to the Compliance Counsel:<br>• Ethics violations?<br>• Court-ordered sanctions for litigation misconduct?<br>• Regulatory investigations?<br>• Client allegations of malpractice or wrongdoing by firm lawyers or staff?<br>• Billing disputes?<br>• Alcohol, drug, or other employee problems?<br>• Over-charging expenses to clients?<br>• Incompetence?<br>• Unauthorized practice of law?<br>• Harassment?<br>• Any other matters that impede client satisfaction? | | | | | |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| Are lawyers and staff supported in making such reports? | | | | • If feasible, allowing such reports to be made confidentially may encourage greater reporting. | |
| **Supervision** | | | | | |
| **Sole Practitioner** | | | | | |
| • Do you conduct performance reviews of staff? | | | | • Colo. RPC 5.3 mandates supervision of non-lawyer staff to ensure professionalism. Ongoing monitoring and mentoring of employees also makes sense from a business standpoint. Clients are attracted to and retained by success. Successful lawyering requires proficiency and efficiency. To achieve these goals, managers must require that employees perform well. The employment of those who cannot meet the firm standards should be terminated. Performance reviews conducted on at least an annual basis are critical to reinforce professionalism and efficiency. | Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), §§ 1.2.5; 1.2.6 |
| • Do you have procedures in place to ensure that the conduct of your staff conforms to your professional obligations? | | | | • Staff need written direction and verbal explanation as to what conduct the firm requires.<br>• Colo. RPC 5.3<br>• You may wish to develop a handbook that addresses the professional obligations of all staff. | *See* Sole Practitioner Staff Procedures Checklist. |
| • Do you regularly review each client matter to check that you and staff have timely performed tasks? | | | | • Missed deadlines and work not completed are among the most common ethics complaints.<br>• Colo. RPC 1.3<br>• Colo. RPC 1.4<br>• Colo. RPC 1.15A; 1.15B | These checks may include:<br>• Checking to see that pleadings have been filed;<br>• Client inquiries responded to;<br>• Fund deposited in trust;<br>• Deadlines calendared.<br>You may also consider regular meetings with each staff member regarding ongoing assignments. |
| **Supervision** | | | | | |
| **Small Firm (2-5 attorneys)** | | | | | |
| • Does the firm conduct regular performance reviews of associates and staff? | | | | • Colo. RPC 5.3 mandates supervision of attorneys and non-lawyer staff to ensure professionalism. Ongoing monitoring and mentoring of attorneys and employees also makes sense from a business | LAWYERS' PROFESSIONAL LIABILITY IN COLO., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 1.3.1 |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| | | | | standpoint. Clients are attracted to and retained by success. Successful lawyering requires proficiency and efficiency. To achieve these goals, managers must require that attorneys and employees perform well. The employment of those who cannot meet the firm standards should be terminated. | |
| • Does the firm have a mentoring program for its associates? | | | | • Mentoring associates improves their performance and, as a result, improves firm performance | LAWYERS' PROFESSIONAL LIABILITY IN COLO., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 1.3.1 |
| • Do you have procedures in place to insure that the conduct of your staff conforms to your professional obligations? | | | | • Staff need written direction and verbal explanation as to what conduct the firm requires<br>• Colo. RPC 5.3<br>• You may wish to develop a handbook that addresses the professional obligations of all staff. | *See* Small Firm Staff Procedures Checklist. |
| **Hiring** | | | | | |
| **Sole Practitioner** | | | | | |
| • Do you perform due diligence before hiring new staff? | | | | • You must be careful when hiring to avoid employees who will create problems down the road. In addition to the interview, you should thoroughly investigate the applicant's background, particularly problems during recent employment. You may also want to verify academic degrees and conduct a background check. | |
| • Does this include checking the list of persons and businesses ordered to stop engaging in the unauthorized practice of law on the Supreme Court website? | | | | • Colo. RPC 5.5(a) | Colorado Supreme Court, List of persons ordered to stop engaging in the unauthorized practice of law. |
| **Hiring** | | | | | |
| **Small Firm (2-5 attorneys)** | | | | | |
| • Does the firm undertake due diligence before | | | | • The firm must be careful when hiring to avoid employees who could create problems down the | |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| hiring new associates and staff? | | | | road. In addition to the interview, the hiring manager should thoroughly investigate the applicant's background, particularly problems during recent employment, including professional liability claims. If a lawyer is transferring from another firm, the owners, or Compliance Counsel, if one is appointed, should troubleshoot the new lawyer's cases. Additionally, Compliance Counsel may consider verifying academic history. | |
| • Does this include checking the list of persons and businesses the Supreme Court has ordered to stop engaging in the unauthorized practice of law? | | | | • Colo. RPC 5.5(a) | Colorado Supreme Court, List of persons ordered to stop engaging in the unauthorized practice of law. |
| • Are new hires oriented regarding the firm's risk management policies? | | | | • Small firms should consider educating new employees about risk management to avoid situations where a new employee does not follow the policies and an ethical concern arises. | |
| **Termination of Staff** | | | | | |
| **Sole Practitioner** | | | | | |
| • Do you take steps when a staff member is terminated or leaves the firm to ensure client files remain confidential? | | | | • If a staff member must be terminated, your priority should be maintaining security and confidentiality. This means return of all firm property and cutoff from all access. This may entail changing passwords, and introducing clients to new staff who will be working on the case. | *See* Employee Resignation/Termination Checklist. |
| **Termination of Staff** | | | | | |
| **Small Firm (2-5 attorneys)** | | | | | |
| • When a lawyer, paralegal or staff member is terminated or leaves the firm, does the firm take steps to insure | | | | • If a lawyer or staff member must be terminated, your priority should be maintaining security and confidentiality. This means return of all firm property and cutoff from all access. If the firm will be continuing as counsel for the departing | *See* Employee Resignation/Termination Checklist. |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| confidentiality of client matters? | | | | lawyer's clients, transition of the files should include introduction of the clients to the new lawyer assigned to their cases. | |
| **Accepting New Engagements** | | | | | |
| **Sole Practitioner** | | | | | |
| • Do you undertake due diligence before agreeing to represent new clients or taking on an additional matter for an existing client? This includes assessing your competency and the client's capacity to pay. | | | | • Clients who are financially weak may not be appropriate to take on, unless you can afford *pro bono* representation. | *See* Sole Practitioner Client Engagement Checklist.<br><br>Linda Oligschlaeger, *A Few Tips on How to Collect Your Fees*, THE MO. BAR.<br><br>*See* Self-Assessment #1, Developing Competent Practices. |
| **Accepting New Engagements** | | | | | |
| **Small Firm (2-5 attorneys)** | | | | | |
| • Does the firm undertake due diligence before agreeing to represent new clients or taking on additional matters for a client, including considering competency and the client's capacity to pay? | | | | • Clients who are financially weak may not be appropriate to take on, unless you can afford *pro bono* representation. | *See* Small Firm Client Engagement Checklist.<br><br>Linda Oligschlaeger, *A Few Tips on How to Collect Your Fees*, THE MO. BAR. |
| **Provision of Law-Related Services** | | | | | |
| • Are you engaged in the provision of law-related services or do you control an organization that provides such services? If so, do you need to take | | | | • Colo. RPC 5.7 details when an attorney may be bound by the Rules of Professional Conduct with respect to the provision of law-related services. | CBA Ethics Op. 98: Ethical Responsibilities of Lawyers Who Engage in Other Business. |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| measures to assure clients that the services are not legal services? | | | | | |
| **Disengagements** | | | | | |
| **Sole Practitioner** | | | | | |
| • Do you have a policy requiring that a letter be sent to each client or successor counsel promptly following a file closing? | | | | • A closing letter prevents confusion as to whether the attorney is still representing the client if there is subsequent litigation. It is also an opportunity for an attorney to end the attorney-client relationship on a positive, cordial note. | LAWYERS' PROFESSIONAL LIABILITY IN COLO., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), §§ 2.10, 2.12.<br><br>Miranda Mandel, *Ethical & Liability Concerns When the Client Relationship Ends*, ATT'YS LIAB. ASSURANCE SOC., INC. (2014). |
| • Do you have a standard procedure for returning unearned fees and other client funds to clients? | | | | • Colo. RPC 1.16(d) | LAWYERS' PROFESSIONAL LIABILITY IN COLO., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 20.4.5 |
| • Do you have a procedure for collecting accounts receivable? | | | | • Colo. RPC 1.16(d) | |
| • Do you have a standard procedure for notifying the court of your disengagement? | | | | • C.R.C.P. 121 § 1-1(2) and(3) | Miranda Mandel, *Ethical & Liability Concerns When the Client Relationship Ends*, ATT'YS LIAB. ASSURANCE SOC'Y, INC. (2014). |
| **Disengagements** | | | | | |
| **Small Firm (2-5 attorneys)** | | | | | |
| • Does the firm have a policy requiring that a letter be sent to each client or successor counsel promptly following the closing of a file? | | | | • A closing letter prevents confusion as to whether the attorney is still representing the client if there is subsequent litigation. It can also be an opportunity for an attorney to end the attorney-client relationship on a cordial, positive note. | LAWYERS' PROFESSIONAL LIABILITY IN COLO., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), §§ 2.10, 2.12.<br><br>Miranda Mandel, *Ethical & Liability Concerns When the Client Relationship Ends*, ATT'YS LIAB. ASSURANCE SOC'Y, INC. (2014). |
| • Does the firm have a procedure for returning unearned fees and other | | | | • Colo. RPC 1.16(d)<br>• Colo. RPC 3.4(c) | LAWYERS' PROFESSIONAL LIABILITY IN COLO., 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 20.4.5 |

| Assessment Questions | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| client funds upon disengagement? | | | | | |
| • Does the firm have a procedure for collecting accounts receivable? | | | | • Colo. RPC 1.16(d) | |
| • Is an unpaid balance reviewed by Compliance Counsel before a collection action is commenced? | | | | | |
| • Does the firm have a procedure for notifying the court of its disengagement? | | | | • C.R.C.P. 121 § 1-1(2) and (3) | Miranda Mandel, *Ethical & Liability Concerns When the Client Relationship Ends*, ATT'YS LIAB. ASSURANCE SOC'Y, INC. (2014). |
| • If the firm is selling or ending its business, has the firm purchased tail malpractice coverage? | | | | | |
| **Closing**<br>**Sole Practitioner** | | | | | |
| • Do you have plans for winding down your practice? Are those plans in writing? | | | | • In closing your practice, you need to notify clients, opposing counsel, and courts. Additionally, you need to return client files or transfer them as well as return unearned funds. You may consider tail malpractice insurance. | PLANNING AHEAD: A GUIDE TO PROTECTING YOUR CLIENTS' INTERESTS IN THE EVENT OF YOUR DISABILITY OR DEATH (ONE OF WHICH IS INEVITABLE), OFF. OF ATT'Y REG. COUNS. (2007). |

## SELF-ASSESSMENT #7 — CHARGING APPROPRIATE FEES AND MAKING APPROPRIATE DISBURSMENTS

Except in circumstances where a lawyer has previously represented a client, a lawyer is required to communicate to a client the base and rate of a fee in writing. Colo. RPC 1.5. It is in the interest of both the lawyer and client to have this communication take the form of a formal written fee agreement signed by both. This protects both the client and the lawyer. In considering what provisions such an agreement should contain, counsel should consider the following questions:

| Questionnaire | Yes | No | N/A | Ethical Considerations | Other Resources |
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| Have you identified the client properly? | | | | | |
| • If the client is an entity, does the person with whom you are dealing have the authority to bind the client? | | | | | |
| • If someone other than the client is paying your fee, do you have a separate understanding reduced to writing with that person? And has the client consented? | | | | • Colo. RPC 1.8(f)<br>• Does the separate understanding make it clear that only the client controls the representation? | CBA Ethics Op. 91, Ethical Duties of Attorney Selected by Insurer to Represent Its Insured. |
| • Does the client have policies that require in-house approval of your fee agreement? | | | | | |
| If you have represented the client before, is there a good reason not to have a new fee agreement for the new matter? | | | | Colo. RPC 1.5, cmt. 2: ". . . when there has been a change from [the attorney and client's] previous understanding, the basis or rate of the fee should be promptly communicated in writing." | |
| Have you adequately described the scope of the representation in your fee agreement or engagement letter? | | | | • Colo. RPC 1.2(a), Colo. RPC 1.2(c)<br>• Precision in describing the scope of the representation avoids disputes as to what services were contemplated. In a litigation matter, for example, an attorney may want to exclude an obligation to file an appeal. In an entity formation matter, a lawyer should consider whether to include that the representation covers tax advice. | Marian Rice, *Engagement Letters: Beginning a Beautiful Relationship*, L. PRACTICE MAG., May/June 2013. |

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| • If you are providing an unbundled legal representation, are your responsibilities clearly defined? | | | | Colo. RPC 1.2(c) | CBA Ethics Op. 101, Unbundling/Limited Scope Representation. |
| Do you clearly explain your fees? | | | | Colo. RPC 1.5 cmt. 2. | |
| • If your fees may be recoverable from another party, does your agreement make it clear to the client whether they are still responsible? | | | | | |
| • Have you avoided any interpretation of a fee as an unearned fee such as a signing bonus? | | | | Colo. RPC 1.5(f) and (g) | Alec Rothrock, *Engagement Retainers: Handle with Care*, THE DOCKET, Sept. 22, 2015. |
| If the fee agreement involves a retainer, have you explained how unearned fees will be held in trust prior to being earned? | | | | Colo. RPC 1.5, cmt. 10: "the lawyer must hold in trust all fees . . . until there is a basis on which to conclude that the lawyer has earned the fee." | *See* Self-Assessment 8 – Trust Account Practices |
| • If a COLTAF account is to be employed, have you explained that the client will not earn interest on the funds? | | | | Colo. RPC 1.15B(b) | |
| For flat fee agreements, have you complied with Colo. RPC 1.5(h)? | | | | Colo. RPC 1.5(h) | |
| • Have you communicated the terms of the flat fee in writing before or within a reasonable time after beginning the representation? | | | | Colo. RPC 1.5(h) | |
| • Have you described the services you agree to perform? | | | | Colo. RPC 1.5(h) | |
| • Does your writing provide the amount to be paid to you and the timing of that payment for the services to be performed? | | | | Colo. RPC 1.5(h) | |
| • Does it specify the amount of the flat fee to be earned if you complete specific tasks or certain events occur before the representation concludes? | | | | Colo. RPC 1.5(h) | |

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| • Does it explain the method you will use to calculate the fees you earn if the representation terminates before the completion of specific tasks or the occurrence of specific events? | | | | Colo. RPC 1.5(h) | |
| • If a dispute arises as to whether you earned all or part of the fee, do you comply with Colo. RPC 1.15A(c) and keep the funds separate? | | | | Colo. RPC 1.5(h)<br>Colo. RPC 1.15A(c) | |
| For a contingent fee agreement, have you complied with Colo. RPC 1.5(c)? | | | | Colo. RPC 1.5(c) | |
| • Do you put the terms of the contingent fee agreement in writing before, or within a reasonable time after, the representation begins? | | | | Colo. RPC 1.5(c) | |
| • Does the contingent fee agreement include the name of the lawyer and client, a statement of the nature of the claim or controversy, and a description of each event triggering your right to compensation? | | | | Colo. RPC 1.5(c) | |
| • Does it describe the method by which your fee will be determined, including the percent or amounts that you earn in the event of settlement, trial, or appeal, and does it specify whether your fee is determined before or after deduction of costs and expenses you advanced or other amounts owed by the client? | | | | Colo. RPC 1.5(c) | |
| • Does it contain a statement explaining under what circumstances you may be entitled to compensation if your representation concludes before an event triggering your right to a contingent fee? | | | | Colo. RPC 1.5(c) | |

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| • Does it contain an estimate of expenses to be incurred; whether you may advance funds for litigation-related expenses to be reimbursed through recovery and the amount of such expenses you may advance without approval; and whether the client must pay expenses if no recovery happens? | | | | Colo. RPC 1.5(c) | |
| • Does it advise the client a court may award costs or attorney fees against the client? | | | | Colo. RPC 1.5(c) | |
| • Does it advise the client a court might award costs or attorney fees in favor of the client, and if that occurs, does it state how costs or attorney fees will be handled? | | | | Colo. RPC 1.5(c) | |
| • Does it inform the client that if you decide to hire associated counsel, you will inform the client in writing of who will be associated counsel, as well as that hiring associated counsel will not increase the contingent fee unless the client agrees, and that the client has the right to disapprove hiring of associated counsel? | | | | Colo. RPC 1.5(c) | |
| • Inform the client that other persons or entities may have a right to be paid from amounts recovered on the client's behalf? | | | | Colo. RPC 1.5(c) | |
| Have you accurately described costs and expenses? | | | | Colo. RPC 1.5(b) | |
| • If you advance costs or expenses, when is your client obligated to reimburse you? | | | | | |
| • Is it clear that the client is responsible for certain costs like postage, copying, depositions, transcripts, service of process? | | | | Colo. RPC 1.5(a) | SDCBA Legal Ethics Opinion 2013-3, SAN DIEGO COUNTY BAR ASS'N, July 16, 2013. |

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| • Have you considered a cost retainer to ensure that persons providing services will be paid since it would otherwise be my responsibility? | | | | | |
| If you are working with an attorney on the case who is outside your firm, has the client consented and have the responsibilities of each lawyer been clearly defined? | | | | Colo. RPC 1.5(d) | David Hudson, *Sharing Fees with a Lawyer Outside the Firm Is OK as Long as Certain Ethics Rules Are Followed*, ABA J., July 1, 2016. |
| Have you described how other lawyers or paralegals who work on the matter will be compensated? | | | | Colo. RPC 1.5(a) | |
| If your client has the proposed fee agreement for consideration, have you stated when you must have a signed fee agreement in order to commence work? | | | | Colo. RPC 1.5(b) provides that the lawyer shall communicate to the client in writing the basis or rate of the fee before or within a reasonable time after commencing the representation. | |
| • Is time of the essence? If you must have money before work begins, have you made this clear to the potential client? | | | | If you must have money before commencing work, explain this to the potential client. | |
| • Do you have a system to track unsigned, outstanding proposed fee agreements? | | | | | |
| Have both you and your client signed the fee agreement? | | | | Although not expressly required under the Colorado Rules of Professional Conduct, a lawyer should obtain a signed fee agreement. The client's agreement should be memorialized. | |
| Do you have an appropriate arbitration clause in your fee agreement? | | | | Colo. RPC 1.5, cmt. 9 | ABA Ethics Op. 02-425: Retainer Agreement Requiring Arbitration of Fee Disputes and Malpractice Claims. |
| Do you explain to your client the circumstances under which you may be forced to ask the court for permission to withdraw, or when you have to do so in a non-litigation matter? | | | | Colo. RPC 1.16(a) | Helen Gunnarsson, *Avoiding Withdrawal Pains*, ILL. BAR J., May 2010. |

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| Does the fee agreement explain the rights you and the client have to withdraw or terminate the relationship based on certain events or conduct, such as non-payment or non-cooperation? | | | | Colo. RPC 1.16(b) | Helen Gunnarsson, *Avoiding Withdrawal Pains*, ILL. BAR J., May 2010. |
| Does the fee agreement grant permission to disclose confidential information the client may provide to you when you reasonably believe that such disclosure would assist in achieving a satisfactory result in the case? | | | | Colo. RPC 1.6, cmt. 5. Explaining to the client up front the circumstances when you may need to disclose confidential information to achieve a satisfactory result can help reduce any misunderstanding and dispute in the future. | Dean Dietrich, *Ethics: "Impliedly Authorized" Disclosure of Client Information*, WIS. LAW., October 2010. |

## SELF-ASSESSMENT #8 — ENSURING THAT RELIABLE TRUST ACCOUNT PRACTICES ARE IN USE

Lawyers must establish a trust account if they accept fees from clients for work they have not yet performed or for expenses not yet incurred. In addition, lawyers who receive client settlement funds or hold a third party's funds as part of a legal representation must have a trust account. The obligation to establish a trust account springs from an attorney's fiduciary duty to clients and third parties and the related duty to safeguard property belonging to others. Under the Colorado Rules of Professional Conduct, lawyers have to keep funds that belong to clients or third persons separate from the lawyer's own property. This includes separate from the lawyer's business or personal accounts.

Lawyers can find the rules pertaining to trust account management at Colo. RPC 1.15A – 1.15E. These rules cover trust account issues ranging from record keeping, to who may withdraw funds, to when account reconciliation must occur.

Proper trust account management is essential to an ethical, professional practice. The following self-assessment contains questions that lawyers required to have a trust account should consider in managing and maintaining such an account.

| Questionnaire | Yes | No | N/A | Ethical Considerations | Other Resources |
|---|---|---|---|---|---|
| **Client Trust Account Overview** | | | | Any lawyer in private practice shall maintain a Trust Account for:<br>• advanced payment of fees that have not been earned<br>• and advance payment of expenses<br>• and funds that have been entrusted to the lawyer's care in connection with a representation | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL.<br><br>"Frequently Asked Questions," Colorado Lawyers Trust Account Foundation Web Site.<br><br>Ed Poll, *Trust Accounts: Accountability, Access, and Advantages*, LAW PRAC. TODAY, Jan. 24, 2015. |
| Do you hold funds for your clients or third parties as part of your legal representation of another? | | | | | |
| • If so, do you have a client trust account? | | | | | |
| • Is it a COLTAF account? | | | | • The rules do not say that a Colorado lawyer must have a COLTAF Account. They say "Trust Account." However, most lawyers satisfy this with a COLTAF Account.<br>• Colo. RPC 1.15B(b) | Colorado Lawyers Trust Account Foundation. |
| • Is your general client trust account or COLTAF account labeled as either "trust" account or "COLTAF" account? | | | | • Colo. RPC 1.15B(a)(2): Trust account name must include either "trust" or "COLTAF." | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Basic Requirements for Trust Accounts. |
| Do you practice in more than one state or does your firm practice in multiple jurisdictions? | | | | | |

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| • If so, do you or does your firm maintain a client trust account in each state in which you or your firm practices? | | | | | |
| • If so, do you or your firm follow each state's varying rules of professional conduct concerning trust accounts? | | | | Jurisdictions vary in their trust account management requirements. Lawyers who practice in multiple jurisdictions should familiarize themselves with jurisdiction-specific trust account rules. | Steven J. Best, *A Lawyer's 7-Point Plan for Trust Account Management*, LexisNexis Law Firm Practice Management White Paper Series, 2013, at p. 2.<br><br>MANAGING TRUST ACCOUNTING FOR COMPLIANCE, LEXISNEXIS BEST PRACTICE (2010). |
| For funds held as part of your Colorado practice, is your trust account at an approved bank doing business in the State of Colorado? | | | | Colo. RPC 1.15E(c)(1) | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Basic Requirements for Trust Accounts. |
| Do you have Colorado clients who desire to have their funds you hold for them placed in a non-COLTAF account? | | | | Colo. RPC 1.15B(b), Colo. RPC 1.15B(h) | |
| • If so, do you have a form for obtaining client consent to place funds outside of a traditional client trust account? | | | | Lawyers utilizing non-traditional trust accounts may wish to obtain written client consent that to such an arrangement to memorialize the agreement. | |
| Who in your firm is responsible for the operation of the client trust account? | | | | Colo. RPC 1.15C(b) | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, BASIC REQUIREMENTS FOR TRUST ACCOUNTS, DELEGATION OF TRUST ACCOUNT DUTIES.<br><br>MANAGING TRUST ACCOUNTING FOR COMPLIANCE, LEXISNEXIS BEST PRACTICE (2010). |
| Do you keep unearned fees in your client trust account/COLTAF account until you have earned such funds? | | | | Colo. RPC 1.15A(c) | |
| Do you provide notice to the client of your removal of earned funds within a reasonable time? | | | | Colo. RPC 1.15D(a)(4) | Ed Poll, *Trust Accounts: Accountability, Access, and Advantages*, L. PRACTICE TODAY, Jan. 24, 2015. |

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| Do you have policies and procedures in place to ensure that you do not deposit business or personal funds in to your trust account? | | | | • Colo. RPC 1.15A(a)<br>• A lawyer cannot use his or her trust account as a personal account for holding or hiding personal assets. Likewise, it would be inappropriate for a law firm to deposit in a trust account the money the firm plans to use on a holiday party. Another example of such a problem is a lawyer who has his stock market sales receipts wired into his trust account. | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Commingling.<br><br>Amy DeVan, *Use of the Client Trust Account: What Not to Do*, THE DOCKET, June 30, 2016. |
| Do you deposit all items intact into your client trust account/COLTAF account? | | | | Colo. RPC 1.15C(a). All trust account receipts shall be deposited intact and the duplicate deposit slip should be sufficiently detailed to identify each item. | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Advance Fees, Costs, and Depositing and Withdrawing Fees from Trust Accounts. |
| Do you hold disputed funds in your client trust account/COLTAF account until the dispute is resolved voluntarily or by court action? | | | | Colo. RPC 1.15A(c). | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Disputes Over Funds in a Trust Account. |
| Do you provide a prompt accounting to your clients and/or third parties for whom you have or still are holding funds for? | | | | Colo. RPC 1.15A(b). Upon request by the client or third person, a lawyer shall promptly render a full accounting regarding property held by the lawyer belonging to a client or third party. | *People v. Miller*, 35 P.3d 689, (Colo. O.P.D.J. 2001) (Client asked for an accounting of funds and a refund of the unused portion of the retainer. Lawyer did not provide an accounting. Failure to account for the funds entrusted to him was a violation of Colo. RPC 1.15(b), predecessor to Colo. RPC 1.15A(b)). |
| Do you comply with the trust account recordkeeping requirements outlined in Colo. RPC 1.15D? These include maintaining:<br>• Records showing the date and amount of deposits made into your trust account;<br>• Records showing the source of all funds for deposits made into your trust account;<br>• Records showing the names and addresses of all persons for whom you hold funds in your trust account;<br>• Records showing the amount and description of all withdrawals, including the date; | | | | Colo. RPC 1.15D(a)(1)(A) | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Required Accounting Records. |

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| • Records showing the names of those to whom money was disbursed and when. | | | | | |
| Do you maintain copies of all trust account records for a period of seven years after they were created? | | | | Colo. RPC 1.15D(a) | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Required Accounting Records. |
| To promote compliance with your recordkeeping requirements, do you keep a generalized ledger that lists all transactions in your trust account? Do you also keep separate client and administrative ledgers? | | | | Colo. RPC 1.15D(a)(1)(A) | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Required Accounting Records. |
| Do you have policies and procedures to ensure that a reconciliation of your trust account occurs at least quarterly and that a lawyer admitted in Colorado or a person under such a lawyer's supervision performs the reconciliation? | | | | Colo. RPC 1.15C(c) | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Delegation of Trust Account Duties. |
| As part of the reconciliation, do you ensure that the balance on your trust account bank statement is the same as that in the general ledger or check register with adjustments? | | | | | |
| Do you also make sure each client ledger balance adds to the same balance as in the trust account bank statement when reconciling? | | | | | |
| Do you have a training program for any non-lawyer to whom you have delegated day-to-day trust account management duties that covers how to handle client or third party funds? | | | | | OFF. OF ATT'Y REG. COUNS., COLO. SUP. CT., TRUST ACCOUNT MANUAL, Delegation of Trust Account Duties. |
| If you delegate trust account management duties to a non-lawyer, ensure that you actively oversee the non-lawyer's work by:<br>• Reviewing monthly bank statements;<br>• Reviewing the trust account general ledger monthly;<br>• Reviewing client ledgers monthly;<br>• Reviewing images of cancelled checks monthly; | | | | | OFFICE OF ATT'Y REG. COUNSEL, COLO. SUP. CT., TRUST ACCOUNT MANUAL, Delegation of Trust Account Duties. |

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| • Reviewing trust account reconciliation whenever it is performed. | | | | | |

## SELF-ASSESSMENT #9 — ACCESS TO JUSTICE AND CLIENT DEVELOPMENT

An important part of the administration of justice in our state is ensuring that people of all economic levels and geographic locations have access to not only the courts, but to competent, licensed professional legal assistance. This self-assessment form is designed to help lawyers evaluate their practices and procedures relating to this important principle. Because tackling the justice gap necessarily involves reaching out to underserved communities, we also provide guidelines concerning client development.

**Access to Justice**: Lawyers have a duty to promote and protect the public interest. One of the most significant issues currently facing consumers of legal services is meaningful access to justice. For purposes of this assessment, we are defining "access to justice" as a concept much broader than access to the courts and litigation. It encompasses a recognition that everyone is entitled to the protection of the law. It is about protecting ordinary and vulnerable people and solving their problems. Improving access to justice in Colorado requires leadership and change that reaches well beyond the traditional construct of legal aid. The responsibility must also fall to law firms and other for-profit legal organizations to look inward at what they might do themselves to better meet their obligations to promote and protect the public interest. Encouraging pro bono or other volunteer work, as well as exploring alternative fee arrangements and limited scope retainers (where appropriate and permitted), are examples of some tangible steps that firms can take to do their part to close the justice gap.

Additionally, lawyers and law firms should explore how they interact with self-represented parties. One aspect of the access to justice crisis in Colorado is that legal services have become increasingly expensive, and are unaffordable for many of those who have a need for legal services. This has resulted in a large number of self-represented parties. Studies show that a significant number of self-represented litigants have complaints about the opposing counsel with whom they interact. On the other hand, many lawyers report challenges in communicating or negotiating with self-represented litigants. This suggests, at the very least, that lawyers need more information and training to assist them in dealing with self-represented litigants.

**Client Development:** Client development and access-to-justice issues are closely tied together. When law firms are willing to retain clients using alternative fee structures and limited scope representation, more people are aware of and able to access legal services, while lawyers expand their books of business and diversify revenue streams. This is a classic example of a win-win. Providing legal services at reduced rates for low-income clients, adopting alternate billing models, and providing unbundled services are all examples of ways that lawyers can both bridge the justice gap, as well as develop new clients.

| Questionnaire | Yes | No | N/A | Suggested Systems & Practices | Resources |
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| **Objective 1: Creating an efficient business structure that has room for alternative operational strategies aimed at reducing expenses and improving long-term sustainability.** | | | | | |
| Have you carefully considered your monthly expenses and overhead, and have you considered ways to reduce your expenses such as:<br>-office sharing<br>-alternative office space<br>-phone service<br>-investigator pricing<br>-staff<br>-supplies/equipment | | | | A law firm can incur sizable expenses and overhead. There are numerous ways to gradually build and manage infrastructure in the effort to keep costs more manageable. Low expenses and overhead means that less money is needed to be profitable and sustainable. Likewise, with tools (such as a state-of-the-art case management system), lawyers and law firms can achieve greater efficiency. This may reduce the need for additional staff (which in turn reduces overhead). This may also free up an attorney's time and provide a financial cushion that allows the attorney to take on pro-bono and modest means cases. If you are a solo lawyer just starting out, sharing office space will allow you to pool resources, save money and ease the isolation of practicing alone. But before entering into an office sharing arrangement with another lawyer, it is imperative that you know exactly what you can and cannot share, whether it be rent, computers—or even clients. Lawyers should also be mindful that sharing office arrangements with non-lawyers is a separate issue that subjects lawyers to distinct ethics requirements. | Randall Ryder, *How to Keep Your Solo Practice Sustainable and Lean*, Lawyerist.com, March 25, 2016.<br><br>Jenny B. Davis, *Designing Your Law Office to Save Money and Boost Productivity--Without Sacrificing Style*, ABA J., July 1, 2014.<br><br>Kathryn Thompson, *Keeping Your Office Sharing Arrangements with Other Lawyers Squeaky Clean Under the Ethics Rules*, ABA CTR. FOR PROF'L RESP., May 2007. |
| Do you use technology to increase your efficiency and increase your ability to provide legal services at a lower cost/hourly fee? | | | | Computer programs – such as for timekeeping, case management, etc., can increase productivity and reduce manual hours spent (and reduce stress). | Dean R. Dietrich, *Handling Clients' Text Messages*, WIS. LAWYER, April 2016. |

| Questionnaire | Yes | No | N/A | Suggested Systems & Practices | Resources |
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| **Objective 2 - Having an effective office set-up that is conducive to providing services to a broader population.** | | | | | |
| Do you have a plan to promote cultural competency in your office?<br><br>Does that plan include recruitment practices that consider diversity as relevant to the effort to promote access to justice? | | | | Consider training to help attorneys and staff develop strategies for dealing with non-English speaking clients, low-income clients, and clients who may have had prior bad experiences with the justice system. Develop training to help attorneys effectively reach out to underserved populations who may not be aware of the nature of the American legal system. Also consider setting up appropriate expectations and practices – including hiring – that will allow the office to be responsive to the community. Diversity is a legitimate consideration in this regard. | N. Y. C. BAR ASS'N MINORITIES IN THE PROFESSION COMM., BEST PRACTICES STANDARDS FOR THE RECRUITMENT, RETENTION, DEVELOPMENT, AND ADVANCEMENT OF RACIAL/ETHNIC MINORITY ATTORNEYS.<br><br>Minority Corporate Counsel Association, "Creating Pathways to Diversity." |
| Does your firm have bilingual staff and/or access to interpreter/translator services | | | | Hiring bilingual staff and/or providing interpreter/translator services will aid the office in outreach and service to non-English speaking, or English-as-a-second-language clients. | |
| Do you provide formal or informal training to help staff interact with the public and potential clients? | | | | Training is important for attorneys and staff alike. Simple tasks such as answering phones, responding to inquiries from clients, potential clients, and pro se parties are some of the office's most important PR. Likewise, lawyers should keep in mind that these interactions are sometimes a person's first encounter with the legal system--make sure it is a positive and respectful one. | |
| Do you provide alternatives for clients with less ability to travel (such as to your office and/or normal work site) and/or potential clients who need off-hour meetings? | | | | Potential clients and clients might not have the ability and/or flexibility to leave their work during business hours. Does the firm have a way of meeting with these people? These same individuals might not have transportation options. Is there a way to accommodate them? | Consider: telephone meetings, Skype or Facetime, home visits, meeting at a local library or other place (be cautious about client confidentiality when meeting in public). |

| Questionnaire | Yes | No | N/A | Suggested Systems & Practices | Resources |
|---|---|---|---|---|---|
| **Objective 3 – Implementing alternative billing arrangements in order to bring in business and bridge the justice gap.** | | | | It is important that strategies and practices are in place that help the firm think broadly about taking diverse clients who might otherwise be unable to access an attorney. This includes actually visiting and getting to know unfamiliar areas. | Justice Index 2016, National Center for Access to Justice, Fordham Law School |
| Do you use alternative pay arrangements based on income level? | | | | These can include, for example, payment plans, reduced fees, sliding scale fees & "modest means" fee structures, unbundled services, and pro-bono | |
| Have you considered providing limited scope representation, i.e. unbundled services? | | | | It is important to remember obligations in both state and federal court. A clear letter laying out the limitations of the representation is also crucial. Also see Colo. RPC 1.2. | INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., UNBUNDLING LEGAL SERVICES: A GUIDE FOR LAWYERS (2015).<br><br>HON. ADAM ESPINOSA, AMY GOSCHA, JAMES GARTS, HON. DANIEL TAUBMAN, AND DANAÉ D. WOODY, PRACTICAL AND ETHICAL CONSIDERATIONS TO INTEGRATING UNBUNDLED LEGAL SERVICES, COLO. BAR ASS'N/CLE IN COLO., (2015). |
| If you are not able to take a client, do you direct them to resources for modest means and indigent clients? | | | | As part of providing access to justice for individuals who are confronted with a legal problem, it is important to think about whether simply saying "no" is the optimal answer. It is important to remember the opportunity to redirect a person to the right resources for their situation. | Colorado Legal Services<br><br>Denver Bar Association Legal Clinics and Free Legal Information<br><br>Colorado Judicial Branch Self-Help Center |

| Questionnaire | Yes | No | N/A | Suggested Systems & Practices | Resources |
|---|---|---|---|---|---|
| **Objective 4: The Firm or Lawyer Provides Pro-Bono and other Volunteer Services** | | | | | |
| Do you take on pro bono work and encourage other attorneys in the firm to do so as well? | | | | Pro bono and other volunteer activity in the community is encouraged by the law firm and taken into account in performance evaluations (for example, billable hour credits are provided or annual goals are set).<br>• A written pro bono policy is in place.<br>• You are required to participate in pro bono work.<br>• Your entity encourages pro bono work.<br>• Pro bono hours "count" toward billable hour targets.<br>• You spend the appropriate amount of time with the client and are empathetic.<br>• Consideration of Colo. RPC 6.1. | CANADIAN BAR ASS'N, *The ABCs of Creating a Pro Bono Policy for Your Law Firm* (Oct. 2009).<br><br>Stacy DeBroff, Kevin Lapp, Alexa Shabecoff, Pro Bono Guide: An Introduction to Pro Bono Opportunities in the Law Firm Setting, HARVARD L. SCH. |
| **Objective 5 - Using Effective Client Development Strategies to Increase Business and Bridge the Justice Gap** | | | | Lawyers should make efforts to be a part of the legal and non-legal community. One way to do this is to network with a local bar association or other legal groups. Lawyers may want to use social media and internet marketing to reach out to non-traditional legal consumers. Lawyers who provide low cost or alternative fee services should emphasize these services in their marketing. Websites and other marketing material should be user friendly and understandable. | |
| Do you have a marketing strategy? | | | | A marketing strategy might target underserved populations by emphasizing the firm's commitment to alternative fee arrangements, modest means clients, and unbundled services. | SUCCESSFUL BUSINESS PLANNING: REPRESENTING THE MODERATE INCOME CLIENT, COLO. BAR ASS'N/CLE IN COLO. (2013) (updated version, SUCCESSFUL BUSINESS PLANNING FOR THE MODERN LAW PRACTICE (2016), *available here*). |

| Questionnaire | Yes | No | N/A | Suggested Systems & Practices | Resources |
|---|---|---|---|---|---|
| Are you actively involved in the Colorado Bar Association and/or a local bar association and/or specialty bar association? | | | | The Bar Association can help lawyers find pro-bono resources and other valuable resources for working with modest means or indigent clients. | Colorado Bar Association (CBA)<br><br>Local Bar Associations (CBA) |
| Do you have a website and/or do you use internet tools for marketing? | | | | Use the internet to reach out to new clients. A good website can bring in business. The website could provide concrete information about fees and billing. Websites can also clearly explain the firm's commitment to alternative fee structures, modest means, and unbundled services. | Steve Olenski, *The 7 Lethal Internet Marketing Mistakes Law Firms Make*, FORBES, Mar. 5, 2015. |
| Do you market in nontraditional ways and reach out to underserved legal markets? | | | | Consider advertising in diverse publications and neighborhoods. Consider advertising in languages other than English. Further, Colorado is a big state with many potential clients who need services that live outside the Front Range metropolitan areas. | |
| **Objective 6 - The Firm evaluates success in providing access to justice.** | | | | | |
| Do you track and evaluate the demographics of clients and where clients are from? | | | | It is important to consider tools to be strategic in advertising, not just reactive. Data collection, for planning purposes, is crucial. | |
| Do you conduct interviews with clients at the end of representation to evaluate how they feel they have been treated in the legal system? | | | | A satisfied client, and a client who understands what happened and why, is one who will leave with a sense of justice. That client will also refer other clients to the lawyer, even if the client "lost." This is because, as Maya Angelou said, "people will forget what you said, people will forget what you did, but people will never forget how you made them feel." | |
| Do you or your law firm periodically review your success in reaching out to underserved populations? | | | | | Marc Davis, *Paying Off*, ABA J., June 2018. |

## SELF-ASSESSMENT #10 — WELLNESS AND INCLUSIVITY

Today's lawyer demands a better lifestyle that embraces work/life balance and diversity. In 2015, the ABA Commission on Lawyer Assistance Programs and the Hazelden-Betty Ford Foundation conducted a study involving approximately 11,400 actively practicing layers from 19 states. The study revealed that approximately 21% of the lawyers qualified as problem drinkers, 28% struggle with depression, and 19% demonstrate symptoms of anxiety. The study also revealed that nearly one third of the lawyers with these issues are less than 30 years of age and have practiced less than 10 years.

Meanwhile, attraction and retention of quality staff is a challenge due to the reduction in law school attendance, aging in the profession, and 21st century changing technology. Diversity is when you count people; inclusiveness is when you make people count. You need both to have sustainable diversity in your firm/organization. Studies show that to increase staff retention, it is better to keep staff happy, healthy, engaged, and motivated.

This assessment presents a series of questions designed to help you evaluate whether your practice promotes wellness and inclusivity. For resources, the Colorado Lawyer Assistance Program (COLAP) offers Colorado attorneys confidential assistance for any career-related challenge. This could include coping with work stress, anxiety, succession planning, support in grieving a loss, or confronting substance use issues. COLAP has a confidential assistance line and its website, http://coloradolap.org/, features links to resources, lists of support groups, and articles on wellness issues. Meanwhile, the Center for Legal Inclusiveness, which is dedicated to "actively educating and supporting private and public sector legal organizations in their own individual campaigns to create cultures of inclusion," provides support for attorneys looking to enhance diversity in their practice. The Center for Legal Inclusiveness promotes networking to connect attorneys with other attorneys to build career satisfaction and success. Its social media pages offer updates on diversity and inclusivity issues on a local and national level and may be found at https://centerforlegalinclusiveness.org/. Other resources to consider include the American Bar Association's Office of Diversity and Inclusion, which may be found at: https://www.americanbar.org/groups/diversity.html, and *What If I Say the Wrong Thing*, by Verna Myers, which is also available through the American Bar Association, https://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=214476.

**Part A: Wellness**

| | Yes | No |
|---|---|---|
| Do you or your firm/organization recognize the importance wellness plays in a person's professional and personal life? | | |
| Does your firm/organization have procedures to easily identify lawyers/staff with any kind of practice or personal problem?<br>• Does your firm have a non-punitive method of adjusting the attorney's workload until the issue is resolved? | | |
| If you are a sole practitioner, do you have a mentor, trusted colleague, family, or friend that you can turn to for support in the event you experience a personal or practice difficulty (or both) and need support? | | |
| If you are a sole practitioner, do you recognize the importance of a work life balance and have you implemented a plan to ensure that balance in your law practice? | | |
| Do you take steps to keep stress associated with the practice of law at a minimum? These may include:<br>• Taking time to spend with family and friends;<br>• Volunteering time through community service organizations; | | |

| | | |
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| • Planning and taking time off;<br>• Reading a new book;<br>• Engaging in physical activity;<br>• Practicing yoga or meditation. | | |
| If you find yourself becoming stressed or anxious, are you familiar with simple techniques to quickly reduce stress including:<br>• Taking a deep breath;<br>• Placing one hand on your upper chest, one on your abdomen, and breathing (a practice that activates calming neurotransmitters);<br>• Opening your eyes and smiling (the act of smiling releases endorphins);<br>• Saying to yourself: "I have the resources to deal with this" and then using those resources. | | |
| Does your firm/organization have policies and procedures that encourage work life balance/integration and that include:<br>• Taking their entitled breaks: lunch breaks, sick leave, annual leave.<br>• Availability of family/parental leave.<br>• Flexible hours when needed. | | |
| Does your firm/organization provide/offer appropriate and regular quality of life programs during regular business hours, and is everyone encouraged and able to take advantage of them? | | |
| Does your firm/organization's work environment promote a healthy lifestyle, for example, ergonomically correct work stations, work breaks, walking paths, and access to healthy food & drink choices? | | |
| • Does management encourage these options? | | |
| Does your firm/organization have appropriate referrals for programs to assist with mental health issues (stress, anxiety, depression, bipolar, relationships, etc.)? | | |
| • Is everyone aware of resources in the community? | | |
| Does your firm/organization have appropriate referrals for programs to assist with substance abuse & addiction issues (alcohol, drugs, gambling, sex, food, etc.) | | |
| Does the firm/organization have a dedicated budget to wellness? | | |
| • Who is the designated person in charge of the budget? | | |

**Part B: Diversity/Inclusiveness**

| | Yes | No |
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| Has your firm/organization developed a rationale of the need for creating a more diverse and inclusive workplace?<br>• Does this rationale tie in with your firm/organization's business imperatives and strategies? | | |

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| Have you taken steps to increase your awareness of implicit bias and other barriers that affect those underrepresented in the legal profession. Consider Project Implicit's free, online assessments at https://implicit.harvard.edu/implicit/aboutus.html. | | |
| Assess which groups with which you feel comfortable, or have a natural affinity, and take steps to meet with or market to those groups that fall outside that list.<br>• As part of such an assessment, acknowledge that these steps may lead you to feeling uncomfortable and fearful of saying or doing something that may offend others but that you become comfortable once you get past the "uncomfortable." | | |
| Develop and implement an inclusivity plan that includes a written statement that defines inclusivity and the benefits you hope to gain from being inclusive. | | |
| Does your firm/organization regularly review the compensation structure to ensure that it does demonstrate equal opportunities for all? | | |
| Has your firm/organization devised measures to evaluate diversity and inclusion initiatives and ensure accountability? | | |
| Has your firm/organization identified a person, department and/or committee to monitor your diversity/inclusiveness efforts?<br>• Does everyone in the firm/organization have a role in its success? | | |
| Does the firm/organization have a dedicated budget to support diversity/inclusiveness efforts? | | |
| Has the firm/organization implemented training sessions for employees that focus on issues related to diversity/inclusiveness? | | |

**Part C: Catch All**

| | Yes | No |
|---|---|---|
| Does management/senior staff set a good example for staff by creating, implementing, and monitoring dependable office policies and systems, including work-life balance and mentoring programs? | | |
| Are the above policies reviewed on a regular basis (minimum every year) for effectiveness and current, up-to-date standards and information? | | |
| Does Human Resources or management conduct exit interviews that allow for an honest and respectful discussion? | | |