

Amended April 21, 2018

**RULES OF THE STANDING COMMITTEE ON ETHICS OF
THE COLORADO BAR ASSOCIATION**

A. PREAMBLE: PURPOSES

RULE A-1. The purpose of the Colorado Bar Association Ethics Committee (Committee) is to provide guidance to members of the Colorado bar regarding ethical issues. The Committee shall prepare and issue Private Letter Opinions and publish Formal Opinions on questions of professional conduct involving the application of the Colorado Rules of Professional Conduct (Colorado Rules). The Committee may make recommendations to the Board of Governors of the Colorado Bar Association (CBA) with respect to proposals by or directed to the Colorado Supreme Court for changes to the Colorado Rules. The Committee shall have no jurisdiction over complaints of misconduct against practicing lawyers or judges. Opinions of the Committee are advisory only, and inquirers will be so advised.

RULE A-2. The Committee may, in its sole discretion, also fulfill educational functions including the following: furnishing continuing legal education to the members of the CBA; providing a speaker's bureau on ethical issues; serving as a liaison with other committees and sections of the CBA; maintaining a Calling Subcommittee which will offer informal telephonic advice to Colorado lawyers; encouraging and assisting its members in preparing and publishing articles on ethics; preparing and maintaining an ethics page on the CBA Website; and undertaking other activities that may assist lawyers in fulfilling their ethical responsibilities.

B. COMPOSITION OF THE COMMITTEE -- QUORUM – ATTENDANCE

RULE B-1. The membership of the Committee shall consist of lawyers and judges who are members of the CBA appointed for one year terms by the President of the CBA with the advice and recommendation of the Committee Chairperson and Vice-Chairperson. The Chairperson may recommend to the CBA President the removal of a Committee member at any time for good cause.

RULE B-2. Committee members are expected to actively contribute to the Committee. Active contribution can include assisting in the preparation of Formal Opinions, assisting in the preparation of private letter opinions, serving on one or more subcommittees or active participation in meetings. Absent extraordinary circumstances, all Committee members shall be required to attend a minimum of five (5) meetings per year and Committee members who reside within fifty (50) miles of the CBA offices shall be required to attend the minimum number of meetings in person. Committee members who reside more than fifty (50) miles from the CBA offices may satisfy the minimum meeting requirement by attending meetings through a Web portal or other remote means provided by the CBA.

RULE B-3. The Committee shall have a Chairperson, a Vice-Chairperson, and a Secretary. The Chairperson shall be selected by the President of the CBA. The Chairperson may appoint a Secretary. The Chairperson shall appoint a Vice-Chairperson with the advice and consent of the President-elect of the CBA.

RULE B-4. The Chairperson shall have the authority to establish and appoint members and chairpersons of subcommittees as he or she deems necessary.

RULE B-5. A quorum of the Committee shall be thirty (30) Committee members. . A member who, though present, is disqualified from discussion or decision on a particular matter nonetheless shall be counted for quorum purposes. Except as otherwise specifically provided in these Rules, if a quorum is present, the Committee may act on any matter before it by the vote of a majority of the members of the Committee present and voting.

C. CONDUCT OF MEETINGS

RULE C-1. Regularly scheduled monthly meetings will be held, unless waived by the Chairperson, or more often than monthly if the Committee or the Chairperson thinks necessary. The Chairperson will provide the members with a schedule of meetings.

RULE C-2. Prior to each regularly scheduled monthly meeting, the Chairperson or Secretary shall distribute the minutes of the prior meeting and an agenda for the next meeting. The minutes shall identify those members who were present at the prior meeting. At the beginning of each such meeting, the Chairperson shall call for the approval or amendment of the minutes.

RULE C-3. For any meeting of the Committee, the Chairperson may direct, and for any meeting of a subcommittee, the chairperson of the subcommittee may direct, that members may participate in the meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and speak to each other. With the consent of the chairperson thereof, deliberations of a subcommittee may take place wholly or in part by e-mail communications in which all subcommittee members are addressees.

RULE C-4. Only members of the Committee or of a subcommittee, assigned CBA staff, and guests present at the invitation of the Committee or subcommittee or the Chairperson of the Committee or the chairperson of the subcommittee, as the case may be, may be present during the presentation of inquiries, draft opinions and the deliberations of the Committee or subcommittee. Only members of the Committee or a subcommittee are entitled to vote on a matter coming before the Committee or subcommittee. A majority of members present at any meeting may vote to exclude guests invited by the chairperson from all or any portion of the meeting of the Committee or subcommittee. As a condition of attendance, any invited guest described above must agree to abide by the rules of the Committee pertaining to confidentiality.

D. CONFIDENTIALITY.

RULE D-1. No inquiry to the Committee or to any member of the Committee acting in his or her capacity as a member of the Committee or of its Calling Subcommittee and no response to an inquirer shall create an attorney-client relationship between the inquirer and the Committee or any of its members. This provision does not preclude the formal establishment of such relationship between an inquirer and a Committee member outside the purview of the activities of the Committee and its Calling Subcommittee, whether or not as a result of an inquiry.

RULE D-2. In order to promote full and free discussion during the deliberations of the Committee and its subcommittees, the statements and positions of each member made in the deliberations of the Committee or a subcommittee, written or oral, shall not be attributed to such member by name in the minutes of the Committee or subcommittee and shall not be disclosed by any member to any non-member without the prior consent of the member making such statement or taking such position.

RULE D-3. Committee members shall not disseminate to non-members copies of requests for, drafts of, or final versions of Private Letter Opinions, and members shall take whatever means required to assure that only they have access to such materials. Members may use the fact patterns of inquiries and conclusions and may provide citations of research contained in Private Letter Opinions and published abstracts of such Opinions for instructional purposes, provided that they assure themselves that such use will not identify the inquiring lawyer or the lawyer's clients, including disclosing specific factual situations that may lead to such identification.

RULE D-4. Members of the Committee's Calling Subcommittee and any other member of the Committee having such information shall not disclose to non-members notes taken during any call, the name or affiliation of any caller, or the facts disclosed in the call in any way that may identify the caller or the caller's clients or specific factual situations, unless the inquirer specifically consents to disclosure generally or for a specific purpose. Members shall take whatever means required to assure that only they have access to notes taken by them during or in relation to a call.

RULE D-5. Drafts of Formal Opinions, drafts of rules and comments thereto contemplated to be proposed to the Colorado Supreme Court, and drafts of comments by the Committee on rules proposed by or to or contemplated to be proposed to the Colorado Supreme Court shall be protected from disclosure to persons who are not Committee members, unless authorized by the Committee or the Chairperson. The Committee or the Chairperson may agree to circulate draft Formal Opinions for comment by other committees or section of the CBA, by members of the CBA, or by persons or groups outside the CBA. Committee members may seek the counsel of persons who are not members of this Committee regarding the subject matter of a proposed Formal Opinion or a contemplated or proposed rule. In seeking such advice,

Committee members may reveal that the Committee has certain issues under consideration for incorporation into a Formal Opinion or with respect to a contemplated or proposed rule, any research being used in that consideration, the general substance of the debate, and the substance of the various positions presented within the Committee, but shall comply with Rule D-2 regarding the positions or comments of individual members.

RULE D-6. Nothing in these Rules is intended to modify the provisions of Rule 8.3 of the Colorado Rules. Notwithstanding the foregoing, if and for so long as the Committee is designated a lawyers' peer assistance program by the Colorado Supreme Court, then to the extent so provided by the Court, members are exempt from the reporting requirements of Rule 8.3 as would be the case if the information provided by an inquirer had been communicated under the attorney-client privilege.

RULE D-7. Disclosure by a member of information pursuant to a subpoena or other order of court does not violate these Rules. Any member receiving or having the belief that he or she will receive such a subpoena or order should take steps reasonable in the circumstances to protect the confidentiality of information covered by these Rules and to limit the extent of disclosure and shall promptly notify the Chairperson of the facts of the matter.

E. PROCEDURE FOR RECEIPT AND PROCESSING OF REQUESTS FOR PRIVATE LETTER OPINIONS

RULE E-1. Requests for Private Letter Opinions should be addressed in writing to the Chairperson or the Committee at the office of the Colorado Bar Association. Upon receipt of a letter requesting a Private Letter Opinion, the Chairperson shall send the inquirer a letter or email acknowledging the receipt of the inquiry and shall in such correspondence notify the inquirer that an abstract of any Private Letter Opinion may be published. In the discretion of the Chairperson, the Chairperson may answer an inquiry or assign it to a Committee member or group of such members for an informal oral opinion or a written Private Letter Opinion. If, as to any inquiry assigned to a Committee member, such member should have an involvement or interest that would disqualify him or her from participation in consideration or disposition of the inquiry, the member shall promptly inform the Chairperson of such interest and the inquiry shall be reassigned to another member.

RULE E-2. If, at any time prior to consideration of an inquiry by the Committee, it becomes clear that the inquiry is within the limitations of Rules F-3 and F-4 of these Rules, the Chairperson shall inform the inquirer that the inquiry will not be answered; except that, in case of doubt as to the applicability of the limitations, the Chairperson may refer the question to the Committee.

RULE E-3. If additional facts beyond those furnished in the inquiry are required to respond to an inquiry, the Committee member reviewing the inquiry shall promptly attempt to

secure such facts from the inquirer. The Committee shall not attempt to ascertain whether the factual assertions in an inquiry are true.

RULE E-4. No member of the Committee who is directly involved, or whose firm is directly involved, will be present or participate in the discussion or disposition by the Committee of any inquiry for a Private Letter Opinion, except upon the express inquiry or with the express consent of the Committee. Any member who is, or whose firm to the knowledge of such member is, directly involved in the inquiry shall notify the Committee of this fact before any discussion begins. Any member may decline to participate in the discussion or disposition of any inquiry without explanation, and shall have the right to have such fact noted in the minutes of that meeting.

RULE E-5. The Committee Chairperson may respond to inquiries for Private Letter Opinions or may designate one or more Committee members to prepare a response. If a Committee member is assigned the duty of responding to an inquiry, the member shall use his or her reasonable best efforts to prepare a draft Private Letter Opinion within twenty-one (21) days following the assignment. The draft Private Letter Opinion shall state all facts necessary to be assumed for the purpose of arriving at a conclusion concerning the questions submitted. At the discretion of the Committee Chairperson, the Private Letter Opinion may be sent to the inquirer without prior review of the entire Committee. If a Private Letter Opinion is sent to the inquirer without prior review of the entire Committee, the Private Letter Opinion shall state that it is the opinion of the drafter(s) but not the Committee as a whole, and the Private Letter Opinion shall be distributed to the Committee at the next scheduled meeting. Alternatively, the Committee Chairperson may elect to present a proposed Private Letter Opinion to the Committee for approval.

RULE E-6. If the Committee decides not to issue a Private Letter Opinion in response to an inquiry, or to defer decision pending further study, or if the Committee agrees on the substance but requires additional drafting before final approval of a Private Letter Opinion, the Chairperson will ensure that the inquirer is promptly notified.

RULE E-7. When a Private Letter Opinion has been finally approved, it will be sent promptly to the inquirer by the Chairperson. The full text of Private Letter Opinions shall be maintained by the CBA staff.

RULE E-8. In cases of inquiries that the Chairperson considers to be of exceptional urgency or amenable to expedited response, the Chairperson may invoke such procedures as he or she deems appropriate for issuance of a Private Letter Opinion within such other period of time as the Chairperson may designate. In such cases, if the Opinion is not adopted by the Committee, it shall contain a disclaimer clearly indicating that it does not constitute the opinion of the Committee.

RULE E-9. The Chairperson, or his or her designee, may answer inquiries for information from inquirers at any time and without consultation with the Committee so long as such answer contains a disclaimer clearly indicating that it does not constitute the opinion of the Committee.

RULE E-10. In its discretion, the Committee may decide from time to time to publish abstracts or summaries of Private Letter Opinions for educational purposes. In deciding what Private Letter Opinions will be abstracted and published, the Committee shall follow these procedures:

- a. The Chairperson shall appoint a subcommittee (Abstract Subcommittee), the number and membership of which shall be in the discretion of the Chairperson. The Chairperson shall also appoint a chairperson of the Abstract Subcommittee (Abstract Chairperson). The Abstract Chairperson and members of the Abstract Subcommittee shall serve at the Chairperson's discretion or until the appointment of a new Chairperson.
- b. Upon adoption of a Private Letter Opinion, the Committee shall also vote whether or not to refer the Private Letter Opinion to the Abstract Subcommittee. If the Committee elects to abstract, then the Chairperson shall also notify the inquirer that the Private Letter Opinion has been selected for abstracting. The Abstract Subcommittee may vote that it cannot abstract a Private Letter Opinion and meet the requirements of these Rules. If an abstract is written and approved by the Abstract Subcommittee, it then shall be sent to the Chairperson, who shall send a copy to the inquirer. In selecting opinions for abstracting and in preparing such abstracts, the Abstract Subcommittee shall use its best efforts to do so without revealing the identity of the inquiring lawyer or the lawyer's clients.
- c. The Chairperson shall review the abstract and may, at his or her sole discretion, elect not to publish the abstract.
- d. The inquirer shall have two weeks from the date the abstract was sent in which to comment solely on whether the publication of the abstract in its current form would reveal the identity of one or more of the parties involved. The inquirer's objection, if any, shall not be determinative of the question of whether or not the abstract shall be published, but the Abstract Subcommittee and the Chairperson shall consider such objection and the reasons for such objection in reaching their final decision as to whether or not to publish any abstract.
- e. From time to time, but not less than once per year, the abstracts that are to be published shall be sent to The Colorado Lawyer for publication.

F. LIMITATIONS ON SUBJECT MATTER OF OPINIONS

RULE F-1. Subject to the limitations stated in Rules F-3 and F-4 of these Rules, the Committee will attempt to answer any bona fide inquiry for an opinion from any lawyer who is a member of the CBA, any group of such lawyers, the Supreme Court of the State of Colorado or its Attorney Regulation Committee, the Committee on Conduct of the U.S. District Court for the District of Colorado, or any inquirer whose inquiry is deemed worthy of response by the Committee, so long as such inquiry involves a question concerning the application of the Colorado Rules to the conduct of lawyers.

RULE F-2. The Committee may issue opinions on its own initiative involving questions concerning the application of the Colorado Rules to the conduct of lawyers.

RULE F-3. The Committee shall not be obliged to answer inquiries for any of the following reasons:

- a. an inquiry for an opinion is withdrawn;
- b. an inquiry is determined to relate to the completed conduct of a specific lawyer, and the inquiry has no relevance to matters on which the Committee desires to give advice, except as allowed by Rule F-4 of these Rules;
- c. an inquiry is considered not to be significant;
- d. an inquiry involves the proposed conduct of someone other than the person or persons requesting the opinion;
- e. an inquiry involves opinions on questions of law, other than those arising under the Colorado Rules;
- f. an inquiry involves an issue in litigation; or
- g. any other reason the Committee deems appropriate.

RULE F-4. Notwithstanding the provisions of Rule F-3 (b) of these Rules, the Committee may give opinions on matters of completed conduct if requested by the Supreme Court of the State of Colorado or its Attorney Regulation Committee, or if the opinion may result in the correction of already completed conduct.

G. PROCEDURE FOR FORMAL OPINIONS

RULE G-1. Inquiries for Formal Opinions should be addressed in writing to the Chairperson or the Committee at the Office of the Colorado Bar Association. The Committee may, in its sole discretion, formulate and issue Formal Opinions. Formal Opinions shall be

opinions on subjects determined to be of widespread interest or importance, such that they may cover a variety of different factual circumstances raising the same or related ethical questions. A Formal Opinion shall not contain any information identifying any inquirer or other person who is involved in the subject matter of the opinion without the prior consent of such person. Prior to adoption of any Formal Opinion, a draft of the opinion shall be circulated to all Committee members.

RULE G-2. All votes of the Committee required for adoption or withdrawal of a Formal Opinion shall be by a majority of members present and voting at a meeting at which a quorum is present, with not fewer than thirty (30) Committee members voting in the affirmative. No Formal Opinion shall be adopted or withdrawn unless the substance of the Opinion has been discussed in at least two meetings of the Committee. A member may express a dissent, abstention, or special concurrence which shall be set forth in the minutes if the member so directs.

RULE G-3. After approval by the Committee, all Formal Opinions shall be edited by one or more members of the Editing Subcommittee, which shall consist of at least three Committee members appointed by the Committee Chairperson. The Editing Subcommittee may correct spelling, grammatical, and citation errors in approved Formal Opinions and may make non-substantive stylistic revisions without approval of the Committee or Committee Chairperson. If the Editing Subcommittee identifies a potential substantive change to an approved Formal Opinion and the Committee Chairperson believes that the potential substantive revision may be warranted, the proposed revision shall be presented to the Committee for approval prior to publication of the Formal Opinion.

RULE G-4. The full text of Formal Opinions shall be compiled by the Secretary, who may use the services of the assigned CBA staff person to maintain such records. The Committee shall make Formal Opinions available for publication on the CBA Website, in The Colorado Lawyer and other publications. The Committee shall assign to each Formal Opinion a non-duplicative identifying number.

H. REVIEW AND RECOMMENDED REVISIONS OF THE COLORADO RULES

RULE H-1. The Committee is charged by the Board of Governors of the Colorado Bar Association with the responsibility for the continuing review of the Colorado Rules with a view to recommending changes in the Colorado Rules to the Supreme Court of the State of Colorado. As part of this responsibility, the Committee shall consider suggestions for changes in the Colorado Rules coming from any outside source, as well as those generated within the Committee itself.

RULE H-2. The Committee may invite comment on possible changes in the Colorado Rules from members of the CBA and the public at large by way of public hearings, exposure for comment of draft recommendations, or otherwise.

RULE H-3. Recommendations of the Committee will be reported to the Board of Governors. If the vote of the Committee as to any recommendation is not unanimous, the Committee's report will set out the numerical division within the Committee and will include statements of the opposing views.

I. AMENDMENTS TO ETHICS COMMITTEE RULES

RULE I-1. These Rules of the Committee may be amended by a two-thirds (2/3) vote of the Committee members.