

Document: Colo. RPC 1.7

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CO - Colorado Court Rules PAW ETTOC **Colorado Rules of Civil Procedure** **Appendix to Chapters 18 to 20** **The Colorado Rules of Professional Conduct** **Client-Lawyer Relationship**

Rule 1.7. Conflict of Interest: Current Clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

History

Committee comment amended October 17, 1996, effective January 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; comment [17] and [20] amended and effective February 6, 2025.

▼ Annotations

Commentary

COMMENT

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters

are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage or when there is a cohabiting relationship between the lawyers, there may be a significant risk that client confidences will be revealed and that the lawyer's family or cohabiting relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse (or in a cohabiting relationship with another lawyer,) ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship or a cohabiting relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(n)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(o) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision

favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the

attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles might conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

State Notes

ANNOTATION

Law reviews. For formal opinion of the Colorado Bar Association on Ethical Duties of Attorney Selected by Insurer to Represent Its Insured, see 22 Colo. Law. 497 (1993). For article, "Representation of Multiple Estate Or Trust Fiduciaries: Practical and Ethical Issues", see 34 Colo. Law. 65 (July 2005). For article, "Ethical Concerns When Dealing With the Elder Client", see 34 Colo. Law. 27 (Oct. 2005). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (Nov. 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (Nov. 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (Oct. 2008). For article, "Engagement Letters and Common Conflicts of Interest in Joint Representation", see 38 Colo. Law. 43 (Feb. 2009). For article, "Climate Change and Positional Conflicts of Interest", see 40 Colo. Law. 43 (Oct. 2011). For article, "Repugnant Objectives", see 41 Colo. Law. 51 (Dec. 2012). For article, "Client-Drafted Engagement Letters and Outside Counsel Policies", see 43 Colo. Law. 33 (Feb. 2014). For article, "Out of Bounds: Boundary Issues in the Practice of Law", see 43 Colo. Law. 57 (Dec. 2014). For article, "Top 10 Things In-House Lawyers Need to Know about Ethics", see 45 Colo. Law. 59 (July 2016). For article, "Formal Opinion 129: Ethical Duties of Lawyer Paid by One Other than the Client", see 46 Colo. Law. 19 (May 2017). For article, "A Lawyer's Duty to Disclose Errors to the Client", see 46 Colo. Law. 39 (June 2017). For article, "Ethical Duties of an Insurance Defense Lawyer", see 46 Colo. Law. 40 (Oct. 2017). For article, "Between a Rock and a Hard Place: Law Firm Conflicts and Lateral Hires", see 47 Colo. Law. 41 (Apr. 2018). For article, "Ethical Considerations When Using Freelance Legal Services", see 47 Colo. Law. 36 (June 2018). For article, "Handling Electronic Documents Purloined by a Client", see 48 Colo. Law. 22 (Jan. 2019). For article, "Your Deal is in Litigation? It's Time to Call Someone Else", see 48 Colo. Law. 30 (Mar. 2019). For article, "The Implied Attorney-Client Relationship: A Trap for the Unwary", see 49 Colo. Law. 46 (Mar. 2020). For article, "'Directly Adverse' Means Directly Adverse: How Courts Have Misread Rule 1.7(a) (1) and Why It Matters", see 98 Denv. L. Rev. 59 (2021). For article, "Revocation of Informed Consent and Its Consequences", see 50 Colo. Law. 24 (Dec. 2021).

Annotator's note. Rule 1.7 is similar to Rule 1.7 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule.

Where there is a large group of clients who are not recognized as a single legal entity, an attorney has an attorney-client relationship with each individual member of the group. Abbott v. Kidder Peabody & Co., 42 F. Supp. 2d 1046 (D. Colo. 1999).

Representation agreement that gives counsel the ability to negotiate settlement for each member of a large group of clients without providing him or her with personalized

advisement and without obtaining individual authority to enter into a settlement agreement violates the professional and ethical standards created to regulate the legal profession in Colorado. *Abbott v. Kidder Peabody & Co.*, 42 F. Supp. 2d 1046 (D. Colo. 1999).

Any provision of an attorney-client agreement that deprives a client of a right to control his or her case is void as against public policy. *Abbott v. Kidder Peabody & Co.*, 42 F. Supp. 2d 1046 (D. Colo. 1999).

Valid client consent to waive the potential conflict of interest cannot be obtained under the circumstances. *Abbott v. Kidder Peabody & Co.*, 42 F. Supp. 2d 1046 (D. Colo. 1999).

Where counsel simultaneously represented company's interests as well as those of company's employees for a substantial period of time and the representation continued through the emergence of conflicts, counsel could continue to represent company

because the company and the former clients, the employees, through counsel, consented to such representation after consultation and there was an indication that counsel reasonably believed that the continued representation would not adversely affect the relationship with the former clients. *Gates Rubber Co. v. Bando Chem. Indus., Ltd.*, 855 F. Supp. 330 (D. Colo. 1994).

Out-of-state law firm disqualified from representing plaintiff when defense counsel had previously consulted with a member of the firm about the case, including counsel's theory of the case and defense strategy. *Liebnow v. Boston Enters. Inc.*, 2013 CO 8, 296 P.3d 108.

A defendant may waive the right to conflict-free counsel. The waiver is valid when: (1) The defendant is aware of the conflict and its likely effect on the attorney's ability to render effective assistance; and (2) the waiver is voluntary, knowing, and intelligent. A waiver is voluntary, knowing, and intelligent when the defendant is aware of and understands the various risks, has the capacity to make a decision on the basis of this information, and states unequivocally a desire to hazard those dangers. *People v. Preciado-Flores*, 66 P.3d 155 (Colo. App. 2002).

A waiver is not knowing and intelligent where a defendant gives merely pro forma answers to pro forma questions. *People v. Preciado-Flores*, 66 P.3d 155 (Colo. App. 2002).

Balancing test to determine whether defendant may waive conflict-free representation.

The trial court must examine: (1) The defendant's preference for particular counsel; (2) the public's interest in maintaining the integrity of the judicial process; and (3) the nature of the particular conflict. *People v. Nozolino*, 2013 CO 19, 298 P.3d 915.

Defendant does not have an absolute right to revoke waiver of conflict-free counsel at any time, but is subject to the same limitations as any defendant terminating counsel. The court

may refuse to revoke an untimely waiver or to grant a revocation that is filed for improper purposes based upon evidence presented at the time of attempted revocation. *People v. Maestas*, 199 P.3d 713 (Colo. 2009).

Attorney violated paragraph (a) by simultaneously representing both a borrower and the purported lenders to a proposed transaction that he attempted to persuade both parties to enter into. *People v. Calvert*, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Lawyer violated section (b) when his representation of a client was materially limited by his responsibilities to another client. He represented loan documents to be investment agreements to circumvent a provision in the Colorado Liquor Code that restricts the cross-ownership of businesses holding liquor licenses. *In re Lopez*, 980 P.2d 983 (Colo. 1999).

Public censure was appropriate for attorney who violated this rule by simultaneously representing, as defendants in a quantum meruit and lis pendens suit initiated by a subcontractor, the homeowners, the general contractor, the bank holding deed of trust on homeowners property, and two other parties who had contracted with contractor. Balancing the seriousness of the misconduct with the factors in mitigation, and taking into account the respondent's mental state when he entered into the conflicts in representation, public censure is appropriate. *People v. Fritze*, 926 P.2d 574 (Colo. 1996).

Public censure warranted for attorney's solicitation of prostitution during telephone conversation with wife of client whom he was representing in a dissolution of marriage proceeding. *People v. Bauder*, 941 P.2d 282 (Colo. 1997).

Critical inquiry when representation of one client may be limited by representation of another is whether a conflict is likely to arise, and, if so, whether it materially interferes with the lawyer's independent professional judgment. *People in Interest of J.A.M.*, 907 P.2d 725 (Colo. App. 1995).

Actual conflict existed where criminal charges were pending against defense counsel in the same district in which his client was being prosecuted. *People v. Edebohls*, 944 P.2d 552 (Colo. App. 1996).

Attorney's representation of criminal defendant for whom attorney negotiated a plea bargain for testifying against another criminal defendant prohibited attorney from also representing the other criminal defendant where such other defendant did not consent to conflict-free counsel. *People ex rel. Peters v. District Court*, 951 P.2d 926 (Colo. 1998).

Attorney who was the trustee of client's trust violated section (b) by utilizing the trust's funds to loan money to his daughter and to purchase his son-in-law's parents' former residence for the purpose of leasing it back to them, and by then failing to take any legal action against them when they did not make lease payments. *People v. DeRose*, 945 P.2d 412 (Colo. 1997).

Preparation of an extension agreement on the repayment of a loan made to a client by the attorney violated section (b) because certain exceptions were not satisfied. *People v. Ginsberg*, 967 P.2d 151 (Colo. 1998).

Thirty-day suspension warranted where lawyer, who represented an individual accused of first-degree murder, communicated with co-defendant who also was charged with first-degree murder and whose interests were adverse to the lawyer's client, without the knowledge or consent of the co-defendant's lawyers. The potential for harm was high in a first-degree murder case and the number of unauthorized contacts demonstrated more than negligence on the lawyer's part. *People v. DeLoach*, 944 P.2d 522 (Colo. 1997).

Suspension for three years was appropriate in case involving violation of this rule and others, together with attorney's breach of his duty as client's trustee to protect his client, who was a particularly vulnerable victim that was recuperating from a serious head injury. *People v. DeRose*, 945 P.2d 412 (Colo. 1997).

Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. Attorney's ability to represent his client in a bankruptcy was materially limited by his own interest as a creditor in collecting attorney fees. *People v. Henderson*, 967 P.2d 1038 (Colo. 1998).

The presumed sanction of suspension is appropriate where the attorney knew of a conflict of interest and did not fully disclose to a client the possible effect of that conflict even though such action caused no actual harm. *In re Cimino*, 3 P.3d 398 (Colo. 2000).

Whether an attorney expects to be paid or not is insignificant to the issue of whether an attorney-client relationship existed. *In re Cimino*, 3 P.3d 398 (Colo. 2000).

The hearing panel of the former grievance committee committed harmless error by failing to consider the personal and emotional problems that an attorney was experiencing at the time of the attorney's misconduct as mitigating in determining sanctions because no medical or psychological proof of emotional problems was brought forward. *In re Cimino*, 3 P.3d 398 (Colo. 2000).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to

justify suspension. People v. Robinson, 853 P.2d 1145 (Colo. 1993); People v. Good, 893 P.2d 101 (Colo. 1995); People v. Silver, 924 P.2d 159 (Colo. 1996); People v. Mason, 938 P.2d 133 (Colo. 1997); People v. Reed, 955 P.2d 65 (Colo. 1998); In re Tolley, 975 P.2d 1115 (Colo. 1999); People v. Beecher, 224 P.3d 442 (Colo. O.P.D.J. 2009); People v. Albani, 276 P.3d 64 (Colo. O.P.D.J. 2011); People v. Miller, 354 P.3d 1136 (Colo. O.P.D.J. 2015); People v. Stern, 522 P.3d 762 (Colo. O.P.D.J. 2022); People v. Storey, 523 P.3d 1025 (Colo. O.P.D.J. 2022).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Bennett, 843 P.2d 1385 (Colo. 1993); In re Lopez, 980 P.2d 983 (Colo. 1999); People v. Sweetman, 218 P.3d 1123 (Colo. O.P.D.J. 2008); People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011).

Cases Decided Under Former DR 5-101.

Law reviews. For article, "The Conflicted Attorney", see 11 Colo. Law. 2589 (1982). For article, "The Ethics of Moving for Disqualification of Opposing Counsel", see 13 Colo. Law. 55 (1984). For article, "Why Shouldn't an Attorney Go Into Business With a Client?", see 13 Colo. Law. 431 (1984). For article, "Avoiding Family Law Malpractice: Recognition and Prevention -- Part I", see 14 Colo. 787 (1985). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For article, "Defending the Federal Drug or Racketeering Charge", see 16 Colo. Law. 605 (1987). For article, "Sex, Lawyers and Vilification", see 21 Colo. Law. 469 (1992).

License to practice law assures public that the lawyer who holds the license will perform basic legal tasks honestly and without undue delay, in accordance with the highest standards of professional conduct. People v. Dixon, 621 P.2d 322 (Colo. 1981).

Public expects appropriate discipline for misconduct. The public has a right to expect that one who engages in professional misconduct will be disciplined appropriately. People v. Dixon, 621 P.2d 322 (Colo. 1981).

A lawyer, by preparing 95 to 99 percent of the pleadings, continues to represent a client even though he has other attorneys sign the pleadings. People v. Garnett, 725 P.2d 1149 (Colo. 1986).

Public censure warranted where attorney engaged in sexual relations with client attorney represented in dissolution of marriage action even though client suffered no actual harm. People v. Zeilinger, 814 P.2d 808 (Colo. 1991).

By investing trust funds in a venture in which the attorney was involved financially and professionally, he allowed his personal interests to affect the exercise of his professional judgment on behalf of his client in violation of DR 5-101(A), justifying suspension from practice. *People v. Wright*, 698 P.2d 1317 (Colo. 1985).

Theft of client's money, misrepresentations, representation of multiple clients with adverse interests, and failure to respond to informal complaints warrants disbarment. *People v. Quick*, 716 P.2d 1082 (Colo. 1986).

Conduct found to violate disciplinary rules. *People v. Razatos*, 636 P.2d 666 (Colo. 1981).

Representing client without full disclosure of potential conflict of interest violates disciplinary rule. *People v. Watson*, 787 P.2d 151 (Colo. 1990).

No violation of paragraph (A). Although disclosure was inadequate as to the nature of the business relationships between the attorney and his business-partner client, record does not support conclusion that attorney's business relationship with individual client would or reasonably might affect his professional judgment with respect to his representation of that client. *In re Quiat*, 979 P.2d 1029 (Colo. 1999).

Violation of paragraph (B) where attorney knew, when he accepted employment in connection with his client's bankruptcy, that he could be a witness by virtue of his interests in the general and limited partnerships that were assets of the bankruptcy estate, and by his failure to transfer the partnership interests to his client's children prior to the filing of the bankruptcy. *In re Quiat*, 979 P.2d 1029 (Colo. 1999).

Representation of client when the exercise of the lawyer's professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests violates disciplinary rule. *People v. Ginsberg*, 967 P.2d 151 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. *People v. Stevens*, 883 P.2d 21 (Colo. 1994); *People v. Wollrab*, 909 P.2d 1093 (Colo. 1996); *People v. O'Donnell*, 955 P.2d 53 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. *People v. Schmad*, 793 P.2d 1162 (Colo. 1990); *People v. Lopez*, 796 P.2d 957 (Colo. 1990); *People v. Watson*, 833 P.2d 50 (Colo. 1992); *People v. Boyer*, 934 P.2d 1361 (Colo. 1997); *In re Quiat*, 979 P.2d 1029 (Colo. 1999); *In re Cohen*, 8 P.3d 429 (Colo. 1999).

Conduct violating this rule sufficient to justify suspension. People v. Vernon, 660 P.2d 879 (Colo. 1982); People v. Stineman, 716 P.2d 1079 (Colo. 1986).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. McGrath, 833 P.2d 731 (Colo. 1992).

Conduct violating this rule sufficient to justify disbarment. People v. McGrath, 833 P.2d 731 (Colo. 1992).

Applied in People v. Spiegel, 193 Colo. 161, 567 P.2d 353 (1977); Jones v. District Court, 617 P.2d 803 (Colo. 1980); McCall v. District Court, 783 P.2d 1223 (1989).

Cases Decided Under Former DR 5-102.

Law reviews. For article, "Prior Representation: The Specter of Disqualification of Trial Counsel", see 11 Colo. Law. 1214 (1982). For article, "The Ethics of Moving for Disqualification of Opposing Counsel", see 13 Colo. Law. 55 (1984). For article, "Defending the Federal Drug or Racketeering Charge", see 16 Colo. Law. 605 (1987). For article, "Ethical Problem Areas for Probate Lawyers", see 19 Colo. Law. 1069 (1990).

A lawyer cannot act as an advocate on behalf of his client and yet give testimony adverse to the interests of that client in the same proceeding. Riley v. District Court, 181 Colo. 90, 507 P.2d 464 (1973).

Prosecution subpoena of accused's attorney may stand. A prosecutorial subpoena served on a criminal defendant's attorney can withstand a motion to quash only if the prosecution shows the following: (1) Defense counsel's testimony will be actually adverse to the accused; (2) the evidence will likely be admissible at trial; and (3) there is a compelling need for the evidence which cannot be satisfied from another source. Williams v. District Court, 700 P.2d 549 (Colo. 1985).

The act of subpoenaing defense counsel is itself the functional equivalent of a motion to disqualify. Williams v. District Court, 700 P.2d 549 (Colo. 1985).

Test applied in Rodriquez v. District Court, 719 P.2d 699 (Colo. 1986).

Paragraph (A) of this rule relates to potential testimony of a lawyer during the trial of a matter for which he is presently employed. People v. Rubanowitz, 688 P.2d 231 (Colo. 1984).

When deputy district attorney was endorsed as witness for prosecution, disqualification of deputy district attorney was proper, and disqualification of entire staff of county district attorney's office, under the circumstances, was not an abuse of discretion. *People v. Garcia*, 698 P.2d 801 (Colo. 1985).

Dismissal of charge is not an appropriate remedy. *People v. Garcia*, 698 P.2d 801 (Colo. 1985).

Motion to disqualify must set forth specific facts which point to a clear danger that either prejudices counsel's client or his adversary. *People ex rel. Woodard v. District Court*, 704 P.2d 851 (Colo. 1985).

Paragraph (B) does not provide a tool for disqualifying counsel by the mere stratagem of suggesting that opposing counsel may be called as a witness during the trial. *People ex rel. Woodard v. District Court*, 704 P.2d 851 (Colo. 1985).

Although the Code mandates that an attorney withdraw on the attorney's own initiative if the attorney violates paragraph (B), there are no provisions in this rule for the trial court to disqualify attorneys and this rule does not require a new trial if the attorney does not withdraw. Although plaintiff's attorneys testified for the defendant, the court found that plaintiff was bound by his counsel's decision not to withdraw and refused to grant plaintiff a new trial. *Taylor v. Grogan*, 900 P.2d 60 (Colo. 1995).

Applied in *Jones v. District Court*, 617 P.2d 803 (Colo. 1980); *Fed. Deposit Ins. v. Isham*, 782 F. Supp. 524 (D. Colo. 1992).

Cases Decided Under Former DR 5-104.

Law reviews. For article, "Why Shouldn't an Attorney Go Into Business With a Client?", see 13 Colo. Law. 431 (1984). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part I", see 19 Colo. Law. 465 (1990). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part II", see 19 Colo. Law. 647 (1990).

Attorney, with power to act as trustee, who obtains a loan from the trust through the actual trustee, but does not disclose conflict and does not discuss security for the loan with the actual trustee, violates this section. *People v. Tanquary*, 831 P.2d 889 (Colo. 1992).

Public censure appropriate for lawyer who failed to make full disclosure to client of their differing interests prior to obtaining her consent for a loan to the lawyer. *People v. Potter*, 966 P.2d 1060 (Colo. 1998).

An attorney's conduct in lending money to a client, preparing a promissory note with an excessive interest rate, and failing to fully disclose his differing interest in the business transaction constitutes conduct violating this rule. *People v. Ginsberg*, 967 P.2d 151 (Colo. 1998).

Exploiting a client's friendship and trust to extort funds for one's personal use is reprehensible conduct deserving of disbarment. *People v. McMahill*, 782 P.2d 336 (Colo. 1988).

Lawyer's encouragement of a client to enter into a business transaction with said lawyer in which the two had differing interests and lawyer's failure to disclose relevant facts warrant disbarment. *People v. Martinez*, 739 P.2d 838 (Colo. 1987); *People v. Score*, 760 P.2d 1111 (Colo. 1988).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. *People v. Lopez*, 796 P.2d 957 (Colo. 1990); *People v. Schubert*, 799 P.2d 388 (Colo. 1990); *People v. Sigley*, 917 P.2d 1253 (Colo. 1996).

Conduct violating this rule sufficient to justify suspension. *People v. Vernon*, 660 P.2d 879 (Colo. 1982); *People v. Foster*, 716 P.2d 1069 (Colo. 1986).

An attorney's conduct in borrowing money from his former clients and in failing to record deeds of trust on their behalf to be used as security constitutes professional misconduct and justifies his suspension. *People v. Brackett*, 667 P.2d 1357 (Colo. 1983).

An attorney's failure to disclose to his clients that he was a lender and holder of a long-term mortgage on their property and that his interests in the transaction were necessarily adverse to their interests constitutes conduct violating this rule sufficient to justify suspension. *People v. Nutt*, 696 P.2d 242 (Colo. 1984).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. *People v. Broadhurst*, 803 P.2d 478 (Colo. 1990); *People v. Rouse*, 817 P.2d 967 (Colo. 1991); *People v. Mulligan*, 817 P.2d 1028 (Colo. 1991); *People v. Tanquary*, 831 P.2d 889 (Colo. 1992).

Conduct violating this rule sufficient to justify disbarment. *People v. Quick*, 716 P.2d 1082 (Colo. 1986); *People v. Foster*, 733 P.2d 687 (Colo. 1987); *People v. Score*, 760 P.2d 1111 (Colo.

1988).

Conduct found to violate disciplinary rules. *People v. Razatos*, 636 P.2d 666 (Colo. 1981); *People v. Bennett*, 810 P.2d 661 (Colo. 1991); *People v. McKie*, 900 P.2d 768 (Colo. 1995).

Applied in *People v. Good*, 195 Colo. 177, 576 P.2d 1020 (1978); *People v. Cameron*, 197 Colo. 330, 595 P.2d 677 (1979); *People v. Luxford*, 626 P.2d 675 (Colo. 1981); *People v. Barbour*, 639 P.2d 1065 (Colo. 1982); *People v. Underhill*, 683 P.2d 349 (Colo. 1984); *People v. Stineman*, 716 P.2d 1079 (Colo. 1986).

Cases Decided Under Former DR 5-105.

Law reviews. For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Prior Representation: The Specter of Disqualification of Trial Counsel", see 11 Colo. Law. 1214 (1982). For article, "The Conflicted Attorney", see 11 Colo. Law. 2589 (1982). For article, "Some Comments on Conflicts of Interest and the Corporate Lawyer", see 12 Colo. Law. 60 (1983). For article, "The Professional Liability Insurer's Duty to Defend -- Part II", see 15 Colo. Law. 1029 (1986). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For article, "Conflict of Interest Systems", see 16 Colo. Law 628 (1987). For article, "Corporate Fiduciary Surcharge Litigation", see 16 Colo. Law. 983 (1987). For article, "Ethics and the Estate Planning Lawyer", see 17 Colo. Law. 241 (1988). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part I", see 19 Colo. Law. 465 (1990). For article, "Update on Ethics and Malpractice Avoidance in Family Law -- Part II", see 19 Colo. Law. 647 (1990). For article, "Ethical Problem Areas for Probate Lawyers", see 19 Colo. Law. 1069 (1990).

Intent of rule is to guarantee the independence of counsel from the conflicting interests of other clients in order to preserve the integrity of the attorney's adversary role. *Allen v. District Court*, 184 Colo. 202, 519 P.2d 351 (1974).

Genuine conflicts of interest must be scrupulously avoided. *Allen v. District Court*, 184 Colo. 202, 519 P.2d 351 (1974); *McCall v. District Court*, 783 P.2d 1223 (Colo. 1989).

It is of the utmost importance that an attorney's loyalty to his client not be diminished, fettered, or threatened in any manner by his loyalty to another client. *Allen v. District Court*, 184 Colo. 202, 519 P.2d 351 (1974); *Watson v. District Court*, 199 Colo. 76, 604 P.2d 1165 (1980).

Conflict arises where parties would be opposed in subsequent contribution action. Where litigants in a negligence action are represented by the same attorneys, a conflict of interest arises if

the plaintiff are considered opposing parties in the same action for purposes of a subsequent contribution action, because both parties would want to place a higher degree of fault on the other party. *Nat'l Farmers Union Prop. & Gas. Co. v. Frackelton*, 662 P.2d 1056 (Colo. 1983).

Whenever a motion to withdraw is filed on the grounds that a conflict of interest may exist or may arise in the future, the trial judge must conduct a hearing to determine if a conflict of interest, or a potential conflict of interest, requires that counsel withdraw, and if, from the facts presented at the hearing, it appears that a substantial conflict of interest exists, or will in all probability arise in the course of counsel's representation, the motion to withdraw should be granted. *Allen v. District Court*, 184 Colo. 202, 519 P.2d 351 (1974); *McCall v. District Court*, 783 P.2d 1223 (Colo. 1989).

Consent of all parties may be insufficient. There are certain factual situations where the conflicts of interests between parties are so critically adverse to one another so as not to permit the representation of multiple parties by an attorney, even with the consent of all parties made after full disclosure. *In re King Res. Co.*, 20 B.R. 191 (Bankr. D. Colo. 1982).

Attorney should evaluate potential for impropriety. The attorney should not only inform the parties of the former representations, but should evaluate for himself, as well as for his client, any potential for impropriety that might arise. *In re King Res. Co.*, 20 B.R. 191 (Bankr. D. Colo. 1982); *People v. Belina*, 765 P.2d 121 (Colo. 1988).

It must be "obvious" that attorney can adequately represent clients. The general rule that a lawyer may represent clients with potentially conflicting interests with the consent of the clients is qualified in that it must be "obvious" that he can adequately do so. *In re King Res. Co.*, 20 B.R. 191 (Bankr. D. Colo. 1982); *People v. Chew*, 830 P.2d 488 (Colo. 1992).

Attorney may represent individual officer of client corporation. When an individual director or officer of a corporation seeks representation from an attorney hired by the corporation, the attorney may serve the individual only if the lawyer is convinced that differing interests are not present. *In re King Res. Co.*, 20 B.R. 191 (Bankr. D. Colo. 1982).

Knowledge of one attorney must be imputed to lawyers with whom he practices. *Osborn v. District Court*, 619 P.2d 41 (Colo. 1980).

Imputed disqualification applies to public law firm. The same rule of imputed disqualification stated in subdivision (D) of this rule may be considered in determining the ethical standards for disqualification of a public law firm, such as a district attorney. *People v. Garcia*, 698 P.2d 801 (Colo. 1985); *McCall v. District Court*, 783 P.2d 1223 (Colo. 1989).

Rule of imputed disqualification applies to public defenders. Allen v. District Court, 519 P.2d 351 (Colo. 1974); McCall v. District Court, 783 P.2d 1223 (Colo. 1989).

Due to imputed disqualification, appellate division of state public defender's office must be permitted to withdraw from representing on appeal a defendant who claims ineffective counsel provided by local deputy public defender. McCall v. District Court, 783 P.2d 1223 (Colo. 1989).

Disqualification of district attorney's office required where two former district attorneys are witnesses on contested issues in case. Pease v. District Court, 708 P.2d 800 (Colo. 1985).

Trial dates accepted should be honored before withdrawal from employment. When a public defender or a busy defense lawyer finds that his representation of one client is inimical to his representation of another client and he must make an election as to the client he will represent, he has a heavy duty to the court to see that he honors dates that he has agreed to for the trial of a case. Watson v. District Court, 199 Colo. 76, 604 P.2d 1165 (1980).

Attorney's compensation may be denied. Where an attorney is shown to represent more than one party with conflicting interests, a court may deny him all compensation under a retainer agreement. In re King Res. Co., 20 B.R. 191 (Bankr. D. Colo. 1982).

Continued representation of clients with conflicting interests violates this rule and warrants discipline. People v. Awenius, 653 P.2d 740 (Colo. 1982).

Public censure is generally appropriate when a lawyer is negligent in determining whether the representation of a client will adversely affect another client, causing injury or potential injury to a client. Attorney's representation of two estates where the beneficiaries of the estates have conflicting interests and the attorney fails to obtain waivers from the beneficiaries violates this rule. People v. Gebauer, 821 P.2d 782 (Colo. 1991).

Public censure was appropriate where attorney simultaneously represented one client in automobile accident case and another client, who was involved in the automobile accident, in a bankruptcy proceeding without listing the accident client as a creditor of the bankruptcy client, and where aggravating factors existed. People v. Gonzales, 922 P.2d 933 (Colo. 1996).

Public censure warranted where attorney entered into compensated consulting agreement with law firm to which he referred client's cases, without full disclosure of agreement to client. People v. Mulvihill, 814 P.2d 805 (Colo. 1991).

An attorney is not always precluded from representing a client in a transaction with a

former or currently inactive client. Whether an attorney properly may do so depends upon the nature and extent of the former legal work performed for the previous client as well as the possible relationship between the two transactions. *Crystal Homes, Inc. v. Radetsky*, 895 P.2d 1179 (Colo. App. 1995).

Evidence sufficient to justify suspension from the practice of law. *People v. Belfor*, 197 Colo. 223, 591 P.2d 585 (1979); *People v. Foster*, 716 P.2d 1069 (Colo. 1986).

Three-month suspension appropriate for violation of DR 5-105 (A) and (B) and DR 5-101 (B). The interests of the client and the client's wife, from whom the client was then separated, were so adverse, or potentially adverse, that the conflicts could not be waived even had there been full disclosure. As such, it was not obvious that the attorney could represent the client, the client's estranged wife, and their children in the client's bankruptcy proceedings. Because the attorney knew of the conflicts involved when he undertook the multiple representation, a short period of suspension is warranted, but not the requirement of reinstatement proceedings. *In re Quiat*, 979 P.2d 1029 (Colo. 1999).

Forty-five-day suspension appropriate for violation of this rule where pattern of misconduct and multiple offenses are factors in aggravation. *People v. Chew*, 830 P.2d 488 (Colo. 1992).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. *People v. Odom*, 829 P.2d 855 (Colo. 1992); *People v. Stevens*, 883 P.2d 21 (Colo. 1994); *People v. Vsetecka*, 893 P.2d 1309 (Colo. 1995); *People v. Wollrab*, 909 P.2d 1093 (Colo. 1996).

Public censure appropriate where attorney represented buyer and seller of restaurant and did not properly advise the buyer or protect the buyer's interest. *People v. Odom*, 829 P.2d 855 (Colo. 1992).

Conduct violating this rule sufficient to justify public censure. *People v. Gebauer*, 821 P.2d 782 (Colo. 1991).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. *People v. Lopez*, 796 P.2d 957 (Colo. 1990); *People v. Hansen*, 814 P.2d 816 (Colo. 1991); *People v. Watson*, 833 P.2d 50 (Colo. 1992); *People v. Butler*, 875 P.2d 219 (Colo. 1994); *People v. Banman*, 901 P.2d 469 (Colo. 1995); *People v. Miller*, 913 P.2d 23 (Colo. 1996); *People v. Silver*, 924 P.2d 159 (Colo. 1996); *In re Cohen*, 8 P.3d 429 (Colo. 1999).

Conduct violating this rule sufficient to justify disbarment. *People v. Quick*, 716 P.2d 1082

(Colo. 1986); *People v. Martinez*, 739 P.2d 838 (Colo. 1987).

Conduct found to violate disciplinary rules. *People v. Razatos*, 636 P.2d 666 (Colo. 1981).

Applied in *People ex rel. MacFarlane v. Boyls*, 197 Colo. 242, 591 P.2d 1315 (1979); *People v. Meldahl*, 200 Colo. 332, 615 P.2d 29 (1980); *People v. Castro*, 657 P.2d 932 (Colo. 1983); *People v. Underhill*, 683 P.2d 349 (Colo. 1984); *People v. McDowell*, 718 P.2d 541 (Colo. 1986).

Cases Decided Under Former DR 5-107.

Law reviews. For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Conflicts of Interest", see 15 Colo. Law. 2001 (1986). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

Applied in *People ex rel. MacFarlane v. Boyls*, 197 Colo. 242, 591 P.2d 1315 (1979).

Colorado Court Rules

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