

Concurrent

Consumer Workshop III:
“Every Which Way
but Loose” - Presenting
Your Chapter 13 Case
Ethically and Effectively

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EVERY WHICH WAY BUT LOOSE

Panelists:

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Moderator: Sally J. Zeman, Chapter 13 Trustee, District of Colorado

I. PROFESSIONALISM

DENVER BAR ASSOCIATION

Denver Bar Association Principles of Professionalism

Adopted by the Denver Bar Association Board of Trustees on April 8, 1999; as amended May 2007.

PRINCIPLES OF PROFESSIONALISM

PREAMBLE

The law is the means by which our society seeks to ensure justice for all. A lawyer's role is to help people to act within the law, and, when they have disputes and grievances, to resolve them within the law. How we conduct ourselves is part of the process of the law. As much as the substantive law, how we conduct ourselves affects whether the parties achieve justice. The effectiveness of the legal system depends upon our conduct. Among the purposes of the law is the fair and efficient resolution of disputes and the fostering of civil relationships in society. In carrying out our duty to advance the purposes of the law, we are committed to conducting ourselves according to the following precepts:

We believe that integrity, honesty, candor, fairness, trust, respect, dignity and courtesy are guiding principles of our conduct.

Professionalism is fundamental to the effective and efficient representation of clients in the legal system and the even-handed administration of justice.

We will endeavor to make legal services available to people who have legal needs, but cannot afford to pay customary charges, and will also strive to provide advisory or other assistance to non-profit community service organizations. As officers of the court, we represent our clients within the system of justice and represent the system of justice to our clients. Justice is never obtained when success is achieved at the expense of the rights and legitimate interests of others.

We are committed to the zealous representation of our clients, using our skills and training to seek their legitimate ends. We are equally committed to preventing the use of the legal system to cause unjust harm or to gain unjust advantage. We recognize that just as legal action pursued for legitimate ends can accomplish great good, legal action pursued for improper purposes or by unjust means can cause great harm.

We must accept fully the responsibility that comes with the privilege and licensure of practicing law. This requires that we respect the legal rights of others that we act reasonably and with candor toward others, and that we not seek to advance our personal interests at the expense of the legitimate interests of others.

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Justice is not achieved where short-term victory plants the seed of future conflict. The satisfactory completion of a transaction creates a foundation for future cooperation. The just resolution of a dispute begins a process of reconciliation for the parties.

Neither we nor our clients are the sole possessors of truth or righteousness in any circumstance. While we may strive zealously for our clients' rights, our zeal also must be directed to achieving justice in the process. An unjust process can never lead to a just result, and a successful result cannot remedy the harm of an unjust process.

As licensed professionals, we understand that the law is more than a business, it is also a calling. We will keep our Lawyer's Oath in mind in our daily practice. We understand and accept our role in the American justice system, and freely accept our responsibility to support and defend the Constitution of the United States of America and the State of Colorado.

The following principles are designed to promote professionalism by providing guidance for the many choices we have to make in conducting ourselves as lawyers. They apply to all aspects and areas of the practice of law. They are not intended to replace the Rules of Professional Conduct, nor are they intended to establish enforceable standards of practice for lawyers. Rather, these are principles upon which we can build professional relationships.

COURTESY AND CIVILITY

1. We will work together toward resolution of our cases by being reasonable.
2. We will be cooperative; to the extent it does not prejudice our clients' legitimate interests.
3. We will treat others with courtesy and respect. We will always endeavor to retain our objectivity, and will try not to take personally disagreements that arise in the zealous representation of our clients.
4. We will communicate promptly with opposing counsel to discuss any disputes, ambiguities or other issues. We recognize that in most instances genuine, personal interaction serves our clients better than perfunctory communication. While electronic means are appropriate methods to communicate, we will not use electronic communication such as facsimile transmission, email, text messaging or telephone contact as a means of gaining unfair advantage or as a substitute for effective interpersonal dialogue.
5. We will allow ourselves and each other sufficient time to resolve any dispute or disagreement by communicating with one another in a timely and professional manner and by agreeing to reasonable deadlines in light of the nature and status of the matter.
6. We will scrupulously refrain from making misleading statements of law or fact, whether by omission, inference or implication. We will refrain from unseemly or discourteous references to opposing parties, counsel, courts, legal systems, or other civil and criminal justice professionals.
7. We will respond to all communications in a timely manner, and allow for reasonable time for opposing counsel to respond.
8. We will work to reduce the level of anger or animosity among or between parties to a conflict or transaction wherever and whenever we can, and will strive whenever possible not to add to, or manipulate, the emotional overburden of any dispute or transaction by our conduct, words, or attitudes.

AGREEMENTS, TRANSACTIONS, AND STIPULATIONS

1. We will abide by our promises and agreements, whether written or oral. Our word is our bond. In the event of a conflict, we will attempt in good faith to resolve the conflict before seeking court intervention.
2. We will cooperate in presenting evidence by providing the court and counsel with the names of witnesses to be called and estimates of time for examination, and by sharing equipment (such as audio-visual equipment) in the courtroom.
3. We will cooperate by agreeing upon and keeping reasonable deadlines for exchanging drafts, scheduling and completing transactions, and providing required documentation.
4. We will seek agreements on preliminary, procedural and factual matters, and enter into written stipulations or agreements which will make more effective use of everyone's time.
5. We will respond promptly to requests for agreements, even when our response is that agreement on a certain issue is not possible.
6. When discussing final stipulations or agreements, we will act promptly to submit proposals for agreement both as to form and content, and will cooperate in assuring that the final documents fairly and accurately reflect the parties' agreements.
7. When exchanging drafts of agreements, we will draw attention to any changes or suggestions for new language and issues which have not been agreed upon beforehand.
 - 7(a) when exchanging documents electronically, we will offer "redline" versions, or otherwise call specific attention to all changes we have made. We will also take steps to assure that the final document executed by the parties is the document to which all parties have agreed.
 - 7(b) when exchanging documents electronically, the sender will take responsibility to assure removal of all "metadata" and other information the sender does not intend to share that may be imbedded in the document file, before sending the document file to counsel, parties, or others.
8. We will act promptly to advise the courts and other interested parties of all stipulations and agreements.
9. We will follow through to assure that all details involved in concluding any agreement or transaction are seen to quickly and efficiently.
10. We will not ask for an opinion in any matter that we in a similar situation would be unable to give.
11. We will use plain language and understandable structure in all documents wherever possible.
12. We will not unduly interfere with another attorney's ability to conduct a conflict check as early in the transaction as possible.
13. When dealing with unrepresented persons, we will encourage them to engage counsel, we will inform them that we do not and cannot represent their interests, and will avoid any appearance or impression that we are providing any unrepresented persons advice as to the transaction or matter.

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14. While always keeping our client's interests paramount, we will also keep in mind that our goal should be the prompt, efficient and fair resolution of disputes, and the prompt, efficient and fair completion of transactions on which we are engaged.

SCHEDULING

1. We will endeavor to schedule hearings, depositions, or other matters by agreement with opposing counsel.
2. We will give opposing counsel notice of cancellation of hearings, depositions, and other matters at the earliest possible time.
3. We will not seek extensions or postponements for the purpose of harassment or to prolong, delay, or increase the cost or complexity of any matter.
4. In scheduling matters, including requests for reasonable extensions of time, we will act in a spirit of cooperation and accommodation. We will act with consideration of the need for expediting the litigation or transaction and the professional and personal schedules of others involved. We will raise scheduling conflicts only when they actually exist.
5. When scheduling, we will keep in mind that a reasonable balance between life and work helps promote the efficient and fair administration of justice and effective delivery of legal services. We will not make unreasonable demands on off-hours time when dealing with parties, witnesses, opposing counsel, co-counsel, associates or partners.

USE OF DATA-TRANSMISSION TECHNOLOGIES

1. We will use data-transmission technologies only as an efficient means of communication and not as a means of obtaining an unfair advantage. The use of such technologies does not require receiving counsel to discontinue other matters to respond.
2. We will honor reasonable requests to retransmit materials or to provide hard copies.

DISCLOSURE AND DISCOVERY

1. We will not use any form of discovery or discovery scheduling as a means of harassing anyone or for the purpose of obstructing the prosecution or defense of the case.
2. We will only use definitions and instructions in written discovery that are pertinent, clear, and concise.
3. We will object to disclosure or discovery only when we have a good faith belief in the merit of the objection.
4. We will not lightly seek court sanctions.
5. We will provide disclosures, and respond to written discovery requests reasonably. We will not strain to interpret requests or disclosure requirements in the rules of procedure in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

CONDUCT DURING DEPOSITIONS

1. We will conduct ourselves in depositions with the same courtesy and respect as is expected in court.
2. We will not conduct examinations or engage in other behavior which is purposely offensive, demeaning, harassing, intimidating, or which unnecessarily invades the privacy of anyone.
3. If sensitive or controversial matters are to be inquired into in a deposition, counsel should consider discussing those matters with opposing counsel in advance. When appropriate, we will attempt to engage in meaningful dialogue with opposing counsel for the purpose of exploring agreements regarding the scope of the examination and the use of the information after the deposition.
4. We will attempt to minimize arguments.
5. We will refrain from coaching deponents by objecting, commenting, or otherwise acting in a manner which suggests a particular answer to a question.
7. We will not object for the purpose of disrupting or distracting the questioner or the witness. We will object only in the manner provided by the rules.
8. We will not interrupt the examination for an off-the-record conference with the deponent for the purpose of obstructing the deposition or coaching the witness.
9. We will not intentionally misstate facts or mischaracterize prior statements or testimony.

MOTIONS AND CONDUCT IN COURT

1. We will scrupulously avoid misleading the court in our presentation of the law, facts, case history or procedure.
2. We will be familiar with the issues to be addressed by the court.
3. We will only make objections which are concise, specific, and have a sound legal basis.
4. We will not impute improper motives to other lawyers or make any statements that impugn their character unless clearly justified by the facts and essential to the resolution of an issue.
5. We will demonstrate courtesy and respect for the court and its staff at all times. When in court, we will stand when the judge and jury enter, when addressing the judge, and when the judge and jury leave, unless the custom and practice of a particular court is different.
6. We will avoid talking at the same time as the court, each other or the witness.
7. We will dress appropriately in court.
8. We will not transmit copies of correspondence to the court unless requested or encouraged by the court or required by extraordinary circumstances.
9. We will not engage the court staff in ex parte communications concerning the merits of a pending case, ask the court staff for an indication of how the judge may rule, or ask the court staff for legal advice.

10. We will respectfully seek permission before continuing to argue after the court has ruled.

11. We will not take positions on litigated or contested matters that are legally or factually unsupportable, and will not use motions or procedural issues to delay the prompt and fair resolution of a matter, or to harass, intimidate, or wear down an opponent.

II. PRACTICE TIPS AND ETHICAL CONSIDERATIONS

A. The goal of every Chapter 13 case is to obtain an order of confirmation. How a case is presented, and how counsel conducts himself during a hearing, reflects on the debtor, and affects whether the court grants the order of confirmation. Do not under-estimate the importance of appearance. When addressing the court, always stand up. Remain at the lectern when addressing a witness. Ask permission to approach the bench or a witness. Judges who perceive proper decorum appreciate the professionalism. Also, in bankruptcy, as in every specialty, there is a “language.” That language is best learned by observing first, and then participating.

B. The bankruptcy landscape changes rapidly. Counsel must be “students” of the practice. Stay current with case law developments, amendments to the rules, particularly local rules.

C. Ex parte communication with chambers should be limited to inquiries as to court room procedures or similar matters. Do not ask clerks for clarification of orders, anticipated rulings from the bench. However, contacting the clerk to inform him of settlement, or to ask how the court prefers receiving exhibits, is acceptable.

D. A married couple on eve of a dissolution proceeding is fraught with problems in a joint chapter 13 case. Which spouse keeps the car? And is that car to be crammed down? And if a cramdown, what percentage of the proposed chapter 13 plan payments should the debtor pay? What if one spouse wants to keep the home and cure the arrears and one spouse wants to move on with her life? Is there equity in the home? Does the spouse who wants to move on then quitclaim her interest to the other?

E. When representing debtors, counsel be a "doubting Thomas." Question all information provided by the client, and in particular, those representations which deal with matters of opinion: values of real property and personal property, or the contents of a judgment obtained by prepetition creditor. Consider using web sites such as Zillow to determine a baseline for home values. Likewise, Kelley blue book is an online source as to the value of the car and is model and year specific. Is there a prepetition judgment in place? Is there an order for restitution? Insist that the debtor provide a copy of the court order and review same. Likewise, if the debtor represents he has a "spendthrift trust" obtain a copy of the putative trust and consider having an attorney knowledgeable regarding applicable state law render a legal opinion.

F. The issue of "reasonableness" is often litigated in chapter 13. In particular, what is a reasonable expense for a similar family living in the same community? Understanding what is reasonable for a court to accept will save considerable time and effort for debtors counsel, the trustee, the court and the client.

G. This is a practice tip—if you reach an agreement with opposing counsel, as expeditiously as possible, communicate to the court's clerk the nature of the settlement and whether a stipulation or amended plan will be forthcoming. Judges spend a considerable amount of time preparing for hearings and are understandably perturbed when their efforts are for naught.

H. Representing debtors in chapter 13 is time intensive. Thus, good calendaring skills are essential.

I. The best method for reducing stress in the bankruptcy arena is to have a realistic expectation of how the court will rule at a final hearing. It is important for all new attorneys, or those returning to the practice, to attend as many hearings as possible-- as a spectator. Likewise, stay abreast of case law decisions.

J. Shortly after reaching a resolution of a contested matter, memorialize the agreement with a quick e-mail or letter. There must be a "meeting of the minds." Spend a few moments to summarize the agreement, even before the stipulation is reduced to writing and signed. Remember – *courts favor settlement*. It reduces the case load for everyone.

K. The provisions and requirements of BAPCPA have required local courts to develop a streamlined confirmation process. The courts have developed local procedures and forms to

implement this expedited process. . In the District of Colorado, for example, counsel may be required to file certificates, lists of witnesses and exhibits, testimony by sworn statement, etc. Counsel must be vigilant and avoid the natural inclination to treat the substance of the form as perfunctory. If counsel is required to report on the status of debtor's payments and the status regarding the debtor's having filed all tax returns, it is imperative that the form be completed after actual inquiry. Likewise, counsel should customize each list of witnesses and exhibits and present an accurate summary to the court of the anticipated proceeding.

L. Representation of a divorced couple in separate bankruptcy filings, if no monies are owed to the respective parties, may not be a problem, but it is best to avoid representation of both parties. When is a potential conflict waive able? Evaluate your commitment as counsel in terms of worse case scenario.

M. Discovery techniques are underutilized in the context of prosecuting chapter 13 cases. Request for production of documents, interrogatories, and depositions will shake out the facts which may make or break a case. It will also streamline the presentation of facts at trial and avoid the appearance of conducting "discovery" during cross-examination of the witness.

Other considerations and issues unique to Chapter 13:

1. How many times has the debtor availed himself of bankruptcy relief in the past ten years? Was there a recent chapter 13 case that was dismissed for failure to make payments? Is the contemplated filing a repeat of a previously dismissed case, i.e., a serial filer. Unlike airlines and hotels, there are no frequent-flier rewards given to debtors who rely too heavily on the bankruptcy process.
2. Did you obtain signatures from the client prior to filing the schedules statements and plan? Did the client sign off on every amended plan or stipulation filed with the court.
3. Are you relying on written materials from the debtor to prepare your plan and schedules (i.e., a questionnaire)?

4. Practice tip—when there is confusion, a quick in-office, face to face meeting with the debtor can resolve a plethora of future misunderstandings and bad feelings. Memorialize the meeting with a letter or email to the client.

5. Issues regarding valuations should not be left solely to what the debtor opines. Sites on the internet may provide a site as a good starting point for values of real property, as are “current market analysis” from realtors. Evidence at trial is another animal. Kelly Blue Book is model and year specific as to car values. Websites such as Lexis-Nexis and Zaba will provide information as to recorded liens or property titles in which the debtor has had an ownership interest.

6. Client control is paramount when representing debtors, particularly in Chapter 13. The debtor’s expectations of keeping an assets (real and personal property) may be unrealistic. Most attorneys representing debtors understand what the bankruptcy can do (i.e., that a plan can cure prepetition mortgage arrears), however, a counselor-at-law will recognize when a family cannot afford the asset post-petition, even if the arrears are cured. Debtors are emotionally attached to their possessions—an attorney must endeavor to look at the facts, and particularly the economics of running a family, as dispassionately as possible.

7. As a professional and officer of the court, it is inappropriate to file a Chapter 13 as a stall tactic and to see the “lay of the land”. Advise the debtor to proceed in the chapter that is legally proper.

III. RECENT DISCIPLINARY DECISIONS—COLORADO ATTORNEY REGULATION

A. SUSPENSIONS

30 day—failure to provide written fee agreement, and failure to diligently represent and adequately communicate

--failure to adequately explain to client how a flat fee would be earned and negligent failure to respond to requests for information about the fee

90 day—failure to obtain signature of co-petitioner; directing legal assistant to notarize the signature line

60 day—failure to sufficiently supervise legal assistant; allowing assistant to use signature stamp

6 month—failure to perform services and dishonest representation regarding status of the case

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--failure to provide diligent representation and to adequately communicate with client

1 year and 1 day—failure to represent clients with reasonable diligence and promptness; failure to inform and respond; inadequate supervision of legal assistant; untruthful response to interrogatories

--failure to perform services and keep client informed

--failure to diligently represent and adequately communicate

--failure to diligently represent several clients; failure to charge a reasonable fee; allowed non-lawyers to provide legal services.

3 years—failure to diligently represent multiple clients and to adequately communicate with them; failure to keep appropriate trust account records and documents

B. PUBLIC CENSURE

--unilateral modification of fee agreement without providing written notice

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Panelist: Honorable Joel T. Marker, U.S. Bankruptcy Court, District of Utah

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Moderator: Sally J. Zeman

HOT ETHICAL ISSUES PRESENTED IN TODAY'S WORLD OF SOCIAL NETWORKING

As attorneys increasingly rely on the internet in their practice, the ethical issues regarding competence, communications, solicitations, advertisements, the unauthorized practice of law, and the inadvertent creation of an attorney-client relationship have become matters of serious concern.

The courts have differing views of communication over the Internet. "The internet...is a major modern tool of free speech and freedom both here and abroad." *In re Zyprexa Injunction*, 474 F.Supp.2d 385, 393 (E.D.N.Y. 2007). The Internet has opened new channels of communication and self-expression...Countless individuals use message boards,...social networks...to make themselves and their ideas visible to the world. While such intermediaries enable the user-driven digital age, they also create new legal problems," *Fair Housing Council of San Fernando Valley v .Roommates.com.LLC*, 489 F.3d 921, 924 (9th Cri. 2007).

Addressing these issues, the Colorado Rules of Professional Responsibility closely mirror the Model Rules of the American Bar Association. All of the following Rules are virtually identical to the ABA Rules.

Client-Lawyer Relationship

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENT

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many

instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation

Concerns: Attorneys communicate through listserve, LinkedIn, Twitter and blogs. What about thoroughness? Will there soon be a duty to tweet or check the chatter? What is "requisite knowledge and skill" for a consumer bankruptcy attorney and what is the attorney "expected to know"? Will an attorney who refuses to engage in social networking remain competent if most attorneys become aware of legal developments much earlier?

What is an emergency? On a local listserve, attorneys ask questions which are readily answered by local rule, federal rule and published case law. How many emergencies does an attorney get in a day or week?

Reliance on advice from out of state or out of jurisdiction. Utilizing tweeters and bloggers is like having a subscription to a law notification service for free. What are the caveats?

Rule 1.6 Confidentiality of Information

a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to reveal the client's intention to commit a crime and the information necessary to prevent the crime;

(3) to prevent the client from committing a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(4) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(5) to secure legal advice about the lawyer's compliance with these Rules, other law or a court order;

(6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(7) to comply with other law or a court order.

Concerns: Mobile data at rest is information stored on electronic media or devices for the physical transportation to another location. An obvious example is an attorneys and trustees using laptops at the meeting of creditors. Other examples: dictation machines or software, thumb drives, flash memory cards, digital cameras and cell phones. Because of the risk to data security, do not use uncertified encryption products even if the product is free or endorsed by another.

Mobile data in transit refers to the information we send and receive over networks. All network communications are at risk of being captured, copied or redirected.

What about his new idea of attaching the transcript of hearing to the ECF docket?

Rule 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that

person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule 1.6 and 1.9 Concerns: Is cyberspace ever nameless and faceless? If you are trying to receive or share information in cyberspace and in your endeavor, you are sharing the necessary details, can you ever be sure that you are not violating Rule 1.6 or 1.9?

Counselor Rule 2

Advocate Rule 3

Transactions With Persons Other Than Clients Rule 4

Law Firms and Associations

Rule 5.5 Unauthorized Practice of Law: Multijurisdictional Practice of Law

(a) A lawyer shall not:

(1) practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by C.R.C.P. 220, C.R.C.P. 221, C.R.C.P. 221.1, C.R.C.P. 222 or federal or tribal law;

(2) practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction;

(3) assist a person who is not authorized to practice law pursuant to subpart (a) of this Rule in the performance of any activity that constitutes the unauthorized practice of law; or

(4) allow the name of a disbarred lawyer or a suspended lawyer who must petition for reinstatement to remain in the firm name.

(b) A lawyer shall not employ, associate professionally with, allow or aid a person the lawyer knows or reasonably should know is a disbarred, suspended, or on disability inactive status to perform the following on behalf of the lawyer's client:

(1) render legal consultation or advice to the client;

(2) appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

(3) appear on behalf of a client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of the client with third parties;

(5) otherwise engage in activities that constitute the practice of law; or

(6) receive, disburse or otherwise handle client funds.

(c) Subject to the limitation set forth below in paragraph (d), a lawyer may employ, associate professionally with, allow or aid a lawyer who is disbarred, suspended (whose suspension is partially or fully served), or on disability inactive status to perform research, drafting or clerical activities, including but not limited to:

(1) legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; and

(3) accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing assistance to the lawyer who will appear as the representative of the client.

(d) A lawyer shall not allow a person the lawyer knows or reasonably should know is disbarred, suspended, or on disability inactive status to have any professional contact with clients of the lawyer or of the lawyer's firm unless the lawyer:

(1) prior to the commencement of the work, gives written notice to the client for whom the work will be performed that the disbarred or suspended lawyer, or the lawyer on disability inactive status, may not practice law; and

(2) retains written notification for no less than two years following completion of the work.

(e) Once notice is given pursuant to C.R.C.P. 251.28 or this Rule, then no additional notice is required.

Concerns: Actions taken in social networking may rise to the level of practicing law. You may be assisting a lay person in the unauthorized practice of law. Running a virtual law office, reachable in all states simultaneously, has enormous potential to subject an attorney to the charge of unauthorized practice of law in a jurisdiction in which he/she is not licensed. When may you be required to become licensed in a district?

Information About Legal Services

Rule 7.1 Communications Concerning A Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(3) is likely to create an unjustified expectation about results the lawyer can achieve;

(b) No lawyer shall, directly or indirectly, pay all or a part of the cost of communications concerning a lawyer's services by a lawyer not in the same firm unless the communication discloses the name and address of the non-advertising lawyer, the relationship between the advertising lawyer and the non-advertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the non-advertising lawyer.

(c) Unsolicited communications concerning a lawyer's services mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery, and shall not resemble legal pleadings or other legal documents.

(d) Any communication that states or implies the client does not have to pay a fee if there is no recovery shall also disclose that the client may be liable for costs. This provision does not apply to communications that only state that contingent or percentage fee arrangements are available, or that only state the initial consultation is free.

(e) A lawyer shall not knowingly permit, encourage or assist in any way employees, agents or other persons to make communications on behalf of the lawyer or the law firm in violation of this Rule or Rules 7.2 through 7.4.

(f) In connection with the sale of a private law practice under Rule 1.17, an opinion of the purchasing lawyer's suitability and competence to represent existing clients shall not violate this Rule if the lawyer complies with Rule 1.17(d).

An attorney must ensure that what is said on their blog or social networking sites is true.

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization.

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Electronic communication is specifically included. A web page is an ad. Is a profile an ad? Must all communication include name and address—any exceptions? Because social networking sites are multistate and international, an attorney must be very careful to comply with each jurisdictions requirements. Mission impossible?

Rule 7.3 Direct Contact with Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) A lawyer shall not solicit professional employment from a prospective client believed to be in need of legal services which arise out of the personal injury or death of any person by written, recorded, or electronic communication. This Rule 7.3(c) shall not apply if the lawyer has a family or prior professional relationship with the prospective client or if the communication is issued more than 30 days after the occurrence of the event for which the legal representation is being solicited. Any such communication must comply with the following:

(1) no such communication may be made if the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter; and

(2) if a lawyer other than the lawyer whose name or signature is contained in the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any such communication shall include a statement so advising the prospective client.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall:

(1) include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2);

(2) not reveal on the envelope or on the outside of a self-mailing brochure or pamphlet the nature of the prospective client's legal problem.

A copy of or recording of each such communication and a sample of the envelopes, if any, in which the communications are enclosed shall be kept for a period of four years from the date of dissemination of the communication.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Public media casts a wide net. When an attorney posts a comment on another's blog, hoping to attract attention if not clients, does Rule 7.3 apply? Is there any infringement of free speech as a result?

Rule 7.4 Communication of Fields Of Practice and Specialization

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law or that the lawyer is a specialist in particular fields of law. Such communication shall be in accordance with Rule 7.1.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

(e) In any advertisement in which a lawyer affirmatively claims to be certified in any area of the law, such advertisement shall contain the following disclosure: "Colorado does not certify lawyers as specialists in any field." This disclaimer is not required where the

information concerning the lawyer's services is contained in a law list, law directory or a publication intended primarily for use of the legal profession.

When a inaccurate or misleading statement is posted on your site, your blog or another website, you should take steps to correct it, otherwise you may run afoul of this rule.

Maintaining the Integrity of the Profession Rule 8

Rule 9 Title -- How Known and Cited