So a lawyer can exercise his or her professional responsibilities to the client and fulfill his or her ethical obligation.

Attorney-client relationship:
- Agency relationship in which a lawyer-agent serves the interest of the client.
- Established when a client seeks and receives advice of a lawyer on legal consequences of the client’s past or contemplated actions.
OLLs Position Statement

- No attorney-client relationship between members of General Assembly and OLLs lawyers.
- Attorney-client relationship between the General Assembly, as an organization, and OLLs lawyers.
- Rule 1.13 of the Colorado Rules of Professional Conduct, entitled “Organization as Client”, governs conduct of OLLs lawyers.
- Statutory duty of confidentiality owed to members is distinct from the attorney-client relationship between the General Assembly and OLLs lawyers.

Position statement on the attorney-client relationship in the legislative employment setting

By Douglas Brown, Director and
Dea L. Curtis, Senior Staff Attorney,
Office of Legislative Legal Services,
Colorado General Assembly

The following position statement was developed by the legal staff of the Colorado General Assembly in 1993 in response to a growing number of questions from members to staff that raised attorney-client issues. The Position Statement was distributed to members participating in a 1994 panel discussion on ethics conducted by the Office of Legislative Legal Services. To date, it has not been formally adopted by the Colorado General Assembly, but it is expected to take on the status of official OLLS policy before the 1996 session.

The attorney-client relationship in the legislative employment setting. It is not

Introduction: Who is the client?

The duties of staff attorneys employed by the Office of Legislative Legal Services (hereafter “the Office”) have undergone change and growth over recent years. Central to that change and growth has been the staff attorney’s duties and obligations in the realm of ethics and confidentiality under the statutes and Colorado Rules of Professional Conduct, and issues surrounding questions from those duties and obligations, arise more often than in the past.

Accordingly, the Office believes it is important to clarify who our client is and, consequently hereinafter, set forth the attorney-client relationship the Office perceives as applicable.

Basis for statement of position:

The following points are relevant to the statement of position set forth below regarding the applicable attorney-client relationship:

1. The Office has traditionally maintained that no attorney-client relationship exists by virtue of the performance of legislative staff duties between a member of the General Assembly and a staff attorney.

2. A staff attorney may perform three distinct roles with regard to members of the General Assembly: 1) Legislative draftsman, 2) provider of advice through legal research and opinions, and 3) “in-house counsel” for members, legislative committees, and other legislative service agencies such as the Joint Budget Committee, Legislative Council, and the State Auditor.

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

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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. For several years, legislative lawyers have been called upon to play the role of legal counsel in addition to the 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. 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. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

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

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Office of Legislative Legal Services
Dan L. Carin, Director

Position Statement on Attorney-Client Relationship

SUMMARY OF POSITION

Applying the Rules of Professional Conduct, together with historical practices, the Office of Legislative Legal Services takes the position that the legislative lawyer maintains an attorney-client relationship with the legislature, as an organization, and not with each legislator.

The legislative lawyer is bound to observe requirements that a communication with a legislator be held confidential. However, a legislative lawyer should not be expected to engage in conduct that affects the legislative lawyer's allegiance to the legislature.

The duties of legislative lawyers employed by the Office of Legislative Legal Services and the General Assembly have changed and grown in recent years. The formal duties of the nonpartisan office relate to bill drafting, statutory publication, review of executive agency rules, review and comment on proposed initiative measures, and provision of general legal services as in-house counsel for the General Assembly. Legislative lawyers have been called upon to play the role of legal counsel in addition to the traditional roles of legal wordsmith and researcher.

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. People v. Bennett, 810 P.2d 661 (Colo. 1991). The Colorado Rules of Professional Conduct (appendix to chapters 18 to 20, Colorado Court Rules, Volume 12, Colorado Revised Statutes) describe the professional responsibility of all Colorado
Application of Position Statement

- Legal opinions related to legislation.
- Conflict of interest/ethics questions and opinions.
- Campaign finance, gift and honoraria disclosure, Amendment 41.
- Colorado Open Records Act, Open Meetings Law.
- Ethics and lobbyist complaints under legislative rules.

CRPC 1.13 Organization as Client

Lawyer employed by an organization:
- Represents the organization which acts through its duly authorized "constituents".
- Owes allegiance to the organization itself, not its constituents.
- May represent any of the organization’s constituents when the lawyer’s allegiance to the organization is not affected and no conflict of interest exists.
- Must proceed as is reasonably necessary in the best interest of the organization if the lawyer knows a constituent’s action is likely to result in substantial injury to the organization.
- Must explain the identity of the client to a constituent when it is apparent the organization’s interests are adverse to the constituent.

The duty defined in CRPC 1.13 applies to governmental organizations.
Statutory Duty of Confidentiality

- Duty to individual members, not to organization.
- Duty of all OLLS employees, not just lawyers.
- Applies to:
  - Prior to introduction, bills and amendments;
  - Documents prepared in response to bill or amendment requests;
  - Prior to delivery of finalized version, documents that are not prepared in response to bill or amendment requests and do not contain legal analysis or express legal opinion.
    - Finalized version not confidential unless member requests.

Statutory Duty of Confidentiality

- Not violated when:
  - Prior to introduction, documents relating to bills or amendments are released to another legislative service agency for fiscal note purposes.
    - Duty of confidentiality then extends to other legislative staff.
  - Same/similar legal opinion previously produced for member is produced for another member without revealing first member’s identity.
  - Member voluntarily waives confidentiality.
General Assembly as an Organization

Constituents of the Organization

- Legislators
- Legislative Committees
- Legislative Service Agency Directors
- Legislative Employees

Attorney-client/Attorney-legislator Relationship & Professional Responsibility Relating to Bill Drafting

OLLs lawyers maintain ethical responsibility to General Assembly as organizational client by knowing and communicating basic legislative rules to constituent legislators in bill drafting process:

- General appropriations act containing only appropriations (Art. V, Sec. 32).
- Revenue raising measures start in House (Art. V, Sec. 31).
Memorandum

Date: September 22, 2000

From: Hale, Hackstaff, Friesen LLP

To: Executive Committee, Committee on Legal Services, Office of Legislative Legal Services

Subject: Analysis of Potential Conflicts of Interest on Representation of the Colorado General Assembly in Redistricting Litigation

The following memorandum discusses application of the Colorado Rules of Professional Conduct ("CRPC") to the legal representation of the Colorado General Assembly by Richard Worstellung and the law firm of Hale, Hackstaff, Friesen, LLP, in the redistricting litigation. Specifically, it addresses assertions by certain minority party legislators questioning the firm's representation of the General Assembly because of political affiliation and the fact that Worstellung and the firm have represented Republican Party members in prior legal matters, thus creating asserted conflicts of interest.

This memorandum will focus first on the identity of the client when government parties are involved, next on special ethical issues when a constituent of an organization differs in opinion with the appointed agent in a legal dispute and finally on whether prior representation of Republican Party members creates a conflict of interest in this litigation.

1. Identity of Government Client; Conflicts Among Constituents
   A. Organizational Client Status

   Rule 1.13(b) of the CRPC (Organization as Client) states in relevant part: "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 to individual members, directors, trustees, officers, employees, representatives or other parties connected with the entity." The Comments to the rule state that it applies to governmental organizations and that

   —See full text of CRPC 1.13 and its Comments attached as an appendix.

2. OLLS Legal Opinion Footnote

   The legal memorandum results from a request made to the OLLS in the course of performing bill drafting functions for the General Assembly.

   Is not an official legal position of the General Assembly or the state of Colorado and is non-binding on members.

   Intended for use in the legislative process and as information to assist members in the performance of their legislative duties.

   Resolve doubts about the General Assembly's authority to legislate in favor of the General Assembly's plenary power.
Since the General Assembly, as an organization, is our client

- Cannot assist a member in drafting a complaint.
  - Potential conflict in goals/objectives.
  - Potential conflict if advising organization on complaint you wrote or gave advice on.

- Cannot advise a member against whom an ethics complaint has been filed.
  - Potential conflict in goals/objectives.
  - Member should retain own lawyer.