

Colo. R. Prof'l. Cond. 4.1

Rule 4.1 - Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

RPC 4.1

Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

COMMENT *False Statements*

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A false statement can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Omissions or partially true but misleading statements can be the equivalent of affirmative false statements. For dishonest conduct generally see Rule 8.4. Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation. Crime or Fraud by Client

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

ANNOTATION Law reviews. For article, "Ethical Considerations and Client Identity", see 30 *Colo. Law.* 51 (April 2001). Annotator's note. Rule 4.1 is similar to Rule 4.1 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. Attorneys are responsible for ethical violation when their investigator failed to disclose to an employee of the defendant prior to an interview that the investigator worked for the attorneys. *McClelland v. Blazin' Wings, Inc.*, 675 F. Supp. 2d 1074 (D. Colo. 2009). Suspension stayed, in view of respondent's cooperation and remorse, conditioned upon successful completion of six-month probationary period and ethics refresher course. *People v. Rosen*, 199 P.3d 1241 (Colo. O.P.D.J. 2007). Conduct violating this rule in conjunction with other rules of disciplinary conduct sufficient to justify public censure. *People v. Newman*, 925 P.2d 783 (Colo. 1996). Conduct

violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Mason, 938 P.2d 133 (Colo. 1997); In re Meyers, 981 P.2d 143 (Colo. 1999); People v. Rosen, 199 P.3d 1241 (Colo. O.P.D.J. 2007). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Jackson, 943 P.2d 450 (Colo. 1997); In re Hugen, 973 P.2d 1267 (Colo. 1999).
