

Colo. Lic. Paraprofe. R. Profe. Cond., Preamble and Scope, SCOPE

SCOPE

[13A] These Rules apply to Licensed Legal Paraprofessionals (LLPs) as defined in C.R.C.P. 207.1. They are intended to govern the conduct of LLPs when serving in that capacity.

[14] These Rules are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of these Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the LLP has discretion to exercise professional judgment. No disciplinary action should be taken when the LLP chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the LLP and others. These Rules are thus partly obligatory and disciplinary and partly constructive and descriptive in that they define a lawyer's professional role. Many of the Comments to the lawyer Rules of Professional Conduct use the term "should." To the extent such Comments may provide guidance to LLPs as explained in paragraph [21] below, such Comments do not add obligations but provide guidance for practicing in compliance with these Rules.

[15] These Rules presuppose a larger legal context shaping the LLP's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of LLPs and substantive and procedural law in general. The Comments in the lawyer Rules of Professional Conduct may alert LLPs to their responsibilities under such other law.

[16] Compliance with these Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. These Rules do not, however, exhaust the moral and ethical considerations that should inform an LLP, for no worthwhile human activity can be completely defined by legal rules. These Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the LLP's authority and responsibility, principles of substantive law external to these Rules determine whether a client-LLP relationship exists. Most of the duties flowing from the client-LLP relationship attach only after the client has requested the LLP to render legal services and the LLP has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6 of these Rules, that attach when the LLP agrees to consider whether a client-LLP relationship shall be established. See Rule 1.18 of these Rules. Whether a client-LLP relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Reserved.

[19] Failure to comply with an obligation or prohibition imposed by these Rules is a basis for invoking the disciplinary process. These Rules presuppose that disciplinary assessment of an LLP's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that an LLP often has to

act upon uncertain or incomplete evidence of the situation. Moreover, these Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of these Rules should not itself give rise to a cause of action against an LLP nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of these Rules does not necessarily warrant any other nondisciplinary remedy, such as disqualification of an LLP in pending litigation. These Rules are designed to provide guidance to LLPs and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of these Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that these Rules are a just basis for an LLP's self-assessment, or for sanctioning an LLP under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of these Rules. Nevertheless, since these Rules do establish standards of conduct by LLPs, in appropriate cases, an LLP's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each rule in the lawyer Rules of Professional Conduct explains and illustrates the meaning and purpose of the rule. Those comments may provide guidance to LLPs when the LLP rule is analogous to the rule applicable to lawyers. Similarly, the Formal Opinions of the Colorado Bar Association's Ethics Committee may provide guidance to LLPs when they interpret rules analogous to the rules applicable to LLPs. The Preamble and this note on Scope provide general orientation. The Comments to the lawyer Rules of Professional Conduct are intended as guides to interpretation, but the text of each of these Rules is authoritative.

Colo. Lic. Paraprofe. R. Profe. Cond., Preamble and Scope, SCOPE

Amended and Adopted by the Court, En Banc, April 13, 2023, effective 7/1/2023.
