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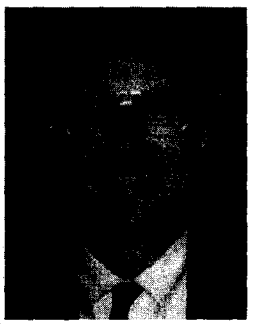
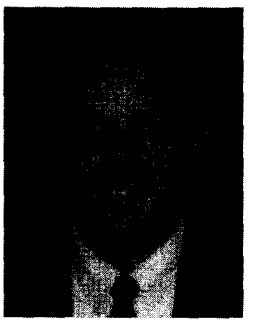
Legislatures in the Twenty-First Century: Traditions in Transition

THE ATTORNEY-CLIENT RELATIONSHIP AND LEGISLATIVE LAWYERS: THE STATE LEGISLATURE AS ORGANIZATIONAL CLIENT



Douglas G. Brown
Director
Office of Legislative
Legal Services
Colorado General
Assembly



Dan L. Cartin
Senior Staff Attorney
Office of Legislative
Legal Services
Colorado General
Assembly[1]

The duties of legislative lawyers employed by the Office of Legislative Legal Services (OLLS) of the Colorado General Assembly have changed and grown in recent years. The OLLS has fifty employees, approximately twenty-five of whom are attorneys. The formal duties of the nonpartisan office relate to bill drafting, statutory publication, review of executive agency rules, review and comment on proposed initiated measures, and provision of general legal services as in-house counsel for the General Assembly.[2] For several years, legislative lawyers have been called upon to play the role of legal counselor in addition to the traditional roles of legal wordsmith and researcher. It is the evolving role of legal counselor or advisor that may have caused legislators to raise questions in recent years relating to the lawyer's ethical obligations to and relationship with the legislator. Those questions provided the impetus to examine whether an attorney-client relationship exists in the legislative employment setting for a legislative lawyer, and, if so, who the client is.

The Colorado Rules of Professional Conduct were the primary source of guidance for that examination.[3] The Rules describe the professional responsibility of all Colorado attorneys. The "SCOPE" portion of the Rules states that "The Rules simply provide a framework for the ethical practice of law." That framework, together with historical practices, provides the basis for the position that an attorney-client relationship exists between the legislative lawyer and the legislature as an organization.

The Attorney-Client Relationship

What, exactly, is the attorney-client relationship? Generally, the attorney-client relationship is established when it is shown that a client seeks and receives the advice of a lawyer on the legal consequences of the client's past or contemplated actions.[4] The relationship of attorney and client is based upon contract, which may be implied by conduct of parties, and general rules as to the making of a contract govern in determining whether or not the relationship has been created.[5] "Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact."[6]

The Colorado Rules of Professional Conduct contain principles for guiding a lawyer in this relationship. The difficulty in applying the Rules to legislative lawyers is rooted in the different roles of legislative and private lawyers. Specifically, a legislative lawyer's obligations and duties in the legislative employment setting are distinguishable from those of a lawyer engaged in representing a private client. The expectation is that a legislative lawyer works for all sides of a controversy; there is no private gain for the client in the usual sense; and conflicts are resolved in the legislative, not the judicial, process.

A lawsuit may involve the submission of a private dispute to the judicial system for personal or adversarial conflict resolution and the final adjudication of the personal, financial, or business rights of the parties. Strict rules of evidence and

precise instructions on the law of the case may apply. That lawsuit is different from the submission of a public policy issue to consideration and debate by legislators in an open, if sometimes adversarial, forum subject to the checks and balances usually present in a legislative policy-making process. Thus, the conflict of interest that prohibits two lawyers in the same law firm from representing opposing parties in a lawsuit is unlike the situation presented when legislative lawyers engage in bill or amendment drafting for legislators with opposing views on a public policy issue. The differences arising from these distinct employment settings complicate the determination of the attorney-client relationship and related ethical requirements for legislative lawyers.[7]

Applying Ethical Rules To Legislative Lawyers

The difficulty in applying the Colorado Rules of Professional Conduct to the roles and processes found in legislative employment does not allow legislative lawyers to disregard the possibility that an attorney-client relationship exists in the legislative employment setting. A legislative lawyer is an attorney-at-law required by law to be licensed to practice in Colorado and is subject to the Rules. In Colorado, legislative lawyers are governmental lawyers performing several distinct services for legislators: The lawyer is a legislative drafter, a provider of advice through legal research and opinions, "in-house counsel" for the legislature, members, legislative committees, and other legislative service agencies, and representational counsel in legal disputes involving the legislature.[8]

Legislative lawyers in Colorado have traditionally maintained that no attorney-client relationship exists by virtue of the performance of legislative staff duties between a legislator and a legislative lawyer. Unlike California and Tennessee, for example, Colorado does not define statutorily the attorney-client relationship as one maintained between legislative lawyers and individual members of the legislature.[9] At least one result of Colorado's approach is to avoid the appearance that each of the one hundred legislators is a client and that a legislative lawyer is plagued with widespread conflict of interest problems in working with legislators in the bill and amendment drafting process.

Today, this position is unresponsive to the reality of the legislative lawyer's role and relationship with legislators and the state legislature. Rule 1.13 of the Colorado Rules of Professional Conduct, entitled "Organization as Client," provides a basis for re-evaluating that position.[10] Rule 1.13 is designed primarily for the corporate counsel situation. However, it is not limited to that situation and lends itself to the conclusion that an attorney-client relationship exists between the legislative lawyer and the legislature as the organizational client. The following five points from Rule 1.13 provide the framework for this conclusion:

1) A lawyer employed by an organization represents that organization and owes primary allegiance to the organization itself, and not its individual employees, representatives, or other persons connected with the entity.

2) A lawyer may also represent any members, employees, or other constituents of the organization, but only when such representation will not affect the lawyer's allegiance to the entity itself or result in a conflict of interest.

3) When a constituent of an organizational client communicates with the organization's lawyer in the constituent's organizational capacity, the communication is protected by the rules on confidentiality.[11]

4) The duty defined in Rule 1.13 applies to governmental organizations.

5) Defining precisely the identity of the client and prescribing the resulting obligations of such

lawyers may be more difficult in the government context.

The Legislative Institution As The Organizational Client

Pursuant to Rule 1.13, legislative lawyers maintain the attorney-client relationship with the state legislature, as an organization, and not with each legislator. The legislature acts through its duly authorized "constituents." The comment to Rule 1.13 provides in part that "'Other constituents' as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations." In the legislative setting, this includes not only state legislators but also the legislature's staff and employees. However, the legislative lawyer owes allegiance to the legislature itself, and not to the legislators, staff, and employees.

This means that the legislative lawyer must develop a perspective which allows the lawyer to view professional behavior in the context of what is in the best interests of the legislature as an institution.

It seems reasonable to view the state legislature as a public institution. It is created by the state constitution and its powers stem from the people of the state. In a sense, the legislature is the manifestation of self-government through elected representatives. Members of one political party may attain a majority in one or both houses and elect the leadership. In this way, legislative leaders assume responsibility for management of the legislative institution. But the legislative institution and the legislative process are, in a sense, timeless. If the institution and the process are "owned," the "owners" are the citizens of the state. Political party control, issues, and lobbyists come and go. Members and legislative staff — the "constituents" of the institution under Rule 1.13 — also come and go. The institution and the process remain.

The legislative institution performs several functions, but the law-making processes are probably of primary importance. Proposed policy is framed in the form of legislative measures that are considered, discussed, amended, voted upon, and enacted and that become part of the living law of the state.

In this connection, the institutional interests of the legislature are served if the members and legislative staff faithfully observe the basic rules that govern the legislative process. Examples are rules of legislative procedure contained in the state constitution requiring that each bill have a single subject and that general appropriation acts contain only appropriations and not substantive law;[12] rules adopted by the legislature, often based on a constitutional grant of authority, to govern the proceedings of both houses;[13] and statutes that require financial disclosure by legislators, mandate open meetings and public notice of those meetings, and describe ethics requirements for legislators.[14] These rules are aimed at a fair and open deliberative process. Legislative lawyers who know and understand these rules and who inform members of these rules and their importance are exercising their professional responsibility.

The enacted laws of a state receive a presumption of constitutionality when reviewed by the courts. The legislative lawyer serves legislative institutional interests by advising legislators about the binding effects of such laws and the consequences of noncompliance.

It is in this sense that the legislative lawyer owes primary allegiance to the legislature itself as the lawyer's institutional or organizational client and is guided by the constitution, statutes, and legislative rules in determining how to exercise professional responsibilities.

Representation Of Legislators And Constituents

Under Rule 1.13, a legislative lawyer may also represent any legislator, employee, or other constituent of the legislative institution, but only in those instances in which such representation will not affect the lawyer's allegiance to the legislature, and also subject to the provisions of the conflict of interest provisions of the Rules. Examples of this principle are found in several legislative settings. The lawyer may provide a legal opinion requested

by a legislator, either orally or in writing, on the effect of a bill, amendment, or some other action, for use by that legislator in committee or debate. A legislative lawyer may be requested to explain the legal effect of a bill or amendment before a committee or to prepare a legislator for testimony on a bill or amendment. Or a legislator may request the lawyer to perform legal research or provide advice on the feasibility of legislation.

In this role, the legislative lawyer is sometimes faced with conflicting responsibilities to the legislator, with whom the lawyer occupies a position of trust and confidentiality, and to the legislative process in general. In dealing with legislators, staff, employees, and other constituents, Rule 1.13 requires a legislative lawyer to proceed as is reasonably necessary in the best interest of the organization when the lawyer knows about an act, omission, or a related intention which is a violation of a legal obligation of the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization. The lawyer should take into account the seriousness of the violation and its consequences, the lawyer's role, the role and motives of the person involved, organization policies, and any other relevant consideration. Possible measures include asking reconsideration, seeking a separate opinion, or referring the matter to a higher authority in the organization.

The lawyer should explain the identity of the client — the legislative institution — when it is apparent that the legislature's interests are adverse to those of the constituent with whom the lawyer is dealing. General examples of such a situation include a legislator who insists on taking any action violative of rules or statutes that is not in the best interests of the legislature as an institution. A direct example is a legislator who is an adverse party to the state legislature in ongoing litigation who requests advice from a legislative lawyer relative to that litigation. Practically, the instances when it may be necessary for the legislative lawyer to have the matter reviewed by a higher authority in the organization may be rare. Under such circumstances, the lawyer must have a sense of the professional behavior that serves the legislature as an organizational client under Rule 1.13.

Confidential Communications

In Colorado, a statutory duty of confidentiality is owed by a legislative lawyer to a legislator in connection with drafting that legislator's bills and amendments.[15] While the statutory duty of confidentiality overlaps with attorney-clientmatters, its origins may be separate from the Rules of Professional Conduct. The statutory requirement may be rooted in the sound public policy of encouraging a member to ask that a bill be prepared without fear of public revelation before the idea is fully explored and developed.

The statutory duty of confidentiality is separate and distinct from the duty of confidentiality that arises under Rule 1.13 when a legislator communicates with a legislative lawyer. Under Rule 1.13, when a legislator or other constituent of the legislative institution communicates with a staff attorney in that person's organizational capacity, the lawyer generally may not reveal the communication without the person's consent.[16] "This does not mean, however, that constituents of an organizational client are the clients of the lawyer."[17] Nonetheless, Rule 1.13 lends itself to the day-to-day activities that legislative lawyers perform for legislators that require confidentiality and are in addition to bill drafting. Rule 1.13 allows the legislative lawyer to maintain the attorney-client relationship with the institution *and* the confidentiality of a legislator's communications to that lawyer.

The Voice of the Organization – A Dilemma

As noted above, the precise definition of the client and resulting obligations is more difficult in the government context. Rule 1.13 and the corporate counsel analogy raise some questions: Who speaks for the state legislature? Who holds the legislative lawyer accountable in a manner similar to the shareholders or board of directors of a corporation?

Sometimes the enacted law or legislative rules do not provide clear guidance to the legislative lawyer in search of instruction as to what is in the best interests of the legislative institution. When these interests are unclear or when there are conflicting

instructions, who speaks for the legislative institution? The majority vote of each house is perhaps the best guide, but it is unrealistic to expect routine resolution of this mundane dilemma through legislative action. In the absence of clear direction who speaks for the organizational client? This probably depends on the circumstances.

When a legislative lawyer is acting as the counsel of record for the legislature in a court proceeding: In Colorado, the legislature passed a statute which authorizes the Committee on Legal Services (COLS) to retain counsel to represent legislative interests.[18]

When the General Assembly seeks to commence a legal action in court, a joint resolution is adopted by both houses. The joint resolution authorizing the commencement of the action often provides general guidance as to the institutional interests which justify the action.

When the Colorado General Assembly "or either house thereof or any committee thereof, or any member or agency of the legislative branch" is sued, application is made to the Committee for legal representation. Under Rule 1.13, the legislative defendant is the client and the attorney-client relationship is between that party and retained counsel. Often, however, the COLS will aid in articulating the interest of the legislative defendant, especially when the named defendant is the General Assembly.

When a legislative lawyer is drafting or reviewing a legislative contract for the purchase of goods or services as in-house counsel for the legislature: The institutional interests of the legislature seem clearer here. The contract should be in good form and protect the business interests of the General Assembly, including the ability to conduct legislative business smoothly and the assurance that the goods and services are of an acceptable level of quality. In Colorado, the constitution requires that the contract for legislative printing for each legislative session be put out to bid.[19] The contract is jointly entered into by the House of Representatives and the Senate, and the Chief Clerk and the Secretary are the institution's constituents responsible for articulating the interests of the organizational client. In addition, statutes assign the Executive Committee of the Legislative Council general responsibility for legislative management issues, especially during the interim.[20] This committee consists of the Speaker of the House, the President of the Senate, the majority leaders, and the minority leaders. The Executive Committee, which may be analogous to a corporation's board of directors, is one source for articulation of legislative institutional interests relating to legislative management.

When a legislative service agency or a legislative lawyer issues a legal opinion in the name of the legal services agency: Because the OLLS is a nonpartisan legal services agency, issuance of legal opinions is viewed as a delicate matter. Section 2-3-505, C.R.S., prohibits employees of the OLLS from lobbying for or against pending legislation.

The preservation and advancement of the reputation of the OLLS as an objective, competent, and responsive legislative service agency is arguably an important legislative institutional interest. The potential use of such opinions to accomplish policy or legislative strategic purposes which are not viewed as being within the scope of the OLLS's responsibility poses a risk of damaging the reputation of the OLLS. However, the constituents of the institution, i.e., legislative leaders, legislative committees, and legislators, have expressed a strong need for the provision of objective and high quality advice about what the law is and what it means in the context of legislative deliberations.

In attempting to balance these interests, the OLLS has developed a footnote which is attached to every legal opinion stating that the provision of the legal opinion is in response to a legislative request, is prepared in the performance of the role of in-house counsel, is not an official legal position of the legislature, is not binding on the legislators, and is intended for use by them in the performance of their legislative duties and functions.

When a legislative lawyer is acting as a bill drafter: The institutional interest which should guide the legislative lawyer acting as a bill drafter should be to draft a bill which accomplishes the legislator's purpose in a clear and effective manner.

The purpose of the sponsor is usually to effect a change in the statutory law. The bill draft should also comply with requirements of the applicable provisions of the constitution, statutes, and legislative rules. Competent bill drafting furthers the interest of the institution in deciding issues based on policy considerations, not based on unclear drafts with ambiguities that cause confusion about the effects of a bill.

On a personal and professional level, the relationship between the legislative lawyer acting as a bill drafter and the sponsoring legislator has many parallels to the traditional attorney-client relationship. What is the difference in the relationship between a legislator working closely with a staff attorney on the legislator's "most important bill of the session" and the relationship between a private attorney and a client who seeks a will or a contract that addresses a personal or business relationship? While the personal interests of the client may predominate in the latter situation, the nature of the professional relationship can be almost indistinguishable. The client's confidence in the attorney's competence and discretion are important to the accomplishment of the purpose behind the preparation of a bill, a will, or a contract.

The legislator's confidence in the legislative lawyer's competence and discretion should be, and probably is, served and protected under a construction of the legislative lawyer's ethical obligations which is based on the proposition that primary allegiance is to the legislative institution.

This approach requires that the legislative lawyer develop a perspective which allows the lawyer to view professional behavior in the context of what is in the best interests of the legislature as an institution. While this can be complicated, it has not proven unworkable in the context of the OLLS.[21]

The foregoing examples of the different circumstances and how they have been addressed in Colorado are not exhaustive. Many may find the resolutions unsatisfactory.

Questions involving who speaks for the legislature are difficult ones. Much depends on the common sense of the lawyer acting as counselor to the legislature or legislator, the facts involved, and, hopefully, some historical basis for decision-making. Approaches to these questions, if not answers, will evolve along with the role of the legislative lawyer as attorney for the state legislature.

Experience in Applying the Proposition that the State Legislature is an Organizational Client

During the 1994 and 1995 interims, the OLLS conducted continuing legal education programs which examined this approach and employed case studies illustrating the sometimes difficult ethical choices posed for nonpartisan staff. Both programs featured panels constituted of lawyer and non-lawyer legislators, a law professor, the staff counsel for the Colorado Supreme Court Grievance Committee, an attorney in private practice, and a retired Colorado Court of Appeals judge viewed by many as a national expert on legal ethics. The general reaction of the members was positive and they encouraged involvement of more legislators in this kind of educational experience. Brooke Wunnicke, the retired judge and legal ethics expert, noted the importance of beginning with the question "Who's your client?" She indicated that reliance on Rule 1.13 is sound support for the position that the client is the General Assembly and not its individual members.

Conclusion

The proposal that the treatment of legislative lawyers as having their primary attorney-client relationship with the legislature as an organization is just that: a proposal. While this approach has met with some acceptance among legislators and has proven workable, it has received no formal or official legal or professional sanction. Its acceptance in Colorado could be attributable to factors that may be unique: a part-time citizen legislature, a strong nonpartisan staff tradition, and other elements of the political and legislative culture in this state.

The development of this approach was rooted in the troublesome ambiguity about staff-legislator

relationships and in a belief that legislative lawyers would benefit from an attempt to analyze the rules of professional conduct to provide guidance in the legislative arena. This approach begins to address the ambiguity and provides a platform for further analysis.

Two final points: First, some observers argue for the importance of ethics education, including development of the ability to analyze ethical questions, because they believe that today's public administrators lack confidence in dealing with ethical dilemmas and may be reduced to inaction.[22] This observation suggests that it may benefit all legislative staffers to be sensitive to ethical issues posed in the performance of their duties.[23]

Second, legislators are subject to term limits in twenty-one states. The effect of massive turnover and loss of institutional memory in state legislatures on legislative staffs should not be underestimated. Many express the fear that term limits will increase the influence of the non-elected people on the legislative process — it is often said that the bureaucrats, the lobbyists, and the STAFF will take over. Surely the role of staff will change and there will be reliance on staff in areas previously considered to be the province of the elected members. These changes pose a critical challenge: "How should the staff help the members maintain control of the legislative institution and the legislative process after term limits?"

Today, behavior and actions of legislative staff should have a firm and understandable ethical basis. Tomorrow, the credibility and ability of the staff to perform their work may depend on the strength of the connection between staff actions and commonly accepted ethical principles.

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[1] The assistance of Rebecca C. Lennahan, Deputy Director, and Mona Heustis, Assistant to the Director, is hereby acknowledged.

[2] Parts 5 and 7 of article 3 of title 2, Colorado Revised Statutes, (C.R.S.); article V, section 1, and article XVIII, Colorado Constitution.

[3] See Appendix to Chapters 18 to 20, Colorado Rules of Professional Conduct, Colorado Court Rules, Volume 7A (1990 Repl. Vol.), C.R.S., adopted by the Supreme Court of Colorado, May 7, 1992, effective January 1, 1993. The Rules replaced the Code of Professional Responsibility.

[4] *People v. Bennett,* 810 P.2d 661 (Colo. 1991).

[5] *Klancke v. Smith,* 829 P.2d 464, cert. den. (Colo. App. 1991).

[6] Colorado Rules of Professional Conduct, "Preamble: A Lawyer's Responsibilities."

[7] Some observers would argue that these distinctions result in a conclusion that all or part of the work of legislative bill drafters is not the practice of law.

[8] The duties of legislative lawyers in Colorado specified by statute include, but are not limited to, bill and amendment drafting (§2-3-504 (1) (a), C.R.S.); staff assistance to the Committee on Legal Services (§2-3-503, C.R.S.); review of and comment on initiative petitions (§1-40-105, C.R.S.); review of executive branch agency rules (§25-4-103 (8) (d), C.R.S.); drafting and legal research services to joint legislative oversight committees (2-7-104, C.R.S.); and staff for the Colorado Commission for Achievement in Education, the Telecommunications Advisory Commission, and the Policemen's and Firemen's Pension Reform Commission (§§22-53-301, 24-30-1803, and 31-30-901, C.R.S.).

Instances where the OLLS has acted in a representational capacity for the Colorado General Assembly include, but are not limited to, *Lujan v. Colo. State Board of Education*, 649 P.2d 1005 (Colo. 1982); *General Assembly v. Lamm,* 704 P.2d 1371 (Colo. 1985); *General Assembly v. Lamm*, 738 P.2d 1156 (Colo. 1987); *In re House Bill No. 1353*, 738 P.2d 371 (Colo. 1987); *In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005*, 814 P.2d 875 (Colo. 1991); *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993); and *In re Interrogatories Relating to the Great Outdoors Colorado Trust Fund, Supreme Court, State of Colorado, Case No. 95SA392, (1996).*

[9] See: West's Ann. Cal. Gov. Code §10207 and Tennessee Code Annotated §3-12-106.

[10] Rule 1.13. Organization as Client:

(a) A lawyer employed or retained by an organization represents the organization which acts through its duly authorized constituents, and the lawyer owes allegiance to the organization itself, and not its individual stockholders, directors, officers, employees, representatives or other persons connected with the entity.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant consideration. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

> (1) asking reconsideration of the matter;
>
> (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
>
> (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders and other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, but only in those instances in which such representation will not affect the lawyer's allegiance to the entity itself, and also subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

[11] See: Rule 1.13 of the Colorado Rules of Professional Conduct: Comment, "The Entity as the Client."

[12] Article V, sections 21 and 32, Colorado Constitution.

[13] Article V, section 12, Colorado Constitution.

[14] Parts 2 and 4 of article 6, and article 18, title 24, C.R.S.

[15] Section 2-3-505, C.R.S.

[16] The Comment to Rule 1.13 of the Colorado Rules of Professional Conduct, "The Entity as the Client," states that "When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule

1.6." It is not clear whether the term "that person" refers to the constituent, the lawyer, or both. For instant purposes, it is assumed that both are communicating in their organizational capacity.

Rule 1.6 (a) of the Colorado Rules of Professional Conduct provides:

> (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

Paragraphs (b) and (c), respectively, allow a lawyer to reveal a client's intention to commit a crime and to reveal a controversy between the lawyer and the client.

[17] The Comment to Rule 1.13 of the Colorado Rules of Professional Conduct, "The Entity as the Client."

[18] Section 2-3-1001, C.R.S. The Office of Legislative Legal Services (OLLS) is sometimes retained by the COLS to represent legislative interests.

[19] Article V, section 29, Colorado Constitution.

[20] Section 2-3-303, C.R.S.

[21] See generally, Purdy, *Professional Responsibility for Legislative Drafters: Suggested Guidelines and Discussion of Ethics and Role Problems*, 11 Seton Hall Legislative Journal 67 (1987).

Purdy proposes Model Rules for Professional Drafters relating to 1) Competence, 2) Loyalty, 3) Scope of duties, 4) Confidentiality, and 5) Declining or terminating representation.

Proposed Drafting Rule 2 on loyalty states that:

> The drafter's primary duty is to the legislative process, and the legislature as a whole. In carrying out this duty, the drafter will work temporarily for one or more legislators on individual projects, but ultimately must act in the interest of the legislature, overall, rather than individuals. Usually these duties will not conflict, and the drafter will normally assist the legislator in achieving his or her goals. Where a reasonable argument supports the action requested by a legislator, the drafter should seek to inform the legislator of relevant considerations, but ultimately accept the legislator's wishes.
>
> Where a legislator, however, intends to act, acts, or seeks to have the drafter act in a way that is clearly violative of the rules of the legislature, in violation of law, substantially deceptive to the legislature, or substantially subverts or is prejudicial to the legislative process, the drafter should take reasonable steps to protect the interests of the legislature and legislative process under Proposed Drafting Rule 3.

Purdy notes that this rule "perhaps suggests the most radical divergence from current practice," and provides a useful discussion of pitfalls of advocacy "for the legislator for whom the drafter is currently working." He notes that the roles of counselor, advisor, intermediary, negotiator, or evaluator are "more useful models for drafters."

In conclusion, Purdy observes that "the most useful function of such rules would be to focus attention on a much neglected but important factor in the legislative process, and stimulate consideration of means to assist the drafter in his or her work."

[22] Cohen, Steven and William B. Eimicke. "Ethics and the Public Administration." *The Annals of the American Academy of Political and Social Science*, 537 (January, 1995): 96-108.

[23] The legislative staff sections of the National Conference of State Legislatures have recently produced a "Model Code of Conduct for Legislative Staff."