



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Alfred A. Arraj  
United States Courthouse  
901 19<sup>th</sup> Street  
Denver, Colorado 80294  
[www.cod.uscourts.gov](http://www.cod.uscourts.gov)

**THURSDAY, JULY 25, 2019**

**"THE PRO BONO WORK TO EMPOWER ACT OF 2018 - WITH ETHICS & PRO  
BONO REPRESENTATION CLE"**

**Chief Judge Philip A. Brimmer, U.S. District Court for the District of Colorado  
James Wilder, Office of Attorney Regulation Counsel  
Representatives of Several Legal Services Organizations, including Project  
Safeguard, the Rocky Mountain Victim Law Center, Family Tree, Colorado  
Legal Services, Metro Volunteer Lawyers, The District of Colorado Civil Pro  
Bono Panel, and the Federal Pro Se Clinic  
Concluding remarks by Magistrate Judge S. Kato Crews**

**12 noon - 1:30 p.m.  
This is a FREE CLE program.**

***ALFRED A. ARRAJ FEDERAL COURTHOUSE  
901 19TH STREET, DENVER  
JURY ASSEMBLY ROOM***

The POWER Act is the acronym for "Pro Bono Work to Empower and Represent Act of 2018" (P. L. 115-237) that Congress passed on September 4, 2018. The primary goal of the POWER Act is for the U.S. district courts to partner with a local, tribal, or territorial domestic abuse service provider and a local volunteer lawyer project to promote pro bono legal services as a way to empower survivors of domestic violence, sexual assault, and stalking, and to engage citizens in assisting those survivors.

The U.S. District Court for the District of Colorado, the Faculty of Federal Advocates, and the Colorado Bar Association have partnered to offer this FREE program. Chief Judge Brimmer will speak about the POWER Act, its purpose and goals. OARC attorney James Wilder will present a one-hour ethics CLE with the title of "Ethics & Pro Bono Representation," discussing limited representation principles when volunteering through non-profit legal organizations. Representatives from several legal service providers will discuss pro bono volunteering opportunities Project Safeguard, the Rocky Mountain Victim Law Center, Family Tree, Colorado Legal Services, The District of Colorado Civil Pro Bono Panel, and the Federal Pro Se Clinic. Magistrate Judge S. Kato Crews will make concluding remarks.

2 General/1.2 Ethics CLE Credits approved.

Rule 6.1. Voluntary Pro Bono Publico Service.

## **Colorado Court Rules**

### **Colorado Rules of Professional Conduct**

#### **Public Service**

*As amended through Rule Change 2018(6), effective April 12, 2018*

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

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

- (a) provide a substantial majority of the fifty hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
  
- (b) provide any additional legal or public services through:
  - (1) delivery of legal services at no fee or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
  - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Where constitutional, statutory or regulatory restrictions prohibit government and public sector lawyers or judges from performing the pro bono services outlined in paragraphs (a)(1) and (2), those individuals should fulfill their pro bono publico

responsibility by performing services or participating in activities outlined in paragraph (b).

**Cite as RPC 6.1**

**History.** Entire rule repealed and readopted November 2, 1999, effective January 1, 2000; Comment amended and effective November 23, 2005; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

**Note:**

**COMMENT**

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

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono under paragraph (a) if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remain unfulfilled, the lawyer may satisfy the remaining commitment in a variety of ways as set forth in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate is encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[8A] Government organizations are encouraged to adopt pro bono policies at their discretion. Individual government attorneys should provide pro bono legal services in accordance with their respective organizations' internal rules and policies. For further information, see the Colorado Bar Association Voluntary Pro Bono Public Service Policy for Government Attorneys, Suggested Program Guidelines, 29 Colorado Lawyer 79 (July 2000).

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. However, in special circumstances, such as death penalty cases and class action cases, it is appropriate to allow collective satisfaction by a law firm of the pro bono responsibility. There may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

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

**Preface.** Providing pro bono legal services to persons of limited means and organizations serving persons of limited means is a core value of Colorado licensed attorneys enunciated in Colorado Rule of Professional Conduct 6.1. Adoption of a law firm pro bono policy will commit the firm to this professional value and assure attorneys of the firm that their pro bono work is valued in their advancement within the firm.

The Colorado Supreme Court has adopted the following recommended Model Pro Bono Policy that can be modified to meet the needs of individual law firms. References are made to provisions that may not apply in a small firm setting. Adoption of such a policy is entirely voluntary.

At the least, a pro bono policy would:

- (1) clearly set forth an aspirational goal for attorneys, as well as the number of hours for which billable credit will be awarded for firms that operate on a billable hour system (the attached model policy uses the figure of at least 50 hours per attorney per year, which mirrors the aspirational goal set out in Rule 6.1);
- (2) demonstrate that pro bono service will be positively considered in evaluation and compensation decisions; and
- (3) include a description of the processes that will be used to match attorneys with projects and monitor pro bono service, including tracking pro bono hours spent by lawyers and others in the firm.

The Colorado Supreme Court will recognize those firms that make a strong commitment to pro bono work by adopting a policy that includes:

- (1) an annual goal of performing 50 hours of pro bono legal service by each Colorado licensed attorney in the firm, pro-rated for part-time attorneys, primarily for persons of limited means and/or organizations serving persons of limited means consistent with the definition of pro bono services as set forth in this Model Pro Bono Policy; and
- (2) a statement that the firm will value at least 50 hours of such pro bono service per year by each Colorado licensed attorney in the firm, for all purposes of attorney evaluation, advancement, and compensation in the firm as the firm values compensated client representation.

The Colorado Supreme Court will also recognize on an annual basis those Colorado law firms that voluntarily advise the Court by February 15 that their attorneys, on average, during the previous calendar year, performed 50 hours of pro bono legal service, primarily for persons of limited means or organizations serving persons of limited means consistent with the definition of pro bono services as set forth in this Model Pro Bono Policy.

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Rule 6.5. Nonprofit and Court-annexed Limited Legal Services Programs.

## **Colorado Court Rules**

### **Colorado Rules of Professional Conduct**

#### **Public Service**

*As amended through Rule Change 2018(6), effective April 12, 2018*

#### **Rule 6.5. Nonprofit and Court-annexed Limited Legal Services Programs**

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
- (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

#### **Cite as RPC 6.5**

**History.** Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

#### **Note:**

#### **COMMENT**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the

need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

**Colorado Court Rules Colorado Rules of Professional Conduct**

**Client-lawyer Relationship**

*As amended through Rule Change 2018(4), effective March 15, 2018*

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

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
  - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
  - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
- (c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
- (d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
  - (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
  - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
  - (1) the client gives informed consent;
  - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
  - (3) information relating to representation of a client is protected as required by Rule 1.6.
  
- (g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
  
- (h) A lawyer shall not:
  - (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
  - (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
  
- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
  - (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
  - (2) contract with a client for a reasonable contingent fee in a civil case.
  
- (j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.
  
- (k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (b) through (i) that applies to any one of them shall apply to all of them.

## **Cite as RPC 1.8**

**History.** Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

### **Note:**

**COMMENT** Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a) (1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

#### Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3. Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position. Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i). Financial Assistance

[10] Lawyers may not subsidize law suits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue law suits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

#### Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

#### Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

## Limiting Liability and Settling Malpractice Claims

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

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

## Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5. Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in

the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

#### Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (b) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not solicit a substantial gift from a client of another member of the firm, even if the soliciting lawyer is not personally involved in the representation of the client, because the prohibition in paragraph (c) applies to all lawyers associated in the firm. The prohibitions set forth in paragraphs (a) and (j) are personal and are not applied to associated lawyers.

**Suspend the Rules and Pass the Bill, S. 717, With an Amendment**  
**(The amendment strikes all after the enacting clause and inserts a  
new text)**

115TH CONGRESS  
1ST SESSION

# S. 717

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IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 2017

Referred to the Committee on the Judiciary

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## AN ACT

To promote pro bono legal services as a critical way in  
which to empower survivors of domestic violence.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pro bono Work to Em-  
5 power and Represent Act of 2018” or the “POWER Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Extremely high rates of domestic violence,  
9 dating violence, sexual assault, and stalking exist at  
10 the local, State, tribal, and national levels and such

1 violence or behavior harms the most vulnerable  
2 members of our society.

3 (2) According to a study commissioned by the  
4 Department of Justice, nearly 25 percent of women  
5 suffer from domestic violence during their lifetime.

6 (3) Proactive efforts should be made available  
7 in all forums to provide pro bono legal services and  
8 eliminate the violence that destroys lives and shat-  
9 ters families.

10 (4) A variety of factors cause domestic violence,  
11 dating violence, sexual assault, and stalking, and a  
12 variety of solutions at the local, State, and national  
13 levels are necessary to combat such violence or be-  
14 havior.

15 (5) According to the National Network to End  
16 Domestic Violence, which conducted a census includ-  
17 ing almost 1,700 assistance programs, over the  
18 course of 1 day in September 2014, more than  
19 10,000 requests for services, including legal rep-  
20 resentation, were not met.

21 (6) Pro bono assistance can help fill this need  
22 by providing not only legal representation, but also  
23 access to emergency shelter, transportation, and  
24 childcare.

1           (7) Research and studies have demonstrated  
2           that the provision of legal assistance to victims of  
3           domestic violence, dating violence, sexual assault,  
4           and stalking reduces the probability of such violence  
5           or behavior reoccurring in the future and can help  
6           survivors move forward.

7           (8) Legal representation increases the possi-  
8           bility of successfully obtaining a protective order  
9           against an attacker, which prevents further mental  
10          and physical injury to a victim and his or her family,  
11          as demonstrated by a study that found that 83 per-  
12          cent of victims represented by an attorney were able  
13          to obtain a protective order, whereas only 32 percent  
14          of victims without an attorney were able to do so.

15          (9) The American Bar Association Model Rules  
16          include commentary stating that “every lawyer, re-  
17          gardless of professional prominence or professional  
18          workload, has a responsibility to provide legal serv-  
19          ices to those unable to pay, and personal involve-  
20          ment in the problems of the disadvantaged can be  
21          one of the most rewarding experiences in the life of  
22          a lawyer”.

23          (10) As leaders in their legal communities,  
24          judges in district courts should encourage lawyers to  
25          provide pro bono resources in an effort to help vic-

1 tims of such violence or behavior escape the cycle of  
2 abuse.

3 (11) A dedicated army of pro bono attorneys fo-  
4 cused on this mission will inspire others to devote ef-  
5 forts to this cause and will raise awareness of the  
6 scourge of domestic violence, dating violence, sexual  
7 assault, and stalking throughout the country.

8 (12) Communities, by providing awareness of  
9 pro bono legal services and assistance to survivors of  
10 domestic violence, dating violence, sexual assault,  
11 and stalking, will empower those survivors to move  
12 forward with their lives.

13 **SEC. 3. DISTRICT COURTS TO PROMOTE EMPOWERMENT**  
14 **EVENTS.**

15 (a) IN GENERAL.—Not later than 1 year after the  
16 date of enactment of this Act, and annually thereafter for  
17 a period of 4 years, the chief judge, or his or her designee,  
18 for each judicial district shall lead not less than 1 public  
19 event, in partnership with a State, local, tribal, or terri-  
20 torial domestic violence service provider or coalition and  
21 a State or local volunteer lawyer project, promoting pro  
22 bono legal services as a critical way in which to empower  
23 survivors of domestic violence, dating violence, sexual as-  
24 sault, and stalking and engage citizens in assisting those  
25 survivors.

1 (b) DISTRICTS CONTAINING INDIAN TRIBES AND  
2 TRIBAL ORGANIZATIONS.—During each 2-year period, the  
3 chief judge, or his or her designee, for a judicial district  
4 that contains an Indian tribe or tribal organization (as  
5 those terms are defined in section 4 of the Indian Self-  
6 Determination and Education Assistance Act (25 U.S.C.  
7 5304)) shall lead not less than 1 public event promoting  
8 pro bono legal services under subsection (a) of this section  
9 in partnership with an Indian tribe or tribal organization  
10 with the intent of increasing the provision of pro bono  
11 legal services for Indian or Alaska Native victims of do-  
12 mestic violence, dating violence, sexual assault, and stalk-  
13 ing.

14 (c) REQUIREMENTS.—Each chief judge shall—

15 (1) have discretion as to the design, organiza-  
16 tion, and implementation of the public events re-  
17 quired under subsection (a); and

18 (2) in conducting a public event under sub-  
19 section (a), seek to maximize the local impact of the  
20 event and the provision of access to high-quality pro  
21 bono legal services by survivors of domestic violence,  
22 dating violence, sexual assault, and stalking.

23 **SEC. 4. REPORTING REQUIREMENTS.**

24 (a) REPORT TO THE ATTORNEY GENERAL.—Not  
25 later than October 30 of each year, each chief judge shall

1 submit to the Director of the Administrative Office of the  
2 United States Courts a report detailing each public event  
3 conducted under section 3 during the previous fiscal year.

4 (b) REPORT TO CONGRESS.—

5 (1) IN GENERAL.—Not later than January 1 of  
6 each year, the Director of the Administrative Office  
7 of the United States Courts shall submit to Con-  
8 gress a compilation and summary of each report re-  
9 ceived under subsection (a) for the previous fiscal  
10 year.

11 (2) REQUIREMENT.—Each comprehensive re-  
12 port submitted under paragraph (1) shall include an  
13 analysis of how each public event meets the goals set  
14 forth in this Act, as well as suggestions on how to  
15 improve future public events.

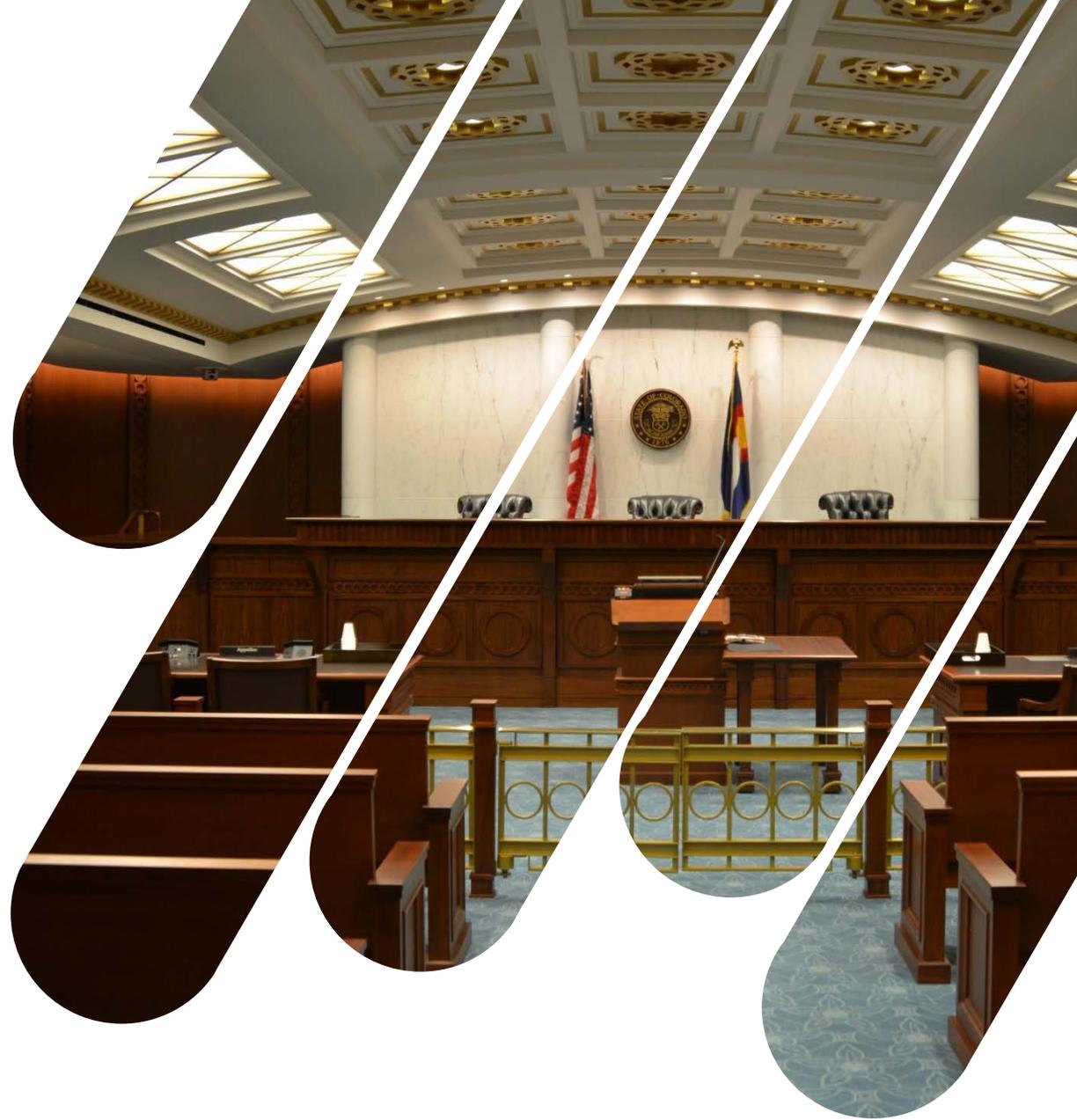
16 **SEC. 5. FUNDING.**

17 The Administrative Office of the United States  
18 Courts shall use existing funds to carry out the require-  
19 ments of this Act.

# GOAL: ACCESS TO JUSTICE

“A lawyer shall be mindful of the deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.”

**Preamble: A Lawyer’s Responsibilities**





# Pro Bono Ethics

**E. James Wilder**

Assistant Regulation Counsel

Office of Attorney Regulation Counsel

Colorado Supreme Court



## Regulatory Objectives

In April 2016, the Colorado Supreme Court adopted the regulatory objectives, which are now the Preamble to Chapters 18-20 (the rules that govern the regulatory system).

## REGULATORY OBJECTIVES

Colorado was the first state to adopt the objectives and formally announce our purpose for regulation.

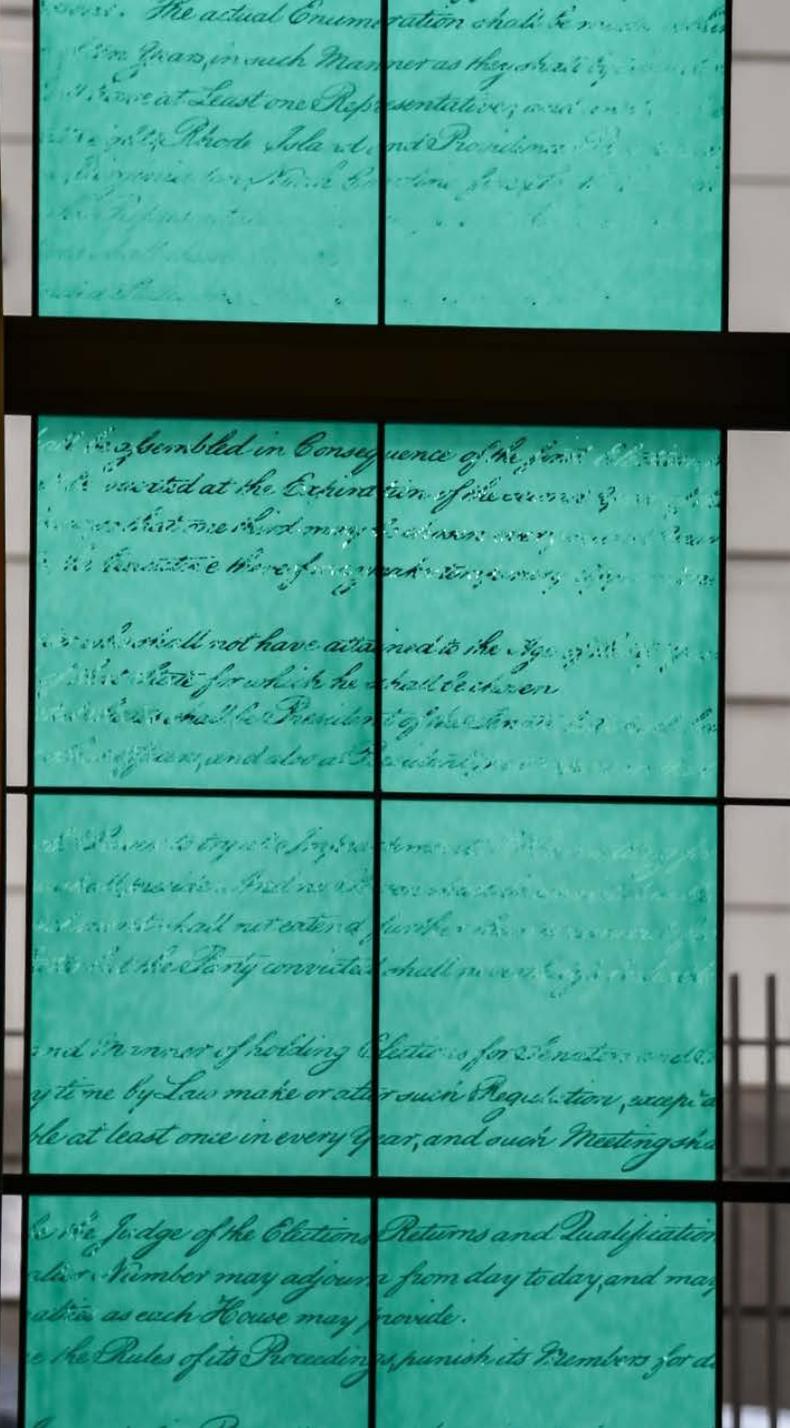
Our office looks to these objectives when gauging our initiatives and role in the legal community.

### Objective #6

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Promoting **access to justice** and consumer choice in the availability and affordability of competent legal services





## Voluntary Pro Bono Service Encouraged

“

Colorado Rule of Professional Conduct 6.1

—  
Every lawyer has a professional responsibility to provide legal services to those unable to pay.”

# ACCESS TO JUSTICE

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*Legal Nights*



*Legal Clinics*



*Ghost Writing*

Drafting for pro se party

**NOT PERMITTED IN  
FEDERAL PRACTICE**

D.C.COLO.LAttyR 2(b)(1) and  
LAttyR 5(a)-(b)



# ACCESS TO JUSTICE

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## *Unbundled Legal Services*

Limited Representation



## *Modest Means Representation*

Low fee representation

- ✓ **Resource: Successful Business**
- Planning: Serving the Moderate Income Client handbook**



## *Pro Bono Representation*

No fee representation either limited or full representation



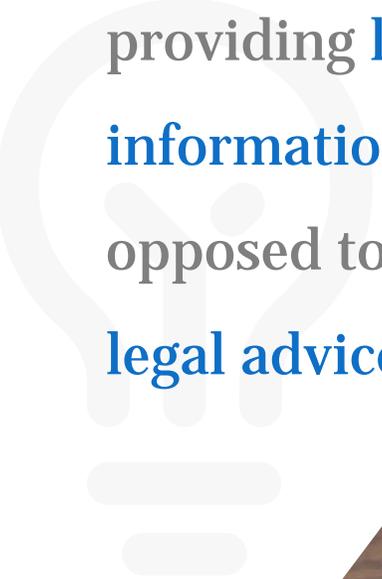


## **THE GOOD NEWS: NOT MANY COMPLAINTS**

**Unbundled Legal Services  
has not been a significant  
problem with OARC.**

**C.R.P.C. 6.2 limits rules  
regarding conflicts of  
interest when working  
at a legal night.**





Distinguish between providing **legal information** as opposed to **legal advice**.

**Particularly for clinics and legal nights:**

Depending on the situation, you may create an attorney-client relationship.

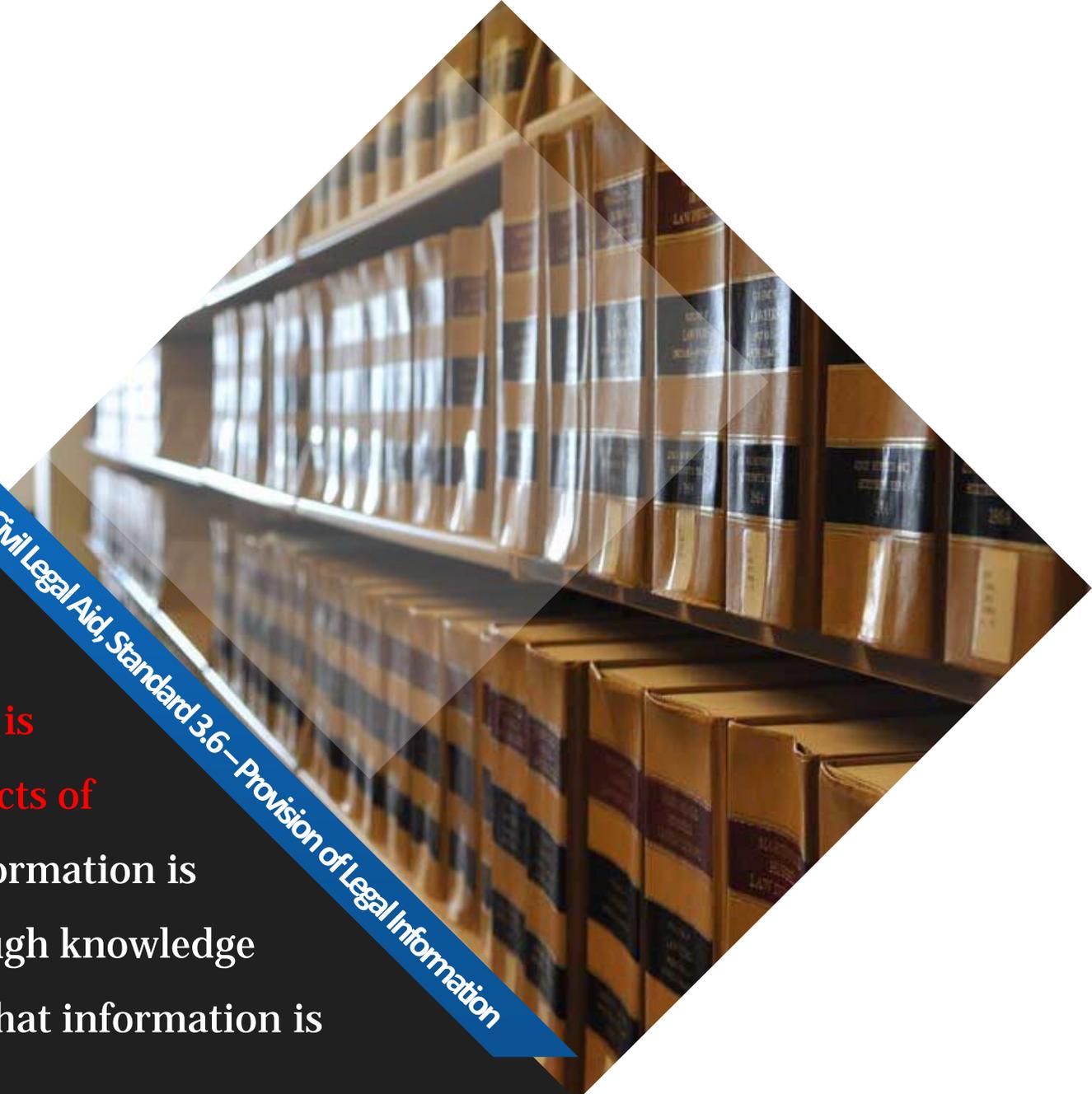


**KEY TO SUCCESS**  
*know your role*

# LEGAL INFORMATION

“Legal information is aimed at helping the recipients of the information understand their rights and responsibilities and the appropriate procedures for redressing those rights and fulfilling those responsibilities. **It is general in nature and not tailored to the unique facts of the individual’s situation**, although when legal information is offered to individuals, the provider may have enough knowledge about the person’s situation to choose generally what information is appropriate.”

ABA Standards for the Provision of Civil Legal Aid, Standard 3.6—Provision of Legal Information



# LEGAL ADVICE

Legal advice in contrast **is specific to the unique circumstances of the inquirer**. It is strategic in that it offers an approach that is tailored to the fact situation of the asker and goes **beyond mere general advice appropriate for all persons** who confront the same issue. The giving of legal advice is legal representation and creates an attorney-client relationship.

ABA Standards for the Provision of Civil Legal Aid, Standard 3.6—Provision of Legal Information



## WHO MAY PROVIDE LEGAL INFORMATION?

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Lawyers and non-lawyers may provide legal information.



## **Chief Justice Directive 13-01**

Directive Concerning Colorado Courts'  
Self-Represented Litigant Assistance

## WHO MAY PROVIDE LEGAL ADVICE?

Legal advice should only be provided by an attorney when the attorney and client intend to create an attorney-client relationship, limited or otherwise.



### **Note:**

There are state and federal statutory exceptions.

**The relationship of attorney and client** can be inferred from the conduct of the parties.

*People v. Morley, 725 P.2d 510 (Colo. 1986).*

## Analyzing the Attorney-Client Relationship





Payment of fee **is not** necessarily the determining factor.

Signing an agreement **is not** necessarily the determining factor.

# WHEN DOES REPRESENTATION BEGIN?



Client's mind



Reasonable belief



Subjective test

- People v. Bennett, 810 P.2d 661 (Colo. 1991)

**Relationship of attorney and client** is sufficiently established when client seeks and receives advice of attorney on legal consequences of client's past or contemplated actions. *Id.* Attorney responds to informal request for legal advice or opinion.

*See, e.g., People v. Boyer, 934 P.2d 1361 (Colo. 1997).*



## Analyzing the Attorney-Client Relationship

**For legal clinics, there are some modifications to application of the Rules of Professional Conduct. See Colo. RPC 6.5. Otherwise, the Rules apply.**

**Start with clearly communicating the scope of the representation.** The clinic may have documentation to explain the limited nature of the representation.

**For all other representations, the Rules apply in their entirety.**

**If there is an attorney-client relationship...**



# CONFLICTS OF INTEREST



“

## AT A LEGAL NIGHT

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Be aware that Colo. RPC 6.5 limits the application of the conflicts Rules. Rules 1.7 and 1.9(a) only apply “if the lawyer **knows** that the representation of a client involves a conflict of interest.”

Rule 1.10(Imputations of Conflicts of Interest; General Rule), only applies if the lawyer “**knows**” that another lawyer in the law firm is disqualified under 1.7 and 1.9(a).

“

## Colo. RPC 1.2(c)

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A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the **client gives informed consent**. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).”



**Are you permitted to provide your business card? In what circumstances?**

➤ **See Colo. RPC 7.3 Solicitation of Clients**

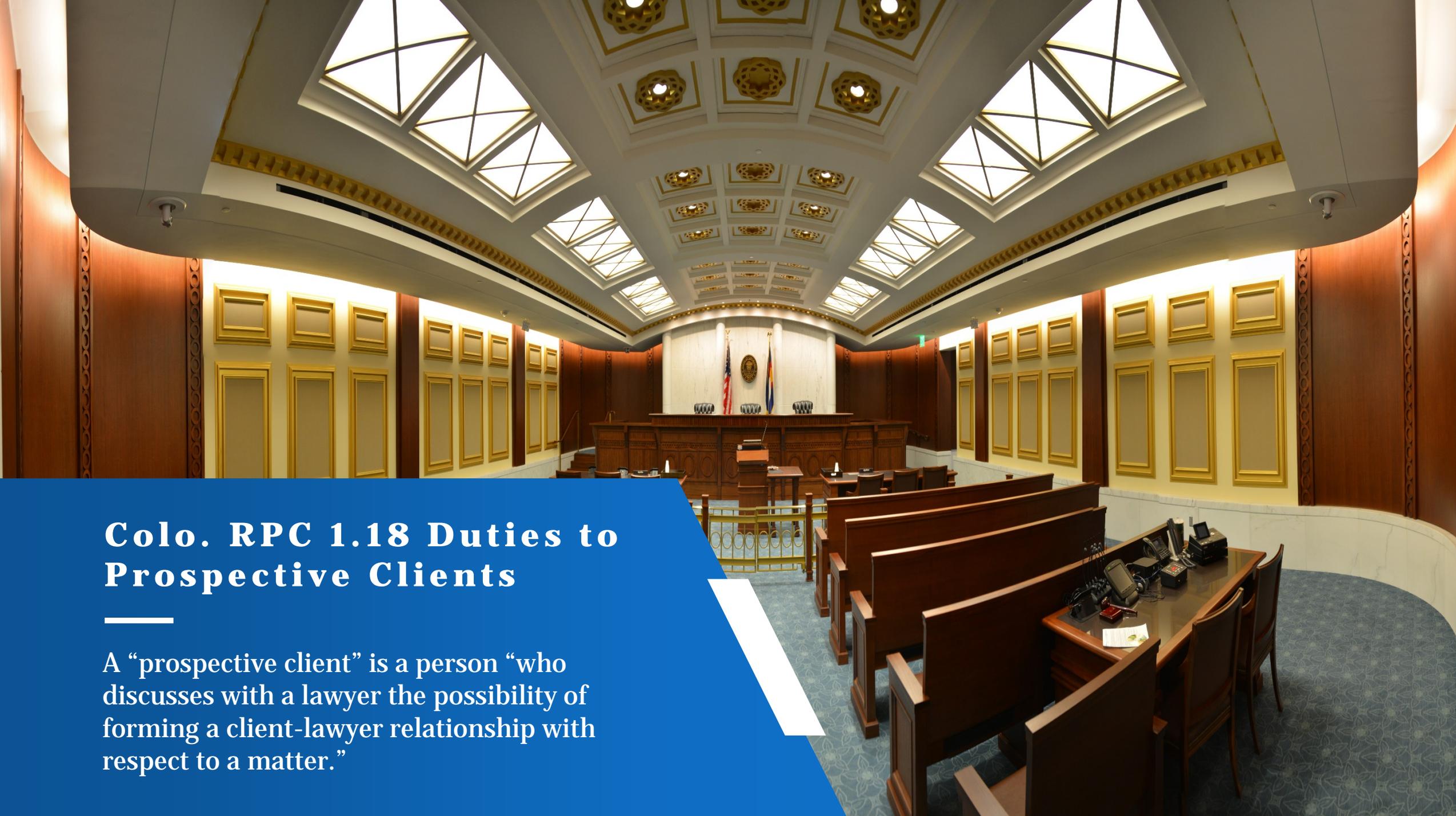
**Are you permitted to provide names of other lawyers who provide the types of services the clinic attendee needs?**

**Note Colo. RPC 6.5, Cmt. 2.**

**If the attendee wishes to hire you beyond the clinic, are you permitted to represent the attendee? Are you permitted to charge a fee?**

## **Know the Parameters of the Program or Clinic**





## Colo. RPC 1.18 Duties to Prospective Clients

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A “prospective client” is a person “who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter.”

# Colo. RPC 1.18 Duties to Prospective Clients

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A lawyer shall “not use or reveal information learned in the consultation.”



A lawyer may be conflicted in representing another party “if the lawyer received information” that could be “significantly harmful.”



A potential conflict can be waived with “informed consent, confirmed in writing” or through appropriate “screening” and written notice to the prospective client.





## Colo. RPC 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.”

# QUESTIONS TO ASK

**If I need assistance/mentoring, who can I turn to?**

**Is this my field of practice?**

**Do I have the resources necessary to take on the representation?**

**What does the client need?**

**Should I refer this case to another lawyer?**



## **Colo. RPC 1.3 Diligence**

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“A lawyer shall act with reasonable diligence and promptness in representing a client.”

Allot sufficient time to work on pro bono matters.



## **Colo. RPC 1.4 Communication**

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Explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

# Colo. RPC 1.4 Communication

**Consult the client.**

**Keep the client informed about the status of the matter.**

**Comply with reasonable requests for information.**

**Document, document, document**

**Set realistic expectations with the client. Just because it is free/lower cost, does not mean you have unlimited time.**



## Colo. RPC 1.5 Fee Agreements

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- ✓ Even if it is free, **put it in writing...** (Colo. RPC 1.5(b)).
- ✓ Make sure the scope of the representation is clear.
- ✓ This is especially important with limited/unbundled representation.



## **CONFIRM THE REPRESENTATION ENDED**

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- Best practice: follow up in writing to confirm representation has ended.
- The clinic/program may have documentation to confirm the representation has ended.
- File Motion to Withdraw in Limited Representation Case

**SEE ALSO**  
Colo. RPC 1.16(d) and  
Colo. RPC 1.16A



# YOU AND YOUR PRACTICE

## **REQUIREMENT: SELF-CARE AND GOOD PRACTICE MANAGEMENT**

To participate in any of the access to justice models, you and your practice must be in a place where you can allot time for the representation/participation in the clinic.

# WHO IS YOUR ADVOCATE?

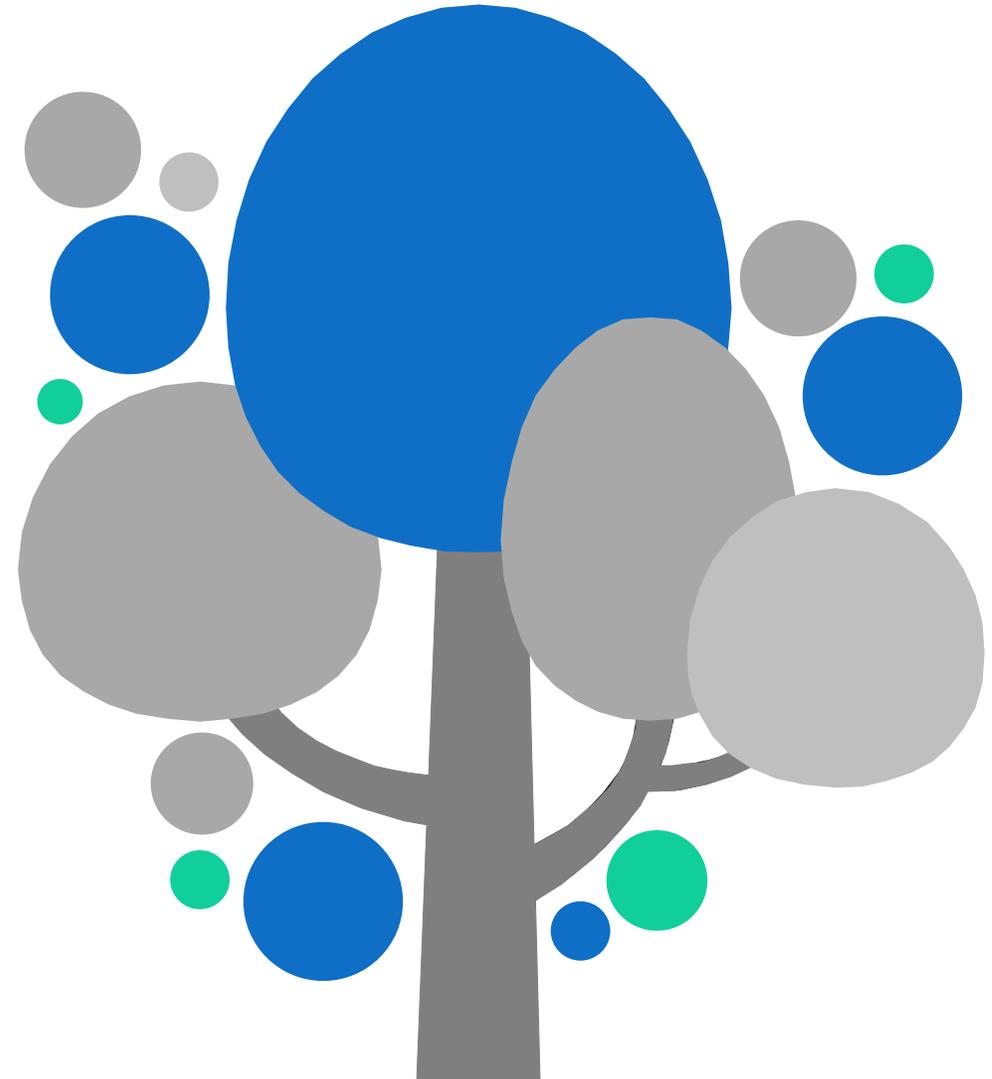
## *Self-care*

- What's going on for you that may impact the representation?
- What's your support system?

## *Set boundaries (and honor them)*

## *Utilize resources:*

1. Pro Se Clinic
2. Metro Volunteer Lawyers
3. COLAP (lawyer assistance program)
4. CAMP (mentoring program)



a new practice resource:  
**LAWYER SELF-ASSESSMENT**

Use proactive ethical infrastructure  
tailored to the practice

Results in:  
Less stress  
Fewer complaints/claims  
Greater confidence  
**Ability to give back to the practice**

Enables lawyer to focus on practice  
of law and provide excellent ethical  
legal services to clients

Clients benefit → Practice thrives

**Launched: Monday, October 23, 2017**

ColoradoSupremeCourt.com > Lawyer Self-Assessment Program



# RESOURCES

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For more information about attorney regulation:

[coloradosupremecourt.com](http://coloradosupremecourt.com)

Colorado Lawyer Assistance Program (COLAP): [coloradolap.org](http://coloradolap.org)

Colorado Attorney Mentoring Program (CAMP): [coloradomentoring.org](http://coloradomentoring.org)

**Ethics Opinions:**

[CBA Ethics Op. 101](#) Unbundled Legal Services

[CBA Ethics Op. 117](#) Ethical Responsibilities of Attorney in Legal Services and

[Pro Bono Programs Concerning Prospective Clients](#)



**THANK  
YOU**