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### THE MISSING CLIENT: DUTY TO COMMUNICATE

As trial counsel, pursuant to Colo. RPC 1.2(a) (scope and objectives) and Colo. RPC 1.4 Communication, the lawyer has an obligation to communicate with the client to determine the objectives of the representation.



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### THE MISSING CLIENT

- To the extent you are now unable to communicate with the client, what, if any, communication did you previously have regarding filing an appeal?
  - If that communication happened early in the representation, can you still rely on it? See ORPC Appellate Policy (attorney should assess how to proceed based on client's last clearly articulated position). See also CJ Directive 16-02, IV.e.
- If no prior communication regarding filing an appeal, see ORPC Appellate Policy (if no prior discussion and client cannot be located, attorney must provide ORPC with unsigned waiver). See also CJ Directive 16-02, IV.e.



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### THE MISSING CLIENT: BEST PRACTICES

- Address client participation with client at the outset. See CBA Ethics Op. 114.
- Document all efforts to locate client.
- ORPC may pay for the appointment of an investigator to help locate the client.



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**THE MISSING CLIENT: FILING DEADLINES**

- C.A.R. 3.4 Appeals from Proceedings in Dependency or Neglect(b)(1)(notice of appeal must be filed within 21 days after entry of judgment, decree or order)
- Colo. RPC 3.4(c)(lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists)
- Colo. RPC 3.2 Expediting Litigation (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client)

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**THE MISSING CLIENT: APPELLATE COUNSEL**

- When addressing issues related to the client with the court, counsel must balance obligations pursuant to Colo. RPC 1.6 Confidentiality of Information, against obligations pursuant to Colo. RPC 3.3 Candor Toward the Tribunal.
- May counsel move to withdraw if she cannot locate the client?



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Hypothetical #2:  
Ineffective  
assistance of  
counsel

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### INVESTIGATING INEFFECTIVE ASSISTANCE OF COUNSEL

- As appellate counsel, the lawyer has an obligation to investigate all possible avenues of relief for the client, pursuant to Colo. RPC 1.1 Competence and Colo. RPC 1.3 Diligence.
- “Trial Counsel and appellate counsel are obligated to consult about appellate issues upon receipt of the appointment notification from the ORPC.” CJ Directive 16-02,IV.h.
- See also Colo. RPC 1.7 Conflicts
- See also Colo. RPC 8.3 Reporting Professional Misconduct

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### Hypothetical #:3 Collaboration between trial and appellate counsel

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### COLLABORATION BETWEEN TRIAL AND APPELLATE COUNSEL

- “In circumstances where a trial attorney wishes to consult an appellate attorney prior to a termination hearing where an appeal will likely follow, trial counsel should contact the ORPC for consultation and potential early appointment of an appellate lawyer.” CJ Directive 16-02,IV.g.
- “Trial Counsel and appellate counsel are obligated to consult about appellate issues upon receipt of the appointment notification from the ORPC.” CJ Directive 16-02,IV.h.

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#### COLLABORATION BETWEEN TRIAL AND APPELLATE COUNSEL

- Best practices:
  - In addition to the requirements of the directive, collaborate to compile the record. See Composition of the Record on Appeal, C.A.R. 3.4(d).
  - Collaborate to discuss ICWA-related issues. See C.A.R. 3.4(f).

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#### RESOURCES

**Colorado Office of the Child's Representative**  
 ➤ <http://www.coloradochildrep.org>  
**Office of Attorney Regulation Counsel:**  
 ➤ [coloradosupremecourt.com](http://coloradosupremecourt.com)  
**Colorado Lawyer Assistance Program (COLAP):**  
 ➤ [coloradolap.org](http://coloradolap.org)  
**CBA Ethics Committee ethics hotline**  
 ➤ 303-860-1115  
**Colorado Bar Association**  
 ➤ [cobar.org](http://cobar.org) (RPCs and Ethics Opinions)  
**Your Organization's Listserv**



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