

## A Proposal for Change

### Amending the Colorado Rules of Professional Conduct: Rule 2.1 and Comment 5

By Joan H. McWilliams, Esq.

*Adversarial proceedings discourage cooperation, too often reward aggressive posturing and positional bargaining, and sabotage the ability of the parents to work together as child-rearing partners. In short, the adversarial model fuels parental conflict, and parental conflict over children is universally understood to be harmful to the children<sup>1</sup>*

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#### Proposal.

- Amend the Colorado Rules of Professional Conduct Rule 2.1 to include a provision which states that “[i]n a matter involving the allocation of parental rights and responsibilities, an attorney should advise the client of the importance of minimizing the adverse impact that parental conflict can have on the minor children.”
- Amend Comment 5 of Rule 2.1 to state that “...when a matter involves the allocation of parental rights and responsibilities, it may be necessary under Rule 1.4 to inform the client of the importance of minimizing the adverse impact that parental conflict can have on minor children....”

#### History.

- In 2000, the American Academy of Matrimonial Lawyers (AAML) promulgated their *Bounds of Advocacy*<sup>2</sup> for family law attorneys with regard to children. Noting that “a clearer mandate must be adopted as part of the [lawyer’s] ethical code or its official interpretations, Goal 6.1 of the *Bounds of Advocacy* states that “[a]n attorney representing a parent should consider the welfare of, and seek to minimize the adverse impact of the divorce on, the minor children.” The Comment to Goal 6.1, states that “[a]lthough the substantive law in most jurisdictions concerning custody, abuse and termination of parental rights is premised upon the ‘best interests of the child,’ the ethical codes provide little (or contradictory) guidance for an attorney whose client’s expressed wishes, interests or conduct are in direct conflict with the well-being of children.” Goal 6.1 “emphasizes that the welfare of each family member is

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<sup>1</sup> William J. Howe and Hugh McIsaac, *Finding the Balance: Ethical Challenges and Best Practices for Lawyers Representing Parents When the Interests of the Children are at Stake*. Vol.46 No.1 *Family Court Review* 78-90 (Jan. 2008).

<sup>2</sup> American Academy of Matrimonial Lawyers, *Bounds of Advocacy* (2000).

interrelated,” and clearly identifies the justification for the proposed Amendment to Rule 2.1 of the Colorado Rules of Professional Conduct (CRPC).

- In 2009, Bob Hinds and David Littman, as Chair of the CBA Family Law Section, formed a Committee to draft an amendment to the CRPC, which suggested that lawyers “should” advise their clients of the dangers of high conflict to children. Members of the Committee included Bob Hinds, Dr. Dana Cogan, Hon. Cheryl Post, Dr. Les Katz, Ann Gushurst, Joan McWilliams, Rob Hinds, and Alec Rothrock. The Committee worked for over a year and, in retrospect, probably approached the issue before its time had come. Lawyers and Judge Edward Moss raised concerns that were respected at that time.
- In January 2016, the Colorado Supreme Court issued a decision, *Baker and Kunda v. Wood, Ris & Hames*, 13SC5443 (Sup.Ct. 2016), in which the Court reaffirmed the strict privity rule in Colorado. This case addresses many of the concerns that were raised previously by the attorneys and Judge Moss. It clearly provides support for the Amendment.
- In March 2016, relying on the *Baker* case, the Amendments to Rule 2.1 and Comment 5, which are attached hereto as Exhibit A, were introduced to the Executive Committee of the CBA Family Law Section. The Executive Committee unanimously approved the Amendments.
- In May 2016, the Colorado Chapter of AAML discussed the Amendments and found them to be consistent with their Bounds of Advocacy.
- In May 2016, the Amendments were introduced to the CBA Ethics Committee. The Committee did not approve the Amendment to Rule 2.1 but did, with some changes, approve an Amendment to Comment 5 of Rule 2.1, which is attached hereto as Exhibit B.
- The proposed Amendments were discussed informally with four Judges, including Hon. Bonnie McLean, Chief Judge of the Domestic Division for the 18<sup>th</sup> Judicial District; Hon. Chris Cross, 18<sup>th</sup> Judicial District, ret.; Hon. Angela Arkin, 18<sup>th</sup> Judicial District, ret.; and Hon. Edward D. Bronfin, 2<sup>nd</sup> Judicial District. The Judges each voiced their strong and enthusiastic support.
- To the best of this author’s knowledge, no other state has a similar provision.

### Background.

There has always been a need for these Amendments. We have known for years that conflict indelibly hurts children. This was confirmed in a study that Magistrate Dumler, a Magistrate in the Douglas County Juvenile Court, conducted a few years ago. She and another Magistrate reviewed files of children who had appeared in the Juvenile Court for a defined period of time. The Magistrates were looking for points of commonality. This is what they discovered: 80% of the juveniles who had appeared in Juvenile Court had experienced a high conflict divorce or abandonment.

Janet Johnston, author of *In the Name of the Child*, states that “children who are the subject of chronic post-separation disputes between their parents have now been identified as one of the most “at-risk” groups among the divorcing population....These children bear an acutely heightened risk of repeating the cycle of conflicted and abusive relationships as they grow up and try to form families of their own.”<sup>3</sup>

In my work with adult children of divorce, participants often speak of the fear they experienced as children when they listened to their parents argue. They freely discuss the negative ways in which it has affected their adult life. As stated in a recent article by Judge Angela Arkin, “[c]hildren exposed to high conflict between their parents are at risk for a number of serious problems later in life, which could, at a minimum, be difficulty with future relationships, and at worst be problems with drugs, criminal activity and suicide.”<sup>4</sup>

Family law practitioners are in an excellent position to educate their clients on the ways that parental disputes affect children, but they are often conflicted. As stated in the AAML Bounds of Advocacy, lawyers have little guidance with respect to their roles as an advocate versus an advisor/ counselor. Many lawyers believe that they have no responsibility to a client’s children and will serve only as a zealous advocate for the client. Others will not represent a client unless there is consideration of the best interests of the children. With this Amendment, we have the opportunity to provide the needed guidance.

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### Concerns/Resolution.

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<sup>3</sup> Janet R. Johnston and Vivienne Roseby, *In the Name of the Child*. The Free Press (New York 1997) p. 5

<sup>4</sup> Rich Harris and Angela Arkin, *Trapped: Kids and the Lingering Aftermath of Divorce*. Law Week (April 25, 2017).

Historically, some members of the Bar have presented arguments against this Amendment. These concerns have been resolved as follows:

1. Concern: By advising a client about the potential harm to the client's child, the lawyer is extending his duty of care to a third party and creating a third party beneficiary who could subsequently sue the lawyer.

Resolution: This theory was recently put to rest by the Colorado Supreme Court in the *Baker* case. The Court reaffirmed the "strict privity rule," which precludes attorney liability to non-clients absent fraud, malicious conduct or negligent misrepresentation.<sup>5</sup>

2. Concern: Advising a client about the impact that parental conflict can have on the children would damage or compromise a lawyer's role as a zealous advocate.

Resolution: The Preamble to the Colorado Rules of Professional Conduct provides that a lawyer, as a representative of clients, performs four very distinct functions: advisor, advocate, negotiator and evaluator. By placing the Amendments in CRCP Rule 2:1, Counselor/Advisor, it does not conflict with the attorney's role as a zealous advocate.

3. Concern: These Amendments conflict with a lawyer's duty to his client.

Resolution: The Colorado Supreme Court has clearly stated in *Baker* that "[t]he attorney-client relationship is distinctly a fiduciary relationship arising as a matter of law and founded upon a special trust and confidence. In light of this relationship, an attorney's obligation is generally to his or her client and not to a third party."<sup>6</sup>

4. Concern: We can't amend Rules for specific practice areas.

Resolution: We are not adding a specific practice area to the Rule because "family matters" are already mentioned in the Comment 4 to Rule 2.1: "Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work."

5. Concern: We have to follow the ABA Model Rules.

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<sup>5</sup> *Baker v. Wood, Ris & Hames*, 364 P.3d 872 (Colo. 2016).

<sup>6</sup> *Baker v. Wood, Ris & Hames*, *Id.*

Resolution: In January 2008, CRCP Rule 2.1 and the Comment were amended. The Rule was amended as follows:

In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

This amendment did not follow the ABA Model Rules, and it was included as a Rule not just a Comment. It addresses a specific practice area, litigation, and serves as a model for the proposed amendment that is before the Ethics Committee.

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Amending CRCP Rule 2.1 and Comment 5 is vitally important for the protection of children. Because the Amendment to the Rule states that lawyers “should” advise their clients of the importance of minimizing the adverse impact that parental conflict can have on minor children, it is not an absolute requirement but, rather, one to which lawyers “should” adhere. The Amendments resolve the conflict regarding the advocate/advisor roles of an attorney, and they affirmatively address the critical issue of parental conflict and the harm that it does to children.

COLORADO RULES OF PROFESSIONAL CONDUCT  
AMENDMENTS TO CRPC RULE 2.1 AND COMMENT 5

PREAMBLE: A LAWYER'S RESPONSIBILITIES

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

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

COUNSELOR

RULE 2.1. ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation. *In a matter involving the allocation of parental rights and responsibilities, an attorney should advise the client of the importance of minimizing the adverse impact that parental conflict can have on the minor children.* In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

COMMENT

*Scope of Advice*

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work (Emphasis added); business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

#### *Offering Advice*

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter involves the allocation of parental rights and responsibilities, it may be necessary under Rule 1.4 to inform the client of the importance of minimizing the adverse impact that parental conflict can have on minor children. Likewise, when a matter is likely to involve litigation, it may be necessary under Rule 1.43 to inform the client of forms of dispute resolution that might constitute reasonable alternative to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

COLORADO RULES OF PROFESSIONAL CONDUCT  
AMENDMENT TO CRPC RULE 2.1, COMMENT 5  
COLORADO BAR ASSOCIATION ETHICS COMMITTEE

PREAMBLE: A LAWYER'S RESPONSIBILITIES

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

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

COUNSELOR

RULE 2.1. ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation. In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

COMMENT

*Scope of Advice*

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.



[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

#### *Offering Advice*

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. *In a matter involving the allocation of parental rights and responsibilities, an attorney should consider advising the client of the importance of minimizing the adverse impact that parental conflict can have on the minor children.* Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.43 to inform the client of forms of dispute resolution that might constitute reasonable alternative to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

## Marcy Glenn

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**From:** berger, michael <michael.berger@judicial.state.co.us>  
**Sent:** Thursday, July 14, 2016 1:21 PM  
**To:** Marcy Glenn  
**Cc:** eid, allison; moore, jenny  
**Subject:** Supreme Court Civil Rules Committee  
**Attachments:** 2016-07-11 CRCP 121 Section 127 Subcommittee Final.pdf

Marcy, because the attached proposal relates to or may impact the Colorado Rules of Professional Conduct, the Civil Rules Committee invites the views of your committee on the propriety and wisdom of amending the Colorado Rules of Civil Procedure in the manner suggested.

The next meeting of the Civil Rules Committee is set for Friday, September 30, 2016 at 1:30pm in the Supreme Court conference room and I invite you to attend that meeting to express, if possible, the views of your committee regarding this proposal.

Michael H. Berger, Chair  
Colorado Supreme Court Civil Rules Committee  
720 625-5231  
[Michael.berger@judicial.state.co.us](mailto:Michael.berger@judicial.state.co.us)

**From:** shamis, jonathan  
**Sent:** Thursday, July 14, 2016 12:54 PM  
**To:** berger, michael  
**Subject:** FW: Civil Rules Committee

Judge Berger:

I have been chairing a subcommittee of the CBA/DBA Professionalism Coordinating Council for close to a year. Our group has included Chief Disciplinary Judge William Lucero and Attorney Regulation Council Jim Coyle. We have worked closely the full CBA/DBA PCC, the Wyoming Judiciary (our rule was inspired by their District Court Rule 801) and we recently presented and received the support of the Council of Chief Judges. Yesterday, the full CBA/DBA PCC approved a draft presented by the subcommittee of a proposed amendment to CRCP 121. It is enclosed. I would welcome the opportunity to meet or chat to discuss the history and our process in advancing this proposal. I am also happy to coordinate with other members of the subcommittee or the PCC to address any questions or concerns you may have.

Best,  
Hon. Jonathan Shamis  
Lake County Judge  
Leadville, CO 80461

**From:** moore, jenny  
**Sent:** Thursday, July 14, 2016 9:21 AM  
**To:** shamis, jonathan  
**Subject:** RE: Civil Rules Committee

You can submit it to the Civil Rules Committee chair, Judge Michael Berger ([michael.berger@judicial.state.co.us](mailto:michael.berger@judicial.state.co.us)). Our next meeting is September 30. Let me know if you have other questions.

Thanks!

Jenny A. Moore  
Rules Attorney  
Colorado Supreme Court

**From:** shamis, jonathan

**Sent:** Thursday, July 14, 2016 8:54 AM

**To:** moore, jenny <[jenny.moore@judicial.state.co.us](mailto:jenny.moore@judicial.state.co.us)>

**Subject:** Civil Rules Committee

Jenny:

I have been chairing a subcommittee of the CBA/DBA Professionalism Coordinating Council over the past several months. The committee has included Chief Disciplinary Judge William Lucero and Attorney Regulation Council Jim Coyle. Yesterday, the full CBA/DBA PCC approved a draft of a proposed amendment to CRCP 121. How should it be presented for formal consideration by the Rules Committee?

Best,  
jonathan  
Hon. Jonathan Shamis  
Lake County Judge  
Leadville, CO

**SECTION 1-27**  
**JUDICIAL EXPECTATIONS FOR PROFESSIONALISM AND CIVILITY**

**1. General Principle.**

Attorneys, as members of the legal profession, are representatives of clients, privileged participants in the legal process, and public citizens having special responsibilities for the administration of justice. Judicial officers appropriately expect attorneys appearing before them to act with integrity, honesty, diligence, respect, courtesy, cooperation, and competence in all their professional interactions.

**2. Civility in Legal Proceedings.**

- (a) Attorneys will be civil and courteous in their conduct and their communications with the court, court personnel, parties, witnesses, and counsel, whether in person or in writing.
- (b) Attorneys will extend reasonable cooperation to all participants in the legal process. For example, attorneys will not unreasonably withhold consent or delay responding to requests for appropriate scheduling or logistical accommodations; attorneys will allow adequate time for response to inquiries or demands; and attorneys will not condition their cooperation or accommodations on disproportionate or unreasonable demands.
- (c) Attorneys will not demonstrate disrespect toward the court or other participants in the legal process.

**3. Timeliness.**

- (a) Attorneys will be punctual while participating in all aspects of judicial proceedings, including, but not limited to, appearing at hearings, mediations, depositions, conferences, and trial; filing papers or other materials with the court; and communicating with judges, court personnel, counsel, and clients.
- (b) Attorneys will avoid unnecessary delay and facilitate the just, speedy, and inexpensive determination of every action. Attorneys will respond in a timely manner to motions, communications, offers of settlement, and other interactions with counsel, and will confer in a timely manner with clients.
- (c) Attorneys will not file or serve motions, pleadings, or other papers in such a manner as to unfairly limit the opportunity to respond.

#### **4. Candor to the Court.**

- (a) Consistent with their duties to a client, attorneys will not knowingly allow the court to proceed under a misperception of fact or law.
- (b) If the court orders an attorney to prepare a proposed order, as provided in C.R.C.P. 121, Sec. 1-16, that attorney will work cooperatively with all counsel and pro se parties to produce an accurate order that correctly states the findings, conclusions, and orders of the court, and will timely submit the order to the court for its review and approval.

#### **5. Candor and Fairness to Counsel and Parties.**

- (a) Attorneys will not use the discovery rules and procedures, or any other aspect of the judicial process, for the purpose of harassing parties or counsel, or as a means of impeding the timely, efficient, and cost-effective resolution of a case or dispute.
- (b) Attorneys will attempt in good faith to stipulate to undisputed matters and to resolve disputes and procedural issues without court intervention.
- (c) Attorneys will clearly identify all changes made in any document exchanged or under discussion.

#### **6. Attorney Conduct in Deposition.**

Attorneys will conduct themselves during deposition practice with the same integrity, honesty, diligence, respect, courtesy, cooperation, and competence expected of attorneys appearing before a court.

#### **7. Attorney Conduct During Judicial Proceedings.**

- (a) Attorneys will make only objections that are concise, specific, and supported by applicable law.
- (b) Arguments, objections, and remarks will be directed to the court and not to counsel or parties, or to any other person present in the courtroom.
- (c) When examining a witness or addressing the court or other persons present in the courtroom, attorneys will conform to the decorum rules of the court in which they are appearing.

- (d) Attorneys will request and receive permission from the court before approaching a witness or court personnel, or before approaching a demonstrative exhibit or aid, unless local custom dictates otherwise or as instructed by the court.
- (e) Attorneys will not engage in conduct that will impair the attorney's physical or mental ability to engage in judicial proceedings.

## 8. Enforcement.

- (a) **Scope and Effect.** Attorneys should not construe this practice standard as permission to interpose unnecessary or inappropriate motions. Judicial officers should expect that adherence to this practice standard will diminish the filing of a wide variety of motions that impose unnecessary demands on the court's time and resources.
- (b) **Judicial Powers and Discretion.** After giving the attorney whose conduct is questioned under this practice standard notice and an opportunity to be heard, the court may impose sanctions it deems appropriate under the circumstances, including, but not limited to:
  - i. A formal or informal reprimand; or
  - ii. Monetary sanctions, including, but not limited to, the reasonable costs, including attorney fees, resulting from the attorney's misconduct.
- (c) **Factors to be Considered.** In determining the sanctions to be imposed against an attorney who has violated this practice standard, the court will consider all relevant factors, including, but not limited to:
  - i. The willfulness of the attorney's misconduct;
  - ii. The effect of the misconduct on the proceedings and affected persons;
  - iii. Whether the attorney's misconduct was an isolated event or a pattern of behavior; and
  - iv. Other sanctions imposed in the proceeding against the attorney for misconduct, including, but not limited to, contempt of court.

## COMMITTEE COMMENT

This practice standard does not limit attorneys' obligations to their clients under the Colorado Rules of Professional Conduct. See *People v. Schultheis*, 638 P.2d 8 (Colo. 1981).

Judicial officers should be mindful that lawyers cannot be sanctioned for exercising their First Amendment right to freedom of speech. For example, attorneys may not be sanctioned for expressing an opinion that a judicial officer is racially biased, bigoted, or has a particular bent of mind. However, under this practice standard, such comments must be expressed professionally. Objectively false statements about a judicial officer are not protected by the First Amendment. See *In re Green*, 11 P.3d 1078, 1086 (Colo. 2000).

Action taken under this practice standard does not constitute discipline as contemplated by C.R.C.P. 251.6, nor does imposition of a sanction under this practice standard preclude the reporting of an attorney's misconduct to the Office of Attorney Regulation Counsel. The sanctions applicable under this practice standard may be imposed independently or in conjunction with other available remedies.

C.R.C.P. 121, Sec. 1-27(2)(b) does not modify the standard for determining a motion for continuance as set forth in C.R.C.P. 121, Sec. 1-11.

Under C.R.C.P. 121, Sec. 1-27(8)(a), abuse of remedial measures provided by the Colorado Rules of Civil Procedure, including this practice standard, may itself be unprofessional conduct that warrants action from the court pursuant to this practice standard.

Should the attorney misconduct at issue occur during a judicial proceeding, the "opportunity to be heard" referenced in C.R.C.P. 121, Sec. 1-27(8)(b) does not require the court to set a separate hearing concerning the attorney's misconduct. The opportunity to be heard may be given in conjunction with, or at the conclusion of, the hearing in which the alleged misconduct occurred.

In lieu of, or in addition to, the sanctions set forth in C.R.C.P. 121, Sec. 1-27(8)(b), the court may take such other actions to address unprofessional behavior as it deems appropriate, including, but not limited to, referral of the attorneys to bar association professionalism assistance groups, the Colorado Lawyer Assistance Program (COLAP), or other appropriate programs. Referrals to COLAP are particularly appropriate in cases in which the attorney's physical or mental ability to participate in a judicial proceeding is in question, yet conclusive evidence as to the nature of the impairment has not been established. See C.R.C.P. 254.