

LIST OF CHAPTERS

VOLUME 1

PART 1 • PROFESSIONAL RESPONSIBILITIES TO CLIENTS AND THE COURTS

- Chapter 1** **PROFESSIONALISM**
Hon. John P. Leopold
- Chapter 2** **THE CLIENT-LAWYER RELATIONSHIP**
Ronald H. Nemirow, Esq.
- Chapter 3** **ALTERNATIVE LAWYER RELATIONSHIPS**
David C. Little, Esq.
- Chapter 4** **CONFLICTS OF INTEREST**
Michael T. Mihm, Esq.
- Chapter 5** **ATTORNEY FEES AND COSTS**
Alec Rothrock, Esq.
- Chapter 6** **RESERVED**
- Chapter 7** **COLLECTING FEES**
Ross W. Pulkrabek, Esq.
- Chapter 8** **PRIVILEGES AND CONFIDENTIALITY**
John M. Palmeri, Esq.
Nicole C. Salamander Irby, Esq.
Megan R. Garnett, Esq.
- Chapter 9** **DIMINISHED CAPACITY CLIENTS**
James R. Walker, Esq.
- Chapter 10** **A LAWYER’S RELATIONSHIP WITH THE PRESS AND MEDIA**
Pamela Robillard Mackey, Esq.
Jamie Hughes Hubbard, Esq.

**Chapter 11 CONTACTS WITH REPRESENTED PARTIES AND THEIR
CURRENT AND FORMER EMPLOYEES**

Nicole M. Quintana, Esq.

Michael P. Cross, Esq.

**Chapter 12 SPYING: THE ETHICS OF SECRET RECORDINGS, HIDDEN
CAMERAS, AND PRIVATE INVESTIGATORS**

Kimberly C. Perdue, Esq.

Daniel R. McCune, Esq.

Forrest Plesko, Esq.

PART 2 • LAW PRACTICE MANAGEMENT

Chapter 13 RISK MANAGEMENT

Christopher B. Little, Esq.

Chapter 14 CHOICE OF LAW FIRM ENTITY

Robert R. Keatinge, Esq.

Chapter 15 PROFESSIONAL LIABILITY INSURANCE

Bradley A. Levin, Esq.

Elisabeth L. Owen, Esq.

Chapter 16 TECHNOLOGY AND THE PRACTICE OF LAW

Troy R. Rackham, Esq.

Chapter 17 LAWYER ADVERTISING

Ross W. Pulkrabek, Esq.

Chapter 18 SOCIAL MEDIA AND PROFESSIONAL LIABILITY

Anna N. Martinez, Esq.

Clayton E. Wire, Esq.

Chapter 19 MULTI-JURISDICTIONAL PRACTICE OF LAW

Robert R. Keatinge, Esq.

Table of Contents

Chapter 20 MANAGING TRUST ACCOUNTS AND CLIENTS' PROPERTY

Office of Attorney Regulation Counsel

Margaret Brown Funk, Esq. (Supplement Author)

Dawn M. McKnight, Esq. (Supplement Author)

Chapter 21 PROFESSIONAL AND ETHICAL RESPONSIBILITIES WHEN DEPARTING A LAW PRACTICE

Nancy Cohen, Esq.

Anna N. Martinez, Esq.

PART 3 • PROFESSIONAL RESPONSIBILITY IN LITIGATION

Chapter 22 LAWYERS' LIABILITY FOR CONDUCT DURING LITIGATION

Heather K. Kelly, Esq.

Chapter 23 INTERVIEWING AND PREPARING WITNESSES

Ronald H. Nemirow, Esq.

Chapter 24 JOINT DEFENSE AGREEMENTS

John R. Chase, Esq.

Amanda C. Jokerst, Esq.

Chapter 25 DISQUALIFICATION OF COUNSEL

Peter A. McClenahan, Esq.

James E. Fogg, Esq.

Chapter 26 INADVERTENT DISCLOSURE

Cecil E. Morris, Jr., Esq.

Chapter 27 SETTLEMENT AND MEDIATION

Heather K. Kelly, Esq.

Julie McCurdy Williamson, Esq.

Chapter 28 DUTY OF CANDOR TO THE TRIBUNAL AND REMEDIAL MEASURES IN CIVIL PROCEEDINGS

Paul Gordon, Esq.

Chapter 29 PRESERVATION AND SPOILIATION OF EVIDENCE

Anna N. Martinez, Esq.

VOLUME 2

**PART 4 • PROFESSIONAL RESPONSIBILITY IN
SUBSTANTIVE PRACTICE AREAS**

Chapter 30 APPEALS

Julie McCurdy Williamson, Esq.
Thomas D. Neville, Esq. (Update Author)

Chapter 31 BANKRUPTCY

Megan M. Adeyemo, Esq.

Chapter 32 TRANSACTIONS AND CLOSELY HELD BUSINESSES

Stephen D. Gurr, Esq.

**Chapter 33 CLASS ACTION LAWYERS' PROFESSIONAL
RESPONSIBILITIES**

Ronald M. Sandgrund, Esq., Author
Scott F. Sullan, Esq., Author
Leslie A. Tuft, Esq., Author
Cecil E. Morris, Jr., Esq., Contributor

Chapter 34 CREDITORS' RIGHTS AND DEBT COLLECTION

Irvin Borenstein, Esq.

Chapter 35 PROFESSIONAL DEFENSE OF THE ACCUSED

Jeffrey S. Pagliuca, Esq.
Laura A. Menninger, Esq.
Alan D. Schindler, Esq.

Chapter 36 EMPLOYMENT ISSUES

Clayton E. Wire, Esq.

Chapter 37 ESTATE PLANNING AND PROBATE

Michael A. Kirtland, Esq. (Part A)
Tammy Conover, Esq. (Part B)

Chapter 38 FAMILY LAW

Kimberly R. Willoughby, Esq.

- Chapter 39 REAL ESTATE TRANSACTIONS**
Thomas Macdonald, Esq.
- Chapter 40 LIABILITY AND PROTECTIONS UNDER THE FEDERAL
SARBANES-OXLEY ACT**
Cecil E. Morris, Jr., Esq.
- Chapter 41 TAXATION**
Jennifer E. Benda, Esq.
- Chapter 42 WORKERS' COMPENSATION**
Thomas L. Kanan, Jr., Esq.
- Chapter 43 TRIPARTITE RELATIONSHIP: PROFESSIONAL AND ETHICAL
RESPONSIBILITIES OF INSURANCE DEFENSE COUNSEL**
Ronald H. Nemirow, Esq.
Christopher P. Brown, Esq.
- Chapter 44 LAW FIRMS' "GENERAL COUNSEL" AND RISK
MANAGEMENT**
Joseph J. Bronesky, Esq.
- Chapter 45 RESERVED**
- Chapter 46 RESERVED**
- Chapter 47 RESERVED**

**PART 5 • LITIGATION OF PROFESSIONAL
LIABILITY AND ETHICS CLAIMS**

- Chapter 48 THE CLAIM OR LAWSUIT**
Bradley A. Levin, Esq.
Elisabeth L. Owen, Esq.
- Chapter 49 FUNDAMENTALS OF LEGAL MALPRACTICE LITIGATION**
Michael T. Mihm, Esq.
Nicole Quintana, Esq.

Chapter 50 CAUSATION AND DAMAGES IN LEGAL MALPRACTICE LITIGATION

Michael T. Mihm, Esq.

Nicole Quintana, Esq.

Chapter 51 COMMON LAW LEGAL MALPRACTICE CLAIMS

Michael T. Mihm, Esq.

Nicole Quintana, Esq.

Chapter 52 STATUTORY LEGAL MALPRACTICE CLAIMS

Michael T. Mihm, Esq.

Nicole Quintana, Esq.

Chapter 53 DEFENSES TO LEGAL MALPRACTICE CLAIMS

Michael T. Mihm, Esq.

Nicole Quintana, Esq.

Chapter 54 VICARIOUS LIABILITY

Paul Gordon, Esq.

Chapter 55 COLORADO ATTORNEY REGULATION: ATTORNEY DISCIPLINE PROCESS AND PROCEDURE

Alec Rothrock, Esq.

Chapter 56 COLORADO ATTORNEY REGULATION: SUMMARY ADJUDICATIONS, COLLATERAL AND DISABILITY PROCEEDINGS, AND REINSTATEMENT AND READMISSION

Alec Rothrock, Esq.

PART 6 • TRENDS

Chapter 57 TRENDS IN LEGAL MALPRACTICE LITIGATION: 2012–2017

Troy R. Rackham, Esq.

SUBJECT INDEX

TABLE OF CONTENTS

VOLUME 1

PART 1 • PROFESSIONAL RESPONSIBILITIES TO CLIENTS AND THE COURTS

Chapter 1 PROFESSIONALISM

§ 1.1 INTRODUCTION

§ 1.1.1—Causes Of Unprofessionalism

§ 1.1.2—Toward The Advancement Of Professionalism And
Civility

§ 1.2 LAWYER’S OBLIGATIONS TO THE CLIENT

§ 1.2.1—Competence

§ 1.2.2—Diligence And Promptness

§ 1.2.3—Independent Professional Judgment And Candor

§ 1.2.4—Loyalty And Conflicts Of Interest

§ 1.2.5—Confidentiality

§ 1.2.6—Communication

§ 1.2.7—Control Attorney Fees And Costs

§ 1.2.8—Civility

§ 1.3 LAWYER’S OBLIGATIONS TO CO-WORKERS

§ 1.3.1—Lawyer Co-Workers

§ 1.3.2—Non-Lawyer Assistants

§ 1.3.3—Civility

§ 1.4 LAWYER’S OBLIGATIONS TO OTHER COUNSEL, PARTIES, AND WITNESSES

§ 1.4.1—Fairness To Opposing Party And Counsel

§ 1.4.2—Standards Of Professionalism And Civility Codes

§ 1.5 LAWYER'S OBLIGATIONS TO THE TRIBUNAL

§ 1.5.1—Candor

§ 1.5.2—Impartiality

§ 1.5.3—Trial Publicity

§ 1.5.4—Courtroom Etiquette And Decorum

§ 1.5.5—Efficiency

§ 1.6 LAWYER'S OBLIGATIONS TO THE JUDICIAL SYSTEM AND THE PUBLIC

§ 1.6.1—The Justice System

§ 1.6.2—The Public

§ 1.7 COLORADO'S MERIT SELECTION SYSTEM AND JUDGES' PROFESSIONALISM

EXHIBIT

Exhibit 1A—10 Tips For Dealing With Rude And Unprofessional Lawyers

Chapter 2 THE CLIENT-LAWYER RELATIONSHIP

§ 2.1 INTRODUCTION

§ 2.2 TERMINOLOGY: "CLIENT-LAWYER RELATIONSHIP" VERSUS "ATTORNEY-CLIENT RELATIONSHIP"

§ 2.3 CLIENT-LAWYER RELATIONSHIP AS A FIDUCIARY RELATIONSHIP

§ 2.4 CLIENT-LAWYER RELATIONSHIP AS AN AGENCY RELATIONSHIP

§ 2.4.1—Generally, The Client Is Bound By The Lawyer's Acts And Omissions Regarding Procedure But Not Substance

Table of Contents

§ 2.4.2—Notice To The Lawyer Within The Scope Of
Representation Is Notice To The Client

§ 2.4.3—A Client Does Not Conspire With The Lawyer Within
The Legitimate Scope Of The Agency

§ 2.5 CREATING THE CLIENT-LAWYER RELATIONSHIP

§ 2.5.1—Who Decides That There Is A Client-Lawyer
Relationship?

§ 2.5.2—Creation By Express Contract

§ 2.5.3—Creation By Implied Contract

§ 2.6 IDENTIFYING THE CLIENT

§ 2.7 INDIVIDUAL CLIENTS

§ 2.7.1—Clients’ Spouses (And Others With Presumably
Shared Interests)

§ 2.7.2—Parents And Children As Clients

§ 2.7.3—Clients Who Are Fiduciaries Or Settlers

§ 2.7.4—Clients Who Are Assignees Or Successors

§ 2.7.5—Clients’ Subrogees

§ 2.8 ORGANIZATIONAL CLIENTS

§ 2.8.1—Corporations

§ 2.8.2—Closely Held Businesses

§ 2.8.3—Limited Liability Companies And Partnerships

§ 2.8.4—Sole Proprietorships

§ 2.9 SCOPE OF REPRESENTATION — GENERALLY

§ 2.9.1—Insurance Defense Relationships

§ 2.9.2—Insurance Defense Relationships: Workers’
Compensation

§ 2.9.3—“Unbundling” Of Legal Services

§ 2.10 ENDING THE CLIENT-LAWYER RELATIONSHIP

§ 2.11 ISSUES WHEN A LAWYER WITHDRAWS FROM THE CLIENT-LAWYER RELATIONSHIP

§ 2.12 DUTIES THAT SURVIVE THE END OF THE CLIENT-LAWYER RELATIONSHIP

EXHIBITS

Exhibit 2A—Sample Closing Letter

Exhibit 2B—Sample Motion To Withdraw

Chapter 3 ALTERNATIVE LAWYER RELATIONSHIPS

§ 3.1 INTRODUCTION

§ 3.2 CONTRACT LAWYERING IN GENERAL

§ 3.2.1—Lawyer Registration Disclosure Of Insurance Coverage For Contract Lawyers

§ 3.3 GENERAL ETHICAL CONSIDERATIONS

§ 3.4 CIVIL CONSEQUENCES OF THE TEMPORARY RELATIONSHIP

§ 3.5 THE FIRM'S LIABILITY

§ 3.5.1—The Contract Lawyer's Exposures

§ 3.5.2—The Client's Obligations

§ 3.6 OUTSOURCING AS A PART OF CONTRACT LAWYERING

§ 3.7 ALTERNATIVE RELATIONSHIPS — UPDATE

§ 3.7.1—Temporary Lawyering Civil Liability

§ 3.7.2—Ethical Principles And Developments

§ 3.8 ENGAGING LOCAL COUNSEL

§ 3.9 LEGAL SERVICE REFERRAL SYSTEMS

§ 3.10 CONCLUSION

EXHIBIT

Exhibit 3A—“The Ethics Of Contract Lawyering”

Chapter 4 CONFLICTS OF INTEREST

§ 4.1 INTRODUCTION

§ 4.2 POLICY CONSIDERATIONS BEHIND THE CONFLICT OF INTEREST RULES

§ 4.3 WHAT IS A CONFLICT OF INTEREST?

§ 4.3.1—What Conflicts Of Interest Matter?

§ 4.3.2—The Standard For Determining Whether A Conflict Of Interest Exists — Generally

§ 4.3.3—What Effect Are The Conflict Of Interest Rules Attempting To Prevent?

§ 4.3.4—How Significant Must The Adverse Effect Be?

§ 4.3.5—What Is The Probability Of An Adverse Effect?

§ 4.3.6—From Whose Perspective Are Conflicts Of Interest To Be Determined?

§ 4.4 GENERAL PRINCIPLES OF COLORADO’S CONFLICT OF INTEREST RULES

§ 4.4.1—Loyalty To The Client

§ 4.4.2—Colorado’s Conflict Of Interest Rule

§ 4.5 CONFLICTS OF INTEREST AMONG CLIENTS

§ 4.5.1—Direct Adversity Among Concurrent Clients

§ 4.5.2—Conflicts Of Interest That Affect The Quality Of Representation — Generally

§ 4.5.3—Representing Co-Parties In Civil Litigation

§ 4.5.4—Conflicts Of Interest In Criminal Cases

§ 4.5.5—Conflicts Of Interest When Representing
Organizations

**§ 4.6 CONFLICTS BETWEEN A LAWYER'S PERSONAL
INTERESTS AND A CLIENT'S INTERESTS**

§ 4.6.1—Conflicts With The Lawyer's Interests — Generally

§ 4.6.2—Transactions With Clients — Generally

§ 4.6.3—Business Transactions With Clients

§ 4.6.4—Loans From Clients

§ 4.6.5—Gifts From Clients

§ 4.6.6—Sex With Clients

§ 4.6.7—Other Transactions With Clients

§ 4.7 CONFLICTS WITH FORMER CLIENTS

§ 4.7.1—Conflicts With Former Clients — Introduction

§ 4.7.2—The “Substantial Relationship” Test

§ 4.7.3—Factors Determining Whether Matters Are
“Substantially Related”

§ 4.7.4—Factors Determining “Material Adversity”

**§ 4.8 CONFLICTS BETWEEN A CLIENT'S INTERESTS AND
DUTIES OWED TO THIRD PARTIES**

§ 4.9 POSITIONAL OR “ISSUE” CONFLICTS

§ 4.10 CLIENT CONSENT TO CONFLICTS OF INTEREST

§ 4.10.1—Introduction

§ 4.10.2—General Rule Of Client Consent Or Waiver

§ 4.10.3—When The Client May Not Properly Consent To The
Conflict

§ 4.10.4—Informed Consent Requirement

§ 4.10.5—Restrictions On Obtaining Consent

Table of Contents

§ 4.11 IMPUTED CONFLICTS OF INTEREST

- § 4.11.1—Introduction To Imputed Conflicts Of Interest
- § 4.11.2—Rule Of Imputed Disqualification — Rationale
- § 4.11.3—Colorado Rule On Imputed Disqualification — Generally
- § 4.11.4—Colorado’s Rule Of Imputed Disqualification
- § 4.11.5—“Confidentiality Walls” Or Screening For Imputed Disqualification

§ 4.12 SUMMARY

Chapter 5 ATTORNEY FEES AND COSTS

§ 5.1 COLO. RPC 1.5(a)

- § 5.1.1—Customary Rates
- § 5.1.2—Reasonableness Of Fees And Expenses: Prospective Or Retrospective Analysis?
- § 5.1.3—Expert Witnesses
- § 5.1.4—Block Billing
- § 5.1.5—Reasonableness Of Contingent Fees
- § 5.1.6—Disputes Between Lawyers Over Contingent Fees
- § 5.1.7—Contingent Fees In Structured Settlements
- § 5.1.8—Reasonableness Of Expenses

§ 5.2 COLO. RPC 1.5(b)

§ 5.3 COLO. RPC 1.5(c)

- § 5.3.1—Rule 1 Of The Rules Governing Contingent Fees
- § 5.3.2—Rule 2 Of The Rules Governing Contingent Fees
- § 5.3.3—Rule 3 Of The Rules Governing Contingent Fees
- § 5.3.4—Rule 4 Of The Rules Governing Contingent Fees
- § 5.3.5—Rule 5 Of The Rules Governing Contingent Fees
- § 5.3.6—Rule 6 Of The Rules Governing Contingent Fees
- § 5.3.7—Rule 7 Of The Rules Governing Contingent Fees

§ 5.4 COLO. RPC 1.5(d)

§ 5.5 COLO. RPC 1.5(e)

§ 5.6 COLO. RPC 1.5(f)

§ 5.7 COLO. RPC 1.5(g)

§ 5.8 COLO. RPC 1.8(a)

§ 5.9 ATTORNEY LIENS

§ 5.9.1—Background

§ 5.9.2—Charging Liens

§ 5.9.3—Retaining Liens

Chapter 6 RESERVED

Chapter 7 COLLECTING FEES

§ 7.1 INTRODUCTION

§ 7.2 ATTORNEYS' LIENS

§ 7.2.1—Overview

§ 7.2.2—Charging Liens

§ 7.2.3—Retaining Liens

§ 7.2.4—Other Security Interests In Client Property

§ 7.2.5—Who Owns The File?

§ 7.3 COLLECTION ACTIONS

§ 7.4 ARBITRATION AND MEDIATION OF FEE DISPUTES

Chapter 8 PRIVILEGES AND CONFIDENTIALITY

§ 8.1 INTRODUCTION

§ 8.2 CLIENT SECRETS AND CONFIDENTIALITY

§ 8.2.1—General

§ 8.2.2—Scope

§ 8.2.3—Exceptions

§ 8.2.4—Waivers

§ 8.3 ATTORNEY-CLIENT PRIVILEGE

§ 8.3.1—General

§ 8.3.2—Scope

§ 8.3.3—Waivers

§ 8.3.4—Exceptions

§ 8.4 WORK PRODUCT DOCTRINE

§ 8.4.1—General

§ 8.4.2—Scope

§ 8.4.3—Waivers

§ 8.4.4—Exceptions

§ 8.5 CONFIDENTIALITY WALLS

§ 8.6 LAWYERS AS WITNESSES

§ 8.6.1—General

§ 8.6.2—Scope

§ 8.6.3—Mediators

§ 8.6.4—Judges

§ 8.7 LAWYER DISQUALIFICATION

Chapter 9 DIMINISHED CAPACITY CLIENTS

§ 9.1 INTRODUCTION

§ 9.2 DIMINISHED CAPACITY — GENERALLY

§ 9.2.1—Guardian *Ad Litem* Or Conservatorship

§ 9.3 SUBSTITUTED JUDGMENT

**§ 9.4 THE AGENCY *RESTATEMENT* AND “PROTECTING
THE PRINCIPAL” FOCUS**

§ 9.5 UNEARTHING DIMINISHED CAPACITY

§ 9.5.1—Diminished Capacity During Representation

§ 9.6 FINANCIAL ABUSE ISSUES

§ 9.7 CONFIDENTIALITY AND DISCLOSURE

**§ 9.8 DIMINISHED CAPACITY AND THE REVISED
COLORADO RULES OF PROFESSIONAL CONDUCT**

§ 9.8.1—The “Old” Ethical Considerations

§ 9.8.2—The “New” Ethical Guidance

§ 9.8.3—Threshold “Risk” Analysis

§ 9.8.4—New Bias When The Client Instructs That No
Protective Action Should Be Taken

§ 9.8.5—Colo. RPC 1.14 And Confidentiality

§ 9.8.6—Importance Of ABA Formal Opinion 96-404

§ 9.9 SUMMARY

Chapter 10 A LAWYER’S RELATIONSHIP WITH THE PRESS AND MEDIA

§ 10.1 INTRODUCTION

§ 10.2 TRIAL PUBLICITY

§ 10.2.1—Introduction

§ 10.2.2—Colorado Rules Of Professional Conduct

§ 10.2.3—What A Lawyer May Say

§ 10.2.4—What Is More Likely Than Not To Be Prejudicial

§ 10.2.5—The Lawyer’s Fair Reply

§ 10.2.6—Special Rules For Prosecutors

§ 10.2.7—Special Rules For Judges

§ 10.2.8—The Lawyer Should Not Forget Client Confidences

§ 10.3 MEDIA ACCESS TO COURT DOCUMENTS

§ 10.4 THE JOURNEY TO EXPANDED MEDIA COVERAGE

§ 10.4.1—Development Of Constitutional Law

§ 10.4.2—Colorado Law On Public Access To The Judicial
Branch

§ 10.4.3—Arguments In Favor Of Expanded Media Coverage

§ 10.4.4—Objecting To Expanded Media Coverage

§ 10.4.5—Using Gag Orders To Limit The Dissemination Of
Information

**§ 10.5 LIBEL AND SLANDER: YOUR CLIENT GAINS
NOTHING FROM SUING THE MEDIA**

**§ 10.6 STRATEGY CONSIDERATIONS IN INTERACTING
WITH THE MEDIA**

§ 10.6.1—When Silence Is More Fruitful

§ 10.6.2—When To Speak To The Media

§ 10.6.3—How To Effectively Speak To The Media

§ 10.7 CONCLUSION

**Chapter 11 CONTACTS WITH REPRESENTED PARTIES AND THEIR
CURRENT AND FORMER EMPLOYEES**

§ 11.1 INTRODUCTION

§ 11.2 COLO. RPC 4.2

§ 11.2.1—Communication With Represented Parties —
Generally

§ 11.2.2—Subject Of The Representation

§ 11.2.3—Knowledge Of Representation

§ 11.2.4—Authorization By Law Or Court Order

**§ 11.3 COMMUNICATION WITH CURRENT EMPLOYEES
OR CONSTITUENTS**

§ 11.4 COMMUNICATION WITH FORMER EMPLOYEES

**§ 11.5 COMMUNICATION WITH GOVERNMENT
PERSONNEL**

§ 11.6 CRIMINAL CASES

§ 11.7 APPROACHES IN OTHER JURISDICTIONS

**§ 11.8 INTERPLAY WITH OTHER RULES OF
PROFESSIONAL CONDUCT**

§ 11.8.1—Colo. RPC 3.4 — Fairness To Opposing Counsel
And Party

§ 11.8.2—Colo. RPC 4.1 — Truthfulness In Statements To
Others

§ 11.8.3—Colo. RPC 4.3 — Dealing With Unrepresented Person

§ 11.8.4—Colo. RPC 4.4 — Respect For Rights Of Third
Persons

§ 11.9 CONCLUSION — RULES TO LIVE BY

EXHIBITS

- Exhibit 11A—CBA Ethics Committee Formal Ethics Opinion 69, Propriety Of Communicating With Employee Or Former Employee Of An Adverse Party Organization (Revised Opinion Adopted June 19, 2010)
- Exhibit 11B—CBA Ethics Committee Formal Ethics Opinion 93, *Ex Parte* Contacts With Government Officials (Revised Opinion Adopted February 2016)

Chapter 12 SPYING: THE ETHICS OF SECRET RECORDINGS, HIDDEN CAMERAS, AND PRIVATE INVESTIGATORS

§ 12.1 INTRODUCTION

§ 12.2 RULES REGULATING LAYPERSONS AND ATTORNEYS

- § 12.2.1—The Right To Privacy
- § 12.2.2—Colorado Law On Eavesdropping
- § 12.2.3—Colorado Law On Wiretapping
- § 12.2.4—Colorado Law On Video Surveillance
- § 12.2.5—Federal Law Prohibiting Surreptitious Recordings
- § 12.2.6—Exceptions To Statutory Prohibitions

§ 12.3 ATTORNEYS AND SURREPTITIOUS INVESTIGATIVE TECHNIQUES

- § 12.3.1—Ethical Considerations
- § 12.3.2—General Prohibition On Surreptitious Audio Recording
- § 12.3.3—Potential Exceptions
- § 12.3.4—Ethical Considerations Concerning Wiretapping
- § 12.3.5—Video Surveillance
- § 12.3.6—Potential Sanctions

**§ 12.4 SURREPTITIOUS RECORDING BY PERSONS ACTING
AT ATTORNEY'S DIRECTION**

§ 12.4.1—Employees, Agents, And Private Investigators

§ 12.4.2—Clients

**§ 12.5 OTHER ETHICAL CONSIDERATIONS FOR
ATTORNEYS' USE OF PRIVATE INVESTIGATORS**

§ 12.5.1—Pretexting

§ 12.5.2—Social Media Investigations

§ 12.5.3—*Ex Parte* Contacts Between Governmental Attorneys
And Represented Persons

§ 12.5.4—Licensure

§ 12.6 RELEVANT CASE SUMMARIES

§ 12.7 CONCLUSION

PART 2 • LAW PRACTICE MANAGEMENT

Chapter 13 RISK MANAGEMENT

§ 13.1 INTRODUCTION TO RISK MANAGEMENT

§ 13.1.1—What Is Risk Management?

§ 13.1.2—How Do Lawyers Handle The Risks?

§ 13.2 FORMAL ORGANIZATIONS OF PRACTICE

§ 13.2.1—C.R.C.P. 265

§ 13.2.2—Sole Proprietorship

§ 13.2.3—Partnership

§ 13.2.4—Limited Liability Company

§ 13.2.5—Limited Liability Partnership

§ 13.2.6—Professional Corporation

Table of Contents

§ 13.3 INFORMAL ORGANIZATIONS OF PRACTICE

§ 13.3.1—“Of Counsel” And “Special Counsel”

§ 13.3.2—Independent Contractors

§ 13.3.3—Office Sharing, Professional Suites, And Other Arrangements

§ 13.4 INTERNAL CONTROLS

§ 13.4.1—Law Firm Committees

§ 13.4.2—Avoiding Conflicts

§ 13.4.3—The Engagement

§ 13.4.4—Trust Accounts

§ 13.4.5—Fee Arrangements

§ 13.4.6—Withdrawal And Termination

§ 13.4.7—Establish Administrative Procedures

§ 13.4.8—Social Media

§ 13.5 CLIENT RELATIONS

§ 13.6 PEER REVIEW FOR HEALTH CONCERNS

§ 13.6.1—Checklists

§ 13.7 CLAIMS REPAIR

§ 13.8 LAWYERS SERVING ON BOARDS OF DIRECTORS

§ 13.8.1—Generally

§ 13.8.2—Serving On Boards Of Clients

§ 13.8.3—Serving On Boards Of Publicly Traded Companies

§ 13.8.4—Serving On Boards Of Closely Held Companies

§ 13.8.5—Serving On Boards Of Nonprofit Entities

§ 13.9 THE RECAPITULATION OVERVIEW

EXHIBITS

Exhibit 13A—C.R.C.P. Chapter 23.3, “Rules Governing
Contingent Fees”

Exhibit 13B—CBA Formal Opinion 113, “Ethical Duty Of
Attorney To Disclose Errors To Client”

Chapter 14 CHOICE OF LAW FIRM ENTITY

**§ 14.1 ALTERNATIVE FORMS OF PRACTICE, DEPENDING
ON SIZE**

§ 14.1.1—Single-Owner Firm

§ 14.1.2—Multiple-Owner Firm

**§ 14.2 AVAILABLE FORMS OF ORGANIZATION FOR THE
PRACTICE OF LAW**

§ 14.2.1—Sole Proprietorship

§ 14.2.2—General Partnership

§ 14.2.3—Limited Liability Partnership

§ 14.2.4—Limited Liability Company

§ 14.2.5—Professional Corporation

**§ 14.3 TAX CONSIDERATIONS IN CHOICE OF
ORGANIZATION**

§ 14.3.1—Sole Proprietorship/Disregarded Entity

§ 14.3.2—Tax Partnership

§ 14.3.3—C Corporation

§ 14.3.4—S Corporation

§ 14.4 TAX COMPARISON CHART

§ 14.4.1—Contribution Of Property

§ 14.4.2—Method Of Accounting

§ 14.4.3—Contribution Of Services

§ 14.4.4—Taxable Year

§ 14.4.5—Taxation Of The Organization

Table of Contents

- § 14.4.6—Effect Of Distribution Of Appreciated Property To Owners
- § 14.4.7—Taxation Of Distributions To Owners
- § 14.4.8—Employment Tax Treatment Of Income Of Individual Owners
- § 14.4.9—Use Of Ownership Interests To Compensate Service Providers
- § 14.4.10—Allocation Of Profits And Losses Among The Owners
- § 14.4.11—Allocation Of The Gain Or Loss From Organization’s Disposition Of Property Contributed By Owners
- § 14.4.12—Payments To Departing Owners

§ 14.5 EMPLOYEES AND SELF-EMPLOYED SERVICE PROVIDERS

- § 14.5.1—General Comparison Of Employee And Self-Employed Service Providers
- § 14.5.2—Changes Adopted In 2010 Health Care Legislation

§ 14.6 ALTERNATIVE BUSINESS RELATIONSHIPS

- § 14.6.1—Employee
- § 14.6.2—Temporary Lawyer
- § 14.6.3—Office Sharing

§ 14.7 ORGANIZATIONAL DOCUMENTS

- § 14.7.1—Partnership Agreement
- § 14.7.2—Articles Of Incorporation For A Professional Corporation
- § 14.7.3—Articles Of Organization
- § 14.7.4—Operating Agreement

EXHIBITS

- Exhibit 14A—Sample Agreement Of A Partnership
- Exhibit 14B—Sample Articles Of Organization Of An LLC

Exhibit 14C—Sample Operating Agreement Of A Single-Member LLC

Exhibit 14D—Sample Articles Of Incorporation Of A Professional Corporation

Chapter 15 PROFESSIONAL LIABILITY INSURANCE

§ 15.1 TO INSURE OR NOT TO INSURE

§ 15.1.1—C.R.C.P. 265

§ 15.2 CHOOSING THE RIGHT INSURANCE COMPANY

§ 15.2.1—Introduction

§ 15.2.2—Broker/Agent/Program Administrator

§ 15.2.3—Insurer's Rating

§ 15.2.4—Insurer's Authority To Conduct Business

§ 15.2.5—Insurer's Experience In The Area

§ 15.2.6—Endorsement By Professional Associations

§ 15.2.7—Risk Management

§ 15.2.8—Insurer's Claims Service

§ 15.2.9—Claims Against The Insurer

§ 15.3 CHOOSING THE RIGHT COVERAGE

§ 15.3.1—Introduction

§ 15.3.2—The Insurance Application

§ 15.3.3—Liability Limits

§ 15.3.4—The Deductible

§ 15.3.5—Policy Coverage Provisions: Professional Legal Services

§ 15.3.6—Policy Coverage Provisions: The Policy's Insureds

§ 15.3.7—Policy Coverage Provisions: Claims-Made Coverage

§ 15.3.8—Policy Coverage Provisions: Coverage For Prior Acts
— Discovery Provisions And Retroactive Dates

§ 15.3.9—Policy Coverage Provisions: Extended Reporting Periods

§ 15.3.10—Policy Coverage Provisions: Territorial Limitations On Coverage

Table of Contents

- § 15.3.11—Policy Coverage Provisions: Coverage For “Loss” Or For “Damages”
- § 15.3.12—The Exclusions
- § 15.3.13—The Policy Conditions
- § 15.3.14—The Policy Endorsements
- § 15.3.15—Other Types Of Coverage
- § 15.3.16—Coverage For Attorney Disciplinary Proceedings

EXHIBITS

- Exhibit 15A—Sample Lawyers Professional Liability Policy
- Exhibit 15B—Sample CNA Application — Attorneys New To The Firm
- Exhibit 15C—Sample CNA Application — Additional Locations/Practice States Supplement
- Exhibit 15D—Sample Form — Plaintiff Practice/Class Action Supplement

Chapter 16 TECHNOLOGY AND THE PRACTICE OF LAW

§ 16.1 INTRODUCTION

§ 16.2 TECHNOLOGY AND CONFIDENTIALITY

- § 16.2.1—Confidentiality Of Electronic Information And Communications Generally
- § 16.2.2—E-Mail
- § 16.2.3—Cell Phones, Laptops, And Portable Devices
- § 16.2.4—Metadata
- § 16.2.5—Cloud Computing
- § 16.2.6—Wireless Networks And Public Computers
- § 16.2.7—Other Technology
- § 16.2.8—Additional Precautions To Protect Against Disclosures

§ 16.3 INADVERTENT DISCLOSURES

§ 16.4 TECHNOLOGY FUNCTIONS AND MALFUNCTIONS

§ 16.4.1—Technology Malfunctions And Data Loss

§ 16.4.2—Failure To Use Technology

§ 16.4.3—Juries And Juror Misconduct

§ 16.5 HANDLING ELECTRONIC INFORMATION

§ 16.5.1—Duty To Preserve And Produce Electronic Evidence

§ 16.5.2—Automated Document Review

§ 16.5.3—Lawyer's Obligations To Retain Client Records

§ 16.5.4—FACTA Disposal Rule

§ 16.5.5—Compliance With Protective Orders

§ 16.6 SOCIAL MEDIA

**§ 16.7 E-ADVERTISING AND FORMING CLIENT-LAWYER
RELATIONSHIPS VIA E-MAIL AND THE WEB**

Chapter 17 LAWYER ADVERTISING

**§ 17.1 PERSPECTIVE ON THE GROWTH IN LEGAL
SERVICES PROMOTION**

**§ 17.2 COLORADO RULES OF PROFESSIONAL CONDUCT
BEARING UPON MARKETING**

§ 17.2.1—Colo. RPC 7.1, Communications Concerning A
Lawyer's Services

§ 17.2.2—Colo. RPC 7.2, Advertising

§ 17.2.3—Colo. RPC 7.3, Direct Contact With Prospective
Clients

§ 17.2.4—Colo. RPC 7.4, Communication Of Fields Of
Practice

§ 17.2.5—Colo. RPC 7.5, Firm Names And Letterheads

**§ 17.3 TOP MARKETING TACTICS AND THE ETHICS
ISSUES POSED BY EACH**

- § 17.3.1—Websites
- § 17.3.2—Trade And Community Groups
- § 17.3.3—Seminars And Speeches
- § 17.3.4—Law Firm Networks
- § 17.3.5—Social Media

Chapter 18 SOCIAL MEDIA AND PROFESSIONAL LIABILITY

**§ 18.1 INTERSECTION OF SOCIAL MEDIA AND LAW
PRACTICE**

- § 18.1.1—Social Media Generally

§ 18.2 REGULATION OF LAWYERS' ONLINE SELVES

- § 18.2.1—Becoming A Member Of The Bar
- § 18.2.2—Keeping Client Confidences
- § 18.2.3—Even On Social Media, Lawyers And Judges Must
Maintain Qualities Of Truthfulness, Candor, And
Integrity
- § 18.2.4—Investigations Using Social Media
- § 18.2.5—Reporting Inappropriate Online Content
- § 18.2.6—Posting Statements About Judges Online
- § 18.2.7—What You Say Online Can Be Grounds For
Sanctions
- § 18.2.8—Interactions With Judge, Jury, Witnesses, Parties,
And Opposing Counsel
- § 18.2.9—Social Media And Publicity
- § 18.2.10—A Duty To Know About And Preserve Others'
Social Media

§ 18.3 SOCIAL MEDIA AND LAWYER ADVERTISEMENTS

§ 18.3.1—Mass Couponing

§ 18.3.2—Designation Of Specialties

§ 18.3.3—Attorney-Client Matchmaking And Online
Advisement

§ 18.4 CONCLUSION

Chapter 19 MULTI-JURISDICTIONAL PRACTICE OF LAW

§ 19.1 MULTI-JURISDICTIONAL PRACTICE

**§ 19.2 SANCTIONS FOR VIOLATING UNAUTHORIZED
PRACTICE OF LAW RULES**

§ 19.2.1—Denial Of Fees

§ 19.2.2—Adverse Results In Case

§ 19.2.3—Reciprocal Sanctions In Home State

§ 19.2.4—Denial Of Licensure

§ 19.2.5—Contempt Of Court

§ 19.2.6—Civil Liability

§ 19.2.7—Criminal Prosecution

§ 19.3 ADMISSION ON MOTION

**§ 19.4 COLORADO RULE: LAWYERS LICENSED IN OTHER
STATES PRACTICING IN COLORADO**

§ 19.4.1—Out-Of-State And Foreign Attorneys Defined

§ 19.4.2—Other General Requirements Of The Special Practice
Rules

§ 19.5 SPECIFIC SPECIAL PRACTICE RULES

§ 19.5.1—C.R.C.P. 205.1 (Temporary Practice By An Out-Of-
State Attorney) And 205.2 (Temporary Practice By
Foreign Attorney)

§ 19.5.2—*Pro Hac Vice* Practice

§ 19.5.3—Single-Client Counsel Certification

Table of Contents

§ 19.6 PRACTICE IN OTHER STATES

§ 19.7 ETHICS CONSIDERATIONS IN PRACTICING ACROSS STATE LINES

§ 19.7.1—Confidentiality

§ 19.7.2—Conflicts Of Interest

§ 19.7.3—Fees

§ 19.7.4—Unbundling

§ 19.7.5—Advertising

§ 19.7.6—Trust Funds

§ 19.7.7—Pro Bono

§ 19.7.8—Continuing Legal Education Rules

§ 19.7.9—Threatening Prosecution

§ 19.8 DEALING WITH DIFFERENT RULES

§ 19.8.1—Comply With The “Strictest Applicable Rule”

§ 19.8.2—Comply With The Appropriate State Rule Under Conflict Of Laws Principles

§ 19.8.3—Comply With The Home State Rules Everywhere

§ 19.9 ADDITIONAL SOURCES

EXHIBIT

Exhibit 19A—Multi-State Practice

Chapter 20 MANAGING TRUST ACCOUNTS AND CLIENTS’ PROPERTY

§ 20.1 INTRODUCTION

§ 20.2 COLO. RPC 1.15A THROUGH 1.15E

§ 20.2.1—Rules Of Professional Conduct 1.15A Through 1.15E

§ 20.2.2—Colo. RPC 1.15A — Lawyers’ General Duties Regarding Clients’ Funds And Property

§ 20.2.3—Purpose Of A Trust Account

§ 20.2.4—Must Lawyers Have A Trust Account?

§ 20.2.5—Must Lawyers Use A Trust Account For Client
Or Third-Party Funds?

§ 20.3 BASIC REQUIREMENTS FOR TRUST ACCOUNTS

§ 20.3.1—What Is A Trust Account?

§ 20.3.2—Where May A Lawyer Have A Trust Account?

§ 20.3.3—Types Of Trust Accounts: The COLTAF Trust
Account

§ 20.3.4—Establishment Of Separate Trust Accounts

§ 20.3.5—Trust Accounts Must Be Separate From All Office Or
Professional Accounts

§ 20.3.6—Name Of Trust Accounts

§ 20.3.7—Management Of Trust Accounts — Colo. RPC 1.15C

§ 20.3.8—Bookkeeping Requirements — Colo. RPC 1.15D

**§ 20.4 LAWYERS' BASIC OBLIGATIONS REGARDING
TRUST ACCOUNTS**

§ 20.4.1—Duty To Safeguard

§ 20.4.2—Duty To Account

§ 20.4.3—Duty Of Confidentiality

§ 20.4.4—Duty Of Acting In Good Faith

§ 20.4.5—Duty To Promptly Refund Or Pay Funds

§ 20.5 INTEREST EARNED ON A TRUST ACCOUNT

§ 20.5.1—Interest Earned Is *Never* The Lawyer's Property

§ 20.5.2—Interest Paid To COLTAF

§ 20.6 COMMINGLING FUNDS OR PROPERTY

§ 20.6.1—What Is Commingling?

§ 20.6.2—Why Is Commingling Prohibited?

§ 20.6.3—Lawyers May Not Use Trust Account For Personal
Finances

§ 20.6.4—Small Amounts To Cover Service Charges But *No*
Cushions

Table of Contents

§ 20.7 ADVANCED FEES AND COSTS

§ 20.7.1—Advanced Fees And Removal Of Earned Fees From Trust Accounts

§ 20.7.2—Costs: Advanced, And Reimbursed

§ 20.8 DEPOSITING AND WITHDRAWING FUNDS FROM TRUST ACCOUNTS

§ 20.8.1—Lawyers Must Deposit Funds Intact Into Trust Accounts

§ 20.8.2—Disbursing Settlement Funds From A Trust Account

§ 20.8.3—Distinction Between An “Available Balance” And A “Collected Balance”

§ 20.9 DISPUTES OVER FUNDS IN A TRUST ACCOUNT

§ 20.9.1—Disputes With A Client About Trust Account Funds

§ 20.9.2—Disputes With Third Parties About Trust Account Funds

§ 20.9.3—Third-Party Claims To Funds In A Trust Account

§ 20.10 USE OF CREDIT CARDS FOR PAYMENTS BY CLIENTS OF ADVANCED RETAINERS, FLAT FEES, OR EARNED FEES

§ 20.10.1—Payment Of Advanced Fee By Credit Card

§ 20.10.2—Payment Of Flat Fee By Credit Card

§ 20.10.3—Payment Of Earned Fees By Credit Card

§ 20.10.4—Bank Card Agreements With Lawyer

§ 20.11 REQUIRED ACCOUNTING RECORDS

§ 20.12 DELEGATION OF TRUST ACCOUNT DUTIES

§ 20.12.1—Training Administrative Staff

§ 20.12.2—Supervision Of Administrative Staff

§ 20.12.3—Junior Lawyers’ Responsibility For Client Funds And Trust Accounts

§ 20.13 THE PROBLEM OF THE MISSING CLIENT FOR WHOM THE LAWYER HAS MONEY IN A TRUST ACCOUNT

§ 20.13.1—New Rules Of Professional Conduct 1.15B(k) And 1.15D(a)(1)(C), And New Comment [7] To Rule 1.15A

EXHIBIT

Exhibit 20A—CBA Formal Ethics Opinion 99, “Use Of Credit Cards To Pay For Legal Services”

Chapter 21 PROFESSIONAL AND ETHICAL RESPONSIBILITIES WHEN DEPARTING A LAW PRACTICE

§ 21.1 LAWYER’S DUTIES WHEN LEAVING A LAW FIRM

§ 21.1.1—Duties Of Partners

§ 21.1.2—Duties Of Associates

§ 21.1.3—Duties Of The Law Firm

§ 21.2 BANKRUPTCY, DISSOLUTION OF LAW PARTNERSHIPS, AND FEE DISPUTES

PART 3 • PROFESSIONAL RESPONSIBILITY IN LITIGATION

Chapter 22 LAWYERS’ LIABILITY FOR CONDUCT DURING LITIGATION

§ 22.1 INTRODUCTION

§ 22.2 CLIENT INTAKE

§ 22.2.1—Competence

§ 22.2.2—Accepting Or Rejecting A New Client

§ 22.2.3—Advocate-Witness Rule

§ 22.2.4—Investigation And Evaluation Of The Case

Table of Contents

§ 22.3 PREPARING THE CASE

§ 22.3.1—The Statute Of Limitations

§ 22.3.2—Document Preservation And Warning The Client
That Social Media Is Discoverable

§ 22.3.3—Calendaring

§ 22.3.4—Identifying The Client Consistently Throughout
Litigation

§ 22.3.5—Keeping The Client Informed Regarding The Status
Of The Case

§ 22.3.6—Implementing A Case Plan

§ 22.3.7—Professionalism

§ 22.4 SOCIAL MEDIA AND PROSPECTIVE JURORS

§ 22.5 POST-JUDGMENT

§ 22.5.1—Attorneys Do Not Guarantee Results

§ 22.6 CONCLUSION

Chapter 23 INTERVIEWING AND PREPARING WITNESSES

§ 23.1 INTRODUCTION

§ 23.2 APPLICABLE RULES OF PROFESSIONAL CONDUCT

§ 23.3 APPLICABLE CRIMINAL RULES

**§ 23.4 THE CORRIGIBILITY OF MEMORY —
THE CORRUPTIBILITY OF WITNESSES**

§ 23.5 DISCOVERABILITY — GENERALLY

**§ 23.6 DISCOVERABILITY OF MATERIAL PROVIDED TO A
TESTIFYING EXPERT**

**§ 23.7 NON-PARTY MEDICAL PROVIDERS IN MEDICAL
MALPRACTICE CASES**

§ 23.8 THE SEQUESTRATION RULE

Chapter 24 JOINT DEFENSE AGREEMENTS

§ 24.1 INTRODUCTION

§ 24.1.1—Introduction To Joint Defense Agreement
Professional Conduct Issues

§ 24.1.2—Relevant Colorado Rules Of Professional Conduct

§ 24.2 JOINT DEFENSE PRIVILEGE

§ 24.2.1—Definition

§ 24.2.2—Relevant Case Law

§ 24.3 JOINT DEFENSE AGREEMENTS

§ 24.3.1—Form

§ 24.3.2—Basic Terms

§ 24.3.3—Benefits

§ 24.3.4—Burdens And Risks

EXHIBIT

Exhibit 24A—Sample Joint Defense Agreement

Chapter 25 DISQUALIFICATION OF COUNSEL

§ 25.1 DISQUALIFICATION — GENERALLY

§ 25.1.1—Constitutional Implications

§ 25.1.2—Statutory Provisions

§ 25.1.3—Ethical Rules That Are Implicated

§ 25.1.4—General Standards

§ 25.2 PROCEDURE

§ 25.2.1—Motion By The Court

§ 25.2.2—Motion By Counsel

Table of Contents

- § 25.2.3—Standing
- § 25.2.4—Findings Of Fact And Need For An Evidentiary Hearing
- § 25.2.5—Standing To Appeal Disqualification Order

§ 25.3 GROUND S FOR DISQUALIFICATION

- § 25.3.1—Ethical Violations — Generally
- § 25.3.2—Conflict Of Interest — Generally
- § 25.3.3—Lawyer As A Witness
- § 25.3.4—Protection Of Former Client
- § 25.3.5—Appearance Of Impropriety
- § 25.3.6—Former Government Officers And Employees
- § 25.3.7—*Ex Parte* Communications With Represented Parties

§ 25.4 DEFENSES TO DISQUALIFICATION

- § 25.4.1—Consent
- § 25.4.2—Waiver (Express Or Implied)
- § 25.4.3—Substantial Hardship
- § 25.4.4—Unfair Tactical Advantage

§ 25.5 IMPUTED DISQUALIFICATION

- § 25.5.1—Imputed Disqualification Of Law Firms
- § 25.5.2—Imputed Disqualification Of Co-Counsel

§ 25.6 POST-DISQUALIFICATION ISSUES

- § 25.6.1—Disqualified Attorney Work Product
- § 25.6.2—Ongoing Limited Participation

§ 25.7 APPELLATE STANDARD

- § 25.7.1—Original Jurisdiction — Colorado Supreme Court
- § 25.7.2—Original Jurisdiction — Federal Court

Chapter 26 INADVERTENT DISCLOSURE

§ 26.1 INTRODUCTION

§ 26.2 PROFESSIONAL LIABILITY OR LEGAL MALPRACTICE — THE DUTY OF CARE

§ 26.3 ETHICAL DUTIES

§ 26.3.1—Ethical Duties Under Colorado State Law —
The Colorado Rules Of Professional Conduct

§ 26.3.2—Ethical Duties Under Federal Law

§ 26.4 THE EVIDENTIARY ISSUE OF WAIVER OF PRIVILEGE OR PROTECTION

§ 26.4.1—The Approach To Waiver Under Colorado State Law

§ 26.4.2—The Approach To Waiver Under Federal Law

§ 26.5 THE SEPARATE PROBLEM OF INTENTIONAL, BUT UNAUTHORIZED, DISCLOSURE

Chapter 27 SETTLEMENT AND MEDIATION

§ 27.1 INTRODUCTION

§ 27.2 SETTLEMENT AND PUBLIC POLICY

§ 27.3 ATTORNEYS' ETHICAL DUTIES REGARDING SETTLEMENT

§ 27.3.1—Competence And Diligence

§ 27.3.2—Duty To Keep The Client Informed

§ 27.3.3—Client's "Unfettered" Right To Make Settlement
Decisions

§ 27.3.4—Advise Of Alternative Methods Of Dispute
Resolution

§ 27.3.5—Duty Not To Communicate With Represented Person

Table of Contents

§ 27.4 AVOIDING MALPRACTICE CLAIMS DUE TO CONDUCT PRIOR TO SETTLEMENT

- § 27.4.1—Communicating With The Client
- § 27.4.2—Inadequate Preparation Of The Case
- § 27.4.3—Negligent Settlement Advice
- § 27.4.4—Judgmental Immunity

§ 27.5 ATTORNEY RETAINED BY INSURER

- § 27.5.1—Advising The Client Of The Terms Of The Insurance Contract
- § 27.5.2—Insurer’s Reservation Of Rights
- § 27.5.3—Preserving Confidentiality
- § 27.5.4—Disagreements Over Defense Strategy
- § 27.5.5—Informing The Insured Of Settlement Offers
- § 27.5.6—Obtaining The Insured’s Consent To Settlement

§ 27.6 ATTORNEYS’ ETHICAL DUTIES REGARDING MEDIATION

- § 27.6.1—Ethical Duties Of Lawyers Representing Clients In Mediation
- § 27.6.2—Ethical Duties Of Lawyers Acting As Mediators

§ 27.7 AVOIDING MALPRACTICE DUE TO CONDUCT DURING MEDIATION

- § 27.7.1—Communication With The Client Before And During Mediation
- § 27.7.2—Importance Of Written Agreement

§ 27.8 SPECIAL ISSUES INVOLVED IN SETTLEMENT

- § 27.8.1—Agreements Limiting Attorney’s Right To Practice
- § 27.8.2—Aggregate Settlements
- § 27.8.3—Settlement Involving Medicare Or Medicaid Liens
- § 27.8.4—Settlement Of Legal Malpractice Claims
- § 27.8.5—Linking Settlement To Other Proceedings
- § 27.8.6—Client’s Consent To Settlement On The Record

§ 27.8.7—Attorney Agreeing To Hold Funds Or Act As Escrow Agent

§ 27.8.8—Disbursement Of Settlement Funds

§ 27.8.9—Tax Consequences Of Settlement

§ 27.8.10—Practice-Specific Settlement Concerns

§ 27.9 CONCLUSION

Chapter 28 DUTY OF CANDOR TO THE TRIBUNAL AND REMEDIAL MEASURES IN CIVIL PROCEEDINGS

§ 28.1 INTRODUCTION

§ 28.2 CANDOR

§ 28.2.1—False Statements

§ 28.2.2—Controlling Adverse Authority

§ 28.2.3—False Evidence

§ 28.3 CRIMINAL OR FRAUDULENT CONDUCT

§ 28.4 DUTY OF CONFIDENTIALITY

§ 28.5 *EX PARTE* PROCEEDINGS

§ 28.6 REMEDIAL MEASURES

§ 28.7 CONCLUSION

Chapter 29 PRESERVATION AND SPOILIATION OF EVIDENCE

§ 29.1 INTRODUCTION

§ 29.2 COUNSELING CLIENTS ON PRESERVATION

§ 29.2.1—Duty To Preserve

§ 29.2.2—Scope Of The Duty To Preserve

§ 29.2.3—When The Duty Arises

§ 29.2.4—Sanctions For Spoliation

§ 29.3 LAWYER’S DUTY TO PRESERVE EVIDENCE

§ 29.4 PREVENTING SPOILIATION

VOLUME 2

**PART 4 • PROFESSIONAL RESPONSIBILITY IN
SUBSTANTIVE PRACTICE AREAS**

Chapter 30 APPEALS

§ 30.1 INTRODUCTION

§ 30.1.1—Elements Of An Appellate Legal Malpractice Claim

§ 30.2 DUTY

§ 30.2.1—Duty To Recommend Appeal

§ 30.2.2—Duty To Raise Particular Issues On Appeal

§ 30.2.3—Standard Of Care Of Appellate Counsel

§ 30.3 BREACH OF DUTY

§ 30.3.1—Particular Conduct Found Negligent

§ 30.3.2—Particular Conduct Found Not Negligent

§ 30.4 CAUSATION

§ 30.4.1—Proving Proximate Cause

§ 30.4.2—Who Decides Proximate Cause?

§ 30.5 DAMAGES

§ 30.6 AVOIDING APPELLATE MALPRACTICE

Chapter 31 BANKRUPTCY

§ 31.1 INTRODUCTION

§ 31.2 THE BANKRUPTCY CODE AND RULES

§ 31.2.1—Structure Of The Bankruptcy Code And Bankruptcy Rules

§ 31.2.2—The Six “Kinds” Of Bankruptcy

§ 31.2.3—Who May Be A Debtor

§ 31.3 ACTING AS COUNSEL FOR THE DEBTOR

§ 31.3.1—Employment As Counsel For The Debtor Or Trustee

§ 31.3.2—Duties As Counsel For Debtor

§ 31.3.3—Exemptions

§ 31.3.4—Proof Of Claim Or Interest

§ 31.3.5—Mortgage Proof Of Claim And Disclosure Rules

§ 31.3.6—Chapter 13 Debtor’s Principal Residence And Disclosure Rules

§ 31.4 BANKRUPTCY PROCEDURE AND LITIGATION

§ 31.4.1—Adversary Proceedings Versus Contested Matters

§ 31.4.2—Discovery In Bankruptcy Proceedings

§ 31.4.3—Preference Actions

§ 31.4.4—Fraudulent Transfer Issues

§ 31.4.5—Discharge And Dischargeability

§ 31.4.6—Bankruptcy Appeals

Chapter 32 TRANSACTIONS AND CLOSELY HELD BUSINESSES

§ 32.1 INTRODUCTION

§ 32.2 CLOSELY HELD BUSINESSES

§ 32.2.1—How Problems Arise

§ 32.2.2—Identifying The Client: The Entity Rule

Table of Contents

- § 32.2.3—Evolution And Formation Of The Client-Lawyer Relationship
- § 32.2.4—Retroactive Application Of The Entity Rule
- § 32.2.5—The “Confidential Information” Conflict In Common Representation
- § 32.2.6—Representing More Than One Party On The Same Side Of A Transaction
- § 32.2.7—Representing Parties On Opposite Sides Of A Transaction
- § 32.2.8—Representing A Party Who Is Adverse To A Former (Or Not So Former) Client

§ 32.3 OTHER ETHICAL ISSUES ARISING IN CLOSELY HELD BUSINESS TRANSACTIONS

- § 32.3.1—Requisite Knowledge And Skill In A Particular Matter
- § 32.3.2—Business Transactions With Clients And Ownership Interest In A Client’s Business
- § 32.3.3—Duty To Disclose Mistakes In Commercial Closings

Chapter 33 CLASS ACTION LAWYERS’ PROFESSIONAL RESPONSIBILITIES

- § 33.1 INTRODUCTION**
- § 33.2 COMPETENCE**
- § 33.3 THE LEGAL SERVICES CONTRACT**
- § 33.4 COMMUNICATIONS WITH POTENTIAL CLASS MEMBERS**
 - § 33.4.1—Pre-Certification Communications With Potential Class Members
 - § 33.4.2—Post-Certification Communications With Potential Class Members, Before Opt-Out Period Expires
 - § 33.4.3—Post-Certification Communications With Class Members, After Opt-Out Period Expires

§ 33.4.4—Communications With Class Members During
Settlement Program Administration

§ 33.4.5—Objectors' Communications

**§ 33.5 CONTENT AND DELIVERY OF CLASS ACTION
COURT NOTICES**

**§ 33.6 SETTLEMENT AND POTENTIAL CONFLICTS OF
INTEREST**

§ 33.6.1—Class Action Attorney Fees

§ 33.6.2—Simultaneous Negotiation Of Attorney Fees, Costs
Reimbursement, And Class Member Benefits

§ 33.6.3—Settlements Incorporating Covenants-Not-To-Sue

§ 33.7 OTHER POTENTIAL CONFLICTS OF INTEREST

**§ 33.8 CLASS COUNSEL'S PROFESSIONAL LIABILITY
EXPOSURES**

§ 33.8.1—Legal Malpractice Exposures

§ 33.8.2—Antitrust Exposures

Chapter 34 CREDITORS' RIGHTS AND DEBT COLLECTION

§ 34.1 INTRODUCTION

§ 34.2 THE FAIR DEBT COLLECTION PRACTICES ACT

§ 34.2.1—The Colorado Fair Debt Collection Practices Act

§ 34.3 LIABILITY

§ 34.4 WHAT DEBTS AND PERSONS ARE COVERED

§ 34.5 THE LAWYER AS A DEBT COLLECTOR

Table of Contents

§ 34.6 COMPLYING WITH THE FDCPA AND CFDCPA

§ 34.6.1—The “Least Sophisticated Consumer” Standard

§ 34.6.2—The Initial Communication And Notice Of Validation Rights

§ 34.6.3—Subsequent Communications

§ 34.6.4—Communication With Third Parties

§ 34.6.5—Venue

§ 34.6.6—Unfair Practices

§ 34.6.7—False Or Misleading Representations

§ 34.7 KNOW THE CLIENT

§ 34.7.1—Legal Capacity

§ 34.7.2—Transacting Business

§ 34.7.3—Cost Bond

§ 34.8 COMPLIANCE WITH HIPAA

§ 34.9 ADMINISTRATIVE ENFORCEMENT

§ 34.10 PRACTICAL CONSIDERATIONS

§ 34.11 CONCLUSION

Chapter 35 PROFESSIONAL DEFENSE OF THE ACCUSED

§ 35.1 INTRODUCTION

§ 35.2 THE ROLE OF DEFENSE COUNSEL

§ 35.3 ESTABLISHING A PROFESSIONAL RELATIONSHIP

§ 35.4 FEE AGREEMENTS

§ 35.4.1—General Requirements Of A Fee Agreement

§ 35.4.2—Explanation Of Fees

§ 35.4.3—Hourly Rate Agreements

§ 35.4.4—Fixed Or Flat Fee Agreements

§ 35.4.5—Third-Party Fee Agreements

§ 35.4.6—Advance Fees

§ 35.4.7—Engagement Retainer

§ 35.4.8—Agreements Relating To Literary Or Media Rights

§ 35.5 TIME RECORDS AND BILLING

§ 35.6 CASH PAYMENTS

§ 35.7 CLIENT CONFIDENCES

§ 35.7.1—General Rules

§ 35.7.2—When The Duty Of Confidentiality Begins And Ends

§ 35.7.3—Sharing Confidences In Multiple Defendant Cases

§ 35.7.4—Exceptions To Confidentiality

§ 35.8 COUNSELING CRIMINAL CONDUCT

§ 35.9 PRETRIAL ISSUES

§ 35.9.1—Bail

§ 35.9.2—Arrest And Plea

§ 35.9.3—Plea Discussions

§ 35.9.4—Communicating The Consequences Of A Guilty Plea

§ 35.9.5—Competency

§ 35.10 DISCOVERY

§ 35.11 INVESTIGATION

§ 35.11.1—General Rules Concerning Investigation

§ 35.11.2—Subpoenas

§ 35.12 WITNESSES

§ 35.12.1—General Rules Involving Witnesses

§ 35.12.2—Surreptitious Recording Of Conversations With
Witnesses

§ 35.12.3—Use Of Social Media For Investigation Purposes

Table of Contents

§ 35.13 CANDOR

§ 35.13.1—General Rules

§ 35.13.2—Representations Of Fact

§ 35.13.3—Representations Of Law

§ 35.13.4—False Statements By The Client

§ 35.14 EVIDENCE

§ 35.15 CONFLICTS OF INTEREST

§ 35.15.1—Representation Of Co-Defendants

§ 35.15.2—Conflicts Involving Former Clients

§ 35.16 WITHDRAWAL

§ 35.17 CONDUCT DURING TRIAL

§ 35.17.1—General Rules

§ 35.17.2—Opening Statement

§ 35.17.3—Presentation Of Evidence

§ 35.17.4—Objections

§ 35.17.5—Closing Argument

§ 35.18 JUROR COMMUNICATIONS

§ 35.19 EXTRAJUDICIAL STATEMENTS

§ 35.20 SENTENCING

§ 35.21 FILE RETENTION

§ 35.22 CONSEQUENCES OF BELOW-STANDARD CONDUCT

§ 35.22.1—Ineffective Assistance Of Counsel

§ 35.22.2—Professional Negligence

§ 35.22.3—Contempt

§ 35.22.4—Direct Contempt

§ 35.22.5—Indirect Contempt

§ 35.22.6—Disciplinary Action

§ 35.23 CONCLUSION

Chapter 36 EMPLOYMENT ISSUES

§ 36.1 INTRODUCTION

§ 36.2 A WORD ABOUT THE DIFFERENCES IN THE PROFESSIONAL RESPONSIBILITY RULES IN FEDERAL AND STATE COURTS

§ 36.3 THE OBLIGATION TO COMPETENTLY REPRESENT PARTIES IN EMPLOYMENT CASES

§ 36.4 DEVELOPING THE CLIENT-LAWYER RELATIONSHIP WITH AN EMPLOYMENT LAW CLIENT

§ 36.4.1—Overview

§ 36.4.2—Fee Agreements

§ 36.4.3—Multi-Plaintiff Or Multi-Defendant Cases And Conflicts Of Interest

§ 36.5 ADVISING THE CURRENT EMPLOYEE

§ 36.5.1—Exhaustion Of Internal Grievance Procedures

§ 36.5.2—Quit First And Sue Later — “Constructive Discharge”

§ 36.5.3—The Demand Letter And Exit Negotiations

§ 36.6 ADVISING THE CURRENT EMPLOYER

§ 36.6.1—Lawyer-Conducted Investigations

§ 36.6.2—Employment Investigations And The Fair Credit Reporting Act

§ 36.6.3—Drug-Free Workplaces And Marijuana

§ 36.6.4—Recent Issues Affecting Employers

§ 36.7 PREPARING TO LITIGATE

§ 36.7.1—Claim Evaluation

§ 36.7.2—The Expansion Of CADA Under The Job Protection And Civil Rights Enforcement Act Of 2013

Table of Contents

- § 36.7.3—Exhaustion Of Administrative Remedies
- § 36.7.4—Choice Of Forum
- § 36.7.5—Considerations Regarding The Identity Of The Defendant
- § 36.7.6—Is There An Arbitration Agreement?
- § 36.7.7—Representing The Unemployed Or Underemployed Plaintiff

§ 36.8 INVESTIGATION AND DISCOVERY ISSUES IN EMPLOYMENT LITIGATION

- § 36.8.1—Communication With Represented Persons
- § 36.8.2—Surreptitious Audio Or Video Recordings
- § 36.8.3—Employee-Confiscated Documents
- § 36.8.4—Use Of Undercover Investigators
- § 36.8.5—Confidentiality Of Personnel Records
- § 36.8.6—The Electronic Age
- § 36.8.7—Sanctions Under 28 U.S.C. § 1927

§ 36.9 RESOLUTION OF EMPLOYMENT CLAIMS

- § 36.9.1—Conflicts During Settlement Negotiations
- § 36.9.2—Settlement Agreements

§ 36.10 CONCLUSION

Chapter 37 ESTATE PLANNING AND PROBATE

PART A — ESTATE PLANNING AND PROBATE

§ 37.1 INTRODUCTION

§ 37.2 LEGAL STANDARD OF CARE

§ 37.3 ESTATE PLANNING

- § 37.3.1—Introduction
- § 37.3.2—The Client
- § 37.3.3—Fees

- § 37.3.4—Wills, Revocable Living Trusts, And Other
Non-Probate Transfers
- § 37.3.5—Powers Of Attorney And Advance Directives
- § 37.3.6—Aid In Dying
- § 37.3.7—Civil Unions, Same-Sex, And Other Non-traditional
Estate Planning

§ 37.4 PROBATE

- § 37.4.1—Introduction
- § 37.4.2—Formal And Informal Probate
- § 37.4.3—Supervised Administration
- § 37.4.4—Creditor Claims
- § 37.4.5—Petition For Instruction
- § 37.4.6—Fees

**PART B — PROBATE PROCESS: THE DECEDENT'S
ESTATE ADMINISTRATION**

§ 37.5 GOVERNING LAW

**§ 37.6 INITIAL DETERMINATIONS: IS PROBATE
NECESSARY?**

§ 37.7 DETERMINING WHERE TO FILE

§ 37.8 DETERMINING IF THERE IS A WILL

**§ 37.9 DETERMINING THE IDENTITY OF THE PERSONAL
REPRESENTATIVE**

**§ 37.10 DETERMINING WHETHER TO FILE FORMALLY OR
INFORMALLY**

§ 37.11 INITIATING INFORMAL PROBATE

- § 37.11.1—Appointment Of A Special Administrator In
Informal Proceedings

Table of Contents

§ 37.12 INITIATING FORMAL PROBATE

§ 37.12.1—Use Of Special Administrator In Formal Proceedings

§ 37.13 INITIATING SUPERVISED ADMINISTRATION

§ 37.14 DUTIES AND POWERS OF THE PERSONAL REPRESENTATIVE

§ 37.15 COLLECTING AND SECURING THE ASSETS

§ 37.15.1—Locating And Securing Real Property

§ 37.15.2—Locating And Securing Tangible Personal Property

§ 37.15.3—Locating And Securing Financial Accounts And Safe-Deposit Boxes

§ 37.15.4—Locating And Securing Motor Vehicles

§ 37.15.5—Locating And Securing Unclaimed Property

§ 37.15.6—Filing An Inventory

§ 37.16 MANAGING THE ASSETS PRIOR TO DISTRIBUTION

§ 37.16.1—Real Property

§ 37.16.2—Motor Vehicles

§ 37.16.3—Tangible Personal Property

§ 37.16.4—Financial Accounts

§ 37.16.5—Sale Of Assets

§ 37.17 HANDLING CLAIMS AGAINST THE ESTATE

§ 37.17.1—Compensating The Personal Representative

§ 37.18 PAYING TAXES

§ 37.19 DETERMINING HEIRS OR DEVISEES

§ 37.19.1—Determining The Heirs Or Devisees

§ 37.19.2—Civil Unions

§ 37.19.3—Ownership Of Personal Property Between Spouses

§ 37.19.4—Exempt Property

- § 37.19.5—Family Allowance
- § 37.19.6—Elective Share
- § 37.19.7—Spouse And Children Omitted From Will

§ 37.20 DISTRIBUTING AND CLOSING THE ESTATE

- § 37.20.1—Partial Distributions
- § 37.20.2—Distributions In Kind
- § 37.20.3—Pecuniary Devise
- § 37.20.4—Private Distribution Agreements
- § 37.20.5—Special Cases
- § 37.20.6—Informally Closing The Estate
- § 37.20.7—Closing The Estate In Formal Proceedings

§ 37.21 ADDRESSING FIDUCIARY MISCONDUCT

Chapter 38 FAMILY LAW

§ 38.1 INTRODUCTION TO FAMILY LAW PROFESSIONAL RESPONSIBILITY ISSUES

§ 38.2 COMMUNICATION WITH CLIENTS

- § 38.2.1—Good Communication Practices
- § 38.2.2—Telephone
- § 38.2.3—E-Mail
- § 38.2.4—Voicemail
- § 38.2.5—Written Correspondence
- § 38.2.6—Facsimile
- § 38.2.7—Fee Agreements And Disengagement Letters

§ 38.3 CASE MANAGEMENT

- § 38.3.1—Domestic Relations Timeline
- § 38.3.2—Sworn Financial Statements
- § 38.3.3—Initial Status Conferences
- § 38.3.4—Temporary Orders
- § 38.3.5—Disclosure
- § 38.3.6—Discovery

Table of Contents

- § 38.3.7—Non-Expert Witnesses
- § 38.3.8—Expert Witnesses
- § 38.3.9—Child And Family Investigators And Parenting
Evaluators
- § 38.3.10—Alternative Dispute Resolution

§ 38.4 TRIALS

- § 38.4.1—Trial Management Certificates
- § 38.4.2—Preparing The Client
- § 38.4.3—Witnesses
- § 38.4.4—Exhibits
- § 38.4.5—Opening And Closing
- § 38.4.6—Lawyer Preparation
- § 38.4.7—Limited Hearing Time
- § 38.4.8—Continuances
- § 38.4.9—Appeals

§ 38.5 OTHER AREAS

- § 38.5.1—Marital Agreements
- § 38.5.2—Qualified Domestic Relations Orders And Domestic
Relations Orders
- § 38.5.3—Maintenance Terms
- § 38.5.4—Bankruptcy
- § 38.5.5—Taxes
- § 38.5.6—Death And Divorce
- § 38.5.7—Criminal Law And Divorce
- § 38.5.8—Competency Of Clients
- § 38.5.9—Domestic Violence

Chapter 39 REAL ESTATE TRANSACTIONS

§ 39.1 INTRODUCTION

§ 39.2 VARIETY OF REAL ESTATE TRANSACTIONS

§ 39.3 CLIENT OBJECTIVES AND SCOPE OF ENGAGEMENT

§ 39.4 CONFLICTS OF INTEREST

§ 39.4.1—Concurrent Conflicts

§ 39.4.2—Representing An Organization And Its Affiliates

§ 39.4.3—Conflicts With Former Clients

§ 39.4.4—Transactions With Clients

§ 39.5 LIABILITY TO CLIENT

§ 39.5.1—In General

§ 39.5.2—Elements Of Claim In Transactional Setting

§ 39.5.3—Existence Of A Duty Of Care

§ 39.5.4—Breach Of Duty

§ 39.6 LIABILITY TO THIRD PARTIES

**Chapter 40 LIABILITY AND PROTECTIONS UNDER THE FEDERAL
SARBANES-OXLEY ACT**

**§ 40.1 LIABILITY UNDER THE FEDERAL SARBANES-
OXLEY ACT AND IMPLEMENTING REGULATIONS —
GENERALLY**

**§ 40.2 THE SARBANES-OXLEY ACT AND IMPLEMENTING
REGULATIONS**

§ 40.2.1—The Act

§ 40.2.2—Proposed Implementing Regulations

§ 40.2.3—Final Rules

§ 40.2.4—Proposed Mandatory External Disclosure Rule

§ 40.2.5—In-House Counsel, Retaliation, And Whistleblower
Protection

**§ 40.3 RELATIONSHIP TO STATE RULES OF
PROFESSIONAL CONDUCT**

§ 40.3.1—ABA Model Rules Of Professional Conduct

§ 40.3.2—Colorado Rules Of Professional Conduct

§ 40.3.3—Comparisons And Contrasts

§ 40.3.4—Preemption

Table of Contents

**§ 40.4 ARTICLES, NOTES, AND COMMENTS REGARDING
THE SEC’S STANDARDS OF PROFESSIONAL
CONDUCT FOR LAWYERS UNDER THE
SARBANES-OXLEY ACT**

Chapter 41 TAXATION

§ 41.1 INTRODUCTION

§ 41.2 CIRCULAR 230 — BACKGROUND

§ 41.3 STANDARDS OF TAX PRACTICE

§ 41.3.1—Best Practices

§ 41.3.2—Firm-Wide Compliance With Practice Standards

§ 41.3.3—Firm-Wide Procedures To Ensure Compliance With
Circular 230

§ 41.3.4—Avoiding Conflicts

**§ 41.4 RULES REGULATING THE PROVISION OF
TAX ADVICE**

§ 41.4.1—Requirements For Written Tax Advice

**§ 41.5 RULES REGULATING TAX RETURNS, DOCUMENTS,
AFFIDAVITS, AND OTHER PAPERS**

§ 41.5.1—Rules Governing The Right To Practice Before
The IRS

§ 41.5.2—Practitioner Penalties Under The Internal
Revenue Code

Chapter 42 WORKERS’ COMPENSATION

§ 42.1 INTRODUCTION

**§ 42.2 COLORADO’S BASIC FRAMEWORK FOR WORKERS’
COMPENSATION**

§ 42.3 CLIENT-LAWYER RELATIONSHIP

§ 42.3.1—The Defense Lawyer's Tripartite Relationship

§ 42.3.2—Attorney Fees

§ 42.3.3—Layperson's Practice Of Law

§ 42.4 SPECIAL PROCEDURAL ISSUES

§ 42.4.1—Statutes Of Limitations

§ 42.4.2—Evidence

§ 42.4.3—Discovery

§ 42.4.4—Settlement Procedures

§ 42.5 SPECIAL SUBSTANTIVE PRINCIPLES OF LAW

§ 42.5.1—Statutory Employment

§ 42.5.2—Offsets

§ 42.5.3—Apportionment

§ 42.5.4—Subrogation

§ 42.5.5—Penalties Against Claimants

§ 42.5.6—Special Funds

§ 42.6 CLAIMS AND BENEFITS

§ 42.6.1—Applications For Hearing

§ 42.6.2—Role Of Authorized Treating Physicians

§ 42.6.3—Medical Benefits

§ 42.6.4—Death Benefits

§ 42.6.5—Disease Claims

§ 42.6.6—Disfigurement Claims

§ 42.6.7—Disability Benefits

§ 42.6.8—Finality Of Awards

§ 42.6.9—Appeals

§ 42.7 CONCLUSION

EXHIBIT

Exhibit 42A—Common Workers' Compensation Acronyms

**Chapter 43 TRIPARTITE RELATIONSHIP: PROFESSIONAL AND ETHICAL
RESPONSIBILITIES OF INSURANCE DEFENSE COUNSEL**

§ 43.1 INTRODUCTION

§ 43.2 WHO IS THE CLIENT?

**§ 43.3 RULES OF PROFESSIONAL CONDUCT IMPLICATED
BY THE TRIPARTITE RELATIONSHIP**

§ 43.3.1—Colo. RPC 1.6

§ 43.3.2—Colo. RPC 1.7(b)

§ 43.3.3—Colo. RPC 1.8(f)

§ 43.3.4—Colo. RPC 5.4(c)

§ 43.4 INSURANCE DEFENSE TRIPARTITE RELATIONSHIP

§ 43.4.1—CBA Formal Ethics Opinion 91

§ 43.4.2—Insurance Defense Lawyers Need To Stay Out
Of Coverage Disputes And, If Disputes Arise,
Recommend That The Insured Retain Independent
Counsel

§ 43.4.3—The Practical Effect Of Coverage Disputes On
Litigation

§ 43.4.4—What Should The Lawyer Do If The Insurer
Unreasonably Restricts The Lawyer’s
Representation?

§ 43.4.5—Counterclaims

§ 43.4.6—The Insurance Claim File

EXHIBIT

Exhibit 43A—Sample Tripartite Disclosure Letter

**Chapter 44 LAW FIRMS' "GENERAL COUNSEL" AND RISK
MANAGEMENT**

§ 44.1 INTRODUCTION

§ 44.1.1—"General Counsel's" Role In A Law Firm

§ 44.1.2—The Client Of The General Counsel Is The Firm

**§ 44.2 THE ATTORNEY-CLIENT PRIVILEGE AND GENERAL
COUNSEL**

§ 44.2.1—The Intra-Firm Privilege Versus The "Fiduciary" And
"Current Client" Exceptions

§ 44.2.2—Recent Decisions Recognizing The Privilege

§ 44.2.3—Colorado's Anticipated Position On The Intra-Firm
Attorney-Client Privilege

§ 44.2.4—Best Practices For Establishing And Protecting The
Intra-Firm Privilege

**§ 44.3 RISK MANAGEMENT DUTIES OF THE GENERAL
COUNSEL**

§ 44.3.1—Client Selection

§ 44.3.2—Client-Proposed Engagement Terms And Policies

§ 44.3.3—Client Relations Policies

§ 44.3.4—Confidentiality And Information Security

§ 44.3.5—Remedial Measures For Impairment Of Firm
Lawyers And Staff

§ 44.4 CLAIMS AND LITIGATION MANAGEMENT

§ 44.4.1—Notice To The Firm's Insurer

§ 44.4.2—Notice To The Firm's Client

§ 44.4.3—Enactment Of A Document Hold Policy

§ 44.4.4—Anticipation Of Public Relations Issues

§ 44.5 ADMINISTRATIVE MATTERS

§ 44.6 CONCLUSION

Chapter 45 RESERVED

Chapter 46 RESERVED

Chapter 47 RESERVED

**PART 5 • LITIGATION OF PROFESSIONAL
LIABILITY AND ETHICS CLAIMS**

Chapter 48 THE CLAIM OR LAWSUIT

§ 48.1 RELATIONSHIP BETWEEN INSURED AND INSURER

- § 48.1.1—Introduction
- § 48.1.2—Presuit Responsibilities
- § 48.1.3—Duty To Notify Insurer
- § 48.1.4—Reservation Of Rights Letter
- § 48.1.5—Choice Of Defense Counsel
- § 48.1.6—Multiple Parties And Policies
- § 48.1.7—Consent To Settlement
- § 48.1.8—Remedies Of Insurer And Insured

§ 48.2 LITIGATION ISSUES

- § 48.2.1—Introduction
- § 48.2.2—Determination Of Lawyer’s Status In Litigation
- § 48.2.3—Notice
- § 48.2.4—Attorney-Client Privilege
- § 48.2.5—Lawyer Work Product Privilege

§ 48.3 REPORTING REQUIREMENTS

- § 48.3.1—Introduction
- § 48.3.2—Colorado Supreme Court
- § 48.3.3—U.S. District Court For The District Of Colorado

Chapter 49 FUNDAMENTALS OF LEGAL MALPRACTICE LITIGATION

§ 49.1 INTRODUCTION

§ 49.1.1—Legal Bases For A Lawyer's Liability

§ 49.2 A LAWYER'S DUTY OF REASONABLE CARE

§ 49.2.1—Existence And Scope Of The Duty Of Reasonable Care

§ 49.2.2—Duty Of Care — Applied

§ 49.2.3—Scope Of The Client-Lawyer Relationship

§ 49.2.4—No Presumptive Duty Of Care To Third Parties

§ 49.2.5—No Duty Of Care To Devisees, Beneficiaries, And Heirs

§ 49.2.6—No Duty Of Care To Spouses Or Children

§ 49.2.7—No Duty Of Care To Shareholders, Officers, Or Directors Of A Client Corporation

§ 49.2.8—No Duty Of Care To Owners Of A Closely Held Business

§ 49.2.9—No Duty Of Care To Business Partners

§ 49.3 A LAWYER'S FIDUCIARY DUTY OF LOYALTY AND CONFIDENTIALITY

§ 49.3.1—What Is A Fiduciary?

§ 49.3.2—Lawyers As Fiduciaries To Clients

§ 49.3.3—Scope Of A Lawyer's Fiduciary Duty To A Client

§ 49.3.4—Lawyers As Fiduciaries To Third Parties

§ 49.4 APPLICATION OF THE RULES OF PROFESSIONAL CONDUCT IN LEGAL MALPRACTICE CASES

§ 49.4.1—Introduction To Use Of The Rules Of Professional Conduct In Legal Malpractice Cases

§ 49.4.2—Exception Permitting Use Of The Rules Of Professional Conduct In Legal Malpractice Cases

§ 49.5 USE OF EXPERT WITNESSES IN LEGAL MALPRACTICE CASES

§ 49.5.1—Use Of Expert Witnesses To Establish A Breach Of A Standard Of Care Or Conduct

§ 49.5.2—Use Of Expert Witnesses To Establish Causation And Damages

§ 49.5.3—Requirement Of A Certificate Of Review

§ 49.5.4—Legal Expert Witnesses Testifying As To The Law

§ 49.5.5—Expert Witness Testimony On The Ultimate Issue

§ 49.6 ASSIGNABILITY OF LEGAL MALPRACTICE CLAIMS

§ 49.6.1—Assignability Of Legal Malpractice Claims — Generally

§ 49.6.2—Exceptions To The General Rule Prohibiting Assignability

Chapter 50 CAUSATION AND DAMAGES IN LEGAL MALPRACTICE LITIGATION

PART A: PROVING CAUSATION IN LEGAL MALPRACTICE CASES

§ 50.1 INTRODUCTION TO PROVING CAUSATION IN LEGAL MALPRACTICE CASES

§ 50.2 PROVING LEGAL CAUSE IN LEGAL MALPRACTICE CASES

§ 50.3 PROVING CAUSE-IN-FACT IN LEGAL MALPRACTICE CASES

§ 50.3.1—Introduction To Proving Cause-In-Fact In Tort Cases

§ 50.3.2—Applying The “But For” Test In Legal Malpractice Cases

§ 50.3.3—Analyzing The Objective And The Subjective: What *Should* Have Happened Versus What *Would* Have Happened

§ 50.3.4—Causation In Litigated Matters: The “Case Within The Case” Analysis

§ 50.3.5—Causation In Business Transactions: The “Deal Within The Case” Analysis

§ 50.3.6—When The “More Favorable Result” Framework Does Not Apply

**PART B: PROVING DAMAGES IN
LEGAL MALPRACTICE LITIGATION**

§ 50.4 INTRODUCTION TO PROVING DAMAGES IN LEGAL MALPRACTICE CASES

§ 50.5 PROVING ECONOMIC DAMAGES IN LEGAL MALPRACTICE CLAIMS

§ 50.5.1—Failure To Obtain An Adequate Judgment Or Settlement

§ 50.5.2—Failure To Avoid A Judgment In The Underlying Case

§ 50.5.3—Economic Damages In Cases Where The Underlying Matter Was Not Litigated

§ 50.5.4—Lost Profits

§ 50.5.5—Tax Liability Damages

§ 50.5.6—Loss Of An Asset Or Right

§ 50.5.7—Additional Or Unnecessary Attorney Fees And Costs

§ 50.5.8—Economic Damages For A Breach Of Fiduciary Duty

§ 50.5.9—Economic Damages For A Breach Of Contract

§ 50.5.10—Economic Damages For Fraud

§ 50.5.11—Forfeiture Or Disgorgement Of Attorney Fees

§ 50.6 PROVING NON-ECONOMIC DAMAGES IN LEGAL MALPRACTICE CASES

§ 50.6.1—Non-economic Damages For Negligence

§ 50.6.2—Non-economic Damages For Breach Of Fiduciary Duty

§ 50.6.3—Non-economic Damages For Breach Of Contract

§ 50.6.4—Non-economic Damages For Fraud

Table of Contents

§ 50.6.5—Emotional Distress Damages For Outrageous Conduct

§ 50.6.6—Loss Of Reputation Damages

§ 50.6.7—Non-economic Damages To Legal Entities

§ 50.7 PUNITIVE DAMAGES IN LEGAL MALPRACTICE CASES

§ 50.8 ATTORNEY FEES AS DAMAGES IN LEGAL MALPRACTICE CASES

§ 50.8.1—Attorney Fees Incurred In The Underlying Lawsuit Or Transaction

§ 50.8.2—Attorney Fees Incurred In The Legal Malpractice Case

Chapter 51 COMMON LAW LEGAL MALPRACTICE CLAIMS

PART A: COMMON LAW CLAIMS BY CLIENTS

§ 51.1 PROFESSIONAL NEGLIGENCE

§ 51.1.1—Elements Of A Professional Negligence Claim

§ 51.1.2—Element 1: Duty Of Care Arising From A Client-Lawyer Relationship

§ 51.1.3—Element 2: Breach Of The Duty Of Care

§ 51.1.4—Examples Of Breaches Of A Duty Of Care — Negligence In Negotiating A Settlement

§ 51.1.5—Examples Of Breaches Of A Duty Of Care — Negligence In Handling An Appeal

§ 51.1.6—Element 3: Causation And Damages

§ 51.1.7—*Res Ipsa Loquitur* In Professional Negligence Cases

§ 51.1.8—Statute Of Limitations Applicable To A Professional Negligence Claim

§ 51.2 BREACH OF FIDUCIARY DUTY

§ 51.2.1—Distinction Between Professional Negligence And Breach Of Fiduciary Duty

§ 51.2.2—Elements Of Breach Of Fiduciary Duty Claim — Generally

§ 51.2.3—Element 1: Client-Lawyer Relationship

§ 51.2.4—Element 2: Lawyer Acts As A Fiduciary

§ 51.2.5—Element 3: Lawyer Breaches The Fiduciary Duty

§ 51.2.6—Element 4: The Client Suffers An Injury, Harm, Or Loss

§ 51.2.7—Element 5: Causation

§ 51.2.8—Conflicts Of Interest — Generally

§ 51.2.9—Business Transactions With Clients

§ 51.2.10—Sexual Relationships With Clients

§ 51.2.11—Statute Of Limitations Applicable To A Breach Of Fiduciary Duty Claim

§ 51.3 BREACH OF CONTRACT

§ 51.3.1—Breach Of Contract Claims — Generally

§ 51.3.2—Elements Of Breach Of Contract Claim

§ 51.3.3—Applicability Of The Economic Loss Rule To Legal Malpractice Claims

§ 51.3.4—Statute Of Limitations Applicable To A Breach Of Contract Claim

§ 51.4 FRAUD

§ 51.4.1—Elements Of Common Law Fraud

§ 51.4.2—Fraudulent Concealment

§ 51.4.3—Fraud Arising Out Of Giving A False Opinion

§ 51.4.4—Statute Of Limitations Applicable To A Fraud Claim

§ 51.5 CONVERSION

§ 51.5.1—Elements Of A Conversion Claim

§ 51.5.2—Recovering Losses As A Victim Of Conversion

§ 51.5.3—Lawyer Discipline Stemming From Conversion

Table of Contents

§ 51.5.4—Relationship Of A Conversion Claim To A Statutory Civil Theft Claim

§ 51.5.5—Statute Of Limitations Applicable To A Conversion Claim

PART B: COMMON LAW CLAIMS BY THIRD PARTIES

§ 51.6 NEGLIGENT MISREPRESENTATION

§ 51.6.1—Introduction To Negligent Misrepresentation Claims

§ 51.6.2—Elements Of A Negligent Misrepresentation Claim

§ 51.6.3—Negligent Misrepresentation Limited To Business Transactions

§ 51.6.4—Statute Of Limitations Applicable To A Negligent Misrepresentation Claim

§ 51.7 ABUSE OF PROCESS

§ 51.7.1—Elements Of An Abuse Of Process Claim

§ 51.7.2—Statute Of Limitations Applicable To An Abuse Of Process Claim

§ 51.8 MALICIOUS PROSECUTION

§ 51.8.1—Elements Of A Malicious Prosecution Claim

§ 51.8.2—Statute Of Limitations Applicable To A Malicious Prosecution Claim

§ 51.9 FALSE ARREST

§ 51.9.1—Elements Of A False Arrest Claim

§ 51.9.2—Statute Of Limitations Applicable To A False Arrest Claim

§ 51.10 INVASION OF PRIVACY

§ 51.10.1—Elements Of An Invasion Of Privacy Claim

§ 51.10.2—Statute Of Limitations Applicable To An Invasion Of Privacy Claim

§ 51.11 INTENTIONAL INTERFERENCE WITH CONTRACT

§ 51.11.1—Elements Of An Intentional Interference With Contract Claim

§ 51.11.2—Statute Of Limitations Applicable To An Intentional Interference With Contract Claim

§ 51.12 DEFAMATION FOR STATEMENTS MADE IN THE COURSE OF LITIGATION

§ 51.12.1—Elements Of A Defamation Claim

§ 51.12.2—Absolute Litigation Privilege

§ 51.12.3—Qualified Litigation Privilege

§ 51.12.4—Litigation Privilege In Non-court Proceedings

§ 51.12.5—Statute Of Limitations Applicable To A Defamation Claim

§ 51.13 AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY

§ 51.13.1—Introduction To Aiding And Abetting Breach Of Fiduciary Duty Claims

§ 51.13.2—Elements Of An Aiding And Abetting A Breach Of Fiduciary Duty Claim

§ 51.13.3—Statute Of Limitations Applicable To An Aiding And Abetting Claim

§ 51.14 CIVIL CONSPIRACY

§ 51.14.1—Introduction To Civil Conspiracy Claims

§ 51.14.2—Elements Of A Civil Conspiracy Claim

§ 51.14.3—Civil Conspiracy Claims Against Lawyers

§ 51.14.4—Statute Of Limitations Applicable To A Civil Conspiracy Claim

§ 51.15 FRAUD (ASSERTED BY NON-CLIENTS)

§ 51.16 CONVERSION (ASSERTED BY NON-CLIENTS)

§ 51.17 SUBROGATION AND INDEMNITY

Chapter 52 STATUTORY LEGAL MALPRACTICE CLAIMS

§ 52.1 INTRODUCTION TO STATUTORY LEGAL MALPRACTICE CLAIMS

§ 52.2 DECEPTIVE TRADE PRACTICES

§ 52.2.1—Introduction To Deceptive Trade Practices Claims

§ 52.2.2—Purpose Of The Act

§ 52.2.3—Who May Bring A CCPA Claim

§ 52.2.4—Elements Of A Deceptive Trade Practices Claim

§ 52.2.5—Requirement of a Public Impact

§ 52.2.6—Issues Particular To Deceptive Trade Practice Claims Against Lawyers

§ 52.2.7—Statute Of Limitations Applicable To A Deceptive Trade Practices Claim

§ 52.3 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

§ 52.3.1—Introduction To RICO Claims

§ 52.3.2—Elements Of A RICO Claim

§ 52.3.3—Statute Of Limitations Applicable To A RICO Claim

§ 52.4 COLORADO ORGANIZED CRIME CONTROL ACT (COCCA)

§ 52.4.1—Introduction To COCCA Claims

§ 52.4.2—Elements Of A COCCA Claim

§ 52.4.3—Statute Of Limitations Applicable To A COCCA Claim

§ 52.5 RIGHTS IN STOLEN PROPERTY STATUTE (CIVIL THEFT)

§ 52.5.1—Introduction To Rights In Stolen Property Claims

§ 52.5.2—Elements Of A Rights In Stolen Property Claim

§ 52.5.3—Statute Of Limitations Applicable To A Rights In Stolen Property Claim

§ 52.6 EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

§ 52.6.1—Introduction To ERISA Claims Against Lawyers

§ 52.6.2—Statute Of Limitations Applicable To An ERISA Claim

§ 52.7 OTHER STATUTORY CLAIMS

§ 52.7.1—Colorado Uniform Fraudulent Transfer Act

§ 52.7.2—Fair Debt Collection Practices Act

§ 52.7.3—Federal And State Securities Laws

Chapter 53 DEFENSES TO LEGAL MALPRACTICE CLAIMS

§ 53.1 INTRODUCTION TO LEGAL MALPRACTICE DEFENSES

§ 53.2 NO LEGAL DUTY DEFENSE

§ 53.2.1—No Client-Lawyer Relationship

§ 53.2.2—Limited Scope Of Representation

§ 53.3 PROFESSIONAL JUDGMENT DEFENSE

§ 53.4 APPORTIONMENT OF FAULT DEFENSES

§ 53.4.1—Non-parties At Fault Designations

§ 53.4.2—Comparative Or Contributory Negligence

§ 53.4.3—Defendant's Own Negligence Or Wrong As A Defense

§ 53.5 ASSUMPTION OF THE RISK DEFENSE

§ 53.6 FAILURE TO MITIGATE DAMAGES DEFENSE

§ 53.7 STATUTE OF LIMITATIONS DEFENSES

§ 53.7.1—Introduction To Statute of Limitations Defenses

§ 53.7.2—Accrual Of A Legal Malpractice Claim

Table of Contents

- § 53.7.3—Requirement Of An Actual Injury
- § 53.7.4—Definition Of An “Injury” For Purposes Of The Statute Of Limitations
- § 53.7.5—Injury Cannot Be Speculative Or In The Future For A Legal Malpractice Claim To Accrue
- § 53.7.6—No Tolling For Continuous Representation
- § 53.7.7—No Tolling While Case Is On Appeal
- § 53.7.8—Statute Of Limitations Applicable To A Professional Negligence Claim
- § 53.7.9—Statute Of Limitations Applicable To A Breach Of Fiduciary Duty Claim
- § 53.7.10—Statute Of Limitations Applicable To A Breach Of Contract Claim
- § 53.7.11—Statute Of Limitations Applicable To A Fraud Claim
- § 53.7.12—Statute Of Limitations Applicable To A Conversion Claim
- § 53.7.13—Statute Of Limitations Applicable To A Negligent Misrepresentation Claim
- § 53.7.14—Statute Of Limitations Applicable To An Abuse Of Process Claim
- § 53.7.15—Statute Of Limitations Applicable To A Malicious Prosecution Claim
- § 53.7.16—Statute Of Limitations Applicable To A False Arrest Claim
- § 53.7.17—Statute Of Limitations Applicable To An Invasion Of Privacy Claim
- § 53.7.18—Statute Of Limitations Applicable To An Intentional Interference With Contract Claim
- § 53.7.19—Statute Of Limitations Applicable To A Defamation For Statements Made In The Course Of Litigation Claim
- § 53.7.20—Statute Of Limitations Applicable To An Aiding And Abetting A Breach Of Fiduciary Duty Claim
- § 53.7.21—Statute Of Limitations Applicable To A Civil Conspiracy Claim
- § 53.7.22—Statute Of Limitations Applicable To A Deceptive Trade Practices Claim
- § 53.7.23—Statute Of Limitations Applicable To A RICO Claim
- § 53.7.24—Statute Of Limitations Applicable To A COCCA Claim

- § 53.7.25—Statute Of Limitations Applicable To A Rights In Stolen Property (Civil Theft) Claim
- § 53.7.26—Statute Of Limitations Applicable To An ERISA Claim
- § 53.7.27—Statute Of Limitations Applicable To A Fraudulent Transfer Act Claim
- § 53.7.28—Statute Of Limitations Applicable To A Fair Debt Collection Practices Act Claim
- § 53.7.29—Statute Of Limitations Applicable To A Securities Fraud Claim
- § 53.7.30—Statute Of Limitations Applicable To A Punitive Damage “Claim”

§ 53.8 DOCTRINE OF *IN PARI DELICTO* DEFENSE

§ 53.9 LACHES DEFENSE

§ 53.10 COLLECTIBILITY OF A JUDGMENT DEFENSE

Chapter 54 VICARIOUS LIABILITY

§ 54.1 EMPLOYEES

§ 54.2 PARTNERS

§ 54.3 PROFESSIONAL COMPANIES

§ 54.4 PARTNERSHIP BY ESTOPPEL

Chapter 55 COLORADO ATTORNEY REGULATION: ATTORNEY DISCIPLINE PROCESS AND PROCEDURE

§ 55.1 THE PLAYERS

§ 55.1.1—The Colorado Supreme Court

§ 55.1.2—The Supreme Court Advisory Committee

§ 55.1.3—The Attorney Regulation Committee

§ 55.1.4—The Office Of Attorney Regulation Counsel

Table of Contents

- § 55.1.5—The Office Of The Presiding Disciplinary Judge
- § 55.1.6—Disciplinary Hearing Boards
- § 55.1.7—Lawyers Licensed To Practice Law In Colorado

§ 55.2 THE PRE-INVESTIGATION OR “CENTRAL INTAKE” PHASE

- § 55.2.1—The Request For Investigation
- § 55.2.2—Immunity
- § 55.2.3—Confidentiality
- § 55.2.4—Determination To Proceed
- § 55.2.5—Settlement

§ 55.3 THE INVESTIGATION PHASE

§ 55.4 PROCEEDINGS BEFORE THE ATTORNEY REGULATION COMMITTEE

§ 55.5 FORMAL PROCEEDINGS

- § 55.5.1—Nature Of Disciplinary Actions
- § 55.5.2—Affirmative Defenses And Mitigating Factors
- § 55.5.3—Disclosures And Discovery
- § 55.5.4—Physical Or Mental Examination Of The Lawyer
- § 55.5.5—Stay Of Disciplinary Proceedings Pending Resolution Of Related Civil Or Criminal Case
- § 55.5.6—Issue And Claim Preclusion
- § 55.5.7—Pretrial And Trial Proceedings
- § 55.5.8—Hearing Board Decisions
- § 55.5.9—Appeals

Chapter 56 COLORADO ATTORNEY REGULATION: SUMMARY ADJUDICATIONS, COLLATERAL AND DISABILITY PROCEEDINGS, AND REINSTATEMENT AND READMISSION

§ 56.1 SUMMARY ADJUDICATIONS

- § 56.1.1—Default
- § 56.1.2—Immediate Suspension

§ 56.2 OPTIONS TO AVOID DISCIPLINARY PROCEEDINGS

§ 56.2.1—Offers To Resign

§ 56.2.2—Collateral Attack In Federal Court

§ 56.2.3—Disability Inactive Status

§ 56.2.4—Disability Inactive Status Procedure

§ 56.3 REINSTATEMENT AND READMISSION

§ 56.3.1—C.R.C.P. 251.28(d) Affidavit

§ 56.3.2—Compliance With C.R.C.P. 251.28

§ 56.3.3—Reinstatement After Suspension

§ 56.3.4—Readmission After Disbarment

§ 56.4 CONCLUSION

EXHIBITS

Exhibit 56A—Sample C.R.C.P. 251.28(d) Affidavit

Exhibit 56B—Sample Affidavit For Reinstatement After
Suspension

PART 6 • TRENDS

Chapter 57 TRENDS IN LEGAL MALPRACTICE LITIGATION: 2012–2017

§ 57.1 INTRODUCTION

**§ 57.2 COLORADO TRENDS: COLORADO SUPREME
COURT — 2012–2017 UPDATE**

§ 57.2.1—Contingency Fees To Experts

§ 57.2.2—Attorney Charging Liens

§ 57.2.3—Costs Charged By Law Firms Could Be Deceptive
Under The Colorado Consumer Protection Act If
Improperly Disclosed

§ 57.2.4—Colorado Supreme Court Adheres To Strict Privilege
For Precluding Malpractice Claims By Nonclients

Table of Contents

- § 57.2.5—Colorado Supreme Court Provides Guidance On How A Dissolved Law Firm Must Divide Fees On Unfinished Cases
- § 57.2.6—Colorado Supreme Court Addresses Whether A Lawyer May Be Disciplined For Failing To Return All Advance Fees Paid By Client Because Some Of The Advance Fees Had Been Earned
- § 57.2.7—Colorado Supreme Court Rejects “Lone Pine” Orders For Case Management Of Complex Cases
- § 57.2.8—Colorado Supreme Court Explains Scope Of Discipline For Alleged Violations Of Rules Of Professional Conduct
- § 57.2.9—Colorado Supreme Court Reverses Trial Court’s Disqualification Of Attorney Under Colo. RPC 1.9
- § 57.2.10—Colorado Supreme Court Holds That An Attorney May Not Assert A Lien To A Client’s Passport
- § 57.2.11—Colorado Supreme Court Decides Case-Within-The-Case Requirement Applicable To A Case Involving An Underlying Transaction, Also Known As Transactional Malpractice
- § 57.2.12—Colorado Supreme Court Holds That A Party May Not Sue His Or Her Opposing Counsel Based Upon Alleged Misrepresentations Made By The Lawyer In The Litigation
- § 57.2.13—An Attorney Does Not Owe Fiduciary Duties To Third Parties Even When A Lawyer Holds Funds In His Or Her Trust Account To Which A Third Party May Be Entitled
- § 57.2.14—Colorado Supreme Court Concludes That Attorney May Pay Appellate Lawyer’s Fees As Costs For A Client Without Violating Ethics Rules
- § 57.2.15—Colorado Supreme Court Concludes That Previous Counsel May Have *Quantum Meruit* Claim For Fees Against Subsequent Counsel

§ 57.3 COLORADO TRENDS: COLORADO COURT OF APPEALS — 2013-2017 UPDATE

§ 57.3.1—Court Of Appeals Holds That Collectibility Is An Affirmative Defense, And Not A Requirement Of The Case-Within-The-Case

§ 57.3.2—Litigation Privilege And Its Limits

§ 57.3.3—Court Of Appeals Holds That Contract That Violates Colorado Rules Of Professional Conduct May Not Be Enforced

§ 57.3.4—Court Of Appeals Concludes Plaintiff Is Not Always Required To Prove Case-Within-The-Case

§ 57.3.5—Court Of Appeals Decides Several Attorney Fee Cases

§ 57.4 CONCLUSION

SUBJECT INDEX
