

## Colorado Small Firm Business Manual and Risk Management Checklist

A written manual of firm policies is an important tool for managing risk. It enables you and your staff to know of and put into action the necessary preventative and curative steps when issues of professional conduct arise. You should ensure that each employee receives a copy of the manual. New hires should be trained to follow every procedure that applies to that person's position. In addition, all staff should attend a regular "refresher course" on policies listed in the manual. By fostering awareness in this way, the policies become an organic part of the firm's operation.

The following checklist details items and issues that this business manual might cover. It also provides practitioners with guidance in the form of citations to the Colorado Rules of Professional Conduct and other resources to consider in developing or refining a business manual to manage risk.

<u>Topics for the Business Manual to Cover</u>	<u>Resources and Ethical Considerations</u>
Client intake?	<ul style="list-style-type: none"> <li>• <a href="#">Colo. RPC 1.4</a>; <a href="#">1.2(c)</a>; <a href="#">1.7</a></li> <li>• See Assessment #2, <a href="#">Communicating in An Effective, Timely and Civil Manner</a>, and Assessment #4, <a href="#">Avoiding Conflicts of Interest</a></li> </ul>
Engagement letters?	<ul style="list-style-type: none"> <li>• Engagement letters establish the firm's contractual relationship with the client, including the scope of the engagement and the fees to be charged.</li> <li>• See Assessment #2, <a href="#">Communicating in An Effective, Timely and Civil Manner</a></li> <li>• Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), § 2.5.1</li> <li>• C.R.C.P. 23.3</li> <li>• <a href="#">Colo. RPC 1.5</a></li> </ul>
Does the engagement letter make clear the firm's check cashing policy?	<ul style="list-style-type: none"> <li>• See Assessment #2, <a href="#">Communicating in An Effective, Timely and Civil Manner</a></li> <li>• Colo. RPC <a href="#">1.4</a>, <a href="#">1.5(f)</a></li> </ul>
Declination letters?	<ul style="list-style-type: none"> <li>• This letter explains why your firm can't take the case.</li> <li>• <a href="#">Colo. RPC 1.4</a></li> </ul>
Dis-engagement letters?	<ul style="list-style-type: none"> <li>• This letter explains why your firm is withdrawing.</li> <li>• <a href="#">Colo. RPC 1.4</a></li> <li>• See Assessment #2, <a href="#">Communicating in An Effective, Timely and Civil Manner</a></li> </ul>
Warning letters, which explain the serious consequences that could result from the client's announced intention to disregard the firm's advice?	<ul style="list-style-type: none"> <li>• Warning letters make it clear what the firm's advice has been, a defense to a later malpractice claim if the client disregards the advice.</li> <li>• <a href="#">Colo. RPC 1.4</a></li> </ul>

	<ul style="list-style-type: none"> <li>• See Assessment #2, <a href="#">Communicating in An Effective, Timely and Civil Manner</a></li> </ul>
Informational letters, explaining what the firm has done for the client recently and what the firm plans to do in the near future?	<ul style="list-style-type: none"> <li>• Clients appreciate being informed about progress in their matter, and being given the opportunity to provide input. An informational letter that accompanies the fee billing helps explain the charges.</li> </ul>
Are informational letters sent to the client on a regular basis, e.g. monthly?	
Do all firm communications identify the author's and sender's title and contact information?	<ul style="list-style-type: none"> <li>• Communication is enhanced if the client has a direct-dial number or email address.</li> </ul>
File retention?	<ul style="list-style-type: none"> <li>• <a href="#">Colo. RPC 1.16A</a></li> <li>• <a href="#">CBA Formal Opinion 104</a>, Surrender of File to the Client Upon Termination of the Representation</li> <li>• Mark Bassingthwaighte, <a href="#">How Long Do We Need to Keep Our Closed Files?</a>, ALPS Corp., May 17, 2016.</li> <li>• See Assessment #5, <a href="#">Maintaining Appropriate File and Records Management Systems</a></li> </ul>
Where to find a list of bank accounts and numbers (and passwords, etc.)?	<ul style="list-style-type: none"> <li>• If the managing partner or compliance counsel is on vacation or unavailable, other partners may need this information.</li> </ul>
Policy for returning phone calls within a certain period of time?	<ul style="list-style-type: none"> <li>• Communication with the client should be timely to avoid client anxiety, confusion, or uncertainty.</li> <li>• <a href="#">Colo. RPC 1.4; 1.3</a></li> <li>• See Assessment #2, <a href="#">Communicating in An Effective, Timely, and Civil Manner</a></li> </ul>
Trust and operating accounts?	<ul style="list-style-type: none"> <li>• <a href="#">Colo. RPC 1.15A; 1.15B; 1.15C; 1.15D</a></li> <li>• Link to Working Group #8 Assessment</li> </ul>
Are there checks and balances to ensure bookkeeper and accountant integrity?	<ul style="list-style-type: none"> <li>• Checks and balances help prevent embezzlement.</li> <li>• <a href="#">Colo. RPC 1.15C(c)</a></li> <li>• See Assessment #8, <a href="#">Ensuring That Reliable Trust Account Practices Are in Use</a></li> </ul>
Does the firm emphasize that an attorney may not pass on credit card processing fees to clients?	
Does the firm have two trusted co-signers for the trust account?	<ul style="list-style-type: none"> <li>• This check and balance helps avoid improper trust account withdrawals.</li> </ul>
Is the trust account statement sent to Compliance Counsel or the managing partner at a confidential (i.e. residential)	<ul style="list-style-type: none"> <li>• This precaution helps prevent staff from destroying or otherwise delaying delivery to the attorney in charge.</li> </ul>

address, so that staff are not able to intercept the account statement?	
Does the firm have a rule that two employees must sign on any disbursements over \$500?	<ul style="list-style-type: none"> <li>• This is another check and balance to encourage integrity and accuracy.</li> </ul>
Does the firm make sure that the issuer bank has cleared a check (for example, settlement funds) before it is deposited into the trust account?	<ul style="list-style-type: none"> <li>• Such a policy prevents the firm from issuing checks from the trust account that are not covered by settlement funds.</li> </ul>
Avoiding the unauthorized practice of law?	<ul style="list-style-type: none"> <li>• Attorneys can be held responsible for the unauthorized practice of law committed by staff.</li> <li>• <a href="#">Colo. RPC 5.5</a></li> <li>• C.R.C.P. 228; <i>People v. Adams</i>, P.3d 256, 265 (Colo. 2010).</li> </ul>
Confidentiality Agreement signed by vendors?	<ul style="list-style-type: none"> <li>• Vendors include process servers, IT maintenance companies, etc.</li> <li>• <a href="#">Colo. RPC 1.6</a></li> </ul>
Office sharing with other lawyers/firms?	<ul style="list-style-type: none"> <li>• <a href="#">Colo. RPC 1.6</a></li> <li>• <a href="#">CBA Formal Opinion 89</a></li> <li>• See Assessment #3, <a href="#">Ensuring That Confidentiality Requirements Are Met</a></li> </ul>
Does the firm minimize shared staff?	
Are confidentiality protections in place with regard to telephone and computer systems?	<ul style="list-style-type: none"> <li>• See Assessment #5, <a href="#">Maintaining Appropriate File and Records Management Systems</a></li> </ul>
Conflict checks?	<ul style="list-style-type: none"> <li>• <a href="#">Colo. RPC 1.7</a></li> <li>• <a href="#">CBA Formal Opinion 57</a></li> <li>• See Assessment #4, <a href="#">Avoiding Conflicts of Interest</a></li> </ul>
Time recording and billing?	<ul style="list-style-type: none"> <li>• <a href="#">Colo. RPC 1.4</a>; <a href="#">1.5</a></li> </ul>
Calendaring deadlines?	<ul style="list-style-type: none"> <li>• Missed deadlines can result in malpractice.</li> <li>• <a href="#">Colo. RPC 1.1</a>; <a href="#">1.3</a></li> </ul>
Response to court-ordered sanctions?	<ul style="list-style-type: none"> <li>• Involve Compliance Counsel if possible.</li> <li>• <a href="#">Colo. RPC 3.4(c)</a></li> </ul>
Response to regulatory investigations?	<ul style="list-style-type: none"> <li>• Involve Compliance Counsel if possible.</li> <li>• C.R.C.P. 251</li> <li>• <a href="#">Colo. RPC 8.1</a></li> </ul>
Response to malpractice claims?	<ul style="list-style-type: none"> <li>• Involve Compliance Counsel; notify carrier</li> <li>• Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), chapter 27, 49.</li> </ul>

Maintaining malpractice coverage?	<ul style="list-style-type: none"> <li>• See C.R.C.P. 265(3) for the minimum requirements for professional liability insurance; for a directory of insurers in Colorado, see <a href="#">ABA LPL Insurance Directory (Colorado)</a>.</li> </ul>
Engaging in business with a client?	<ul style="list-style-type: none"> <li>• Involve Compliance Counsel if possible.</li> <li>• <a href="#">Colo. RPC 1.8</a></li> <li>• <a href="#">CBA Formal Opinion 109</a></li> <li>• See Assessment #4, <a href="#">Avoiding Conflicts of Interest</a></li> </ul>
Opinion letters?	<ul style="list-style-type: none"> <li>• <a href="#">Colo. RPC 1.1</a></li> </ul>
Communications with the media?	<ul style="list-style-type: none"> <li>• Avoid disclosures of client confidences</li> <li>• <a href="#">Colo. RPC 1.6</a></li> </ul>
Disaster recovery?	<ul style="list-style-type: none"> <li>• See Assessment #5, <a href="#">Maintaining Appropriate File and Records Management Systems</a></li> </ul>
Advertising?	<ul style="list-style-type: none"> <li>• <a href="#">CBA Formal Opinion 76</a></li> <li>• <a href="#">Colo. RPC 7.2</a></li> <li>• Lawyers' Professional Liability in Colorado, 2016 Ed. (Michael T. Mihm, ed., CLE in Colo., Inc.), chapter 17.</li> </ul>
Is there a disclaimer on the firm's website to the effect that: "We are not representing you unless and until you sign a retainer agreement with the firm"?	
Succession plan (in case of death or disability)?	<ul style="list-style-type: none"> <li>• This can avoid the need for appointment of Inventory Counsel.</li> <li>• <a href="#">Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (One of Which Is Inevitable)</a>, Office of Attorney Regulation Counsel (2007).</li> <li>• C.R.C.P. 251.32(h)</li> </ul>
Is the manual given to all lawyers and staff?	<ul style="list-style-type: none"> <li>• The manual should be a reference tool.</li> </ul>
Are workshops held at least annually to educate and remind all lawyers and staff of the policies in the business manual?	<ul style="list-style-type: none"> <li>• Refreshing familiarity with firm policies will make the policies part of firm culture.</li> </ul>