


**Ethics and GALs:
The Regulation Process
and Trending Topics**

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**THE OFFICE OF ATTORNEY
REGULATION COUNSEL**

Admissions
Registration
Continuing Judicial and Legal Education
Unauthorized Practice of Law
Regulation of Attorneys (including Magistrate Judges):

- Diversion – practice management/alcohol monitoring
- Discipline
- Disability
- Inventory Counsel
- Client Protection Fund

Special Counsel to Commission on Judicial Discipline

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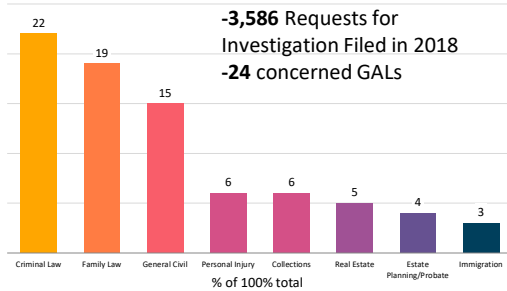


REGISTRATION

26,963 Active Licensed Attorneys in 2018	14,921 Inactive Attorneys in 2018
Solos are 1/5th of Active Attorneys, 1/3rd of Private Practitioners	38% Female of Active Licensed Attorneys <ul style="list-style-type: none"> ▪ In private practice, only 33% female

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AREAS OF PRACTICE WITH THE MOST GRIEVANCES



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Analyzing Complaints



- Rules implicated?
 - By clear and convincing evidence?
- And also...
- Lawyer's mental state and process

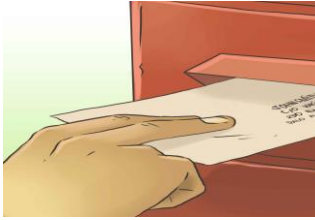
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FOR GALs, ANALYSIS INCLUDES:

- CJ Directive 04-06
- Rules of Professional Conduct
- Case Law
- OCR Contract

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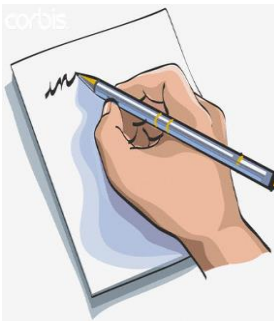
Responding to a Complaint



- Timely respond
- Provide relevant information and documents
- Don't make assumptions
- Consider hiring counsel

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Filing a Complaint



- Colo. RPC 8.3 applies when you "know" of violation that "raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer."
- No anonymous complaints

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WHAT BRINGS ATTORNEYS TO THE PROCESS?

- Mistakes
- Lack of knowledge
- Limited bandwidth
- Isolation
- Lapse in judgment
- Intentional misconduct



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ESPECIALLY IN A HIGH STRESS PRACTICE, REMEMBER:

- Professional competence and well-being often go hand-in-hand.
- Compromised well-being may result in:
 - Lack of professionalism
 - Poor boundaries
 - Inadequate representation
 - Disciplinary issues

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BEST PRACTICES

Prioritize you!
Know and use resources:

- ✓ OCR
- ✓ COLAP
- ✓ CAMP



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Law Practice Resource

- coloradosupremecourt.com
 - Lawyer Self-Assessment Program
- 3 CLE credits (general and ethics) are available for completing the Self-Assessment
 - Affidavit is on the website, under "Lawyer Self-Assessment" tab
- C.R.C.P. 256 The Colorado Lawyer Self-Assessment Program



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TRENDING TOPIC: CONFLICTS

Colo. RPC 1.7 Current Clients

No concurrent conflicts

- Direct adversity OR
- Significant risk that the representation will be materially limited by lawyer's responsibilities to another client, former client or third person or personal interest of the lawyer
- May need informed consent from each affected client

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TRENDING TOPIC: CONFLICTS

Colo. RPC 1.9 Duties to Former Clients

- Can't represent new client in same or substantially related matter if the new client's interests are materially adverse to the interests of the former client unless former client gives informed consent
- Can't use information to disadvantage of former client except as Rules permit or require, or when information has become generally known; can't reveal information relating to the representation except as Rules would permit or require



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CONFLICTS: INFORMED CONSENT



**Informed consent
v.
Waiver
(cmt. 22 to RPC 1.7)**

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CONFLICTS: HYPOTHETICAL



Relationships with others in the process— foster parents, parents, department workers

Colo. RPC 1.7- personal interest of lawyer

Even if no Rule violation, what if there's an appearance of bias/conflict?

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CONFLICTS: HYPOTHETICAL



Sibling conflicts

Colo. RPC 1.7 (responsibilities to another client, or personal interest)

Are best interests conflicted?

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CONFLICTS: HYPOTHETICAL



GAL previously represented parent and is now GAL for the children. What was the prior matter?

Colo. RPC 1.7 for the current child clients; Colo. RPC 1.9 for parent

GAL must consider duties to both current and former client(s)

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BEST PRACTICES

- ✓ Maintain clear boundaries
- ✓ If there's confusion, follow up and document
- ✓ Avoid even the appearance of conflicts



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**TRENDING TOPIC:
SUCCESSION PLANNING**

Are you prepared for the next phase?



**Case
coverage
v.
Practice
coverage**

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**TRENDING TOPIC:
SUCCESSION PLANNING**

Cmt. 5 to Colo. RPC 1.3 Diligence, explains that for a sole practitioner, the duty of diligence may require the lawyer prepare a plan to designate a competent lawyer to review client files, notify clients, and determine whether immediate protective action is needed on cases, should the sole practitioner die or become disabled.

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TRENDING TOPIC: SUCCESSION PLANNING

1. Assess state of the practice:

- ✓ Calendar
- ✓ Trust account ledgers
- ✓ Billing and time records
- ✓ Client files

2. Identify inventory counsel who can wind up the practice:

- ✓ Secure and return files
- ✓ Disburse funds in trust
- ✓ Return client property

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TRENDING TOPIC: SUCCESSION PLANNING

coloradosupremecourt.com

- ✓ Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (One of Which is Inevitable)
- ✓ Succession planning articles by Jon White in OARC's 2019 bimonthly newsletters



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TRENDING TOPIC: RULE 8.4(c) AMENDMENT



It is professional misconduct to “engage in conduct involving ...dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, or investigators, who participate in lawful investigative activities.”

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CBA ETHICS OP. 137 May 2019

- Lawyers can't participate in dishonesty, fraud, deceit or misrepresentation even if there's a lawful investigation.
- Criminal investigations usually are lawful if not intended to mislead the court.
 - *What if there is a court finding of unlawfulness?*

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CBA ETHICS OP. 137 May 2019

- Civil investigations may be lawful if designed to ferret out violations of law
 - ✓ Posing as customer or member of public;
 - ✓ No attempt to induce statements the subject otherwise would not make;
 - ✓ Deception should not impede another lawful investigation;
 - ✓ May not affirmatively mislead court.

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TRENDING TOPIC: NEW FLAT FEE RULE

Newly adopted Colo. RPC 1.5(h) provides the flat fee writing should include:

- ✓ A description of the services the lawyer agrees to perform;
- ✓ The amount to be paid to the lawyer and the timing of payment for the services to be performed;
- ✓ If any portion of the flat fee is to be earned by the lawyer before conclusion of the representation, the amount to be earned upon the completion of specified tasks or the occurrence of specified events; and
- ✓ The amount or the method of calculating the fees the lawyer earns, if any, should the representation terminate before completion of the specified tasks or the occurrence of specified events.

See the Form Flat Fee Agreement

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TRENDING TOPIC: PROPOSED RULE 8.4(i)

Proposed language:
It is professional misconduct for a lawyer to:
(i) engage in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities.



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TRENDING TOPIC: PROPOSED RULE 8.4(i)

Proposed comment:
[5A] Sexual harassment may include, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that a reasonable person would perceive as unwelcome. The substantive law of employment discrimination, including antiharassment statutes, regulations, and case law, may guide, but does not limit, application of paragraph (i). "Professional activities" are not limited to those that occur in a client-lawyer relationship.



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RESOURCES

Office of Child's Representative
➤ coloradochildrep.org
Office of Attorney Regulation Counsel
➤ coloradosupremecourt.com
Colorado Lawyer Assistance Program (COLAP)
➤ coloradolap.org
Colorado Attorney Mentoring Program (CAMP)
➤ coloradomentoring.org
Colorado Bar Association: cobar.org
➤ Law Practice Management
➤ Casemaker
➤ Member benefits
Ethics Hotline – 303-860-1115



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