Practical Solutions to Elder Financial Abuse and Fiduciary Theft

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A. Introduction

Elder financial abuse and fiduciary theft are on the rise and they come in many different guises. Although the media typically covers a few of the more heinous cases of elder abuse each year, most financial abuses are committed by family members and relatively few of those crimes are ever reported to law enforcement. When a client first meets with you to discuss suspected abuse, or you if happen upon a situation that appears questionable, the options available will vary widely with the particular situation. This presentation will focus on the practical steps practitioners and others may take to investigate and address possible elder abuse when presented with those situations.

B. Recent Studies/Trends in Elder Exploitation

Background:

There are several types of abuse of older people that are generally recognized as being elder abuse, including:

- Physical: e.g. hitting, punching, slapping, burning, pushing, kicking, restraining, false imprisonment/confinement, or giving excessive or improper medication
- Psychological/Emotional: e.g. shouting, swearing, frightening, or humiliating a person. A common theme is a perpetrator who identifies something that matters to an older person and then uses it to coerce an older person into a particular action. It may take verbal forms such as name-calling, ridiculing, constantly criticizing, accusations, blaming, and general disrespect, or non verbal forms such as ignoring, silence or shunning.
- Financial abuse: also known as financial exploitation. e.g. illegal or unauthorized use of a person's property, money, pension book or other valuables (including changing the person's will to name the abuser as heir). It may be obtained by deception, coercion, misrepresentation, undue influence, or theft. The term includes fraudulently obtaining or use of a power of attorney. Other forms include deprivation of money or other property, or by eviction from own home
- Scam by strangers: e.g. worthless "sweepstakes" that elderly persons must pay in order to collect winnings, fraudulent investment schemes, predatory lending, and lottery scams.
- Sexual: e.g. forcing a person to take part in any sexual activity without his or her consent, including forcing them to participate in conversations of a sexual nature against their will; may also include situations where person is no longer able to give consent (dementia)
- Neglect: e.g. depriving a person of food, heat, clothing or comfort or essential medication and depriving a person of needed services to force certain kinds of actions, financial and otherwise. The deprivation may be intentional (active neglect) or happen out of lack of knowledge or resources (passive neglect).

In addition, some U.S. state laws also recognize the following as elder abuse:

- Rights abuse: denying the civil and constitutional rights of a person who is old, but not declared by court to be mentally incapacitated. This

is an aspect of elder abuse that is increasingly being recognized and adopted by nations

- Self-neglect: elderly persons neglecting themselves by not caring about their own health or safety. Self neglect (harm by self) is treated as conceptually different than abuse (harm by others).
- 'Abandonment': deserting a dependent person with the intent to abandon them or leave them unattended at a place for such a time period as may be likely to endanger their health or welfare.

C. Tips for preventing abuse by Agents under a Power of Attorney

- Discuss possible options with your client for choosing the best Agent. For example: family versus professional alternatives.
- Educate both the client and the potential Agent on duties, responsibilities, right's of the client, how to's, documentation, reporting, self-dealing, etc…
- Include a provision for an accounting both annually and after revocation or termination
- Specify limits on any gifts or charitable donations
- Prohibit and educate on joint owner bank accounts versus fiduciary accounts
- Include a provision to require the fiduciary to communicate with the client about the status and nature of their financial affairs
- Consider requiring third party approval (or conferral) for major transactions i.e.: real estate, beneficiary changes, transfers.
- Discuss up front if reasonable fees are allowed or agreed upon.
- Encourage multiple party involvement versus isolation
- Consider co-agent arrangement, with a tiebreaking mechanism in the event of a dispute
- Credit check & Background check

D. Factors to Consider Initially

When a new (or former) client comes into your office alleging that he/she or another is being financially exploited by another, it is imperative that the practitioner assess the situation immediately. The practitioner should consider the following factors, which are listed in no particular order of importance.

- The identities of the client, the purported victim, the alleged abuser(s), and any individuals concerned with the welfare of the purported victim.

- The level of the alleged or suspected financial abuse.

- The size of the purported victim's estate

- The dynamics of the family involved

- The immediacy of the risk

- Is the alleged abuser a fiduciary, e.g., an agent under power of attorney, guardian, conservator, trustee, etc.

- The capacity of the purported victim and/or the ability of purported victim to consent to any questionable transactions

- The purported victim's history of gifting to, or support of, the alleged abuser

- Whether the alleged abuser has taken steps to isolate the alleged victim

- The credibility and possible motives of the person alleging the abuse

- Whether the person raising the alarm appears motivated to stop the abuse and protect the alleged victim's welfare; or whether the reporting person may be more interested in taking over control for their own (potentially nefarious) reasons

- The probative value of any evidence presented by the person alleging the abuse in support of the allegations

- Any history of prior interventions and the outcomes of those interventions

- The potential for retaliation by alleged abuser

- The potential for retaliation by the alleged victim (e.g., the victim disinheriting the intervener) and the intervener's tolerance for assuming the risk

- Whether civil proceedings have been initiated

- Whether criminal proceedings have been initiated; or whether law enforcement has an active investigation

- The ability and willingness of the party to pay for legal and other services to address the potential abuse

- If the client cannot afford legal services, the willingness of the attorney to take on a *pro bono* case, or a case that may become *pro bono* at some point

- The obligations of the attorney if the client is the alleged victim and has diminished capacity; *See* Rule 1.14, Colorado Rules of Professional Conduct

- Others factors to consider?

E. Potential Solutions to Consider

After considering the verifiable facts and assessing the other factors listed above, the practitioner may be able to address the situation using one or more of the following options, which are listed in ascending order of complexity and expense. Please note that each option will have its advantages and disadvantages.

- Talk to the alleged victim about any questionable circumstances.

- If the practitioner has access to the alleged victim and the victim's financial records, search the bank account statements and other financial documents for questionable transactions and any recently executed estate planning documents.

- Order an ownership and encumbrances (O&E) report for any real estate owned by the alleged victim.

- If the practitioner has access to the alleged victim's medical providers and/or medical records, attempt to ascertain whether the alleged victim has diminished capacity.

- Encourage the alleged victim to seek a medical evaluation.

- If appropriate, refer the matter to Adult Protective Services and/or law enforcement officials.

- Alert the alleged victim's banks and other financial institutions, financial advisor and/or attorney of the suspected abuse.

- Confront the alleged perpetrator, either without attorneys involved or through counsel.

- Attempt to arrange a family meeting to discuss the problems and possible solutions, with or without lawyers.

- Attempt to implement a system of checks and balances, and encourage transparency regarding any future transactions.

- Attempt to mediate the problem, with or without lawyers.

- If the suspected abuser is acting under a power of attorney, have the alleged victim revoke the power of attorney and notify the victim's financial institutions, notify the agent, and record the revocation in any county in which the victim owns real estate.

- If a power of attorney is involved, report to the Court to investigate the situation pursuant to C.R.S. §15-14-716.

- If the alleged victim may have diminished capacity, initiate a conservatorship, guardianship and/or seek another type of protective order under C.R.S. Title 15, Article 14.

- If a fiduciary is involved and an estate has already been opened, report the situation to the Court under the Fiduciary Oversight Act, C.R.S. §15-10-501, *et seq.*

- If an estate has already been opened, seek a citation pursuant to C.R.S. § 15-12-723.

- If the client has or obtains requisite standing, seek a civil protection order pursuant C.R.S. § 13-14-101, et. seq.

- If the client has or obtains requisite standing, file a civil action against the purported abuser alleging civil causes of action, e.g., breach of fiduciary duty, breach of confidential relationship, conversion, unjust enrichment, seek the imposition of a constructive trust, a resulting trust, etc.

- Consider bringing a civil action alleging civil theft if the facts warrant it as it may allow treble damages. C.R.S. § 18-4-401(1) (A person commits theft when he "knowingly obtains, retains, or exercises control over anything of value of another without authorization or by threat or deception" with the intent to deprive the other person permanently of the thing of value.) The civil theft statute does not set forth a criminal violation; it establishes a private civil remedy for theft. See *Itin v. Ungar*, 17 P.3d 129, 133 (Colo. 2000). Thus, pursuant to C.R.S. § 13-9-103, a civil theft claim is cognizable by the probate court when the claim is logically related to the estate.

- Once a court proceeding has been initiated, record a *lis pendens* in any county in which the principal owns real estate.

- Others potential solutions to consider?

F. Legal Authority for Specific Solutions

C.R.S. § 15-14-716 Judicial relief.

(1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) The principal or the agent;

(b) A guardian, conservator, or other fiduciary acting for the principal;

(c) A person authorized to make health care decisions for the principal;

(d) The principal's spouse, parent, or descendant;

(e) An individual who would qualify as a presumptive heir of the principal;

(f) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(g) A governmental agency having authority to protect the welfare of the principal;

(h) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(i) A person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

C.R.S. § 15-10-501. Court powers - definitions - application.

(1) Court powers. A court, incident to a court proceeding, possesses and may employ all of the powers and authority expressed in the provisions of this part 5 to maintain the degree of supervision necessary to ensure the timely and proper administration of estates by fiduciaries over whom the court has obtained jurisdiction. Nothing in this part 5 shall be interpreted to limit a court's powers under Colorado law. The powers of a court as

described in this part 5 do not confer jurisdiction over the fiduciaries of nonsupervised trusts, private trusts, agencies created by powers of attorney, and custodial accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., except as provided in paragraph (c) of subsection (2) of this section.

(2) Definitions. As used in this part 5, unless the context otherwise requires:

(a) "Court" means a district court of Colorado and the probate court of the city and county of Denver.

(b) "Estate" means the estate of a decedent; a guardianship; a protective proceeding; a trust, including an implied trust; an agency created by a power of attorney; or a custodial account created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

(c) "Jurisdiction" means, and is restricted to, the personal jurisdiction obtained by a court over a fiduciary as a result of the filing of a proceeding concerning the estate. The filing of a trust registration statement, by itself, shall not constitute a proceeding for the purposes of this part 5.

(3) Application. The provisions of this part 5 shall apply to any fiduciary over whom a court has obtained jurisdiction, including but not limited to a personal representative, special administrator, guardian, conservator, special conservator, trustee, agent under a power of attorney, and custodian, including a custodian of assets or accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S.

C.R.S. § 15-10-502. Initial investigation.

(1) If, during the administration of an estate, a court desires to be informed about the current status of the administration, then the court, on its own motion or the request of an interested person, and without the need to state any reason for its actions, may:

(a) Send a letter to the fiduciary of the estate directing the fiduciary to file with the court one or more of the following documents on or before a date to be determined by the court:

(I) A status report;

(II) An inventory of the current assets of the estate;

(III) An up-to-date interim accounting; or

(IV) A financial report concerning the estate;

(b) Order the fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1) on or before a date to be determined by the court.

(2) When a court has directed a fiduciary to file or appear before the court to submit one or more of the documents described in paragraph (a) of this subsection (1), the fiduciary may request that the documents be placed under security pursuant to rule 20 of the Colorado rules of probate procedure.

C.R.S. § 15-10-503. Power of a court to address the conduct of a fiduciary - emergencies - nonemergencies.

(1) Emergency situations - court action without the requirement of prior notice or hearing. If it appears to a court that an emergency exists because a fiduciary's actions or omissions pose an imminent risk of substantial harm to a ward's or protected person's health, safety, or welfare or to the financial interests of an estate, the court may, on its own motion or upon the request of an interested person, without a hearing and without following any of the procedures authorized by section 15-10-502, order the immediate restraint, restriction, or suspension of the powers of the fiduciary; direct the fiduciary to appear before the court; or take such further action as the court deems appropriate to protect the ward or protected person or the assets of the estate. If a court restrains, restricts, or suspends the powers of a fiduciary, the court shall set a hearing and direct that notice be given pursuant to section 15-10-505. The clerk of the court shall immediately note the restraint, restriction, or suspension on the fiduciary's letters, if any. Any action for the removal, surcharge, or sanction of a fiduciary shall be governed by subsection (2) of this section.

(2) Nonemergency situations - court action after notice and hearing. Upon petition by a person who appears to have an interest in an estate, or upon

the court's own motion, and after a hearing for which notice to the fiduciary has been provided pursuant to section 15-10-505, a court may order any one or more of the following:

(a) Supervised administration of a decedent's estate, as described in part 5 of article 12 of this title. The degree and extent of the supervision shall be endorsed upon the fiduciary's letters, if any.

(b) A temporary restraint on the fiduciary's performance of specified acts of administration, disbursement, or distribution; a temporary restraint on the fiduciary's exercise of any powers or discharge of any duties of the office of the fiduciary; or any other order to secure proper performance of the fiduciary's duty if it appears to the court that, in the absence of such an order, the fiduciary may take some action that would unreasonably jeopardize the interest of the petitioner or of some other interested person. The court may make persons with whom the fiduciary may transact business parties to any order issued pursuant to this paragraph (b). The restraint shall be endorsed upon the fiduciary's letters, if any.

(c) Additional restrictions on the powers of the fiduciary. The restrictions shall be endorsed upon the fiduciary's letters, if any.

(d) The suspension of the fiduciary if the court determines that the fiduciary has violated his, her, or its fiduciary duties. If a court orders the suspension of a fiduciary pursuant to this paragraph (d), the court shall direct that the suspension be endorsed upon the fiduciary's letters, if any.

(e) The removal of the fiduciary. A court may remove a fiduciary for cause at any time, and the following provisions shall apply:

(I) After a fiduciary receives notice of proceedings for his, her, or its removal, the fiduciary shall not act except to account, to correct maladministration, or to preserve the estate.

(II) If a court orders the removal of a fiduciary, the court shall direct by order the disposition of the assets remaining in the name of, or under the control of, the fiduciary being removed.

(III) Cause for removal of a fiduciary exists when removal would be in the best interests of the estate or if it is shown that the fiduciary or the person seeking the fiduciary's appointment intentionally

misrepresented material facts in the proceedings leading to the fiduciary's appointment, or that the fiduciary has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(IV) If a court orders the removal of a fiduciary, the court shall direct that the fiduciary's letters, if any, be revoked and such revocation be endorsed upon the fiduciary's letters, if any.

(f) The appointment of a temporary or permanent successor fiduciary;

(g) A review of the fiduciary's conduct. If a court orders a review of the fiduciary's conduct, the court shall specify the scope and duration of the review in the court's order.

(h) A surcharge or sanction of the fiduciary pursuant to section 15-10-504; or

(i) Such further relief as the court deems appropriate to protect the ward or protected person or the assets of the estate.

C.R.S. § 15-10-504. Surcharge - contempt - sanctions against fiduciaries.

(1) Notice. Except as provided in subsection (3) of this section, notice to a fiduciary concerning any matters governed by the provisions of this section shall be provided pursuant to section 15-10-505.

(2) Surcharge.

(a) If a court, after a hearing, determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court may surcharge the fiduciary for any damage or loss to the estate, beneficiaries, or interested persons. Such damages may include compensatory damages, interest, and attorney fees and costs.

(b) In awarding attorney fees and costs pursuant to this section, a court may consider the provisions of part 6 of this article.

(3) Contempt proceedings against fiduciary. Nothing in this part 5 shall be interpreted to limit or restrict a court's authority to proceed against a

fiduciary for direct contempt as provided in rule 107 of the Colorado rules of civil procedure. In addition, if a fiduciary fails to comply with an order of a court issued pursuant to this part 5, the court may proceed against the fiduciary for indirect contempt as provided in rule 107 of the Colorado rules of civil procedure. A court may initiate indirect contempt proceedings on its own motion or upon the filing of a motion supported by affidavit as described in rule 107 of the Colorado rules of civil procedure.

(4) Sanctions. If a court determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court, after a hearing, may order such other sanctions as the court deems appropriate.

C.R.S. § 15-12-723. Assets concealed or embezzled.

If any personal representative, heir, legatee, creditor, guardian, or conservator or other person interested in the estate of any deceased person or protected person complains to the court, in writing, that any person is suspected to have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased or protected person, or that such person has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidence of or tend to disclose the right, title, interest, or claim of the decedent or protected person to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said district or probate court may cite such suspected person to appear before it and may examine him on oath upon the matter of such complaint. If the person cited refuses to appear and submit to such examination or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail until he complies with the order of the court. All such interrogatories and answers may be in writing and signed by the party examined and filed in the district or probate court.

C.R.S. § 15-14-311. Findings - order of appointment.

(1) The court may:

(a) Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(I) The respondent is an incapacitated person; and

(II) The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance; or

(b) With appropriate findings, treat the petition as one for a protective order under section 15-14-401, enter any other appropriate order, or dismiss the proceeding.

(2) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(3) Within thirty days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

Rule 1.14. Colorado Rules of Professional Conduct – Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the

client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENT

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person

even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

C.R.S. § 13-14-102(1) – (9). Civil protection orders - legislative declaration.

(1) (a) The general assembly hereby finds that the issuance and enforcement of protection orders are of paramount importance in the state of Colorado because protection orders promote safety, reduce violence, and prevent serious harm and death. In order to improve the public's access to protection orders and to assure careful judicial consideration of requests and effective law enforcement, there shall be two processes for obtaining protection orders within the state of Colorado, a simplified civil process and a mandatory criminal process.

(b) The general assembly further finds and declares that:

(I) Domestic violence is not limited to physical threats of violence and harm but includes financial control, document control, property control, and other types of control that make a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs;

(II) Victims of domestic violence in many cases are unable to access resources to seek lasting safety options;

(III) These victims need the assistance of additional court orders to meet their immediate needs for food, shelter, transportation, medical care, and child care at the time they go to court for a civil protection order; and

(IV) These additional court orders are needed not only in cases that end in dissolution of marriage but also in cases in which reconciliation is appropriate, as well as in other cases.

(1.5) Any municipal court of record, if authorized by the municipal governing body; any county court; and any district, probate, or juvenile court shall have original concurrent jurisdiction to issue a temporary or permanent civil protection order against an adult or against a juvenile who is ten years of age or older for any of the following purposes:

(a) To prevent assaults and threatened bodily harm;

(b) To prevent domestic abuse;

(c) To prevent emotional abuse of the elderly or of an at-risk adult;

(d) To prevent stalking.

(2) Any civil protection order issued pursuant to this section shall be issued using the standardized set of forms developed by the state court administrator pursuant to section 13-1-136.

(2.5) Venue for filing a motion or complaint pursuant to this section is proper in any county where the acts that are the subject of the motion or complaint occur, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

(3) A motion for a temporary civil protection order shall be set for hearing, which hearing may be ex parte, at the earliest possible time and shall take precedence over all matters, except those matters of the same character that have been on the court docket for a longer period of time. The court shall hear all such motions as expeditiously as possible.

(3.3) Any district court, in an action commenced under the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S., shall have authority to issue temporary and permanent protection orders pursuant to the provisions of subsection (1.5) of this section. Such protection order may be as a part of a motion for a protection order accompanied by an affidavit filed in an action brought under article 10 of title 14, C.R.S. Either party may request the court to issue a protection order consistent with any other provision of this article.

(3.7) At the time a protection order is requested pursuant to this section, the court shall inquire about, and the requesting party and such party's attorney shall have an independent duty to disclose, knowledge such party and such party's attorney may have concerning the existence of any prior protection or restraining order of any court addressing in whole or in part the subject matter of the requested protection order. In the event there are conflicting restraining or protection orders, the court shall consider, as its first priority, issues of public safety. An order that prevents assaults, threats of assault, or other bodily harm shall be given precedence over an order that deals with the disposition of property or other tangible assets. Every effort shall be made by judicial officers to clarify conflicting orders.

(4) (a) A temporary civil protection order may be issued if the issuing judge or magistrate finds that an imminent danger exists to the person or persons seeking protection under the civil protection order. In determining whether an imminent danger exists to the life or health of one or more persons, the court shall consider when the most recent incident of abuse or threat of harm occurred as well as all other relevant evidence concerning the safety and protection of the persons seeking the protection order. However, the court shall not deny a petitioner the relief requested solely because of a lapse of time between an act of abuse or threat of harm and filing of the petition for a protection order.

(b) If the judge or magistrate finds that an imminent danger exists to the employees of a business entity, he or she may issue a civil protection order in the name of the business for the protection of the employees. An employer shall not be liable for failing to obtain a civil protection order in the name of the business for the protection of the employees and patrons.

(5) Upon the filing of a complaint duly verified, alleging that the defendant has committed acts that would constitute grounds for a civil protection

order, any judge or magistrate, after hearing the evidence and being fully satisfied therein that sufficient cause exists, may issue a temporary civil protection order to prevent the actions complained of and a citation directed to the defendant commanding the defendant to appear before the court at a specific time and date and to show cause, if any, why said temporary civil protection order should not be made permanent. In addition, the court may order any other relief that the court deems appropriate. Complaints may be filed by persons seeking protection for themselves or for others as provided in section 26-3.1-102 (1) (b) and (1) (c), C.R.S.

(6) A copy of the complaint together with a copy of the temporary civil protection order and a copy of the citation shall be served upon the defendant and upon the person to be protected, if the complaint was filed by another person, in accordance with the rules for service of process as provided in rule 304 of the rules of county court civil procedure or rule 4 of the Colorado rules of civil procedure. The citation shall inform the defendant that, if the defendant fails to appear in court in accordance with the terms of the citation, a bench warrant may be issued for the arrest of the defendant and the temporary protection order previously entered by the court shall be made permanent without further notice or service upon the defendant.

(7) The return date of the citation shall be set not more than fourteen days after the issuance of the temporary civil protection order and citation. If the petitioner is unable to serve the defendant in that period, the court shall extend the temporary protection order previously issued, continue the show of cause hearing, and issue an alias citation stating the date and time to which the hearing is continued. The petitioner may thereafter request, and the court may grant, additional continuances as needed if the petitioner has still been unable to serve the defendant.

(8) (a) Any person against whom a temporary protection order is issued pursuant to this section, which temporary protection order excludes such person from a shared residence, shall be permitted to return to such shared residence one time to obtain sufficient undisputed personal effects as are necessary for such person to maintain a normal standard of living during any period prior to a hearing concerning such order. Such person against whom a temporary protection order is issued shall be permitted to return to such shared residence only if such person is accompanied at all times while the person is at or in such shared residence by a peace officer.

(b) When any person is served with a temporary protection order issued against such person excluding such person from a shared residence, such temporary protection order shall contain a notification in writing to such person of such person's ability to return to such shared residence pursuant to paragraph (a) of this subsection (8). Such written notification shall be in bold print and conspicuously placed in such temporary protection order. No judge, magistrate, or other judicial officer shall issue a temporary protection order that does not comply with this subsection (8).

(c) Any person against whom a temporary protection order is issued pursuant to this section, which temporary protection order excludes such person from a shared residence, shall be entitled to avail himself or herself of the forcible entry and detainer remedies available pursuant to article 40 of this title. However, such person shall not be entitled to return to the residence until such time as a valid writ of restitution is executed, filed with the court issuing the protection order, and, if necessary, the protection order is modified accordingly. A landlord whose lessee has been excluded from a residence pursuant to the terms of a protection order is also entitled to avail himself or herself of the remedies available pursuant to article 40 of this title.

(9) (a) On the return date of the citation, or on the day to which the hearing has been continued, the judge or magistrate shall examine the record and the evidence. If upon such examination the judge or magistrate is of the opinion that the defendant has committed acts constituting grounds for issuance of a civil protection order and that unless restrained will continue to commit such acts, the judge or magistrate shall order the temporary civil protection order to be made permanent or order a permanent civil protection order with different provisions from the temporary civil protection order. The judge or magistrate shall inform said defendant that a violation of the civil protection order shall constitute a criminal offense pursuant to section 18-6-803.5, C.R.S., or shall constitute contempt of court and subject the defendant to such punishment as may be provided by law. If the defendant fails to appear before the court for the show cause hearing at the time and on the date identified in the citation issued by the court and the court finds that the defendant was properly served with the temporary protection order and such citation, it shall not be necessary to re-serve the defendant to make the protection order permanent. However, if the court modifies the

protection order on the motion of the protected party, the modified protection order shall be served upon the defendant.

Subsections 9(b) – (21) not included in materials.