

# Colorado Legal Ethics: Guide to Resources

by Robert M. Linz

Officers of the court and public figures, including attorneys and judges, are required to adhere to high ethical standards in conducting their professional duties. Courts and bar associations have a long tradition of identifying ethical norms and regulating conduct through rules and action. Although some conduct is obviously incorrect, the appropriateness of other conduct is less clear.

When attorneys are unsure of the ethical nature of an action, they will need to consult sources for guidance. These sources may be fellow attorneys or bar association ethics hotline advisors. These sources also include the rules, decisions, and commentary that constitute the body of legal ethics. This article compiles and examines the various resources for legal ethics research.

## Sources of Authority

When performing legal ethics research, the attorney is searching for three types of materials or sources of authority: rules, adjudications, and advisory opinions. The preeminent authority are the rules of professional conduct. Each jurisdiction adopts its own rules, which bind the attorneys licensed to practice law in that jurisdiction. All jurisdictions within the United States base their rules on the American Bar Association's (ABA) Model Rules of Professional Conduct (ABA Model Rules) or its predecessor, the Model Code of Professional Conduct.<sup>1</sup> The researcher should locate and study both the jurisdiction's rules of professional conduct and the ABA Model Rules.

If an attorney violates an ethical rule, he or she may be disciplined by the jurisdiction's disciplinary body. The disciplinary process may involve a trial and appeal. The decisions of both the hearing board and the appellate court may be published. Publication of these decisions serves to inform and educate the public and Bar of what acts constitute unethical conduct.

Attorneys also can refer to ethics advisory opinions. In Colorado, these opinions are issued by the Ethics Committee of the Colorado Bar Association (CBA).<sup>2</sup> The opinions are written to give guidance to attorneys about whether proposed conduct may violate ethical rules; however, these opinions are not binding on the Colorado Supreme Court or its enforcement bodies. Although these opinions are a form of secondary authority, they are well-researched, well-reasoned, and well-written analyses that the Court may find persuasive.

In addition to these types of materials, the attorney can search for commentary and analysis of ethical rules. This commentary can be found in a variety of resources, including law journals, practice guides, and loose-leaf resources.

## Colorado Resources

Resources such as the Colorado Rules of Professional Conduct (Colorado Rules or Rules) and adjudicative decisions are extensive. Below is a general discussion of these Colorado resources.

### *Rules of Conduct*

The Colorado Supreme Court regulates the state's legal profession. In 2007, the Court adopted the current ABA Model Rules (with some modifications) as the Colorado Rules. The Rules became effective January 1, 2008 and are available in print or online through several resources.

**Colorado Revised Statutes.** Many law firm libraries include bound copies of the Colorado Revised Statutes (CRS) for ready reference. The Colorado Rules can be found in the CRS as the appendix to chapters 18 through 20 of the Colorado Rules of Civil Procedure (Civil Rules). In the CRS published by LexisNexis,<sup>®</sup> the Colorado Rules are located in "Court Rules, Book I."<sup>3</sup> In the



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collection of annotated CRS (CRSA) published by West, the Colorado Rules appear as part of the “Court Rules” volumes.<sup>4</sup>

The LexisNexis and West collections print the text and comments of the Rules as adopted by the Colorado Supreme Court. As annotated codes, the Rules are accompanied by citations to cases and law journal articles, legal encyclopedia articles, and other secondary authority. The West publication also includes the applicable American Digest System topic and key numbers. (See the brief discussion of this system below.)

Attorneys also may choose to access the Rules online. The CRS are available through the LexisNexis and Westlaw databases by paid subscriptions. The Colorado General Assembly website,<sup>5</sup> which serves as a portal to numerous other resources, provides links to the CRS. From the General Assembly’s home page, attorneys can first link to the Office of Legislative Legal Services, which “edits, collates, and revises the laws enacted each session, with annotations, and prints them each year,” and then to Michie’s Legal Resources to get to the CRS.<sup>6</sup>

CBA members can access the CRS and the Colorado Rules from the Casemaker Legal Library.<sup>7</sup> Casemaker research is a free membership benefit. Additionally, CBA members and nonmembers can visit the CBA website to access the version that contains the text of the Rules and the Comments, but not the annotations.<sup>8</sup>

*Colorado Ethics Handbook.* The Rules also are printed in the *Colorado Ethics Handbook*, published by Continuing Legal Education in Colorado, Inc.<sup>9</sup> In the first of this two-volume loose-leaf set, the Rules are reprinted as found in the CRS. The set also includes the previous version of the Colorado Rules that was in effect between 1993 and 2007, along with a “Conversion” or “Translation” table correlating the former rules to the new rules.

**Colorado Supreme Court website.** The Court links to adopted and proposed changes on its website.<sup>10</sup> The Court provides a link to the CBA’s website for accessing the Colorado Rules.<sup>11</sup> Rule changes likely will be posted on the CBA website and published in *The Colorado Lawyer*; however, researchers would be wise to initially visit the Court’s website, where proposed changes to the Rules likely will make their first appearance.<sup>12</sup>

### Adjudicative Decisions

If an attorney is suspected of violating the Colorado Rules, the matter is managed according to the procedures set forth in Chapter 20 of the Civil Rules. These procedures provide a mechanism to ensure the integrity of the legal profession, while reforming or disciplining the attorney who has violated the Colorado Rules.<sup>13</sup> In this process, there are three ways a document may be generated:

1. The Office of the Presiding Disciplinary Judge (PDJ) will publish only a summary for a conditional admission of misconduct between the attorney and the Office of Attorney Regulation Counsel (OARC).
2. The Disciplinary Hearing Board will publish its decision after an attorney’s case has been tried before the hearing board.
3. This decision may be appealed to the Colorado Supreme Court and an opinion of its decision may be issued.

**PDJ decisions.** The Court publishes the decisions of the PDJ and hearing board on its website for the OARC.<sup>14</sup> Researchers will find these conditional admissions summaries, opinions, and orders on the page for the Office of the PDJ.<sup>15</sup> Coverage extends back to 1999. As with opinions in other matters, the Court publishes its decisions in ethics cases on its website. Coverage begins in 2006.

*The Colorado Lawyer.* The CBA’s official publication publishes recently issued disciplinary case summaries. When the PDJ issues a disciplinary decision in the form of an opinion, it also is published in the journal.<sup>16</sup>

*Pacific Reporter and Colorado Reporter.* The decisions of the PDJ and Colorado Supreme Court also are published in West’s *Pacific Reporter*, and its Colorado subset, the *Colorado Reporter*. These decisions will appear in the Colorado Cases database (CO-CS) on Westlaw, and in the Colorado State Cases Combined (COCTS) file name on LexisNexis.

### Using the American Digest System

For each case published in one of the reporters of its National Reporter System, West classifies the points of law discussed in that case according to the categories of its American Digest System. The categories comprise broad subject areas called topics, which are divided into subtopics, commonly referred to as Key Numbers. Researchers use this hierarchical system of topics and Key Numbers to locate all of the case law on a particular issue in one or several jurisdictions. This classification scheme includes the topic of “Attorney and Client.” Within that topic, attorneys doing research in this area of law likely would consult the key numbers 1 through 61 on “The Office of Attorney,” with particular attention paid to key numbers 34 to 61 on “Discipline in Particular.” Decisions of the Colorado Supreme Court and the PDJ are included in the American Digest System.

### Advisory Opinions

Advisory opinions are a form of secondary authority. They are thoughtful articles written by attorneys about whether some type of attorney conduct will violate the ethical rules. In Colorado, advisory opinions are issued by the CBA Ethics Committee. These opinions are not binding on the Colorado Supreme Court or any of its disciplinary bodies. The Court may find the opinions persuasive and attorneys may use them as a guide to regulate their own conduct. Attorneys are encouraged to contact the CBA for an advisory opinion whenever the attorney is uncertain about the ethics of certain conduct.

The Ethics Committee issues two types of advisory opinions: private and formal. Private opinions are issued to the individual attorney seeking advice. Formal opinions are issued on matters that the CBA deems to be of general interest to all members of the Bar. The earliest formal opinions were issued in the 1950s and were based on the now superseded Canons of Ethics. The CBA withdraws outdated formal opinions as necessary.

Private and formal opinions are published on the CBA’s Ethics Committee website<sup>17</sup> and in the second volume of the *Colorado Ethics Handbook*. The CBA publishes only a summary of the private opinion and ensures that it does not contain information identifying any particular person.

### Additional Sources of Commentary and Analysis

Beyond the resources discussed above, the researcher may need to reach for additional sources of commentary and analysis of the ethical rules. Three additional sources for the Colorado researcher are as follows:

- *Essays on Legal Ethics and Professional Conduct in Colorado* by Alec Rothrock, a Colorado practitioner and former Chair of

the CBA Ethics Committee.<sup>18</sup> Rothrock discusses the ethical rules in light of particular conduct.

- The continuing legal education arm of the Colorado Bar Association (CBA–CLE) offers programs on ethics topics. For materials from past CBA–CLE programs addressing relevant ethical issues, researchers should consult the online catalogs of the University of Colorado (CU) and University of Denver (DU) law libraries.<sup>19</sup> The CU and DU law libraries collect the written materials that accompany a speaker’s CBA–CLE presentation. These written materials can serve as a reference guide.
- Articles addressing ethical issues in various practice settings have been published in *The Colorado Lawyer*. Articles from 1997 are available to CBA members on the organization’s website. Members also can search for articles by topic from November 1971 on Casemaker.

## Multijurisdictional Sources for Legal Ethics Research

In addition to Colorado sources, the legal ethics researcher may need to consult resources written for other jurisdictions. This research approach can often bear fruit for the Colorado researcher because the Colorado Rules are based on the ABA Model Rules. As with any uniform law, researchers can gain insights and arguments derived from other jurisdictions. Although nonbinding on Colorado courts, the work of other jurisdictions may prove helpful to the practitioner facing a similar ethical dilemma.

### ABA Model Rules

The ABA Model Rules can be found in a number of sources. To obtain a single volume of these rules, the attorney can turn to either the *Annotated Model Rules of Professional Conduct*<sup>20</sup> or the *Compendium of Professional Responsibility Rules and Standards (Compendium)*.<sup>21</sup> In addition to the official text and comments of individual rules, the *Annotated Model Rules* includes extensive commentary addressing the development of the rules, with case citations. The *Compendium* prints the current rules, as well as other sets of ABA Model Rules, including the *Model Code of Professional Responsibility*, the *Model Code of Judicial Conduct*, and the *Canons of Professional Ethics*. The ABA Model Rules can be found on the organization’s Center for Professional Responsibility website.<sup>22</sup>

### Shepard’s Professional and Judicial Conduct Citations

LexisNexis publishes a citator for the ABA Model Code, Model Rules, and Code of Judicial Conduct.<sup>23</sup> Organized by code or rule section, this title lists judicial decisions citing the canon or rule.

### ABA/BNA Manual

The ABA and the Bureau of National Affairs (BNA) jointly publish the *ABA/BNA Lawyer’s Manual on Professional Conduct (Lawyer’s Manual)*, a loose-leaf resource on legal ethics.<sup>24</sup> As with other loose-leaf sources, this publication prints both primary law and commentary designed to simplify the research process for busy practitioners. The set comprises two parts: “The Manual” and “Current Reports.” The Manual provides practice guidelines and background information on a variety of ethical topics. The materials of The Manual are indexed and each topic includes a table of contents. Current Reports is a biweekly newsletter highlighting

updates in this area of law and publishing recent court decisions, ethics opinions, and disciplinary proceedings. The full text of the ethics opinions are published and filed in a separate binder with their own index.

In addition to the practice materials, the first part of The Manual reprints the various model rules of conduct. For the Colorado practitioner, this section also includes a helpful article detailing how a state’s rules of professional conduct vary from the ABA Model Rules.

## The Law of Lawyering

Where the *Lawyer’s Manual* provides both primary authority and practice commentary, *The Law of Lawyering*<sup>25</sup> offers in-depth commentary and analysis on the range of laws affecting attorney ethical conduct. This two-volume, loose-leaf treatise uses the ABA Model Rules as pretext for a broad discussion of ethical topics, including confidentiality, communication, and conflicts of interest.

### ALI’s Restatement (Third)

The goal of the American Law Institute’s Restatement (Third) *of the Law Governing Lawyers*<sup>26</sup> is not to create a model codification of professional conduct, but to identify the common law rules derived from court cases and other disciplinary tribunals. For each topic, the drafters restate the prevailing rule and include extensive commentary and authority supporting the prevailing rule.

## General Treatments

Attorneys seeking a general treatment of legal ethics can turn to a variety of familiar sources. These treatises include hornbooks and nutshells. As part of its Hornbook Series, West publishes *Modern Legal Ethics* in practitioner and student editions.<sup>27</sup> Each edition covers a wide range of legal ethics topics, although the practitioner's edition includes a chapter on judicial ethics. LexisNexis publishes *Understanding Legal Ethics*,<sup>28</sup> which has similar coverage and objectives as *Modern Legal Ethics*.

Finally, practitioners can reach for two abbreviated but equally sound treatments of the topic: West's *Legal Ethics in a Nutshell*<sup>29</sup> and Foundation Press's *Professional Responsibility and Regulation*.<sup>30</sup> Primarily targeted to students, these texts will help anyone gain an understanding of the issues, sources, and terminology of legal ethics.

## Internet Resources

The Internet offers a number of resources for legal ethics research. In addition to the offerings on the ABA's website, Cornell University Law School's Legal Information Institute provides the American Legal Ethics Library.<sup>31</sup> This website contains rules of professional conduct and commentary on the law governing lawyers, organized on a state-by-state basis.

The website LegalEthics.com focuses on ethical issues raised by an attorney's use of technology. This site includes news updates, case summaries, and articles.<sup>32</sup>

## Conclusion

Attorneys have a duty to ensure that their conduct complies with the ethical rules of the legal profession. The courts, state bar associations, and the ABA provide a plethora of resources to help attorneys abide by this duty. Additionally, if an attorney's firm does not own a particular resource, it may be available at the local law library, where staff is on-hand to provide any additional assistance.

## Notes

1. The American Bar Association (ABA) can be found at [www.abanet.org](http://www.abanet.org). To reach the Center for Professional Responsibility page, click on the "Members Resources" tab, then the "Ethics/Professional Conduct" link in the drop-down menu.

2. Colorado Bar Association (CBA) Formal Ethics Opinions are published in *The Colorado Lawyer* when approved. They also are available to CBA members and nonmembers through the CBA's online "Ethics Portal," available at [www.cobar.org/index.cfm/ID/386/CETH/Formal-Ethics-Opinions](http://www.cobar.org/index.cfm/ID/386/CETH/Formal-Ethics-Opinions).

3. Colorado Revised Statutes (LexisNexis, 2009).

4. Colorado Revised Statutes Annotated (West, 2009).

5. The Colorado General Assembly website is [www.leg.state.co.us](http://www.leg.state.co.us).

6. The Office of Legislative Legal Services is available at [www.state.co.us/gov\\_dir/leg\\_dir/olls/colorado\\_revised\\_statutes](http://www.state.co.us/gov_dir/leg_dir/olls/colorado_revised_statutes). Michie's Legal Resources is available at [www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=](http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=).

7. Casemaker is available at [www.cobar.org/casemaker](http://www.cobar.org/casemaker).

8. See [www.cobar.org/page.cfm/ID/384](http://www.cobar.org/page.cfm/ID/384).

9. *Colorado Ethics Handbook* (5th ed., Continuing Legal Education in Colorado, Inc. (CLECI), 2007). The *Handbook* is a joint project of the CBA Ethics Committee and CLECI.

10. See [www.courts.state.co.us/Courts/Supreme\\_Court/Rule\\_Changes.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes.cfm).

11. See [www.cobar.org/index.cfm/ID/384/CETH/Colorado-Rules-of-Professional-Conduct](http://www.cobar.org/index.cfm/ID/384/CETH/Colorado-Rules-of-Professional-Conduct).

12. Adopted and proposed rule changes are available on the Colorado Supreme Court website at [www.courts.state.co.us/Courts/Supreme\\_Court/Rule\\_Changes.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes.cfm).

13. Rothrock, "Attorney Discipline and Disability Process and Procedure—Part I," 36 *The Colorado Lawyer* 23 (Feb. 2007).

14. The Colorado Supreme Court Office of Attorney Regulation website is available at [www.coloradosupremecourt.com/index.htm](http://www.coloradosupremecourt.com/index.htm).

15. The Colorado Supreme Court Office of the Presiding Disciplinary Judge website is available at [www.coloradosupremecourt.com/PDJ/pdj.htm](http://www.coloradosupremecourt.com/PDJ/pdj.htm).

16. CBA members can access these opinions at no cost through Casemaker, available at [www.cobar.org/index.cfm/ID/1749/dpmem/Case-maker](http://www.cobar.org/index.cfm/ID/1749/dpmem/Case-maker).

17. The CBA Ethics Committee website is available at [www.cobar.org/page.cfm/ID/20202](http://www.cobar.org/page.cfm/ID/20202).

18. Rothrock, *Essays on Legal Ethics and Professional Conduct in Colorado* (1st ed., CLECI, 2008).

19. Researchers can access the University of Colorado Law School Library website at [www.colorado.edu/law/lawlib](http://www.colorado.edu/law/lawlib) and the University of Denver Sturm College of Law Library website at [www.law.du.edu/index.php/library](http://www.law.du.edu/index.php/library). Visit the CBA's continuing legal education arm, CBA-CLE, at [www.cobar.org/cle](http://www.cobar.org/cle) or speak to a CBA-CLE customer service representative at (303) 860-0608 or (888) 860-2531.

20. *Annotated Model Rules of Professional Conduct* (6th ed., ABA, 2007).

21. *Compendium of Professional Responsibility Rules and Standards* (2010 ed., ABA, 2009).

22. See [www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html).

23. *Shepard's Professional and Judicial Conduct Citations* (LexisNexis, 2010).

24. Bureau of National Affairs, *ABA/BNA Lawyer's Manual on Professional Conduct* (1998).

25. Hazard, Jr. and Hodes, *The Law of Lawyering* (3d ed., Aspen Publishers, 2010).

26. *Restatement (Third) of the Law Governing Lawyers* (American Law Institute, 2000). Although this title is released as part of the third series of the Restatements, this is the first treatment of this topic by the American Law Institute.

27. Wolfram, *Modern Legal Ethics*, Hornbook Series Practitioner's Edition (West Publishing, 1986); Wolfram, *Modern Legal Ethics*, Hornbook Series Student Edition (West Publishing, 1986).

28. Freedman and Smith, *Understanding Lawyer's Ethics* (3d ed., Lexis Nexis, 2004).

29. Rotunda, *Legal Ethics in a Nutshell* (3d ed., Thomson-West, 2007).

30. Rhode and Hazard, Jr., *Professional Responsibility and Regulation* (2d ed., Foundation Press, 2007).

31. Legal Information Institute, available at [law.cornell.edu/ethics](http://law.cornell.edu/ethics).

32. Legaethics.com: Focusing On The Ethical Issues Associated With The Use Of Technology By Legal Professionals, available at [www.legal-ethics.com](http://www.legal-ethics.com). ■