

Chapter 29

STATUTORY LEGAL MALPRACTICE CLAIMS

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§ 29.1 • DECEPTIVE TRADE PRACTICES CLAIMS

§ 29.1.1—Introduction

The Consumer Protection Act has only recently been used in the context of legal malpractice cases. Although there are no reported decisions in Colorado to address whether a plaintiff may recover for deceptive trade practices in a legal malpractice action, other jurisdictions' consumer protection statutes have been applied to lawyers.

The deceptive trade practices statute is found at C.R.S. § 6-1-105(1), and is part of the Colorado Consumer Protection Act (CCPA). The sections of the deceptive trade practices statute

that might be applicable to a legal malpractice case are in C.R.S. §§ 6-1-105(1)(e), (g), (u), and (z). Those subsections provide liability for a person who does the following in the course of trade or commerce:

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, *services* or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

...

(g) Represents that goods, food, *services*, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

...

(u) Fails to disclose material information concerning goods, *services*, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

(z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer. (Emphasis added.)

The claim could conceivably cover statements by the lawyer concerning the quality of his or her legal services, failure to disclose the lawyer's inadequacies or inexperience in certain areas of the law, or any false representations or deliberate overbilling.¹ Additionally, the claim could cover the unauthorized practice of law.

This statute has the possibility of being a particularly powerful tool because, if the claim is proven, the successful plaintiff is entitled to attorney fees and, if it is established by clear and convincing evidence that the defendant engaged in bad faith conduct, treble damages.² Given what Colorado courts have said regarding claims that are merely duplicative of negligence claims, such as breach of fiduciary duty³ and breach of contract,⁴ it seems unlikely that courts will allow a deceptive trade practices claim to stand unless there is compelling evidence to support the deceptive trade practices aside from mere professional negligence.

§ 29.1.2—Purpose Of The Act

The purpose of the CCPA is to provide “prompt, economical and readily available remedies against consumer fraud.”⁵ The legislature enacted the CCPA “to prevent the use of methods or tendencies that have a tendency or capacity to attract customers through deceptive trade practices.”⁶ Accordingly, the CCPA defines and proscribes a large number of deceptive trade practices.⁷

The CCPA creates a private right of action under C.R.S. § 6-1-113(1), thereby permitting “any person” to assert a claim for any deceptive trade practice listed in C.R.S. § 6-1-105. The

Colorado Supreme Court's decisions in *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*,⁸ *Martinez v. Lewis*,⁹ and *Hall v. Walter*¹⁰ set forth the elements of a CCPA claim and the limits of such a claim.

§ 29.1.3—Elements Of A Deceptive Trade Practices Claim

Generally, a plaintiff asserts a violation of the CCPA against a lawyer under C.R.S. §§ 6-1-105(1)(e) and (g). Under C.R.S. § 6-1-105(1)(e), a plaintiff claims that the lawyer-defendant knowingly made a false representation as to the characteristics, uses, or benefits of his or her services. Under C.R.S. § 6-1-105(1)(g), a plaintiff claims that the lawyer-defendant represents that his or her services are of a particular standard, quality, or grade when he or she knew or should have known that they are of another.

A plaintiff must commence all actions brought under the CCPA within three years after the date on which the false, misleading, or deceptive act occurred.¹¹ If a plaintiff proves his or her case, the CCPA permits the award of attorney fees and costs, and the greater of (1) actual damages, (2) \$500, or (3) treble damages, if it is established by clear and convincing evidence that the defendant engaged in bad faith conduct.¹² A plaintiff may not recover both punitive damages under a common law claim and treble damages under the CCPA.¹³

To prove a CCPA violation, a plaintiff must show:

(1) that the defendant engaged in an unfair or deceptive trade practice; (2) that the challenged practice occurred in the course of the defendant's business, vocation, or occupation; (3) that it significantly impacts the public as actual or potential consumers of the defendant's goods, services, or property; (4) that the plaintiff suffered injury in fact to a legally protected interest; and (5) that the challenged practice caused the plaintiff's injury.¹⁴

Furthermore, for claims based on deceptive trade practices of knowingly making a false representation or representing that services are of one particular standard when the defendant knew they were of another, no expert testimony is necessary because the claims are based on actual knowledge.¹⁵ However, if a claim is made based on a deceptive trade practice of representing that services are of one particular standard when the defendant *should have known* they were of another, expert testimony is required to the extent expert testimony would be required in a professional negligence case.¹⁶

Who May Bring a CCPA Claim

In *Hall v. Walters*,¹⁷ the supreme court clarified that a "person" who is not an actual or potential consumer has a right to bring a CCPA claim. There, the plaintiff landowners were subject to trespassers who had purchased adjacent property from the defendant-developers based on false representations that the defendants had an access route across the plaintiffs' property. However, in *Rhino Linings*,¹⁸ the supreme court refused to allow a non-consumer plaintiff to proceed on a CCPA claim where the plaintiff, unlike the plaintiffs in *Hall*, had a contractual relation-

ship with the defendant, would not have suffered harm but for the defendant's breach of contract, and where there was no finding that third-parties were deceptively induced to buy because of the defendant's false representation.

Deceptive Trade Practice of Knowingly Making a False Representation

In *Rhino Linings*, the Colorado Supreme Court addressed what must be proved to establish a deceptive trade practice:

1) False Representation

A false representation need not deceive a plaintiff, so long as it had the capacity or tendency to do so.¹⁹ “[A] false representation must either induce a party to act, refrain from acting, or have the capacity or tendency to attract consumers.”²⁰

2) Knowingly Making

Such a misrepresentation is actionable when it is made “either with knowledge of its untruth, or recklessly and willfully made without regard to its consequences, and with an intent to mislead and deceive the plaintiff.”²¹

A knowing misrepresentation is distinguishable from a contractual promise. “A promise cannot constitute a misrepresentation unless the promisor did not intend to honor it at the time it was made.”²² The *Hall* decision holds that a plaintiff's right to assert a claim under the CCPA is not affected by the fact that the same set of facts are the basis for other causes of actions.²³ However, in *Rhino Linings*, the supreme court noted that “[a] breach of contract claim, without additional conduct, cannot constitute an actionable claim under the CCPA.”²⁴

3) Public Impact Requirement

A wrong that is private in nature and does not affect the public is not actionable under the CCPA.²⁵ To meet the public impact requirement (*i.e.*, the requirement that the challenged practice significantly impacts the public as actual or potential consumers of the defendant's goods, services, or property), considerations include:

(1) the number of consumers directly affected by the challenged practice, (2) the relative sophistication and bargaining power of the consumers affected by the challenged practice, and (3) evidence that the challenged practice has previously impacted other consumers or has the significant potential to do so in the future.²⁶

In *Martinez v. Lewis*,²⁷ a patient sued a physician who conducted an independent medical evaluation of the patient at the request of the patient's insurer for purposes of evaluating the patient's claimed injuries allegedly sustained in a car accident. The physician concluded that the

patient was malingering and the insurer subsequently denied coverage for future care. The patient sued the physician, claiming, *inter alia*, that the physician violated the CCPA by concealing the fact that he was not qualified to select, administer, and interpret certain neuropsychological tests.²⁸

In determining whether the plaintiff met the public impact requirement, the supreme court noted that the physician's alleged deceptive practices occurred solely in the context of his private agreement to provide services to the insurer, who was the physician's only consumer.²⁹ Furthermore, the court found that the insurer, who had "ample access to information regarding appropriate qualifications and practices for experts" and who had "extensive experience as a consumer of this type of service," was not the type of consumer the CCPA was designed to protect.³⁰ The court also noted that there was no allegation the physician's services were previously affected by his alleged misrepresentations or likely to be so affected in the future.³¹ Based on these factors, the supreme court concluded that the alleged deceptive practices did not significantly impact the public as consumers of the physician's services.³²

§ 29.1.4—Issues Particular To Claims Against Lawyers

Several other state legislatures have explicitly excluded professionals, or the provision of professional services, from the reach of their consumer protection statutes.³³ Colorado, however, has not.

Colorado courts have not published an opinion as to whether a plaintiff may sue a lawyer-defendant under the CCPA. Other jurisdictions take a variety of positions. Delaware and New Jersey, for example, have inferred an exception for learned professions under their consumer protection statutes.³⁴ Other states approach the issue by looking at whether the lawyer is sued for professional services or the entrepreneurial or commercial aspects of the practice of law, refusing to extend the statutes to the professional malpractice context.³⁵ In Massachusetts, the consumer protection statute appears to apply to lawyers without exception: it has been applied to cases of unlawful billing, unethical deceit regarding the status of litigation, and reliance on an illegal contingency fee agreement to collect a fee.³⁶

Given that the legislature has not explicitly excluded professionals from the CCPA, and given that the supreme court has already addressed at least one case involving a professional defendant in a CCPA claim, it appears likely Colorado will allow a CCPA claim against a lawyer, at least under some circumstances. If, for example, a lawyer advertises expertise in a particular area of the law, but in fact has no such expertise, or misrepresents his or her level of experience to the public in advertising, it may be that a deceptive trade practices claim will be appropriate. On the other hand, if the lawyer has merely agreed to represent the client competently but fails to do so, the client has a claim for professional negligence; a deceptive trade practices claim seems to be duplicative and inappropriate.

**§ 29.2 • RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT**

The Racketeer Influenced and Corrupt Organizations Act³⁷ (RICO) imposes criminal and civil liability upon persons who engage in certain “racketeering activities” as defined in § 1961(1). Section 1962 lists prohibited activities, and almost all of RICO claims against professionals allege a violation of § 1962(c).³⁸ To successfully state a RICO claim, a plaintiff must sufficiently allege “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.”³⁹ “Racketeering activity” includes a multitude of illegal acts, including state-law crimes, crimes indictable under federal statute, and certain federal offenses.⁴⁰ A “pattern of racketeering activity” consists of two or more acts of racketeering activity that have occurred within the last 10 years.⁴¹ “The target of [RICO] is thus not sporadic activity. The infiltration of legitimate business normally requires more than one ‘racketeering activity’ and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern.”⁴² A pattern requires the showing of continuity or “the threat of continuing activity.”⁴³ Sporadic activity or an isolated offense is not sufficient to establish a pattern of racketeering activity.⁴⁴

In order to establish a pattern of racketeering activity, a plaintiff must show that the racketeering activities are “related” and that they amount to, or pose a threat of, “continual” criminal activity.⁴⁵ The racketeering activities are related if they have “the same or similar purposes, results, participants, victims, or methods of commission or otherwise are related by distinguishing characteristics and are not isolated events.”⁴⁶ “Continuity” focuses on the period during which the acts occurred and consists of either closed-ended or open-ended acts.⁴⁷ A closed-ended act consists of predicate acts occurring before trial and occurring over a substantial period of time.⁴⁸ Open-ended acts consist of threats of continued prohibited conduct.⁴⁹

The statute of limitations for a RICO action is four years.⁵⁰ The determination of when a cause of action accrues is a federal question.⁵¹

Plaintiffs may assert a wide variety of claims under RICO. Lawyers have been sued for securities fraud, breach of fiduciary duty, and mail fraud. However, after the Private Securities Litigation Reform Act⁵² (PSLRA) (which authorizes the Securities Exchange Commission to bring enforcement actions against any person who aids and abets violations of the Securities Exchange Act of 1934) was enacted in 1995, conduct actionable as securities fraud can no longer be a predicate act for a civil RICO case, unless the defendant was convicted of a crime involving the securities fraud.⁵³ Therefore, the PSLRA has generally greatly reduced lawyers’ exposure to securities claims.

There are few reported RICO claims against lawyers in Colorado.

In a Tenth Circuit Court of Appeals decision, *Pitts v. Turner and Boisseau, Chartered*,⁵⁴ a dentist failed to establish a RICO claim against his lawyers. In that case, a dentist retained lawyers Turner and Boisseau to represent him in a licensing proceeding with the Kansas Dental Board.⁵⁵

The Dental Board revoked the dentist's license, and the dentist subsequently filed a civil rights suit against the Dental Board. Turner, who initially represented the dentist in the licensing proceeding, assisted the attorney general in representing the secretary of the Dental Board in the civil rights suit.⁵⁶ The dentist, in turn, commenced an action against the lawyers, the attorney general, and various others contending that the defendants were aware of the fiduciary relationship between him and Turner, and conspired with Turner to obtain information in violation of RICO.⁵⁷ The trial court found that the dentist's complaint only described one scheme — that is, to defraud the dentist of his confidences and secrets, although it alleged a general statement of numerous acts that allegedly transpired to carry out the scheme.⁵⁸ Because the dentist had made no specific allegations to establish more than one scheme, the trial court dismissed the RICO claim and the appellate court affirmed that dismissal.

In *Seidl v. Greentree Mortgage Company*,⁵⁹ the Colorado district court dismissed racketeering claims against a lawyer and her client. The client, a computer science student, sued a mortgage company for various tort claims after the mortgage company's bulk Internet advertising campaign resulted in the student, rather than the mortgage company, receiving thousands of "bounce-back" and reply e-mails. The mortgage company filed counterclaims against the student and her lawyer, alleging, *inter alia*, racketeering. The RICO counterclaims were based on allegations that the lawyer and her client schemed to extort money from Internet advertisers by re-registering a generic domain name used for misaddressed and undeliverable e-mail, knowing it would attract unwanted e-mail to ensnare unsuspecting advertisers with false claims for damages. The RICO counterclaims alleged the lawyer and her client prepared and sent e-mails and participated in a web page describing the lawsuit and soliciting funds to help pay for the lawsuit.⁶⁰

The court dismissed all of the RICO counterclaims. First, the court dismissed the counterclaim under § 1962(a), making it unlawful for a person who has received income from a pattern of racketeering activity to use or invest it in any operation affecting interstate commerce. The court found that the mortgage company had not shown that the lawyer or client obtained any income from the alleged scheme, had not shown that the lawyer or the client used or invested any income derived from the alleged scheme, and had not shown any injury from the use or investment of the income derived from the alleged scheme, as opposed to just injury from the scheme itself.⁶¹

Next, the court dismissed the counterclaim brought under § 1962(b), which makes it unlawful for a person, through a pattern of racketeering activity, to acquire or maintain an interest in or control of any enterprise affecting interstate commerce. The court found the allegations that the client's business and the lawyer's law firm were enterprises under RICO were unsupported by any specific allegations regarding the structure or operation of the alleged enterprises or any specific allegations of the alleged association between the two. The court also found that allegations of the predicate offenses of mail and wire fraud were not supported by sufficient facts, including the specific number of wires, the precise dates, and how they furthered the scheme, to meet the heightened pleading requirements of F.R.C.P. 9(b). Furthermore, the court found that, at best, the mortgage company showed "a single scheme directed at one victim with one discrete goal,"⁶² not a threat of continuing illegal activity. The mortgage company's conclusory allegation of a threat of continuing illegal activity did not allege specific facts that showed such a threat. Therefore, the

mortgage company failed to show a pattern of racketeering activity.⁶³ Likewise, the allegations regarding acquiring or maintaining an interest in or control of an enterprise, as well as the demonstration of an “enterprise” fell short of the specificity required under F.R.C.P. 9(b).

In addressing the counterclaim brought under § 1962(c), which prohibits a person employed by or associated with any enterprise from conducting or participating in the conduct of such enterprise’s affairs through a pattern of racketeering activity, the court stated “an attorney does not participate in the operation or management of an enterprise by offering legal advice or otherwise represent[ing] a client.”⁶⁴ Therefore, the mortgage company’s allegation that the lawyer knew about and acquiesced in the client’s fraudulent re-registration of the domain name was insufficient to show conduct or participation in the conduct of a RICO enterprise.⁶⁵

Finally, the *Seidl* court found the allegations of violations of § 1962(d), prohibiting conspiracies to violate other provisions of RICO, were too vague and conclusory.⁶⁶

§ 29.3 • COLORADO ORGANIZED CRIME CONTROL ACT

Colorado’s version of RICO, the Colorado Organized Crime Control Act (COCCA)⁶⁷ is generally patterned after RICO.⁶⁸ Like its federal counterpart, COCCA prohibits activities constituting a “pattern of racketeering” to influence an enterprise.⁶⁹ Under COCCA, any person injured by reason of any prohibited activities listed in C.R.S. § 18-17-104 may maintain a private cause of action. If the activities constituting a violation of the COCCA are fraudulent acts, the plaintiff must plead the circumstances underlying the claim with the particularity required by C.R.C.P. 9(b).⁷⁰

A “pattern of racketeering” requires “engaging in at least two acts of racketeering activity which are related to the conduct of the enterprise.”⁷¹ “Racketeering activity” occurs if one commits, attempts to commit, conspires to commit, or solicits, coerces, or intimidates another person to commit, any of the federal or Colorado crimes listed under C.R.S. § 18-17-103.⁷² Colorado has adopted the U.S. Supreme Court’s analysis of what constitutes a “pattern of racketeering activity” as applied in *H.J. Inc. v. Northwestern Bell Telephone Company*.⁷³ Accordingly, Colorado requires a showing that the racketeering activities are “related” and that they amount to or pose a threat of “continual” criminal activity.⁷⁴

In *Floyd v. Coors Brewing Company*,⁷⁵ a former employee sued Coors and its lawyers claiming wrongful discharge, outrageous conduct, and violations of COCCA. The plaintiff alleged that in his capacity as Coors’ director of security, safety, and occupational health, he engaged in covert drug purchases under the direction and approval of his supervisors for the purpose of discovering illicit drug use by Coors’ employees. The plaintiff alleged that the purchases were made with funds deposited in and then withdrawn from the account of Coors’ lawyers. According to the plaintiff, his supervisors conspired to discharge him and make it appear he had engaged in the illegal drug purchases on his own when it appeared the operation might be exposed.⁷⁶

The Colorado Court of Appeals upheld the dismissal of the COCCA claims because the plaintiff lacked standing to bring them. The court found that “none of the damages alleged by him was caused by the underlying acts of criminality that he relied upon to establish a pattern of racketeering activity.”⁷⁷ The court noted that although a plaintiff need not demonstrate that injury resulted from a pattern of racketeering, so long as one or more injuries to someone resulted from each of the predicate acts, the injury for which compensation is demanded must be caused by at least one of the predicate acts.⁷⁸ Because the plaintiff alleged only damages resulting from a wrongful discharge, which did not constitute one of the acts contemplated by COCCA, the damages did not result from a predicate act.⁷⁹ Furthermore, the plaintiff did not allege the coverup of the prior criminal acts was a predicate act under COCCA.⁸⁰ Accordingly, the court of appeals concluded the allegations were insufficient to give the plaintiff standing under COCCA.⁸¹

§ 29.4 • RIGHTS IN STOLEN PROPERTY STATUTE

The Colorado Rights in Stolen Property statute states:

All property obtained by theft, robbery, or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. The owner may maintain an action not only against the taker thereof but also against any person in whose possession he finds the property. In any such action, the owner may recover two hundred dollars or three times the amount of the actual damages sustained by him, whichever is greater, and may also recover costs of the action and reasonable attorney fees; but monetary damages and attorney fees shall not be recoverable from a good-faith purchaser or good-faith holder of the property.⁸²

Although proof of a criminal act is required, damages for civil theft may be obtained without proof of conviction of burglary, theft, or robbery.⁸³

In *Itin v. Bertrand T. Ungar, P.C.*,⁸⁴ a lawyer and his law firm were sued under the Rights and Stolen Property statute. The lawyer was acting as his client’s escrow agent for the purpose of purchasing stock. After the client wired funds to the lawyer’s trust account, the lawyer disbursed those funds from the trust account to other companies. The client claimed that the disbursements were not authorized and sued, alleging the lawyer had committed the crime of theft in taking the money. Rejecting the lawyer’s argument that criminal conviction was a prerequisite to the award of treble damages under the Rights and Stolen Property statute, the Colorado Supreme Court upheld the award of treble damages, attorney fees, and costs in favor of the client.⁸⁵

§ 29.5 • OTHER STATUTORY CLAIMS

§ 29.5.1—Fraudulent Transfer Act

A fraudulent conveyance is a transfer undertaken by a debtor with intent to place property beyond reach of creditors.⁸⁶ The Colorado Uniform Fraudulent Transfer Act⁸⁷ governs fraudulent conveyances and is similar to the Uniform Fraudulent Transfer Act. In Colorado, lawyers have been disciplined, including disbarment, for conduct violating the Colorado Uniform Fraudulent Transfer Act.⁸⁸ For a detailed discussion of lawyer liability under the Colorado Uniform Fraudulent Transfer Act, *see* Chapter 18, “Creditors’ Rights and Debt Collection,” of this handbook.

§ 29.5.2—Fair Debt Collection Practices Acts

In 1977, Congress enacted the Fair Debt Collection Practices Act (FDCPA) to protect consumers against debt collection abuses.⁸⁹ Congress initially did not include lawyers within the Act’s coverage. In 1986, however, Congress amended the Act, removing the exclusion for lawyers.⁹⁰ The Colorado Fair Debt Collection Practices Act (CFDCPA) also includes lawyers within its scope.⁹¹ Please refer to Chapter 18, “Creditors’ Rights and Debt Collection,” of this handbook for a discussion of lawyers’ liability under these acts.

§ 29.5.3—Federal And State Securities Laws

There is little doubt that lawyers may be held liable pursuant to state and federal securities statutes; however, the subject is largely beyond the scope of this Chapter. Please refer to Chapter 25, “Liability Under the Federal Sarbanes-Oxley Act,” of this handbook for a detailed discussion of lawyers’ exposure under the state and federal securities statutes.

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NOTES

1. *See, e.g., Meryhew v. Gillingham*, 893 P.2d 692 (Wash. App. 1995), *modified by* 1995 Wash. App. LEXIS 330 (July 28, 1995).
2. C.R.S. § 6-1-113(2)(a).
3. *Moguls of Aspen, Inc. v. Faegre & Benson*, 956 P.2d 618 (Colo. App. 1997); *Smith v. Mehaffy*, 30 P.3d 727 (Colo. App. 2000).
4. *McLister v. Epstein & Lawrence, P.C.*, 934 P.2d 844 (Colo. App. 1996).
5. *Western Food Plan, Inc. v. District Court, City and County of Denver*, 598 P.2d 1038, 1041 (Colo. 1979).
6. *Dunbar v. Gym of America*, 493 P.2d 660, 668 (Colo. 1972).
7. C.R.S. § 6-1-105.
8. *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 146-47 (Colo. 2003).
9. *Martinez v. Lewis*, 969 P.2d 213 (Colo. 1998).

10. *Hall v. Walter*, 969 P.2d 224 (Colo. 1998).
11. C.R.S. § 6-1-115.
12. C.R.S. § 6-1-113(2).
13. *Lexton-Ancira Real Estate Fund, 1972 v. Heller*, 826 P.2d 819, 822 (Colo. 1992).
14. *Hall*, 969 P.2d at 235.
15. *Baumgarten v. Coppage*, 15 P.3d 304, 308 (Colo. App. 2000).
16. *Id.* at 308.
17. *Hall*, 969 P.2d at 231.
18. *Rhino Linings USA*, 62 P.3d at 150.
19. *Id.* at 148.
20. *Id.* at 147.
21. *Id.*, quoting *Parks v. Bucy*, 211 P. 638, 639 (Colo. 1922).
22. *Rhino Linings USA*, 62 P.2d at 148.
23. *Hall*, 969 P.2d at 237.
24. *Rhino Linings USA*, 62 P.3d at 148.
25. *Id.* at 149.
26. *Id.*; *United States Welding, Inc. v. Burroughs Corp.*, 615 F. Supp. 554, 555-556 (D. Colo. 1985).
27. *Martinez v. Lewis*, 969 P.2d 213 (Colo. 1998).
28. *Id.* at 214.
29. *Id.* at 222.
30. *Id.*
31. *Id.* at 222-23.
32. *Id.* at 223.
33. *See, e.g.*, Tex. Bus. & Com. Code § 17.49(c); Oh. Rev. Code Ann. 1345.01(A); Md. Code Ann., Com. Law, 13-104(1); N.C. Gen. Stat. Ann. 75-1.1(b).
34. *See Macedo v. Dello Russo*, 840 A.2d 248 (N.J. 2004); *Jamgochian v. PKR Enterprises, Inc.*, 2000 Del. Super. LEXIS 373 (Aug. 31, 2000).
35. *See, e.g.*, *Short v. Demopolis*, 691 P.2d 163, 168 (Wash. 1984); *Kessler v. Loftus*, 994 F. Supp. 240, 242-43 (D. Vt. 1997) (interpreting Vermont's Consumer Fraud Act); *Beverly Hills Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin*, 717 A.2d 724, 740 (Conn. 1998).
36. *See Sears, Roebuck & Co. v. Goldstone & Sudalter, P.C.*, 128 F.3d 10 (1st Cir. 1997) (unlawful billing practices); *Guenard v. Burke*, 443 N.E.2d 892, 896 (Mass. 1982) (reliance on illegal contingent fee agreement to collect a fee); *Brown v. Gerstien*, 460 N.E.2d 1043, 1051-52 (Mass. App. 1984) (unethical deceit regarding status of litigation).
37. Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 through 1968.
38. 1 R. Mullen & J. Smith, *Legal Malpractice* § 11.2 at 1226 (2005 ed.), citing *American Bar Association Report of the Ad Hoc Civil RICO Task Force, 1985*.
39. *Sedima v. Imrex Co.*, 473 U.S. 479, 496 (1985).
40. 18 U.S.C. § 1961(1).
41. 19 U.S.C. § 1961(5).
42. S. Rep. No. 91-617, p. 158 (1969) (quoted in *Smith v. MCI Telecommunications Corp.*, 124 F.R.D. 665, 672 (D. Kan. 1989)).
43. *Sedima*, 473 U.S. at 496 n. 14.
44. *Id.*
45. *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 242 (1989).
46. *Id.* at 240.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143 (1987).
51. *Bowling v. Founders Title Co.*, 773 F.2d 1175, 1178 (11th Cir. 1985), cert. denied 475 U.S. 1109 (1986).

52. Pub. L. No. 104-67 § 107, 109 Stat. 737 (1995) (amending 18 U.S.C. § 1964(c) (1996)).
53. 18 U.S.C. § 1964(c); *In re Enron Corporation Securities Derivatives & ERISA Litigation*, 284 F. Supp.2d 511, 618-24 (S.D. Tex. 2003).
54. *Pitts v. Turner and Boisseau, Chartered*, 850 F.2d 650 (10th Cir. 1988), *cert. denied* 488 U.S. 1030 (1989).
55. *Id.* at 651.
56. *Id.*
57. *Id.* at 652.
58. *Id.*
59. *Seidl v. Greentree Mortgage Company*, 30 F. Supp.2d 1292 (D. Colo. 1998).
60. *Id.* at 1303.
61. *Id.* at 1303-04.
62. *Id.* at 1304.
63. *Id.* at 1304-05.
64. *Id.* at 1305, *citing Azrielli v. Cohen Law Offices*, 21 F.3d 512 (2nd Cir. 1994).
65. *Seidl*, 30 F. Supp.2d at 1305.
66. *Id.* at 1306.
67. C.R.S. §§ 18-17-101, *et seq.*
68. *People v. Chaussee*, 880 P.2d 749, 754 (Colo. 1994).
69. C.R.S. § 18-17-104.
70. *New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363, 1371 (Colo. App. 1993).
71. C.R.S. § 18-17-103(3).
72. *Benedict*, 877 P.2d at 1371.
73. *Id. H.J. Inc. v. Northwestern Bell Telephone Company*, 492 U.S. 229 (1989).
74. *Id.*
75. *Floyd v. Coors Brewing Co.*, 952 P.2d 797 (Colo. App. 1997), *rev'd and remanded on other grounds* 978 P.2d 663 (Colo. 1999).
76. *Id.* at 802.
77. *Id.* at 803.
78. *Id.*
79. *Id.*
80. *Id.* at 804.
81. *Id.*
82. C.R.S. § 18-4-405.
83. *Itin v. Bertrand T. Ungar, P.C.*, 17 P.3d 129 (Colo. 2000).
84. *Id.*
85. *Id.*
86. *Crown Life Ins. Co. v. April Corp.*, 855 P.2d 12 (Colo. App. 1992).
87. Colorado Uniform Fraudulent Transfer Act, C.R.S. §§ 38-8-101, *et seq.*
88. *See, e.g., People v. Koller*, 873 P.2d 761 (Colo. 1994); *People v. Bennett*, 843 P.2d 1385 (Colo. 1993); *People v. Mason*, 938 P.2d 133 (Colo. 1997).
89. 15 U.S.C. § 1692(e).
90. *Heintz v. Jenkins*, 514 U.S. 291 (1995); 15 U.S.C. § 1692a(6)(F) (1977) (amended 1986).
91. C.R.S. §§ 12-14-101, *et seq.*