COLORADO SUPREME COURT STANDING COMMITTEE ON THE COLORADO RULES OF PROFESSIONAL CONDUCT

AGENDA

July 22, 2022, 9:00 a.m.
The Supreme Court Conference Room and via Webex
Webex link:

https://judicial.webex.com/judicial/j.php?MTID=m739f731cbd4b9a48f79be09bf80325f6

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1. Call to Order [Judge Lipinsky].

2. Approval of minutes for April 22, 2022 meeting [attachment 1].

3. Old business:

   a. Report on approval of the technical correction to comment [3] to Rule 1.16A [Judge Lipinsky].

   b. Report on the public hearing on the proposed amendment to Rule 1.8(e) [Judge Lipinsky].

   c. Report from the Rule 1.4 subcommittee [Dave Stark and Jessica Yates] [attachment 2].

   d. Report on the patent practitioner harmonization proposal [Rob Steinmetz and Alec Rothrock].

   d. Report on the PALS II committee [Judge Espinosa] [attachment 3].

4. New business.

5. Adjournment.

Judge Lino Lipinsky, Chair
Colorado Court of Appeals
lino.lipinsky@judicial.state.co.us

Attachment 1

COLORADO SUPREME COURT

STANDING COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT

Submitted Minutes of Meeting of the Full Committee
On
April 22, 2022
Sixty- Third Meeting of the Full Committee
Virtual meeting in Response to Covid-19 Restrictions

The sixty-third meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:00 AM on Friday, April 22, 2022, by Chair Judge Lino Lipinsky de Orlov. The meeting was conducted virtually.

Present at the meeting, in addition to Judge Lipinsky and liaison Justices Monica Márquez and Maria Berkenkotter were Cynthia Covell, Thomas E. Downey, Jr., Judge Adam Espinosa, Margaret B. Funk, Marcy Glenn, Erika Holmes, April Jones, Matthew Kirsch, Marianne Luu-Chen, Julia Martinez, Cecil E. Morris, Jr., Judge Ruthanne N. Polidori, Troy Rackham, Henry Richard Reeve, Alexander R. Rothrock, Marcus L. Squarrell, David W. Stark, Jamie S. Sudler, III, Judge William R. Lucero, Robert W. Steinmetz, Eli Wald**,** Jennifer J. Wallace, Judge John R. Webb, Jessica E. Yates, and E. Tuck Young. Nancy L. Cohen, A. Tyrone Glover, Noah C. Patterson, Lisa M. Wayne and Frederick R. Yarger were excused from attendance. Special guests in attendance were Daniel Smith, National Association of Patent Practitioners Advocacy Committee Chair; Christopher M. Turoski, President, National Association of Patent Practitioners; Molly Kocialski, United States Patent and Trademark Office; and Jonathan D. Asher, Executive Director, Colorado Legal Services.

1. **Call to Order.**

   The Chair called the meeting to Order at 9:04.

2. **Approval of Minutes of January 28, 2022**.

   The Chair had provided the submitted minutes of the sixty-second meeting of the Committee held on January 28, 2022, to the members prior to the meeting. A motion to approve the minutes was made and seconded. The motion to approve the minutes carried by a unanimous vote of the Committee.

3. **Technical Correction to comment [3] to Rule 1.16A.**

   Item 3A – Technical correction to comment [3] to RPC 1.16A. Mr. Rothrock presented. Mr. Rothrock explained that there is a reference in comment [3] that is outdated. The comment currently references "Rule 4, Chapter 23.3 C.R.C.P. (six-year retention of contingent fee agreement and proof of mailing following completion or settlement of the

case)." The reference is outdated because RPC 1.5 was changed significantly and now contains the rules on contingent fees. Mr. Rothrock proposed a change to the comment that would reference RPC 1.5(c)(3), which explains that "[t]he lawyer shall retain a copy of the contingent fee agreement for seven years after the final resolution of the case, or the termination of the lawyer's services, whichever first occurs." A motion to approve was made, which was seconded. No further discussion. The motion carried unanimously.

4. **Report of the RPC 1.4 Subcommittee**.

Jessica Yates and David Stark presented. Ms. Yates identified the members of the subcommittee who worked on the changes and thanked them for their work. The goal of the subcommittee was to work on changes to the rule to incentivize disclosure of the absence of malpractice insurance. Dave Stark noted that approximately 2,100 Colorado attorneys do not carry professional liability insurance. He discussed the different approaches other states use that require disclosure of insurance. A member asked if other states have record retention requirements like what is in the proposed Rule. Ms. Yates explained that the record retention language comes from Pennsylvania's rule, and perhaps other states contain the same language.

A member asked whether there was coordination between C.R.C.P. 265 and the proposed changes to Colo. RPC 1.5. The member also asked whether states are requiring disclosure to the bar and disclosure to the client, because it used to be that states would require one or the other, but not both. A member raised another issue about the block quote contained in the proposed change to Colo. RPC 1.4 comment [9] because the block quote seems structurally inconsistent with how other comments are drafted. Finally, a member of the committee suggested that comment [19] of Colo. RPC 1.5 was so abstract that it was not useful.

Ms. Yates responded that the subcommittee had coordinated with C.R.C.P. 265 and used the same aggregate limits as C.R.C.P. 265. Mr. Stark explained that the subcommittee looked at C.R.C.P. 265, and it has more information than could be coordinated with Colo. RPC 1.4. The subcommittee believed that C.R.C.P. 265 may need to be amended to address nuances such as eroding limits, effect of claims on insurance, etc. The subcommittee elected to keep the proposed changes to RPC 1.4 to keep the issue simple, ensure it is raised with the clients, and then incentivize clients to talk to lawyers about insurance once the information is disclosed.

Regarding the block quote in comment [9] of RPC 1.4, as it relates to the safe harbor language, the subcommittee had not given much consideration to the formatting of the quote. The subcommittee was willing to consider revising the structure to eliminate the block quote and keep the substance.

Ms. Yates commented that proposed comment [19] to RPC 1.5 was just an effort by the subcommittee to cross-reference other rules. The subcommittee would review the matter and consider removal of the proposed draft comment [19].

A member provided historical context to the discussion, noting that about a decade ago the Committee had examined the issue and found that states either required an indirect disclosure requirement (e.g., disclosing to the bar) or a direct disclosure to the client, but not both. At that time, the Colorado Supreme Court elected to adopt the indirect disclosure concept by requiring lawyers to identify whether they have insurance at the time of annual registration.

A discussion on the need to advise clients at the first retention and then advise clients again when lawyers fall out of coverage was held. Making this revision would incentivize lawyers to communicate material information about changes in insurance coverage during the retention. Ms. Yates explained that the subcommittee discussed this issue at length. It discussed how the issue would work as a practical matter. For example, if the lawyer had insurance that was in place at the time of retention, but lapsed for a few months, does the lawyer have an obligation to communicate the lapse to the client? Another big complicating factor is that most liability insurance is written on a "claims made" basis, which means that the coverage *during* the representation is less meaningful than insurance *after* the representation when a claim is made. Communicating to a client that insurance lapsed during the representation creates confusion because the coverage would not be triggered until much later when a claim is made. Because these complicated nuances, which will change over time, would make a disclosure very complicated, the subcommittee opted for a simpler approach.

Mr. Stark addressed the issue of direct versus indirect nondisclosure. He explained that there is a good reason to keep both requirements in place because the indirect disclosure (disclosure to OARC) allows the bar to track how many lawyers have insurance, which is important. The subcommittee also decided, however, that the indirect disclosure does not assist the client very much.

Another member agreed with having both direct and indirect disclosures but suggested that the direct disclosure requirement could have an adverse effect, which only targets less affluent lawyers and lawyers in solo practices rather than lawyers in medium-sized or large law firms.

Another member explained that without the indirect disclosure, a prospective client who is researching a potential lawyer would not have access to information about the lawyer's lack of insurance coverage. Additionally, with respect to lawyers who fall out of coverage, they may not know that they fell out of coverage. As a result, if the committee changes the language to require disclosure of circumstances where lawyers fall out of coverage, there should be a scienter requirement.

Another member expressed concerns about proposed comment [19] of RPC 1.5. The member's concern was that comment [19] was unnecessary and may be incorrect. The language explains that "[t]he provisions of other Rules may require a lawyer to include additional terms or statements in communications concerning fees. See Rule 1.4." That is inaccurate because Rule 1.5 addresses the requirements of what a lawyer must

communicate about fees and expenses. It does not require the communication to be together.

A member suggested that the structure of the disclosure requirement could be a problem because it could be misleading to a client because of the uniqueness of insurance coverage (claims made, eroding limits, etc.). Those unique features could be misleading to a client because it may give the false impression that the existence of insurance coverage at the time of retention means that insurance coverage will exist at the time a claim is made.

The subcommittee discussed this issue. It was a risk-benefit analysis. While there is a risk that requiring disclosure to the client can create false impressions or erroneous assumptions on the part of the client, requiring the disclosure does not necessarily add to the confusion because most clients assume that the lawyer has malpractice insurance. The disclosure at least helps inform the client at the outset that there may be additional risk. It also fosters a discussion between the client and the lawyer about the absence of insurance coverage if that information is disclosed. As a result, the benefits of the proposed rule net out in a positive way, even if there are some risks in requiring the disclosure.

A member suggested that the existing indirect disclosure enables a prospective client or a client to determine from the website whether the lawyer has coverage. The member suggested that a client or prospective client may become confused with a direct disclosure if the client or prospective client had already evaluated coverage by consulting the website.

A member raised an issue about what data the subcommittee considered in terms of increases in coverage or increases in premium. Ms. Yates explained that there is not a lot of reliable and consistent data on this topic, but the subcommittee did not dig into the data substantially.

A member of the subcommittee reported that he initially was resistant to the direct disclosure rule. He came around to support these proposed changes because the data shows clearly that clients believe that lawyers always have malpractice insurance. Because they assume insurance coverage, clients should be advised when a lawyer does not have coverage. If the supreme court does not mandate malpractice insurance, this is a good alternative. The members of the subcommittee did not believe it was advisable to propose a rule mandating that Colorado lawyers carry malpractice insurance because it could potentially exclude many valuable members of the Bar and it did not believe there was consensus for such action.

A member suggested that, in the absence of a mandate to require malpractice insurance, the proposed change is good because it at least requires a disclosure to the client and could foster a discussion between the lawyer and the client. A member suggested that it is a bit odd to have a disclosure requirement in RPC 1.4 instead of 1.5 or another rule because RPC 1.4(b) addresses the obligation to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." That relates to issues after the representation begins. It may not be germane to include requirements in

RPC 1.4 relating to material information to be provided to the prospective before the representation begins.

Members of the subcommittee expressed concern about how much information is useful to a client and how much may be confusing. They noted that insurance terms are complicated and often difficult to understand, and that clients generally do not like long and complicated engagement letters.

Mr. Stark explained that C.R.C.P. 265 avoids joint and several liability between law partners so long as minimum coverage exist. Put another way, C.R.C.P. 265 provides that a partner in a law firm will not be liable for his partner's professional negligence so long as the firm carries sufficient insurance coverage. That is one method the Court has adopted to incentivize insurance. Mr. Stark also explained that the coverage identified in this disclosure rule uses the current minimum coverage limits. The subcommittee used those numbers to ensure that lawyers could effectively and appropriately have insurance coverage without requiring unrealistic insurance.

The Chair expressed appreciation for the informed and robust discussion. The Chair proposed that the subcommittee review the minutes, consider the comments made on the proposed changes, and then come back during the next meeting to potentially make revisions and for a possible vote on the proposal.

5. **Report on Patent Practitioner Harmonization**

Dan Smith presented. Mr. Smith's letter to Judge Lipinsky requesting the Committee's assistance is contained in Attachment 3 to the meeting agenda. His goal is to have the Committee harmonize the Colorado Rules of Professional Conduct with the Rules of Professional Conduct issued by the United States Patent and Trademark Office ("USPTO rules)". The USPTO rules are based on the ABA model rules, but the USPTO has changed the word "lawyer" to "practitioner." It did this because the term "practitioners" includes patent attorneys, trademark attorneys, and patent agents. A patent agent is a person who has taken the patent bar and been approved by the USPTO to represent clients before the USPTO. But a patent agent is not necessarily a lawyer. A patent agent is not licensed by a state to practice law.

Molly Kocialski from the Denver office of the USPTO discussed patent agents and their required backgrounds. Mr. Smith indicated that a subcommittee may need to be formed to look at the issue and recommend precise language.

A member raised a question about what the National Association of Patent Practitioners ("NAPP") is doing in other states. NAPP is reaching out to other states, but Colorado is the first. NAPP is reaching out to the ABA to recommend similar changes to the Model Rules. NAPP has a concern that the ABA process is very slow and cumbersome, so it wanted to take a parallel approach of addressing the issue with individual states and the ABA at the same time.

Ms. Kocialski explained that, while the rules of professional conduct in the District of Columbia, Virginia and Maryland have been harmonized with the USPTO rules, the rules of professional conduct in many other jurisdictions, including Colorado, have not, and, as a result, patent practitioners have narrower opportunities in law firms or in house positions because of the limitations imposed by the rules of professional conduct. She discussed the historical utilization of patent agents in patent and trademark matters and how that practice provides a more economical alternative to hiring an attorney for clients in need of those services.

A member suggested that this issue merits a subcommittee, but the issue merits a larger discussion of whether it should encompass other types of professionals. The Supreme Court and the Committee are currently considering licensed limited legal technicians, who are nonlawyers but could handle uncomplicated family matters. The member suggested that issues related to patent agents be considered together with the paraprofessional licensing under consideration. Mr. Smith expressed concern about expanding the discussion to include paraprofessionals because doing so would inject delay into the process and because inclusion of paraprofessionals raised additional issues because they are not licensed, whereas patent agents are licensed. Mr. Smith viewed the patent agent and paraprofessional issues as being separate and distinct, requiring separate treatment. The member responded that the issues are not materially different because the Colorado proposal would allow limited licensed paraprofessionals to be licensed and to practice law in a limited scope.

A member also raised a question about RPC 5.4 generally. Arizona recently dispensed with RPC 5.4. Utah revised RPC 5.4 to allow nonlawyers to be involved with law firm ownership. Mr. Smith advised he was aware of those interesting developments but stated he did not view them as resolving the specific issues of patent agents.

A member explained that, if RPC 5.4 is amended, then a patent agent could share all fees in a law firm even though the patent agent is not a lawyer. Mr. Smith explained that the USPTO licenses patent agents, which enables them to earn and share fees. The member suggested that revising RPC 5.4 would not really be harmonizing existing rules with the USPTO rules, but instead would be changing the status quo because it would allow other conduct besides just sharing fees.

Mr. Smith and Ms. Kocialski both explained that 25% of the total patent bar are patent practitioners. Without changing the rules, those people will have impairments in the law firm context because they cannot share origination credit or fees, which limits their opportunities.

A member also raised the issue about other circumstances, such as enrolled agents who provide tax advice and tax representation. Those agents are allowed by federal law to provide legal services even though the agents are not lawyers. IRS circular 230 allows nonlawyers to be enrolled agents. Lawyers who have shared fees with enrolled agents have been subject to discipline because of gaps in the rule. As a result, the member noted that he would be receptive to the idea of revising the rule to accommodate enrolled agents,

patent agents, and individuals practicing before the SEC and the Department of Veterans Affairs.

A member wondered if it would be better to just leave this to the ABA instead of being the first state to revise the rule. Mr. Smith responded that, while waiting for the ABA to act is an option, the stress on the patent and trademark practice and the need for additional patent agents required faster action. Ms. Kocialski described the urgency issue as a "crisis," noting that the biggest complaint she hears from inventors and businesses is the cost necessary to protect their inventions. She said that, because patent agents are much more cost-effective than patent lawyers, the use of patent agents makes the intellectual property system more accessible to clients. She said that disciplinary data from the USPTO indicates that patent agents are less likely to be disciplined than patent lawyers.

The Chair formed a subcommittee to consider Ms. Smith's proposal. Marcus Squarrell, Dan Smith, Rob Steinmetz, Molly Kocialski, Eli Wald, Alec Rothrock, and Jessica Yates all volunteered to participate in the subcommittee. Other members desiring to participate were encouraged to advise the Chair of their interest.

6. **Report on proposed amendment to RPC 1.8(e).**

Jon Asher shared with the committee the subcommittee's proposal for revisions to RPC 1.8(e). Mr. Asher thanked the subcommittee members for their respective participation on the subcommittee. Mr. Asher also thanked the committee for welcoming him and providing robust comments on the subcommittee's proposal to Mr. Asher and the subcommittee. Mr. Asher said he believed that the proposed language before the committee is significantly clearer and simpler than the ABA model rule. The subcommittee resolved all disputes about the proposed language, except for RPC 1.8(e)(3)(iii) as it relates to not publicizing or advertising gifts to prospective clients. Mr. Asher explained that the issue related to the word "prospective" because sometimes advertising is to clients rather than just to prospective clients. The member who raised this concern indicated that he is fine with the term "prospective."

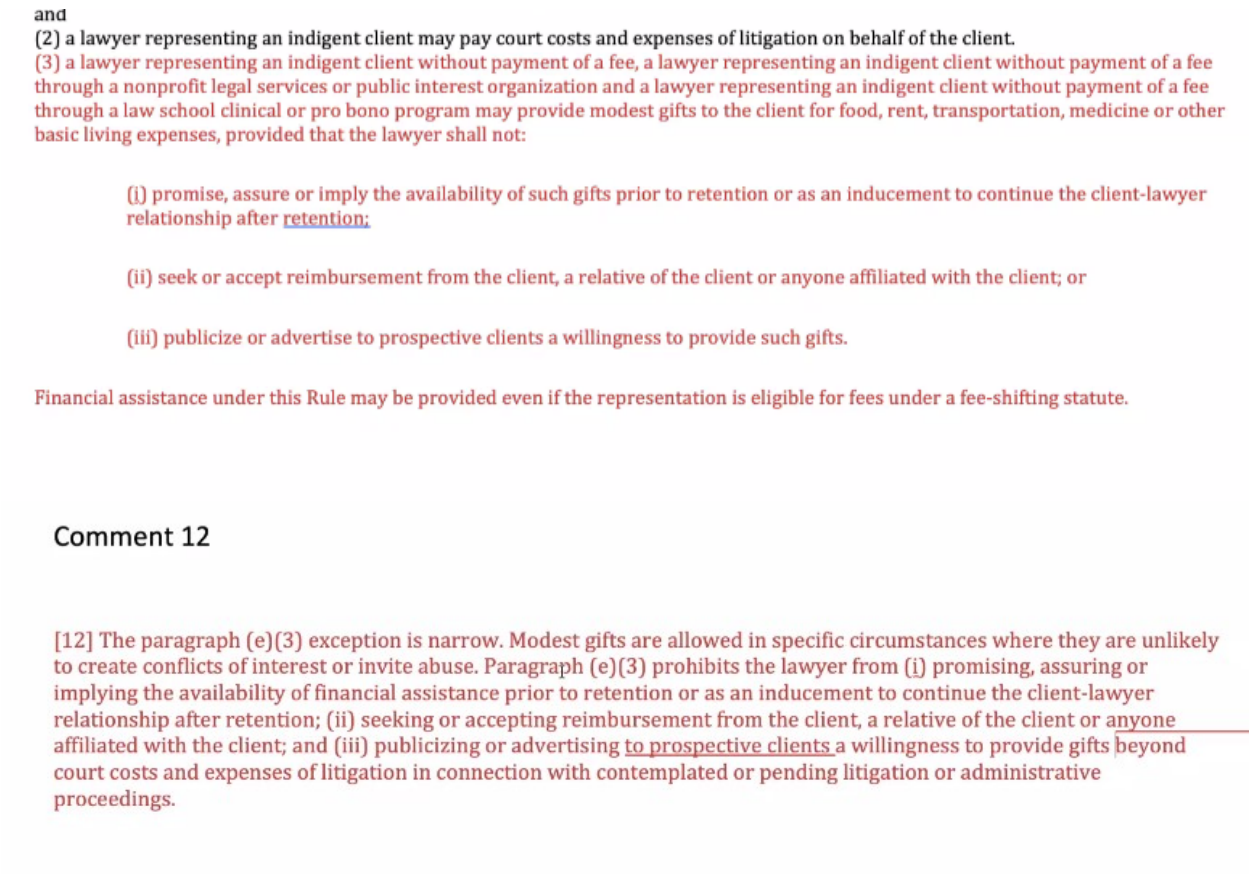
A member explained that the phrasing is confusing because it is not clear whether a lawyer may not advertise or publicize to prospective clients or whether a lawyer may not provide gifts to prospective clients. The member suggested a friendly amendment to RPC 1.8(e)(3)(iii) to say, "provided that the lawyer may not: . . . (iii) publicize or advertise to prospective clients a willingness to provide such gifts."

Members discussed whether to include the word "prospective" at all. Some members indicated that the language in RPC 1.8(e)(3)(iii) may be unnecessary altogether.

A member raised a concern about the structure of RPC 1.8(e). RPC 1.8(e) uses the term "shall not provide" and then RPC 1.8(e)(1)-(3) provides exceptions to that, and then RPC 1.8(e)(3)(iii) provides an exception to the exception. That can be confusing. Additionally, use of the term "may not" in RPC 1.8(e)(3)(iii) differs from "shall not." So RPC 1.8(e)(3) should say "shall not."

A motion was made to approve the proposed revisions to RPC 1.8(e) with the friendly amendments.

The proposal with the friendly amendment language is as follows:



and
(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
(3) a lawyer representing an indigent client without payment of a fee, a lawyer representing an indigent client without payment of a fee through a nonprofit legal services or public interest organization and a lawyer representing an indigent client without payment of a fee through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine or other basic living expenses, provided that the lawyer shall not:

(i) promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; or

(iii) publicize or advertise to prospective clients a willingness to provide such gifts.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

Comment 12

[12] The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific circumstances where they are unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising to prospective clients a willingness to provide gifts beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

The motion was seconded. The committee approved the motion unanimously.

7. **PALS Committee**

Judge Espinoza spoke. His memorandum regarding the status of the licensed legal paraprofessional initiative (known as "PALS") was included with the materials for this meeting. Judge Espinoza identified and thanked those members who are participating in the PALS committee and summarized his memorandum.

8. Adjournment.

A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 11:36 A.M.

Respectfully submitted,

Troy Rackham
Thomas E. Downey, Jr., Secretary

Attachment 2

COLORADO SUPREME COURT
ATTORNEY REGULATION COUNSEL

Attorney Regulation Counsel
Jessica E. Yates

Chief Deputy Regulation Counsel
Margaret B. Funk

Deputy Regulation Counsel
April M. McMurrey

Deputy Regulation Counsel
Dawn M. McKnight

Deputy Regulation Counsel
Gregory G. Sapakoff

Attorneys' Fund for Client Protection
Unauthorized Practice of Law

Senior Assistant Regulation Counsel
Erin Robson Kristofco
Alan C. Obye
Lisa E. Pearce
Assistant Regulation Counsel
Jill Perry Fernandez
Michelle LeFlore
Jody McGuirk
Michele Melnick
Justin P. Moore
Matt Ratterman
Catherine S. Shea
Jacob M. Vos
Jonathan P. White
Rhonda White-Mitchell
E. James Wilder
Inventory Counsel
Jay Fernandez

July 8, 2022

Dear Members of the Supreme Court Standing Committee on the Rules of Professional Conduct:

Pursuant to the work of the subcommittee formed to address communications about professional liability insurance and the feedback received from the Standing Committee at its April 2022 meeting, the subcommittee hereby tenders a revised recommendation to the Standing Committee. The proposed rule and comments that would be added to Colo. RPC 1.4 are set forth in **Attachment A.**

Membership of the Subcommittee

The subcommittee continues to be comprised of the following members of the Standing Committee:

- Nancy Cohen
- The Hon. Adam Espinosa
- Margaret Funk
- Troy Rackham
- David Stark
- Robert Steinmetz
- Jamie Sudler
- Jessica Yates
- Tuck Young

Revisions Included in This Proposal

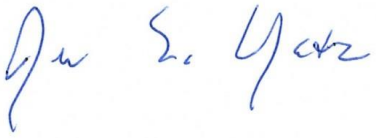
The subcommittee met after the Standing Committee provided some feedback during its April 2022 meeting. The subcommittee was left with the sense that the

previous proposal could be simplified, and endeavored to do that. The revisions include the following:

- Clarifying in the proposed rule, Colo. RPC 1.4(c), that the requirement for disclosure of no insurance or under-insurance refers to having a "policy" providing at least $100,000 per claim and $300,000 in the aggregate per year;
- Deleting from the proposed rule language the phrase "subject to commercially reasonable deductibles, retention or co-insurance," and deleting the portion of proposed comment [10] that interpreted that language, as it could be confusing and likely is unnecessary;
- Deleting from proposed comment [9] a reference to an additional disclosure if the lawyer's professional liability insurance drops or is terminated, which had not been included in the prior proposal and was inadvertently retained in the comment;
- Adding language to proposed comment [10] that an insurance policy with the dollar thresholds referred to in proposed Colo. RPC 1.4(c) is "sufficient" even if limits of the coverage erode with defense costs;
- Deleting the proposed comment [19] to Colo. RPC 1.5 as unnecessary and possibly confusing; and
- Reformatting the safe harbor language in proposed comment [9].

Attachment A is a redline of the proposed revision compared to the previous proposal with yellow highlighting for additions and strike-through for deletions against the previous proposal. If the Standing Committee approves any changes to Colo. RPC 1.4, the subcommittee can prepare a redline against the current rule for transmittal to the Supreme Court.

Sincerely,



Jessica E. Yates
Attorney Regulation Counsel

Attachment A

Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer in private practice shall inform a new client in writing before or within a reasonable time after commencing the representation if the lawyer is not covered by a professional liability insurance policy of at least $100,000 per claim and $300,000 in the aggregate per year~~, subject to commercially reasonable deductibles, retention or co-insurance~~. A lawyer shall maintain a record of these disclosures for seven years after the termination of the representation of a client.

COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with

and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.

Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[6A] Regarding communications with clients when a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the providing of legal services to the client, see Comment [6] to Rule 1.1.

[6B] Regarding communications with clients and with lawyers outside of the lawyer's firm when lawyers from more than one firm are providing legal services to the client on a particular matter, see Comment [7] to Rule 1.1.

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A

lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

Explanation of Fees and Expenses

[7A] Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. Additionally, the lawyer should promptly respond to the client's reasonable requests concerning such matters. It is strongly recommended that all these communications be in writing. As to the basis or rate of the fee, see Rule 1.5(b).

Disclosures Regarding Insurance

[8] “Private practice” in paragraph (c) does not include lawyers exclusively in government practice or exclusively employed as in-house counsel.

[9] Lawyers may use the following language in making the disclosures required by this rule:

> ~~“~~Colorado Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least $100,000 per claim and $300,000 in the aggregate per year ~~and if, at any time, a lawyer’s professional liability insurance drops below either of those amounts or a lawyer’s professional liability insurance coverage is terminated~~. You are therefore advised that (name of attorney or firm) does not have professional liability insurance coverage of at least $100,000 per claim and $300,000 in the aggregate per year.~~”~~

[10] ~~A lawyer or firm maintaining professional liability insurance coverage – whether through the current policy or successor policies - in at least the minimum amounts provided in paragraph (c) is not subject to the disclosure obligations mandated by paragraph (c) if such coverage is subject to commercially reasonable deductibles, retention or co-insurance. Deductibles, retentions or co-insurance offered, from time to time, in the marketplace for professional liability insurance~~

~~for the size of firm and coverage limits purchased will be deemed to be commercially reasonable.~~ A professional liability insurance policy with coverage of at least $100,000 per claim and $300,000 in the aggregate is sufficient ~~deemed commercially reasonable~~ even if limits of that coverage erode with defense costs.

~~Rule 1.5. Fees~~

~~****~~

~~COMMENT~~

~~****~~

~~[19] The provisions of other Rules may require a lawyer to include additional terms or statements in communications concerning fees. See Rule 1.4.~~

Attachment 3

Licensed Legal Paraprofessionals Implementation Report and Plan

On June 3, 2021, the **Colorado Supreme Court ordered the Advisory Committee on the Practice of Law** to develop a plan to implement the licensure of legal paraprofessionals, such as paralegals, to provide certain types of legal services in certain types of family law matters. The following proposed plan was developed by the Advisory Committee's "PALS II" Subcommittee and its various working groups, which include volunteer judges, attorneys, paralegals, family court facilitators, and other court staff.

Executive Summary

This plan provides for the licensure of qualified legal paraprofessionals to provide limited legal services in less complicated, lower-asset domestic relations cases, including marital dissolutions and allocations of parental responsibility, so that legal services may become more widely available and more affordable to many of the 73% of domestic relations litigants[1] who otherwise would appear in family court without a lawyer.

Licensed legal paraprofessionals—referred to as LLPs—would be allowed to represent a party in a marital dissolution where net marital assets are below $200,000. They also would be allowed to represent a party in an allocation of parental responsibility matter outside a dissolution proceeding if their client's income falls below a certain amount. LLPs could complete and file standard pleadings, and represent their clients in mediation. They would be allowed to

[1] *See* Colorado Judicial Branch, "Cases and Parties without Attorney Representation in Civil Cases Fiscal Year 2021," Dec. 15, 2021, p. 4. The report is available here: https://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Research%20and%20Data/Cases%20Parties%20without%20Attorney%20Representation/Case%20and%20Parties%20without%20Attorney%20Representation-FY2021.pdf.

accompany their clients to court, and to answer a court's factual questions. However, they would not be allowed to orally advocate, present oral argument, or examine witnesses in a hearing.

LLPs would have to meet certain educational requirements. They would need 1,500 hours of experience in a professional law setting, such as a law firm or court, in the past three years, with at least 500 hours of family law experience. They would have to take and pass a licensure exam and an ethics exam specific to LLPs. They would have to pay an annual registration fee, complete continuing legal education requirements, and could be grieved like an attorney. They could be subject to public discipline against their licenses, and even suspended or disbarred for serious misconduct.

Fortunately, the drafters of this plan – which includes core competencies for licensure and various rule and statutory changes – did not have to reinvent the wheel. Washington and Utah already have rolled out programs to license legal paraprofessionals, and Arizona and Minnesota are well on their way. Based on the still-accumulating lessons learned, Colorado LLPs would be allowed to have their own practices and firms, though the drafters expect that most will choose to practice in law firms with lawyers.

Finally, while outreach already has started, the plan drafters know education and training directed to courts, lawyers and the public about LLPs will be critical to the success of the program. With the submission of this plan, the work has just begun.

Outline of Implementation Plan

The Implementation Plan covers the following:

1. What LLPs[2] Would Be Allowed to Do (and Not Do)? As noted above, LLPs would be authorized to engage in a limited scope of practice of law in certain types of matters. The restrictions are designed to allow effective representation in many less complex family law matters, while preventing LLP representation in more complex matters and higher-asset matters (which tend to involve more litigation), as well as matters with contested or novel questions of law.

2. How Would LLPs Be Deemed Qualified to Provide Legal Services? A qualifying applicant would need to meet certain educational requirements and complete 1,500 hours of substantive law-related experience within the three years prior to the application, including 500 hours of substantive law-related experience in Colorado family law. All LLP applicants would be required to take and pass a substantive exam on family law demonstrating sufficient knowledge in the core competencies of this area of practice, as well as an exam on professional responsibilities.

3. What Registration and CLE Requirements Would Apply to LLPs? LLPs would be required to register annually as attorneys do. LLPs would need to take CLEs as follows: at least 30 credit hours every three years, of which at least 5 hours would be devoted to professional responsibility comprised of at least four credit hours in the areas of legal ethics or legal professionalism, and one credit hour in the area of equity, diversity, and inclusivity.

[2] This plan uses the name Licensed Legal Paraprofessionals (LLP), recognizing that the acronym LLP could be confusing and another name could be selected. Other states have used the following: Legal Paraprofessionals (LPs) (Arizona); Licensed Paralegal Practitioners (LPPs) (Utah); and Limited License Legal Technicians (LLLTs) (Washington). Minnesota uses the term Legal Paraprofessional, but these individuals are not licensed for independent practice.

4. How Would LLPs' Compliance with Ethics Rules Be Enforced? LLPs would be required to comply with rules of professional conduct specific to LLPs. The proposed LLP rules of professional conduct very closely parallel the Colorado Rules of Professional Conduct that apply to lawyers. LLPs would be subject to the regulatory jurisdiction of the Court through the Office of Attorney Regulation Counsel and the Office of the Presiding Disciplinary Judge.

5. Who Has Been Involved in This Plan? And Who Would Implement It? This plan reflects the contributions of the many working group members involved in this plan, whose efforts are detailed below and include outreach to family law attorneys and judges. This plan also proposes that many of these contributors would be part of the implementation process, including a governance process, IT systems changes, and dedicated training and outreach efforts.

6. Why Go Through The Effort of Licensing Non-Lawyers in a Limited Field of Practice? The lack of representation in family law matters is well documented, with 73% of litigants in domestic relations matters appearing pro se.[3] Even basic legal advice and completion and filing of standard pleadings could be significantly helpful to litigants, court staff, judges, and even opposing counsel. Assistance in mediation also could help parties save time and legal costs. Other types of non-lawyer professionals – such as real estate agents – effectively engage in a limited scope practice of law through a non-lawyer license, and the medical profession has long provided for different professional scopes of practice. While the initial set-up of an LLP program may seem like a significant lift, the long-term impact is not complex: more people will get legal services during a critical time for them.

[3] See footnote 1, *supra.*

The resource implications, if any, of each question posed and answered are discussed within that topic. Washington State and Utah, the two states that have at least several years of experience with licensing legal paraprofessionals have reported that the number of licensed individuals remain low enough to not require substantial increases in staff.[4]

1. What LLPs Would Be Allowed to Do (and Not Do)?

A **new rule would be created to expressly authorize LLPs to engage in the practice of law**, but only in certain areas of family law and only with respect to certain types of legal services/tasks. Specifically, LLPs would not be allowed to orally advocate in court, but LLPs could prepare filings and supporting documentation, accompany a client to court and sit at counsel table, and represent a client in mediated proceedings. LLPs could practice independently, without supervision by attorneys, and therefore handle client property and funds. LLPs also could practice with attorneys, but would not be allowed to supervise attorneys, nor could they have a majority interest in an attorney law firm.

The rule also would create jurisdictional limitations on the client matters an LLP could accept, though a court could allow the representation for good cause. These limitations are aimed at ensuring that LLPs do not accept client matters that would require resolution of complex issues of law or fact. A **client intake form** would be developed to assist LLPs in the process of evaluating whether they could take on client matters.

[4] As of early May 2022, Utah has licensed 23 paralegals over 2 years. Washington has licensed 66 legal technicians over 6 years, and currently is not accepting new applications. Arizona held its first licensure exam in June 2021 and now has 17 licensed legal paraprofessionals.

LLPs could represent a client in a dissolution of marriage or civil union only if the LLP's initial determination of net marital assets shows they are less than $200,000. Net marital assets are defined as marital property (C.R.S. §14-10-113(2)) minus marital debts (*In re Marriage of Krejci*, 2013 COA 6, 297 P.3d 1035). Because an LLP could learn information later in a representation that would push net marital assets over the cap, a court would be authorized to allow a representation to continue for good cause.

Within this type of case, LLPs could assist in proceedings requesting dissolution, legal separation, allocation of parental responsibility (APR), invalidity of marriage, parentage (in the context of dissolution or APR) petition, and/or protection orders, motions for remedial contempt citations, and/or post-decree modifications of APR, child support and/or maintenance.

LLPs also would be allowed to prepare and file the following:[5]

- Stipulated Case Management Plan (C.R.C.P. 16.2);
- Verified Pleading Affidavit for Grandparent or Great-Grandparent Visitation (C.R.S. § 19-1-117);
- Motion to Intervene (C.R.C.P. 24);
- Name change for minor child (C.R.S. §13-15-101 et. seq.);
- Garnishment for Support (C.R.S. §13-54-101 et. seq.);
- Income Assignments (C.R.S. §14-14-111.5); and
- Domestication (C.R.S. §14-14-111.5).

An LLP would be authorized by rule to provide the following services:

[5] These suggested additions were not included in the PALS preliminary report in 2021, but since that time, various working group participants have proposed these additions, and they have been widely vetted across working groups.

- informing, counseling, advising, and assisting the client in determining which form (among those approved by the Judicial Department or the Supreme Court) to use as the basis for a document in a matter, and advising the client on how to complete a form or provide information for a document;
- preparing and completing documents using forms approved by the Judicial Department or the Supreme Court[6], including proposed parenting plans, separation agreements, motions or stipulations for child support modification, child support worksheets, proposed orders, non-appearance affidavits, discovery requests and answers to discovery requests, trial management certificates, pretrial submissions, and exhibit and witness lists; obtaining, explaining, and filing any document or necessary information in support of a form or other document, including sworn financial statements and certificates of compliance;
- signing, filing, and completing service of documents;
- reviewing documents of another party and explaining them to the client;
- informing, counseling, assisting and advocating for a client in negotiations with another party or that party's representative and in mediations;
- filling in, signing, filing, and completing service of a written settlement agreement in conformity with the negotiated agreement;
- communicating with another party or the party's representative regarding documents prepared for or filed in a case and matters reasonably related thereto;
- explaining a court order to a client that affects the client's rights and obligations;

[6] Court-approved forms are intended to be used by either attorneys or pro se parties. Many of them may need to be modified to refer to LLPs.

- standing or sitting at counsel table with the client during a court proceeding to provide emotional support, communicating with the client during the proceeding, answering factual questions if the court addresses the LLP, taking notes, and assisting the client in understanding the proceeding and relevant orders;
- providing clients with information about additional resources or requirements, such as parenting education classes, and filing certificates of completion with the court; and
- advising clients regarding the need for a lawyer to review complex issues that may arise in a matter.

Similarly, LLPs could represent a client in an APR matter that is not part of a marital dissolution only if the client's income and/or combined parental income is less than a certain threshold.[7] This implementation plan does not propose either a specific income threshold or method of determining that threshold, because the drafters concluded that the Court's perspective and public comments may be helpful in determining the threshold. The proposed approaches to determining such an income threshold include: a reference to a client's taxable income as determined by the prior year's tax filing; a client's self-reported gross income; and a client's good-faith estimate of the other parent's gross income as well as a

[7] Discussions by various working group members included a suggestion of a "cap" of $100,000 in income for a client who is not married to the child/ren's other parent. This amount is roughly half the proposed net marital asset "cap" for LLP representation in dissolution of marriage actions, and slightly above 400% of the current Federal poverty guidelines for a family of three people ($92,120 as of February 2022). Others suggested that the amount be tied to 400% of the Federal Poverty Guidelines as updated, but there was concern that it would be difficult for LLPs to annually monitor this number. Other comments included that some of these individuals could pay for services from a domestic relations attorney. The group decided to request that the Colorado Supreme Court determine the appropriate APR "cap" for LLPs, considering all these concerns, and solicit public comment on the issue.

client's own income. State median incomes, child support tables, and federal poverty tables were discussed as possible analytical tools. An LLP would need to be able to readily ascertain this information at the time of client intake. Again, a "good cause" exception would allow a court to authorize a representation if the qualifying threshold is not met.

LLPs could provide legal services in these APR cases with essentially the same scope of authority and similar services as marital dissolution cases.

In contrast, LLPs would not be allowed to represent any clients, regardless of assets or income, in certain types of matters that are inherently more complicated. These include: registration of foreign orders; motions for or orders regarding punitive contempt citations; matters involving an allegation of common law marriage; preparation or enforcement of pre-nuptial or post-nuptial agreements, matters in which a party is a beneficiary of a trust, and information about the trust will be relevant to resolution of the matter; and matters involving contested jurisdiction of the court. An LLP would be required to advise a client that only a licensed attorney can represent the client in such matters. Likewise, ethics rules would require an LLP to decline a representation when it is apparent that it would raise issues of significant complexity.

An LLP also would be required to advise a client that the LLP cannot provide certain types of services, and for such services, the client would need to retain a lawyer if the client desires representation. For example, because LLPs would not be allowed to examine witnesses, they also could not take or defend depositions. If expert opinion will be needed in a court proceeding, an LLP also would need to advise the client that the LLP cannot assist in eliciting that expert testimony, so assistance from a licensed attorney would be recommended.[8]

[8] The preliminary report had recommended that the LLP be restricted to pattern discovery. This report does not include that recommendation.

Plan drafters anticipate—based on discussions with Utah and Washington representatives familiar with similar programs – that LLPs will develop working relationships with certain attorneys familiar to them (indeed, with whom they may be working in a law firm) to whom they can refer matters when such situations arise.

Extending to LLPs the authority to practice law would require **changes to a variety of statutes and rules,** so that it is clear what LLPs are allowed to do (and not do), and also to protect client communications with LLPs as privileged. Most such changes would simply add a reference to LLPs where there already is a reference to lawyers. Other changes would be specific to LLPs given their more limited authority to practice law.[9]

LLPs could practice in firms with attorneys, and indeed, experience from Washington State and Utah indicates that many if not most LLPs choose to do so. When LLPs practice with lawyers, they would be allowed to have a minority ownership interest in the firm, but could not supervise lawyers. LLPs also could practice independent of attorneys, so the ethical rules concerning funds-handling and trust accounts would apply when LLPs are practicing by themselves or in an LLP firm (a firm without lawyers).

[9] This implementation plan includes draft amendments to C.R.C.P. 11, 16.2, 26, 33, 36, 37, 45, 53, and 121 to provide for LLP practice are attached and linked here; the Court's Civil Rules Committee will need to be engaged to develop a proposal. The plan also includes proposed changes to Title 13, Courts and Court Procedure, of the Colorado Revised Statutes – Article 17 (Attorney Fees), Article 90 (Witnesses), and Article 93 (Attorneys-at-Law), as well as Title 14, Domestic Matters, Article 10 (Uniform Dissolution of Marriage), and Title 19, Children's Code, Article 4 (Uniform Parentage Act).

2. How Would LLPs Be Deemed Qualified to Provide Legal Services?

LLPs would need to satisfy certain educational and experiential requirements in order to sit for licensure examinations. They would need to pass those exams, and meet character and fitness requirements.

Educational Requirements:

After a three-year transition period from the time the LLP program is launched, individuals applying to become LLPs would need to demonstrate at least one of the following educational qualifications:

- A juris doctorate degree in law from an accredited law school;
- An associate's degree in paralegal studies from an accredited school;
- A bachelor's degree in paralegal studies from an accredited school;
- A bachelor's degree in any subject from an accredited school, plus a paralegal certificate, or 15 hours of paralegal studies from an accredited school; or
- A master's degree in legal studies[10] from an accredited school.

Utah's definition of the term "accredited" may provide guidance and could be used in Colorado's admissions rules.[11]

[10] This option was not included in the PALS preliminary report submitted in 2021, but as a result of wider consultation in the past year, it is being included now.

[11] The Utah Code of Judicial Administration, Rule 15-701, provides definitions of accreditation, paralegal certificate and paralegal studies that rely on approval by the U.S. Department of Education, and/or the ABA Standing Committee on Paralegals.

Experiential Requirement

To apply for LLP licensure, an individual must demonstrate that they have 1,500 hours of substantive law-related experience within the three years prior to the application, including 500 hours of substantive law-related experience in Colorado family law.

Family Law and Ethics Licensure Exams

The family law exam would be developed based on the "**Core Competencies**" developed through an extensive working group process. The Core Competencies document sets forth a comprehensive list of tasks and legal concepts that an LLP must master to obtain licensure. Some of these core competencies will be obtained through education, and some will be learned during the prerequisite hours of qualifying LLP experience. The exam would cover both substantive law as well as procedural competence in ascertaining what filings are needed in a case, and practical skills in completing court-approved forms. A separate exam would cover LLPs' knowledge of the rules of professional conduct specific to LLPs.

An exam creation firm would be used to **develop exam questions**. Such firms often employ a psychometrician to ensure exam content is of comparable difficulty from one exam administration to another, and to identify an appropriate passing score. The initial cost of exam development likely will range from $50,000-$60,000. A process for grading the exams also will be needed, though the initial exam pools are likely to be small. Currently OAA pays graders for the attorney bar exam to help create long-term stability in the grading process.

No "on motion" admissions process is being proposed that would permit waiver of the exam requirements by legal paraprofessionals licensed in other jurisdictions.

Given the highly specific nature of this licensure exam (as opposed to a general licensure exam for attorneys), most if not all applicants will need to take a family law class to prepare for licensure. **Plan drafters anticipate that community colleges and possibly the graduate programs** at the University of Colorado and the University of Denver will develop programs to cover the Core Competencies, and will offer classes through in-person and on-line continuing education at a community college(s) throughout Colorado. Applicants seeking LLP licensure also could seek a waiver from the Supreme Court to be relieved of the requirement to complete additional coursework, but still would be required to pass the licensure exams and otherwise meet character and fitness requirements.

Admissions Process for LLPs

Interested individuals would apply to become an LLP through an online application. OARC's Office of Attorney Admissions ("OAA") could work with its existing vendor, CiviCore, to add an application specific to LLPs. It likely would parallel the application for attorney admission in many ways. Application deadlines would be published by the OAA through its website. LLP applications would then be reviewed by designated OAA staff for compliance with **admissions eligibility rules as well as character and fitness**.

LLP applicants requesting waiver of an eligibility rule could petition the Supreme Court through a rule similar to the C.R.C.P. 206 process available to attorney applicants. The cost of developing a unique LLP application has not been estimated at this time.

Character and fitness review would take place in the same manner as it current does for attorney applicants. The Court's Character and Fitness Committee of the Board of Law Examiners would have authority to convene inquiry panels

and hold character and fitness hearings in order to make a recommendation to the Supreme Court regarding admission.

3. What Registration and CLE Requirements Would Apply to LLPs?

LLPs will be required to register annually as attorneys do using a very similar on-line form. However, this implementation plan proposes an **LLP-specific registration rule** that would set a fee lower than that of attorneys in recognition that LLPs have a more limited authority to practice law and will primarily work with modest means clients. The current active attorney registration fee is $325, with $25 of that designated for the Client Protection Fund; attorneys in their first three years of practice pay $190 a year. Inactive attorneys pay $130 a year up until age 65.

This plan proposes that active LLPs pay $90 their first three years of practice, $160 per year after that. Inactive LLPs would pay $60 a year until age 65. $15 of each active registration would be applied to the Attorneys' Fund for Client Protection, with claims against LLPs for their dishonest conduct being eligible for payment from the Fund.

LLPs would have a unique identifier similar to the attorney registration number. The details of this issue will require resolution with systems administrators at the State Court Administrator's Office (SCAO). Although the Office of Attorney Registration Counsel's Clerk of Registration has the ability to give LLPs a unique identifier that is different from that of attorneys – such as starting the identifier with a letter combined with a number rather than just a number – the letters will not batch with Colorado Courts E-filing (CCE) and JPOD (Colorado courts' internal judicial operating system)'s fields that are numeric only. Resources would be needed to make these system changes by SCAO, as LLPs need to be able to file into cases and access case documents. SCAO also would

need to add a field to the drop-down menu for case roles to include LLPs, which appears to be an easier change to implement.

LLPs also would be required to comply with **continuing legal education provisions specific to LLPs**. In doing so, LLPs would need to meet a lower number of CLE credit hours compared to the 45-hours every-three-years that attorneys must meet, given that LLPs would have a much more limited authority to practice. LLPs instead would need to take CLEs as follows: at least 30 credit hours every three years, of which at least 5 hours would be devoted to professional responsibility comprised of two categories (four credit hours in the areas of legal ethics or legal professionalism, and one credit hour in the area of equity, diversity, and inclusivity).

As with attorneys, LLPs would be subject to administrative suspension if they fail to complete annual registration or required CLEs.

4. How Would LLPs' Compliance with Ethics Rules Be Enforced?

LLPs would be required to comply with **rules of professional conduct specific to LLPs**. This implementation plan includes a draft set of rules, though for the most part, the comments to each rule have not been drafted yet. The LLP rules of professional conduct very closely parallel the Colorado Rules of Professional Conduct that apply to lawyers.

While individual courts would have jurisdiction over whether an LLP can enter an appearance in a particular case, LLPs will have an independent ethical obligation to not practice law outside their authorized scope, and to advise clients that they cannot handle complex matters and should consider engaging attorneys for such matters. However, LLPs would not necessarily need to withdraw from a matter if a client chooses to also engage an attorney, for example, to handle a

particular hearing. Attorneys already can take on limited scope representations under Colo. RPC 1.2(c).

The Supreme Court's rules concerning attorney discipline and disability would be amended to **apply the attorney discipline and disability rules to LLPs**. Complaints about LLPs would be directed to OARC's intake process, and investigated by OARC staff. Any alternatives to discipline available to attorneys also would be available to LLPs. The Legal Regulation Committee would have jurisdiction to authorize formal proceedings, which would occur before the Presiding Disciplinary Judge.

Other states with licensed paraprofessional programs have observed that few complaints are filed against their licensed paraprofessionals, and OARC assumes it could absorb these additional responsibilities without any immediate need for more resources dedicated to LLP regulation.

5. Who Has Been Involved in This Plan? And Who Would Implement It?

The Coordinators of and Contributors to the Plan

Under the auspices of the Advisory Committee on the Practice of Law, the PALS II[12] Executive/Coordination Working Group and four implementation Working Groups[13] which have met frequently over the past year. Descriptions of the Groups and their functions are as follows:

[12] A group developed a white paper for "PALS I" – Providers of Alternative Legal Services – and submitted it to the Advisory Committee and the Court in 2019. It focused on landlord-tenant cases, and the paralegals would have been allowed to provide pro bono services to tenants. The Supreme Court requested that a second effort be commenced to focus on paid, licensed paraprofessionals and domestic relations matters.

[13] Working group participants are identified below.

Executive/Coordinating Working Group:

- Monitor and coordinate tasks of working groups.
- Propose permanent structures to:
    - Fund implementation and ongoing LLP program oversight;
    - Propose licensure/regulation entity and staffing for implementation and ongoing work of LLP program;
    - Create one or more standing committees to exercise oversight in a manner consistent with attorney regulation and/or propose folding paraprofessionals into existing standing committees.
- Address any residual decisional issues not finalized in May 2022 report.
- Develop an evaluation plan, vet evaluation experts, and propose funding sources.[14]

Qualifications for Licensure Working Group:

- Educational and experiential qualifications: Refine and provide any additional specifications.
- Work with community colleges, institutions of higher educations and law schools re: statewide course availability, coverage, and accessibility.
- Testing/exam qualifications: Specify parameters of exams, identify competencies to be tested, receive briefings and information from psychometricians.

Systems and Judicial Coordination Working Group:

- Evaluate whether buildouts/changes of existing systems are needed, and identify estimated costs.

[14] An evaluation plan is not being submitted with the implementation plan at this time, as evaluation will depend on final details of the LLP program.

- Evaluate training needed for judicial officers, clerks and judicial assistants, family court facilitators, self-help litigant assistants, and other Judicial Branch staff necessary for implementation.
- Evaluate what court-approved forms need to be edited.
- Evaluate which administrative district orders, chief justice directives, and other court issuances may need to be revised.

Rules Working Group:

- Identify and evaluate the universe of statutes and rules required to be amended to implement the LLP program.
- Draft statutory and rule amendments and coordinate as needed with other Supreme Court committees.

Education and Outreach Working Group:

- Identify informational gaps/misunderstandings regarding the use of licensed paraprofessionals to provide legal services.
- Develop and deliver public and lawyer education campaign proposals and presentations.

<u>Individual Working Group Participants from June 4, 2021- April 24, 2022</u>

Executive/Coordinating Working Group:

- David Stark, Chair of Advisory Committee on the Practice of Law
- Jessica Yates, Attorney Regulation Counsel
- Hon. Adam Espinosa, District Court Judge
- Hon. Angie Arkin, Retired District Court Judge
- Hon. Jennifer Torrington, District Court Judge
- Maha Kamal, Family Law Attorney
- Amy Goscha, Family Law Attorney

Licensure and Qualifications

- Co-chairs: Hon. Angie Arkin (Ret.), Hon. Jennifer Torrington
- Tanya Bartholomew, University of Denver Sturm College of Law
- Joel Borgman, Child Support Services Coordinator, Judicial
- Hon. Catherine Cheroutes, District Court Judge
- Erin Clark, Family Court Facilitator
- Richard Corbetta, Arapahoe Community College
- Tina Diaz, Community College of Denver
- Jennifer Feingold, Family Law Attorney
- Hon. Michelle Haynes, Magistrate Judge
- Karey James, Community College of Denver
- Hon. Frances Johnson, District Court Judge
- Laura Landon, Family Law Paralegal
- Dawn McKnight, Deputy Regulation Counsel for Admissions, Registration and CLE
- Colleen McManamon, Family Law Paralegal and Mediator
- Rebekah Pfahler, Family Law Attorney
- Gina Weitzenkorn, Family Law Attorney
- Jessica Yates

Rules

- Chair: Hon. Adam Espinosa
- Nancy Cohen, Attorney, Member of Advisory Committee and Committee on Rules of Professional Conduct
- Cindy Covell, Attorney, Member of Advisory Committee and Committee on Rules of Professional Conduct
- Dave Johnson, Family Law Attorney, Member of Legal Regulation Committee
- Hon. Michal Lord-Blegen, Magistrate Judge
- Katharine Lum, Family Law Attorney
- David Stark
- Hon. Dan Taubman, Retired Court of Appeals Judge
- Jessica Yates

Outreach and Communications

- Co-chairs: Maha Kamal and Amy Goscha
- Hon. Angie Arkin (Ret.)

- Celeste Carpenter, Arapahoe Community College
- Kaylene Guymon, Self-Represented Litigant Coordinator, Judicial
- Brittany Kauffman, Institute for the Advancement of the American Legal System
- Wes Hassler, Attorney, Access-to-Justice Commission
- Hon. Bryon Large, Magistrate Judge
- Laurie Mactavish, Family Court Facilitator, Judicial
- Toni-Anne Nuñez, Colorado Bar Association Director of Pro Bono Programming
- Hon. Marianne Marshall Tims, Magistrate Judge
- Stefanie Trujillo, Paralegal
- Penny Wagner, Self-Represented Litigant Program Coordinator, Judicial
- Danaé Woody, Family Law Attorney

Judicial Systems Coordination

- Chair: Jessica Yates
- Dawn Handeland, Business Analyst, Judicial
- Heather Lang, Family Court Facilitator
- Jacqueline Marro, Access to Justice Coordinator, Judicial
- Hon. Angie Arkin (Ret.)

The Outreach and Education Efforts To-Date

In 2021-2022, members of the outreach working group as well as members of other LLP working groups have **presented or are scheduled to present** to the following:

- Colorado Bar Association Family Law Executive Council
- Colorado Supreme Court Standing Committee on Family Law Issues
- Colorado Bar Association Executive Council
- Arapahoe Bar Association
- Denver Bar Association
- Douglas Elbert Bar Association
- Pueblo County Bar Association
- Larimer County Bar Association/Ethics Day

- First Judicial District Bar Association
- Continental Divide Bar Association
- Modern Law Practice Initiative
- Fifth Judicial District Access to Justice Committee
- Access to Justice Commission
- Rocky Mountain Paralegal Association
- University of Denver Sturm College of Law (Justice Hart's Access to Justice class)
- University of Colorado School of Law (Professor Kay's ethics classes)
- Domestic Relations Judicial Conference
- Family Law Institute
- OARC's Professionalism Classes

Who Would Implement the Plan

Many of the same individuals would be involved in working groups to implement the plan for a new LLP program; additional individuals would be recruited as appropriate.

- As noted above, many statutory and rule changes would be required, and further review by the above individuals and other Supreme Court committees likely is necessary. They would be able to respond to feedback from the Court or from public comment by refining the attached proposals as necessary.
- Once the core competencies and funding are approved, a new Exam Development Working Group likely will be created to work with the psychometrician to develop the examinations, and to publish guidelines for

the Colorado LLP Examinations. The exam development process is expected to take about 12 months.

- An outreach working group would continue to explain the details of the LLP program to the legal community and the public. Eventually a public information campaign would be needed.
- Judicial officers, clerks, family court facilitators, and self-represented litigant coordinators will need to be trained in what LLPs can and cannot do. (This plan has not evaluated what additional resources will be needed for this training, or whether existing SCAO staff can organize the training.)
- Knowledgeable working group members also will be needed to provide the business requirements for IT systems changes.

Governance of LLP Program

The Supreme Court has exclusive authority over the practice of law through Colorado's constitutional separation of powers. *See* Colo. Const. art. III and *Unauthorized Prac. of L. Comm. of Supreme Ct. of Colorado v. Emps. Unity, Inc.*, 716 P.2d 460, 463 (Colo. 1986). The Supreme Court Advisory Committee on the Practice of Law, through various subcommittees and working groups, has been working on the proposals to allow the practice of law by non-lawyers in certain circumstances, and this proposal to license paraprofessionals to perform certain types of legal services in designated family law matters is a result of that Committee's efforts.

It would be appropriate for the Advisory Committee to continue to have jurisdiction over the LLP program given both the institutional knowledge of that Committee as well as its existing oversight over attorney admissions, registration, continuing legal education, discipline, and disability functions. This

implementation plan anticipates that the Office of Attorney Regulation Counsel ("OARC") would be the administrator of all of these functions as to LLPs.

This plan proposes that the establishment of a new permanent committee to specifically oversee the LLP program, including licensure and admissions requirements. The chair of that committee would also be a member of the Advisory Committee. However, other existing committees – namely the CLJE Committee, the Character and Fitness Committee, and the Legal Regulation Committee – would have jurisdiction over LLP matters falling within the subject matter jurisdiction of those Committees.

The new permanent committee may be encouraged to form subcommittees that would continue to assist in developing the LLP program, tapping on the shoulders of those who have been invested their time and energy in the program's development and have institutional knowledge of decisions that were made in the earlier stages of that development.

6. Why Go Through The Effort of Licensing Non-Lawyers in a Limited Field of Practice?

For many years, participants in Colorado divorce and child custody proceedings have faced challenges in accessing our courts. In 2020, a staggering 64% of Colorado domestic relations parties had no legal representation for the entirety of their case.[15] In fact, out of the more than 30,000 domestic relations cases filed, only one in four had lawyers on both sides. A substantial unmet need remains for these litigants, despite the contributions of non-profits such as Colorado Legal

[15] State Judicial Dept (2020), https://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Research%20and%20Data/Cases%20Parties%20without%20Attorney%20Representation/Case%20and%20Parties%20without%20Attorney%20Representation-FY2020.pdf.

Services, Metro Volunteer Lawyers, and lawyers providing unbundled and/or other volunteer services.

In 2015, to address widespread access to justice concerns in Colorado, the Advisory Committee of the Supreme Court (Court) established the first Providers of Alternative Legal Services (PALS) subcommittee. By 2019, the PALS subcommittee had developed a pilot program for non-lawyer advocates in county court. The Court determined that paraprofessional resources could have the most impact if they were trained to address the immediate needs of litigants in family law cases.

In 2020, the Court requested this change of direction and asked that a new subcommittee of the Advisory Committee (PALS II) be constituted to address the use of licensed paraprofessionals in domestic relations matters. Unlike family court facilitators and self-represented litigant coordinators, these non-lawyers would be allowed to represent clients and provide direct legal advice to their clients. The PALS II subcommittee, with the input of judges, family court facilitators, mediators, paralegals, self-represented litigant coordinators, and family lawyers, **submitted a recommendation to the Court in June 2021 to create the LLP program**. Upon the recommendation of the Advisory Committee on the Practice of Law to move forward with a plan for licensed paraprofessionals, **the Court accepted the recommendation and requested the development of an implementation plan**.

Over the past year, PALS II has developed a detailed strategy for the implementation of the LLP program, in coordination with important stakeholders, including the Colorado Bar Association's Family Law Section, the Rocky Mountain Paralegal Association, family court facilitators, Office of Attorney Regulation Counsel, and family court judges and magistrates. While different stakeholders offer varying perspectives on the scope or nature of the problem, no one has disputed that

a significant number of pro se family court litigants would benefit from receiving legal advice and assistance that they currently do not receive.

Conclusion

This implementation plan builds on the blueprint submitted to the Supreme Court in May 2021, not just by supplying more details to the general framework, but also through extensive involvement of more stakeholders, who helped shed light on specifics that had not been addressed previously and who provided valuable, informed perspectives on the challenging policy questions involved in deciding to license a new type of legal services professional.

At this point, broader public input would be helpful, as well as continued outreach to ensure stakeholders have the opportunity to ask questions and engage in the evolution of the LLP program. Further review and refinement, as necessary of statutory and rule changes also would be appropriate. And systems changes needed for implementation should be prioritized now so resources can be dedicated to those changes. The LLP program proposal is ready for these next steps.