

### Working Group #1 Competence Self-Assessment Form

The Colo. RPC 1.1 requires lawyers to provide client competent representation, which includes the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

A lawyer should consider issues of competence when accepting a new matter and when substantively or procedurally expanding an existing matter, *e.g.*, whenever the lawyer addresses a new claim, files counterclaims, identifies other issues not previously considered, when unforeseen issues develop, when interpreting a contract previously drafted or negotiated by the lawyer, or at any point when the procedural course or substantive nature of the matter deviates from that which the lawyer initially envisioned.

This self-assessment form provides only examples of issues to consider and resources to explore, and is not intended to be comprehensive or to provide legal advice.

Do I have the legal knowledge and education to handle this matter? (black letter law)	Yes	No	If you answered NO, consider:	Common Ethical Issues Involving Knowledge-Based Competence	Sample Resources
<ul style="list-style-type: none"> <li>Am I familiar with the governing statutes, rules, and regulations, including limitations, for this matter?</li> </ul>			<ul style="list-style-type: none"> <li>Can I timely acquire the knowledge or obtain the education necessary to handle this matter? What resources are available to me to do so? Can I learn from, associate with, or seek supervision or mentoring from a lawyer with established knowledge in this field?</li> <li>Can I limit the scope of my representation to work within my current knowledge base or within the reasonably expandable scope of my knowledge base?</li> <li>Is the required proficiency that of a general practitioner, or is expertise in a particular field of law required?</li> <li>Can the client provide informed consent (preferably in writing after a full explanation of the competencies necessary) to a limited scope of representation?</li> </ul>	<ul style="list-style-type: none"> <li>A lawyer must understand the form and substance of the disclosure required to be made to client to obtain informed consent. Colo. R.P.C. 1.4</li> <li>A lawyer cannot delegate the duty of competence to the client. <i>See In re Shipley</i>, 135 S. Ct. 1589-90 (2015).</li> <li>A lawyer must not charge a client fees for time spent achieving competence. Colo. RPC 1.5. A lawyer should ask: can I afford this burden for which I will not be compensated by the client?</li> <li>A lawyer who realizes that he or she has a competence problem should immediately seek assistance: covering up incompetence often results in far graver charges of misconduct.</li> </ul>	<ul style="list-style-type: none"> <li>Colo. RPC 1.1 cmt. 6 (a lawyer has a duty to maintain competence by engaging in continuing study and education and by complying with all continuing legal education requirements to which the lawyer is subject).</li> <li>Colo. RPC 1.1 cmt. 2 ("A lawyer can provide adequate representation in a wholly novel field through necessary study").</li> <li>Christopher Sabis and Daniel Webert, "Understanding the "Knowledge" Requirement of Attorney Competence: A Roadmap for Novice Attorneys," 15 <i>Geo. J. Legal Ethics</i> 915 (Summer 2002).</li> <li>Consider Fees and Fee Agreement Checklist for limited scope disclosures and informed consent.</li> </ul>
<ul style="list-style-type: none"> <li>Am I familiar with the governing rules of procedure and court or applicable tribunal rules?</li> </ul>					
<ul style="list-style-type: none"> <li>Am I familiar with the governing case law?</li> </ul>					
<ul style="list-style-type: none"> <li>Am I familiar with any recent changes in applicable substantive or procedural law?</li> </ul>					
<ul style="list-style-type: none"> <li>Am I familiar with the relevant factual context and subject matter?</li> </ul>					
<ul style="list-style-type: none"> <li>Am I familiar with the governing rules of ethics?</li> </ul>					

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<b><u>Do I have sufficient expertise, training, or access to mentoring or other assistance such that I have the legal skills to handle this matter? (application of skills to black letter law)</u></b>	<b>Yes</b>	<b>No</b>	<b>If you answered NO, consider:</b>	<b>Common Ethical Issues Involving Skills-Based Competence</b>	<b>Sample Resources</b>
<ul style="list-style-type: none"> <li>Have I handled client matters in the same practice area in the past?</li> </ul>			<ul style="list-style-type: none"> <li>Can I timely acquire the skills necessary to handle this matter? What resources are available to me to do so?</li> <li>Can I learn from, associate with, or seek supervision or mentoring from a lawyer with established skills in this field?</li> <li>Can I limit the scope of my representation to work within my current skill set or within the reasonably expandable scope of my skill set?</li> </ul>	<ul style="list-style-type: none"> <li>The scope of a matter will affect the competence that the lawyer will need to possess.</li> <li>A lawyer must understand the form and substance of the full disclosure required to be made to client to obtain informed consent. Colo.R.P.C. 1.4</li> <li>A lawyer must not charge a client fees for time spent achieving competence. Colo. RPC 1.5. The lawyer should ask: can I afford this burden for which I will not be compensated by the client?</li> <li>If a lawyer contracts with or retains other lawyers outside the lawyer's own firm to assist in the representation, the lawyer must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. Colo. RPC 1.1 cmt. 6.</li> </ul>	<ul style="list-style-type: none"> <li>Colo. RPC 1.1 cmt. 5 ("An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible.").</li> <li>Colo. RPC 1.2 (concerning limiting the scope of representation).</li> <li>Colo. RPC 1.1 cmt. 2 ("A lawyer can provide adequate representation in a wholly novel field through necessary study").</li> <li>Colo. RPC 1.1 cmt. 8 (lawyers must keep abreast of "changes in the law and its practice, and changes in communications and other relevant technologies"</li> <li>Consider Fees and Fee Agreement Checklist for limited</li> </ul>
<ul style="list-style-type: none"> <li>Have I handled client matters of similar complexity in the past?</li> </ul>					
<ul style="list-style-type: none"> <li>Do I possess all licenses and authorizations necessary to carry out the representation?</li> </ul>					
<ul style="list-style-type: none"> <li>Can I analyze precedent, issue spot, evaluate evidence and draft legal documents in this matter?</li> </ul>					
<ul style="list-style-type: none"> <li>Am I familiar with and employing relevant technologies and modes of communication?</li> </ul>					
<ul style="list-style-type: none"> <li>Does this matter require compliance with different rules, regulations, or procedures than that with which I have had prior experience?</li> </ul>					

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				<ul style="list-style-type: none"><li>If lawyers from more than one firm are providing legal services in the same matter, the lawyers should consult with the client and each other about the scope of the representations and the allocation of responsibility among them. Colo. RPC 1.1 cmt. 7.</li></ul>	scope disclosures and informed consent.
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<u>Do I have the necessary resources available so that I can adequately prepare and offer thorough representation?</u>	Yes	No	If you answered NO, consider:	Common Ethical Issues Involving Resource-Based Competence	Sample Resources
<ul style="list-style-type: none"><li><u>Time</u><ul style="list-style-type: none"><li>➤ Do I have the time to handle this matter without neglecting existing professional or personal obligations? Conversely, are my other obligations an impediment to providing adequate representation?</li><li>➤ Assuming I see this matter to conclusion (or through the full scope of the limited representation), do I have the time available to investigate and develop all factual aspects of the matter?</li><li>➤ Assuming I see this matter to conclusion (or through the full scope of the limited representation), do I have the time available to investigate and develop all legal aspects of the matter?</li><li>➤ Is this particular client likely to have needs or preferences that will</li></ul></li></ul>			<ul style="list-style-type: none"><li>Do I need or want to decline this representation? If so, what form and substance should the communication(s) declining the representation take?</li><li>Do I need to or would I be prudent to refer the matter to a lawyer with the requisite skill set and the time to investigate and handle the matter?</li></ul>	<ul style="list-style-type: none"><li>Lawyers may not have in hand or have reasonable access to the documentation necessary to make appropriate factual assertions and legal arguments. Therefore, lawyers will need to devote the time to develop what is necessary to perform, adequately, the representation.</li><li>Failure to spend time investigating the factual and legal bases for an action could result in a finding that a matter is frivolous under Colo. RPC 3.1 or could expose a lawyer to sanctions under C.R.C.P. 11.</li><li>Making representations without due diligence or expressing insufficiently qualified opinions may violate duties to third parties under rules of professional conduct and other sources of legal authority.</li></ul>	<ul style="list-style-type: none"><li>ABA Formal Ethics Op. 441</li><li><i>In re Nunnery</i>, 725 N.W. 2d 613 (Wis. 2007) (suspending a lawyer for two months because he did not conduct a meaningful inquiry into the veracity of suspicious documents presented to him by his client).</li><li>Colo. RPC 3.1 (lawyers are required to “inform themselves about the facts of their clients’ cases and the applicable law”).</li><li>C.R.C.P. 11 (the signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well-grounded in fact . . . )</li></ul>

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require additional time? If so, do I have the time, patience or other appropriate resources to handle, properly, this matter?					<ul style="list-style-type: none"><li>• <i>Omnicare v. Laborers</i>, 135 S.Ct. 1318 (2015) (the accuracy of "expressions of opinion [depends on] considering the foundation [an investor] would expect an issuer to have before making the statement"</li></ul>
<ul style="list-style-type: none"><li>• <u>Financial Resources and Reserves</u><ul style="list-style-type: none"><li>➤ Am I charging a fee that is adequate to support developing the legal aspects of the matter?</li><li>➤ Am I charging a fee that is adequate to support investigating and developing the factual aspects of this matter?</li><li>➤ Do the economic realities of my business model support my ability to access the professional advice of others who can assist me to understanding the technical aspects of the matter, be they attorneys, accountants, engineers, or other experts?</li><li>➤ Do I have sufficient financial liquidity to support the fee structure or payment timing of this representation?</li><li>➤ Do the economic realities of my business model support my ability to assume the financial risk involved if problems arise in this representation?</li></ul></li></ul>			<ul style="list-style-type: none"><li>• Can I modify my fee structure so that I can provide adequate representation?</li></ul>		

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<ul style="list-style-type: none"> <li>• <u>Staffing</u> <ul style="list-style-type: none"> <li>➤ Do I have sufficient staff-hours available to handle this matter?</li> <li>➤ Do those staff members have adequate knowledge and training to handle this matter?</li> <li>➤ Do those staff members have adequate skills to handle this matter?</li> <li>➤ Do those staff members have any other constraints that would reasonably interfere with their otherwise anticipated level of performance?</li> </ul> </li> </ul>			<ul style="list-style-type: none"> <li>• Can I timely hire the necessary staff?</li> <li>• Can I timely train existing staff to ensure that they have adequate knowledge or skills to handle the matter?</li> <li>• Can I adequately supervise the necessary staff?</li> </ul>	<ul style="list-style-type: none"> <li>• Lawyers with supervisory authority over non-lawyers must make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer. Colo. RPC 5.3(b).</li> <li>• Lawyers must take into account that non-lawyers do not have legal training and are not subject to professional discipline. Colo. RPC 5.3 cmt. 1.</li> </ul>	
<ul style="list-style-type: none"> <li>• <u>Infrastructure</u> <ul style="list-style-type: none"> <li>➤ Do I have adequate access to research resources to answer legal questions?</li> <li>➤ Do I have systems in place to handle the electronic data involved in this matter?</li> <li>➤ Do I have systems in place to protect the privacy and security of data in this matter?</li> </ul> </li> </ul>			<ul style="list-style-type: none"> <li>• Can I contract with or retain other lawyers outside my firm who have adequate infrastructure to handle this matter?</li> </ul>		<ul style="list-style-type: none"> <li>• Colo. RPC 1.1 cmt. 8 (lawyers must keep abreast of “changes in communications and other relevant technologies”).</li> <li>• Ellie Margolis, “Surfin’ Safari – Why Competent Lawyers Should Research on the Web,” 10 <i>Yale J. L. &amp; Tech.</i> 82 (2007) (noting that rules of professional conduct, read together, “create an ethical obligation to perform sufficient research to effectively advocate on behalf of a client).</li> </ul>

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<ul style="list-style-type: none"> <li>• <u>Advice</u> <ul style="list-style-type: none"> <li>➤ Do I have a relationship with at least one other lawyer with whom I can consult for advice or assistance as to substance, procedure, or questions of judgment on this matter?</li> <li>➤ Do I have systems in place to ensure that I receive regular, honest, and relevant feedback on my work product?</li> </ul> </li> </ul>			<ul style="list-style-type: none"> <li>• Can I timely associate with at least one lawyer with whom I can reliably consult for advice or assistance on this matter?</li> </ul>	<ul style="list-style-type: none"> <li>• Without a sounding board or someone who can offer a different perspective, lawyers can fall prey to bad judgment and echo-chamber thinking.</li> </ul>	
<ul style="list-style-type: none"> <li>• <u>Willingness</u> <ul style="list-style-type: none"> <li>➤ Is this matter sufficiently interesting to me to ensure that I develop the factual and legal aspects of this matter?</li> <li>➤ Am I constrained in providing competent representation by my personal circumstances (including medical issues) or my personal feelings about the client or the matter?</li> <li>➤ Will this representation create any peer pressure or image issues with which I am reluctant or not able to cope, reasonably?</li> </ul> </li> </ul>			<ul style="list-style-type: none"> <li>• Do I need or want to decline this representation? If so, what form and substance should the communication(s) declining the representation take?</li> <li>• Do I need to or would I be prudent to refer the matter to a lawyer with the requisite skill set and the interest to investigate and handle the matter?</li> </ul>		