# RULE CHANGE 2024(06)

# COLORADO RULES OF PROFESSIONAL CONDUCT

## Rules 1.8, 1.13, 1.14, 4.2, 4.5, 5.5, and 6.1

**Rule 1.8. Conflict of Interest; Current Clients; Specific Rules**

[NO CHANGE]

COMMENT

[1] – [16] [NO CHANGE]

[17] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for ~~his or her own~~the lawyer's conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[18] – [23] [NO CHANGE]

**Rule 1.13. Organization as Client**

(a) – (d) [NO CHANGE]

(e) A lawyer who reasonably believes that ~~he or she~~the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) – (g) [NO CHANGE]

COMMENT

[1] – [7] [NO CHANGE]

[8] A lawyer who reasonably believes that ~~he or she~~the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

[9] – [14] [NO CHANGE]

**Rule 1.14. Client with Diminished Capacity**

[NO CHANGE]

COMMENT

[1] – [9] [NO CHANGE]

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of ~~his or her~~the lawyer's relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

**Rule 4.2. Communication with Person Represented by Counsel or an LLP**

[NO CHANGE]

COMMENT

[1] – [6] [NO CHANGE]

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by the constituent's ~~his or her~~ own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] – [9A] [NO CHANGE]

**Rule 4.5. Threatening Prosecution**

[NO CHANGE]

COMMENT

[1] – [6] [NO CHANGE]

[7] Rule 4.5(b) provides a safe harbor for notifications of this type. Other factors that should be considered to differentiate threats from notifications in difficult cases include (a) an absence of any suggestion by the notifying lawyer that ~~he or she~~ the lawyer could exert any improper influence over the criminal, administrative or disciplinary process, (b) consideration of whether any monetary recovery or other relief sought by the notifying lawyer is reasonably related to the harm suffered by the lawyer's clients. Where no such reasonable relation exists, the communication likely constitutes a proscribed threat. For example, a lawyer violates Rule 4.5 if the lawyer threatens to file a charge or complaint of tax fraud against another party where issues of tax fraud have nothing to do with the dispute. It is not a violation of Rule 4.5 for a lawyer to notify another party that the other person's writing of an insufficient funds check may have criminal as well as civil ramifications in a civil action for collection of the bad check.

**Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law**

(a) - (e) [NO CHANGE]

COMMENT

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. In order to protect the public, persons not admitted to practice law in Colorado cannot hold themselves out as lawyers in Colorado or as authorized to practice law in Colorado. Rule 5.5(a)(1) recognizes that C.R.C.P. 204, *et seq.* permit lawyers to practice law in accordance with their terms in Colorado without a license from the Colorado Supreme Court. Lawyers may also be permitted to practice law within the physical boundaries of the State, without such a license, where they do so pursuant to Federal or tribal law. Such practice does not constitute a violation of the general proscription of Rule 5.5(a)(1). Lawyers who are physically present in Colorado and provide legal services under the authority of another jurisdiction do not violate Rule 5.5(a)(1), provided such lawyers do not solicit or accept clients in Colorado for services to be performed in Colorado and do not hold themselves out, directly or impliedly, as authorized to practice law in Colorado.

[2] - [6] [NO CHANGE]

**Rule 6.1. Voluntary Pro Bono Publico Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) – (b) [NO CHANGE]

COMMENT

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay. Indeed, the oath that Colorado lawyers take upon admittance to the Bar requires that a lawyer will never "reject, from any consideration personal to myself, the cause of the defenseless or oppressed." In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of ~~his or her~~the lawyer's legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] – [11] [NO CHANGE]

Recommended Model Pro Bono Policy for Colorado Licensed Attorneys and Law Firms

Preface. [NO CHANGE]

Table of Contents [NO CHANGE]

References [NO CHANGE]

I. – II. [NO CHANGE]

III. Pro Bono Services Defined

[NO CHANGE]

A. – F. [NO CHANGE]

G. Mentoring of Law Students and Lawyers on Pro Bono Matters. Colorado Supreme Court Rule 260.8 provides that an attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which ~~he/she~~the attorney mentors a law student. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which ~~he/she~~the attorney mentors another lawyer. However, mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means.

Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, the firm will not count them toward fulfillment of any attorney's, or the firm's, goal to provide pro bono legal services to persons of limited means or to nonprofits that serve such persons' needs: participation in a non-legal capacity in a community or volunteer organization; services to non-profit organizations with sufficient funds to pay for legal services as part of their normal expenses; client development work; non-legal service on the board of directors of a community or volunteer organization; bar association activities; and non-billable legal work for family members, friends, or members or staff of the firm who are not eligible to be pro bono clients under the above criteria.

IV. [NO CHANGE]

V. Administration of Pro Bono Service (see suggested change for small firms below).

A. – I. [NO CHANGE]

J. Departing Attorneys. When an attorney handling a pro bono case leaves the firm, ~~he or she~~the attorney should work with the Pro Bono Committee/Coordinator to (1) locate another attorney in the firm to take over the representation of the pro bono client, or (2) see if the referring organization can facilitate another placement.

** [Small firms may wish to title this section “Pro Bono Procedures” and include only the following paragraph in lieu of the above provisions: All pro bono legal matters will be opened in accordance with regular firm procedures, including utilization of a conflicts check and a client engagement letter. Pro bono matters should be supervised by a partner, as appropriate. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters whenever possible.]

VI. CLE Credit for Pro Bono Work

[NO CHANGE]

A. Amount of CLE Credit. Attorneys may earn one (1) CLE credit hour for every five (5) billable-equivalent hours of pro bono representation provided to the client of limited means. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which ~~he/she~~the lawyer mentors another lawyer. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means. An attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which ~~he/she~~the lawyer mentors a law student.

B. [NO CHANGE]

Recommended Model Pro Bono Policy for Colorado In-House Legal Departments [NO CHANGE]

**Rule 1.8. Conflict of Interest; Current Clients; Specific Rules**

[NO CHANGE]

COMMENT

[1] – [16] [NO CHANGE]

[17] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for the lawyer’s conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[18] – [23] [NO CHANGE]

## Rule 1.13. Organization as Client

(a) – (d) [NO CHANGE]

(e) A lawyer who reasonably believes that the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) – (g) [NO CHANGE]

COMMENT

[1] – [7] [NO CHANGE]

[8] A lawyer who reasonably believes that the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

[9] – [14] [NO CHANGE]

## Rule 1.14. Client with Diminished Capacity

[NO CHANGE]

COMMENT

[1] – [9] [NO CHANGE]

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of the lawyer's relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

**Rule 4.2. Communication with Person Represented by Counsel or an LLP**

[NO CHANGE]

COMMENT

[1] – [6] [NO CHANGE]

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by the constituent's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] – [9A] [NO CHANGE]

## Rule 4.5. Threatening Prosecution

[NO CHANGE]

COMMENT

[1] – [6] [NO CHANGE]

[7] Rule 4.5(b) provides a safe harbor for notifications of this type. Other factors that should be considered to differentiate threats from notifications in difficult cases include (a) an absence of any suggestion by the notifying lawyer that the lawyer could exert any improper influence over the criminal, administrative or disciplinary process, (b) consideration of whether any monetary recovery or other relief sought by the notifying lawyer is reasonably related to the harm suffered by the lawyer's clients. Where no such reasonable relation exists, the communication likely constitutes a proscribed threat. For example, a lawyer violates Rule 4.5 if the lawyer threatens to file a charge or complaint of tax fraud against another party where issues of tax fraud have nothing to do with the dispute. It is not a violation of Rule 4.5 for a lawyer to notify another party that the other person's writing of an insufficient funds check may have criminal as well as civil ramifications in a civil action for collection of the bad check.

## Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) - (e) [NO CHANGE]

COMMENT

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. In order to protect the public, persons not admitted to practice law in Colorado cannot hold themselves out as lawyers in Colorado or as authorized to practice law in Colorado. Rule 5.5(a)(1) recognizes that C.R.C.P. 204, *et seq.* permit lawyers to practice law in accordance with their terms in Colorado without a license from the Colorado Supreme Court. Lawyers may also be permitted to practice law within the physical boundaries of the State, without such a license, where they do so pursuant to Federal or tribal law. Such practice does not constitute a violation of the general proscription of Rule 5.5(a)(1). Lawyers who are physically present in Colorado and provide legal services under the authority of another jurisdiction do not violate Rule 5.5(a)(1), provided such lawyers do not solicit or accept clients in Colorado for services to be performed in Colorado and do not hold themselves out, directly or impliedly, as authorized to practice law in Colorado.
[2] - [6] [NO CHANGE]

**Rule 6.1. Voluntary Pro Bono Publico Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) – (b) [NO CHANGE]

COMMENT

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay. Indeed, the oath that Colorado lawyers take upon admittance to the Bar requires that a lawyer will never "reject, from any consideration personal to myself, the cause of the defenseless or oppressed." In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of the lawyer's legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] – [11] [NO CHANGE]

Recommended Model Pro Bono Policy for Colorado Licensed Attorneys and Law Firms

Preface. [NO CHANGE]

Table of Contents [NO CHANGE]

References [NO CHANGE]

I. – II. [NO CHANGE]

III. Pro Bono Services Defined

[NO CHANGE]

A. – F. [NO CHANGE]

G. Mentoring of Law Students and Lawyers on Pro Bono Matters. Colorado Supreme Court Rule 260.8 provides that an attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which the attorney mentors a law student. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which the attorney mentors another lawyer. However, mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means.

Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, the firm will not count them toward fulfillment of any attorney's, or the firm's, goal to provide pro bono legal services to persons of limited means or to nonprofits that serve such persons' needs: participation in a non-legal capacity in a community or volunteer organization; services to non-profit organizations with sufficient funds to pay for legal services as part of their normal expenses; client development work; non-legal service on the board of directors of a community or volunteer organization; bar association activities; and non-billable legal work for family members, friends, or members or staff of the firm who are not eligible to be pro bono clients under the above criteria.

IV. [NO CHANGE]

V. Administration of Pro Bono Service (see suggested change for small firms below).

A. – I. [NO CHANGE]

J. Departing Attorneys. When an attorney handling a pro bono case leaves the firm, the attorney should work with the Pro Bono Committee/Coordinator to (1) locate another attorney in the firm to take over the representation of the pro bono client, or (2) see if the referring organization can facilitate another placement.

** [Small firms may wish to title this section “Pro Bono Procedures” and include only the following paragraph in lieu of the above provisions: All pro bono legal matters will be opened in accordance with regular firm procedures, including utilization of a conflicts check and a client engagement letter. Pro bono matters should be supervised by a partner, as appropriate. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters whenever possible.]

VI. CLE Credit for Pro Bono Work

[NO CHANGE]

A. Amount of CLE Credit. Attorneys may earn one (1) CLE credit hour for every five (5) billable-equivalent hours of pro bono representation provided to the client of limited means. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which the lawyer mentors another lawyer. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means. An attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which the lawyer mentors a law student.

B. [NO CHANGE]

Recommended Model Pro Bono Policy for Colorado In-House Legal Departments [NO CHANGE]

**Amended and Adopted by the Court, En Banc, February 8, 2024, effective immediately.**

**By the Court:**

**William W. Hood, III**
**Justice, Colorado Supreme Court**