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# Trending Topics in Ethics for Municipal Lawyers



# Select Colorado Admissions and Practice Requirements

- Colorado municipal attorneys practice Colorado law in Colorado – they must be licensed here (Colo. RPC 5.5).
- Student practice is available for the first two bar exams (C.R.C.P. 205.7).
- Practice pending admission is available when submitting a qualifying on-motion application -- PPA expires after 12 months.
- *Consider requiring attorney job applicants to show proof of bar application admission within one month of commencing employment.*
- MPRE offered only three times a year (need passing score within past 5 years); exception for 15+ years active practice attorneys.

# Best Practices for New Hires

- Require that they update their attorney registration information within the first week of employment (C.R.C.P. 227 requires update within 28 days).
- Consider office-wide reminder emails for attorney registration and CLE compliance.
- Any “ethical screens” needed per Colo. RPC 1.11(d) (and comments) or government policy?

# OARC and Attorney Discipline

- We don't issue ethics opinions and we can't give legal advice.
- We are a complaint-based system – though complaints are “through the roof”
  - 2018: 3586
  - 2020: 3424
  - 2022: 3740
  - 2024: 4431
  - 2025 annualized so far: 5118
- Pro se parties may file an attorney grievance despite the lack of any attorney-client relationship.
- Municipal judges – conduct might implicate RPCs; who has jurisdiction to address judicial ethics?
  - Should municipality require municipal judge compliance with some/all Judicial Codes?

# OARC's Analysis for Reviewing Complaints

- Are the Colorado Rules of Professional Conduct implicated?
- Do we believe that now or with additional investigation there will be clear and convincing evidence of a violation of the Rules?
- To whom did the lawyer owe professional obligations and when?



# Representing Entity as the Client

**Colo. RPC 1.13**, see Cmt 9. see also Cmt. 18 to Scope  
Recognizes the uniqueness of government entity representation

Importance of identifying the client:

- To whom do I owe professional obligations?
- Who is the primary contact person?
- From whom do I take direction?

Procedure for memorializing direction?

# Municipal Entities as Client(s)

- Charter/code provisions usually identify the municipality as a whole
  - Who are the “duly authorized constituents” per Colo. RPC 1.13(a)?
- Document authority for attorney to act without further consultation with client (e.g. negotiating terms of contract)
- Distinguish between authority to advise on municipal action vs. authority to defend municipal action in a court proceeding vs. authority to represent the municipality or the People
  - Necessary witness rule (Colo. RPC 3.7) could apply if advisor/advocate roles blur
  - Avoiding ex parte communications with quasi-adjudicative boards
  - May need separate counsel/ internal screening
- Be clear with individuals in government (Colo. RPC 1.13(f))
  - Elected public officials, appointed public officials, line employees
  - What is within the scope of their public capacity/role?
  - Dual representations? See Colo. RPC 1.7 and 1.13(g)



## Colo. RPC 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

## Comment 2 to Colo. RPC 4.3

- Distinguishes between situations where interests are adverse
- When adverse, no advice, except to retain counsel
- Whether advice is impermissible, consider experience and sophistication of unrepresented person, and setting in which the behavior and comments occur
  - “So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.”

# ABA Ethics Opinion 514

## **“A Lawyer’s Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization’s Constituents” (January 8, 2025)**

- What does it mean to advise the organization about its risk if the impact on individual constituents might be a consideration to the organization?
- Ethics opinion looks to competence, professional judgment and communication rules. E.g. MRPC 1.4(b) requires a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”
- Standard practice is to make sure individuals know they aren’t the client; but there also may be a professional obligation to ensure that the same individuals as duly authorized constituents of the organization hear – on behalf of the organization – that there may be legal risks that impact them as individuals.
  - See Opinion, FN 9 for an example when there might not be that obligation, such as when the individual already is represented by other counsel.

## Colo. RPC 4.2 Dealing With a Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.



## Colo. RPC 4.2 Dealing With a Person Represented by Counsel

**When can a private attorney contact municipal officials who are represented by municipal attorneys?**

- **Cmt. 5 to Colo. RPC 4.2:** authorized by law may include communication by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government
- **CBA Ethics Op. 69:** Propriety of Communicating with Employee or Former Employee of an Adverse Party Organization
- **CBA Ethics Op. 93:** Ex Parte Contacts With Government Officials

# CBA Ethics Opinions 69 and 93 re: Colo. RPC 4.2

- Attorneys can contact certain municipal officials and employees under certain circumstances “authorized by law.” (**Opinion 93**)
  - First Amendment protected activities likely include lobbying for policy or legislative changes, direct contact with officials designated to hear and act on complaints, etc.
  - Rule 4.2 would cover an individual pending legal matter where the employee has authority to bind municipal agency involved in the matter or otherwise is directing legal action.
  - Consider policies for employees, officials, board members tailored to their function and whether they engage in quasi-adjudicative work.
- Attorneys can contact former municipal officials and employees, but cannot invade the attorney client privilege. (**Opinion 69**)

# Best Practices around Rules 4.2 and 4.3



- Confirm whether someone is represented
- Unique to government: advise clients regarding the fact they may be contacted directly
- For unrepresented parties, clarify role; follow up in writing when appropriate
- Notate the file



## CBA Ethics Op. 148


### **CBA Ethics Op. 148: Ethical Issues When a Lawyer Includes a Client in a Group Email or Text to Counsel for Other Parties Reminders**

“The Colorado Bar Association Ethics Committee (Committee) also opines in this Opinion that the sending lawyer who has included the lawyer’s own client in a group email or text to other counsel has impliedly consented to having the sending lawyer’s client included in a reply from a receiving lawyer. A receiving lawyer therefore does not violate Colo. RPC 4.2 by including the sending lawyer’s client in a reply, subject to the limitations addressed below.”

# Generative Artificial Intelligence (GAI)

- Fun fact – I asked Google AI (search performed 5/29/25) whether municipal attorneys were subject to the Colorado Open Meetings Law and it said yes!

## ✦ AI Overview

Municipal attorneys in Colorado, as representatives of municipal governments, are subject to the Colorado Open Meetings Law (OML). The OML generally requires that meetings of municipal governing bodies where public business is discussed or formal action is taken must be open to the public. This includes gatherings, whether in person, by telephone, electronically, or by other means. 

- And that little paper clip that shows the source of the information was CML's guidance on Open Meetings!
  - Which, of course, did not say that municipal attorneys had to meet in public with prior notice to the public.

# Reasons to “get to know” Generative Artificial Intelligence

## **It is here and not going away!**

- Members of the public and pro se parties will use it without checking facts or law; try to learn to recognize AI work product.
  - Worst case scenarios are not good: fabricated documents, videos, deep fakes to induce public action – which may be appropriate for referral to law enforcement (influencing a public servant)
- Private attorneys could inappropriately rely on GAI too – be wary of irregular case citations and authorities.
- Is there a place for it? Yes! For example:
  - Legal research, creating a first draft that you will review and edit.
  - Summarizing lengthy files – as long as confidential information is protected.

# Artificial Intelligence

## Some considerations for lawyer use of generative artificial intelligence.

Does your organization have a policy?

- Competence: understand the technology, including the difference between artificial intelligence (AI) and generative artificial intelligence (GAI).
- Confidentiality: is client information secure and protected? (Assume the answer is no.)
- Diligence: even with the most reliable AI, double-check.
- Candor: if asked by the client or court, provide accurate information as to whether AI was used and lawyer's role in verifying AI information.
- Communication: requirement or best practice to inform the client?

# Artificial Intelligence

## Artificial Intelligence - Areas of Guidance:

- ABA Formal Opinion 512 Generative Artificial Intelligence Tools
- Lawyer Ethics Opinions (Florida, West Virginia, Missouri, D.C., Pennsylvania)
- Guidance from State Bars and Agencies (California, New Jersey, USPTO, NY State Bar Association)
- State Bar Task Forces (Illinois, New York, Texas)
- For Colorado: <https://cl.cobar.org/features/artificial-intelligence-and-professional-conduct/>
- *People v. Crabill, case no. 23PDJ067*

# Reminders and Updates

- OARC Newsletter
- Attorney and LLP Registration
- CLE – take advantage of free CLE
  - OARC Self-Assessment
- Licensed Legal Paraprofessional (LLP)
  - Focus: marital dissolution and child support matters

# Colorado Well-Being Programs

## **Colorado Lawyer Assistance Program (COLAP)**

**See: <https://coloradolap.org/>**

COLAP is a confidential program that's funded through registration fees. COLAP provides assistance and support to the Colorado legal community (applicants, lawyers, LLPs, judges) for personal and professional issues that may impact their practice or well-being, without a financial cost.

## **Colorado Well-Being Recognition Program for Employers:**

**See: <https://coloradolawyerwellbeing.org/>**

The program provides resources for Colorado legal employers to support their employees with access to education, resources, support, and technical assistance to improve well-being in an organization.





**THANK  
YOU**

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