

RULE CHANGE 2021(10)

COLORADO RULES OF PROFESSIONAL CONDUCT

Rules 1.1, 1.3, 1.15D, 1.15E, 5.4, and 5.5

Rule 1.1. Competence

[NO CHANGE]

COMMENT

[1] - [5] [NO CHANGE]

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(~~d~~e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] - [8] [NO CHANGE]

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENT [1] – [4] [NO CHANGE]

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer); C.R.C.P. ~~244~~^{51.32}(h).

Rule 1.15D. Required Records

(a) – (c) [NO CHANGE]

(d) Any of the records required to be kept by this Rule shall be produced in response to a subpoena duces tecum issued by the Regulation Counsel in connection with proceedings pursuant to C.R.C.P. ~~242~~⁵¹ or C.R.C.P. 243. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding, and their contents shall not be

disclosed by anyone in such a way as to violate the attorney-client privilege of the lawyer's client.

Rule 1.15E. Approved Institutions

(a) – (b) [NO CHANGE]

(c)(1) – (c)(3)(ii) [NO CHANGE]

(4) The financial institution agrees to cooperate fully with the Regulation Counsel and to produce any trust account records on receipt of a subpoena for the records issued by the Regulation Counsel in connection with any proceeding pursuant to C.R.C.P. [242](#) or C.R.C.P. [243](#)~~51~~. Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule, but such charges shall not be a transaction cost to be charged against funds payable to the COLTAF program.

(c)(5) – (c)(13) [NO CHANGE]

Rule 5.4. Professional Independence of a Lawyer

(a) – (e) [NO CHANGE]

(f) For purposes of this Rule, a “nonlawyer” includes (1) a lawyer who has been disbarred, (2) a lawyer who has been suspended and who must petition for reinstatement, (3) a lawyer who [is subject to an interim suspension](#) ~~has been immediately suspended~~ pursuant to C.R.C.P. [242](#)~~51.228~~ or [251.20\(d\)](#), (4) a lawyer who is on inactive status pursuant to C.R.C.P. 227(A)(6), ~~or~~ (5) [a lawyer who has been permitted to resign under C.R.C.P. 227\(A\)\(8\), or \(6\)](#) a lawyer who, for a period of six months or more, has been (i) on disability inactive status pursuant to C.R.C.P. [243](#)~~51.6~~~~23~~ or (ii) suspended pursuant to C.R.C.P. [227\(A\)\(4\)](#), [242](#)~~51.238~~~~5~~, [242.24](#), [227\(A\)\(4\)](#) or [260.6](#), ~~or 251.8.6~~.

COMMENTS [1] – [3] [NO CHANGE]

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not:

(1) practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by [C.R.C.P. 204](#), *et seq.* ~~C.R.C.P. 204~~ or ~~C.R.C.P. 205~~ or federal or tribal law;

(2) - (4) [NO CHANGE]

(b) – (d) [NO CHANGE]

(e) Once notice is given pursuant to C.R.C.P. ~~24251.3228~~ or this Rule, then no additional notice is required.

COMMENT

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. In order to protect the public, persons not admitted to practice law in Colorado cannot hold themselves out as lawyers in Colorado or as authorized to practice law in Colorado. Rule 5.5(a)(1) recognizes that [C.R.C.P. 204, et seq.](#) ~~C.R.C.P. 204 and C.R.C.P. 205~~ permit lawyers to practice law in accordance with their terms in Colorado without a license from the Colorado Supreme Court. Lawyers may also be permitted to practice law within the physical boundaries of the State, without such a license, where they do so pursuant to Federal or tribal law. Such practice does not constitute a violation of the general proscription of Rule 5.5(a)(1).

[2] – [6] [NO CHANGE]

Rule 1.1. Competence

[NO CHANGE]

COMMENT

[1] - [5] [NO CHANGE]

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(d) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] - [8] [NO CHANGE]

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENT [1] – [4] [NO CHANGE]

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer); C.R.C.P. 244.

Rule 1.15D. Required Records

(a) – (c) [NO CHANGE]

(d) Any of the records required to be kept by this Rule shall be produced in response to a subpoena duces tecum issued by the Regulation Counsel in connection with proceedings pursuant to C.R.C.P. 242 or C.R.C.P. 243. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding, and their contents shall not be

disclosed by anyone in such a way as to violate the attorney-client privilege of the lawyer's client.

Rule 1.15E. Approved Institutions

(a) – (b) [NO CHANGE]

(c)(1) – (c)(3)(ii) [NO CHANGE]

(4) The financial institution agrees to cooperate fully with the Regulation Counsel and to produce any trust account records on receipt of a subpoena for the records issued by the Regulation Counsel in connection with any proceeding pursuant to C.R.C.P. 242 or C.R.C.P. 243. Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule, but such charges shall not be a transaction cost to be charged against funds payable to the COLTAF program.

(c)(5) – (c)(13) [NO CHANGE]

Rule 5.4. Professional Independence of a Lawyer

(a) – (e) [NO CHANGE]

(f) For purposes of this Rule, a “nonlawyer” includes (1) a lawyer who has been disbarred, (2) a lawyer who has been suspended and who must petition for reinstatement, (3) a lawyer who is subject to an interim suspension pursuant to C.R.C.P. 242.22, (4) a lawyer who is on inactive status pursuant to C.R.C.P. 227(A)(6), (5) a lawyer who has been permitted to resign under C.R.C.P. 227(A)(8), or (6) a lawyer who, for a period of six months or more, has been (i) on disability inactive status pursuant to C.R.C.P. 243.6 or (ii) suspended pursuant to C.R.C.P. 227(A)(4), 242.23, 242.24, or 260.6.

COMMENTS [1] – [3] [NO CHANGE]

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not:

(1) practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by C.R.C.P. 204, *et seq.* or federal or tribal law;

(2) - (4) [NO CHANGE]

(b) – (d) [NO CHANGE]

(e) Once notice is given pursuant to C.R.C.P. 242.32 or this Rule, then no additional notice is required.

COMMENT

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. In order to protect the public, persons not admitted to practice law in Colorado cannot hold themselves out as lawyers in Colorado or as authorized to practice law in Colorado. Rule 5.5(a)(1) recognizes that C.R.C.P. 204, *et seq.* permit lawyers to practice law in accordance with their terms in Colorado without a license from the Colorado Supreme Court. Lawyers may also be permitted to practice law within the physical boundaries of the State, without such a license, where they do so pursuant to Federal or tribal law. Such practice does not constitute a violation of the general proscription of Rule 5.5(a)(1).

[2] – [6] [NO CHANGE]

Amended and Adopted by the Court, En Banc, May 20, 2021, effective July 1, 2021.

By the Court:

**Monica M. Márquez
Justice, Colorado Supreme Court**