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

AGENDA

April 25, 2025, 9:00 a.m.
The Supreme Court Conference Room and via Webex

Webex link:
https://judicial.webex.com/judicial/j.php?MTID=m15dfa318f375d1d4daafc26e4cdce05b

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1. Call to Order [Judge Lipinsky].

2. Approval of minutes for January 24, 2025, meeting [attachment 1].

3. Old business:

   a. Update on proposed amendments regarding outdated references in the Rules [Judge Lipinsky].

   b. Report from the Rule 6.5 subcommittee [Jessica Yates].

   c. Report from the AI subcommittee [Julia Martinez] [attachment 2].

   d. Update on ABA Model Rule 1.16 [Steve Masciocchi].

   e. Report from the Rule 1.2 subcommittee [Judge Lipinsky].

   f. Report from the subcommittee reviewing references to "nonlawyer" in the Rules [Lois Lupica].

4. New business.

   a. Report on House Bill 25-1090 [Jessica Yates] [attachment 3].

   b. The proposed amendments to the U.S. District Court for the District of Colorado's Attorney Rules [Steve Masciocchi] [attachment 4.]

5. Adjournment.

Upcoming meeting dates: July 25, 2025; September 26, 2025; and January 23, 2026.

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

Attachment 1

COLORADO SUPREME COURT

RULES OF PROFESSIONAL CONDUCT STANDING COMMITTEE

Approved Minutes of Meeting of the Full Committee
On
January 24, 2025
Seventy-Fourth Meeting of the Full Committee

The seventy-fourth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:03 a.m. on Friday, January 24, 2025, by Chair Judge Lino Lipinsky de Orlov. Judge Lipinsky initially took attendance.

Present at the meeting in person were Judge Lipinsky (Chair), Justice Maria E. Berkenkotter, Justice William Hood, Katayoun Donnelly, Judge Adam Espinosa, Marcy G. Glenn, April D. Jones, Judge Bryon M. Large, Jason Lynch, Julia Martinez, Stephen G. Masciocchi, Troy R. Rackham, Marcus L. Squarrell, David W. Stark, James S. Sudler, J.J. Wallace, and Jessica Yates.

Present for the meeting by virtual appearance were Nancy L. Cohen, Cynthia F. Covell, Thomas E. Downey, Jr., Scott L. Evans, Margaret B. Funk, Erika L. Holmes, Jason Lynch, Cecil E. Morris, Jr., Noah Patterson, Henry R. Reeve, Alexander R. Rothrock, and Eli Wald.

Marianne Luu-Chen, Jason Lynch, Judge John Webb, and Fred Yarger were excused. Michael Kaufmann from the Public Defender's Office attended as a guest.

1. CALL TO ORDER. Judge Lipinsky called the meeting to order at 9:03 a.m. Judge Lipinsky welcomed the members in attendance and virtually.

2. APPROVAL OF MINUTES FOR SEPTEMBER 27, 2024 MEETING. A member moved to approve the minutes, which another member seconded. A vote was taken on the motion, which passed unanimously.

3. OLD BUSINESS.

a. Report on the proposed amendments to Rules 1.15A and 1.15B [Judge Lipinsky]. Judge Lipinsky reported that the Colorado Supreme Court had adopted the proposed amendments on October 2, 2024. He thanked the members of the subcommittee that drafted the proposed amendments: James S. Sudler, Chair; Katayoun Donnelly; Scott L. Evans; Margaret B. Funk; Erika Holmes; Marianne Luu-Chen; Alexander R. Rothrock; Marcus L. Squarrell; and Fred Yarger.

b. Report from the Rule 6.5 subcommittee [Jessica Yates]. Ms. Yates reported that the subcommittee was considering possible amendments Rule 6.5, which addresses limited scope representation, in light of the recent amendments to C.A.R. 5(e), C.R.C.P. 11(b), and C.R.C.P. 311(b), and to clarify when a lawyer volunteering at a legal clinic must disclose in writing to the

individuals whom the lawyer assists at the clinic the scope of the lawyer's limited representation. The subcommittee members generally seek to give guidance to clinics and participants in the clinics about what disclosures are necessary to satisfy the informed consent requirement in Rule 1.2(c) and the documentation necessary to confirm that the lawyer provided the required informed consent.

c. Interim report from the AI subcommittee and Technology Committee proposal [Julia Martinez]. Ms. Martinez presented on the status of the work of the AI subcommittee. The last time the Committee met, in September 2024, the subcommittee provided a lengthy report and a minority report. The subcommittee obtained helpful feedback from members of the Committee at that time. The subcommittee has subsequently met several times and discussed incorporating some of the Committee members' suggestions into the subcommittee's proposals. The subcommittee is not in a position to submit a final report because it decided to add definitions of terms such as "AI tool" to its proposed new Rule 1.19. A member of the subcommittee explained that this issue came up a month or so ago and wondered whether existing, generally accepted definitions could be used. The subcommittee anticipates that it will provide final majority and minority reports in advance of the Committee's April meeting.

In addition, the subcommittee is recommending that the Committee propose that the Supreme Court form a new advisory committee on technology that could provide the Bar, LLPs, the judiciary, and members of the public with guidance regarding ethical use of AI. No entities in Colorado are currently authorized, or possess the legal and technological expertise, to draft such guidance documents. Moreover, because technology develops so quickly, current committees, including the CBA Ethics Committee, would not have the resources, time, and expertise to provide timely guidance as technology evolves.

A member explained that roughly two thirds of U.S. jurisdictions have mandatory bar associations, committees of which are authorized to provide court-approved guidance documents or advisory opinions for lawyers and nonlawyers. There would be value in forming a committee to provide similar guidance in Colorado.

Another member spoke in support of the idea of having a technology committee staffed with members who have the expertise and time to provide guidance on the use of technology and evolving changes in technology. A member also noted that no state has adopted changes to its Rules of Professional Conduct to address AI, although there are ethics opinions from the ABA and other states about the use of AI. The absence of authoritative guidance in Colorado makes it all the more important for the formation of a technology committee that could provide useful and authoritative guidance to lawyers and others in Colorado.

Another member voiced support for proposing a technology committee, but wondered under what auspices the committee would proceed. For example, would it be a subcommittee of a current committee? Another member noted that other states, such as New Jersey and New York, have committees that promulgate guidance documents. There is no analog in Colorado.

Judge Lipinsky noted that the proposed committee would not promulgate advisory opinions or guidance documents without the Supreme Court's approval. But the benefit of such a

technology committee would include flexibility and nimbleness. A member liked the idea of having specific subject matter expertise on such a committee and noted that a few subject matter experts are members of the AI subcommittee of the Standing Committee. A subcommittee of the CBA Ethics Committee is considering an AI opinion, but has placed the issue on hold while the Standing Committee considers Rule changes relating to AI. The goal is to ensure that all court and CBA committees speak with a unified voice on AI so there is consistency in the guidance provided. Should the Court elect not to adopt AI-related Rule changes, the Ethics Committee would likely issue an AI opinion.

A member commented that it is important to consider proposing to the Supreme Court AI-related revisions to the current Rules even if the Committee does not propose a standalone Rule on technology. Other members of the Committee agreed. A subcommittee member explained that the subcommittee's next report would likely include proposals for AI-related revisions to the current rules, in addition to a proposed new Rule 1.19 on technology. Judge Lipinsky emphasized that a vote to approve a proposed technology committee would not impact the work of the AI subcommittee.

A member voiced support for proposing a technology committee to the Court, but said the proposal should include a job description or a mission statement. Judge Lipinsky suggested that a few members of the Committee work together to prepare that mission statement for the Committee's approval.

Judge Lipinsky suggested putting the proposal to create a technology committee up for a vote. Judge Large abstained. Mr. Wald abstained. The remainder of the members present voted unanimously in favor of proposing a technology committee to the Supreme Court. A working group was formed to draft a mission statement for the proposed technology committee. The working group members include Jessica Yates, Julia Martinez, Dave Stark, and Judge Lipinsky. Mr. Kaufmann suggested language for the proposed mission statement for the technology committee. The working group will review that language and draft a proposed mission statement for the Committee's review and approval.

A member suggested determining what the CBA and other local bar associations are doing relating to technology and guidance to lawyers on the use of technology. Judge Lipinsky commented that this was a good suggestion. There are other local AI subject matter experts, such as Michael Siebecker (a professor at the University of Denver), who has spoken on the topic. A member discussed an AI tool that the member recently reviewed and noted that a number of generative AI tools are now available for the legal market. Members discussed such tools and how lawyers are using them in their practices.

Justice Berkenkotter thanked the work of the Committee and the AI subcommittee. She explained that, when the Court reached out to Judge Lipinsky to ask the Committee to take on this project in mid-2023, the Court understood that Colorado lawyers and litigants were already confronting problems with their use of AI technology. The evolution of the technology and the correlating issues has been swift. Justice Berkenkotter expressed her and the Court's thanks to everybody on the subcommittee, particularly Julia Martinez (who graciously volunteered to chair the subcommittee) for the time and significant efforts they have spent on evaluating and addressing

issues relating to lawyers' use of AI. Justice Berkenkotter explained that many lawyers simply do not understand the technology or its risks and are using it improperly or in a way that violates the Rules of Professional Conduct and expectations of lawyers. The work that the subcommittee is doing is very important. Judge Lipinsky referenced two recent cases highlighting the dangers of AI and the risk of lawyer sanctions as a result of improper use of the technology. He encouraged members to review the cases: (1) *United States v. Hayes*, 24-cr-0280, 2025 WL 235531 (E.D. Cal. Jan. 17, 2025); and (2) *Kohls v. Ellison*, No. 24-cv-3754, 2025 WL 66514 (D. Minn. Jan. 10, 2025).

d. Update on ABA Model Rule 1.16 [Steve Masciocchi]. Mr. Masciocchi presented on the states that have adopted, rejected, or are considering the amendments to ABA Model Rule 1.16 that the ABA House of Delegates approved in August 2023. So far, only two states — Oregon and Wyoming — have adopted the revised Rule. Wyoming also adopted the comments to the revised Rule. Oregon did not do so; it created its own comments. Eight jurisdictions are at some level of consideration: Alaska, the District of Columbia, Massachusetts, Ohio, New York, Texas, Washington, and Wisconsin. Some states have declined to adopt the revised Rule, including California, Florida, Indiana, and Utah. Mr. Masciocchi will continue to monitor various jurisdictions' consideration of Model Rule 1.16 and inform the Committee of further developments, as necessary.

e. Report from the Rule 1.2 subcommittee [Erika Holmes] Ms. Holmes reported that the subcommittee is considering whether the term "limited legal services" should be substituted for "limited representation" in Rule 1.2(c). The subcommittee had waited to see whether the Court would adopt the proposed changes to C.R.C.P. 11(b) and C.R.C.P. 311(b), which tracked the recent amendments to C.A.R. 5(e). When the court approved those changes, the subcommittee began considering revisions to Rule 1.2(c) to track the language of the amendments to the three rules. The subcommittee plans to submit a proposed revision to the Committee in advance of its April 2025 meeting.

f. Report from the subcommittee reviewing references to "nonlawyer" in the Rules [Lois Lupica]. Judge Lipinsky presented because Professor Lupica was unavailable. Some commentators believe that the use of "non-lawyer" in the Rules is derogatory to persons who do not have a J.D. and are not members of the bar. The subcommittee anticipates it will submit a report with recommendations for consideration at the Committee's April 2025 meeting.

4. NEW BUSINESS.

a. Outdated cross-references in the Rules [Steve Masciocchi]. Mr. Masciocchi reported that he had identified a number of outdated cross-references in the Rules, which appear to be artifacts of prior amendments to the Rules that did not update the corresponding cross-references found in other Rules. Mr. Masciocchi recommended the following amendments to the Rules:

- Rule 1.7, comment [17]: change 1.0(m) to 1.0(n)
- Rule 1.7, comment [20]: change 1.0(n) to 1.0(o)
- Rule 1.10, comment [4]: change 1.0(k) to 1.0(l)
- Rule 1.11, comment [6]: change 1.0(k) to 1.0(l)

- Rule 1.12, comment [4]: change 1.0(k) to 1.0(l)
- Rule 1.18, comment [7]: change 1.0(k) to 1.0(l)
- Rule 2.4, comment [5]: change 1.0(m) to 1.0(n)
- Rule 3.3, comment [1]: change 1.0(m) to 1.0(n)
- Rule 3.5, comment [5]: change 1.0(m) to 1.0(n)

A member moved to approve the recommended revisions. Judge Large abstained. The proposal otherwise carried unanimously. A member commented that it is important to keep in mind in the future that, when the Committee proposes changes to the Rules, it should also propose the necessary changes to any cross-references to those Rules.

b. Coordination with LLP committee [Jessica Yates]. Ms. Yates explained that the advisory committee on LLPs recommended and approved amendments to the LLP Rules of Professional Conduct to conform to the recent amendments to Rules 1.15B, 5.4, and 5.4. The advisory committee will keep abreast of further proposed changes to the Rules to determine whether analogous changes to the LLP Rules of Professional Conduct are needed. At this point, the LLP Rules of Professional Conduct, with only a couple of exceptions, do not have their own comments and instead direct readers to the comments to the analogous Rules. There is currently no need to amend or revise the LLP Rules, which the advisory committee has conformed to the Rules.

5. ADJOURNMENT. A motion to adjourn was made at 10:01 am. The motion carried. The next meeting of the Committee will be on April 25, 2025, with meetings on July 25, 2025, and on September 26, 2025.

Respectfully submitted,

Troy R. Rackham, Secretary

Attachment 2

Memorandum

To: Supreme Court Standing Committee on the Rules of Professional Conduct

From: Artificial Intelligence Subcommittee

Date: April 16, 2025

Re: Potential Changes to the Colorado Rules of Professional Conduct in Response to Emerging Artificial Intelligence Technologies

Summary

The artificial intelligence subcommittee for the Standing Committee on the Colorado Rules of Professional Conduct ("the AI subcommittee") respectfully recommends that the Standing Committee consider the following amendments to the Colorado Rules of Professional Conduct ("the Rules"):

(I) A new Scope [20a];
(II) Amendments to Rule 1.1, Comment [8];
(III) A new Rule 1.19;
(IV) Adding the term "AI Tool" and definition to 1.0 Terminology.

Background

The AI subcommittee submitted an initial memorandum to the Standing Committee in July 2024. That memorandum is attached hereto. Straw polls from the Standing Committee indicated support for adding new Scope [20a][1] and amending Comment [8] to Rule 1.1., both as proposed. Straw polls showed insufficient support for any action on Rule 5.3. And finally, while there was support for the concept of adding a new rule on technology, the Standing Committee provided feedback concerning the proposed text and asked the AI subcommittee to continue working.

The AI subcommittee has amended proposed new Rule 1.19 and the accompanying comments and now also recommends adding a definition of "AI Tools" to 1.0 Terminology, should the Standing Committee support the addition of the new rule.

[1] The AI subcommittee proposed adding a new Scope [21] and renumbering. The Standing Committee suggested adding the proposed language as new Scope [20a] to avoid renumbering.

Recommendations

I. New Scope [20a]

The AI subcommittee recommends proposing the addition of a new Scope [20a] in the Preamble and Scope of the Rules as follows:

> [20a] Technology, including artificial intelligence and similar innovations, plays an increasing role in the practice of law, but that role does not diminish a lawyer's responsibilities under these Rules. A lawyer who uses, directly or indirectly, technology in performing or delivering legal services may be held accountable for a resulting violation of these Rules.

II. Comment [8] to Rule 1.1

The AI subcommittee recommends proposing an amendment to Colorado Rule of Professional Conduct 1.1, Comment [8] to adopt the language in current Comment [8] to ABA Model Rule 1.1. A redline and clean copy of the proposed amendment follows:

> Maintaining Competence
>
> [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with ~~and changes in communications and other~~ relevant technology~~ies~~, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. ~~See Comments [18] and [19] to Rule 1.6.~~

> Maintaining Competence
>
> [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technologies, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

III. New Rule 1.19

A majority of the members of the AI subcommittee recommend that the Standing Committee approve for the Supreme Court's consideration a new, standalone Rule 1.19 addressing technology as follows:

Rule 1.19. Use of Technology

A lawyer shall make reasonable efforts to ensure that the use of technology, including artificial intelligence (AI) tools, in the lawyer's practice conforms to the Rules of Professional Conduct.

COMMENTS

[1] A lawyer's use of technology, particularly generative AI tools, can implicate a number of Rules, including, without limitation, those governing competence (Rule 1.1), communication (Rule 1.4), reasonable fees (Rule 1.5), preservation of a client's confidential information (Rule 1.6), meritorious claims and defenses (Rule 3.1), candor toward the tribunal (Rule 3.3), responsibilities of a partner or supervisory lawyer (Rule 5.1), responsibilities of a subordinate lawyer (Rule 5.2), responsibilities regarding nonlawyer assistance (Rule 5.3), communications concerning a lawyer's services (Rule 7.1), and bias (Rule 8.4(g)).

[2] Comment [8] to Rule 1.1 has particular application to a lawyer's use of AI because the technology is rapidly evolving, an AI tool can produce inaccurate information, and when an AI tool is used to interact autonomously with clients or third parties, the lawyer cannot review and correct the outputs of the AI tool before such interactions occur.

[3] Reliance on technology does not diminish the lawyer's duty to exercise independent judgment in the representation of a client. A lawyer should take reasonable steps to ensure that the use of technology by the lawyer and any lawyers or non-lawyer assistants whom the lawyer supervises produces accurate information.

[4] The reasonable efforts that this Rule imposes require more than reliance on a third party's representations regarding the capabilities, benefits, and risks of a technological tool. Third party representations are not a substitute for the lawyer's independent judgment in evaluating technological tools. For example, a lawyer's reasonable efforts may necessitate reviewing information about a provider or product and reviewing outputs for accuracy.

Ten members of the AI subcommittee voted in favor of proposing this new rule to the Standing Committee. Four members voted against.

IV. Definition of "AI Tool"

A majority of the members of the AI subcommittee recommend proposing that the Supreme Court consider, along with new Rule 1.19, adding a definition of "AI Tool" to 1.0 Terminology, as follows:

> "AI Tool" means any software application, system, or process that uses artificial intelligence—such as machine learning, deep learning, or natural language processing—to generate, analyze, disseminate, or act upon information, data, or content.

Ten members of the AI subcommittee voted in favor of proposing this definition to the Standing Committee. Four members voted against. In addition to the above definition, the AI subcommittee considered other proposed definitions. Thirteen members of the AI subcommittee voted in favor of the above definition, should a definition be proposed, and one member voted in favor of the following alternative definition:

> "AI Tool" means a device or process whose principal function is disseminating information created or developed by artificial intelligence.

Memorandum

To: Supreme Court Standing Committee on the Rules of Professional Conduct

From: Artificial Intelligence Subcommittee

Date: July 18, 2024

Re: Potential Changes to the Colorado Rules of Professional Conduct in Response to Emerging Artificial Intelligence Technologies

Summary

This memorandum sets forth recommendations of the artificial intelligence subcommittee for the Standing Committee on the Colorado Rules of Professional Conduct ("the AI subcommittee") for possible amendments to the Colorado Rules of Professional Conduct ("the Rules"). These recommendations include:

(I) A new Scope [21];
(II) Amendments to Rule 1.1, Comment [8];
(III) Amendments to the text and comments of Rule 5.3;
(IV) A new Rule 1.19.

We ask that the Standing Committee consider each recommendation separately, rather than as a cohesive set of recommendations. The adoption of some recommendations may obviate the need for others.

Background

The AI subcommittee was tasked with considering possible amendments to the Colorado Rules of Professional Conduct in response to recent rapid developments in artificial intelligence ("AI") technologies.

Our initial step as a subcommittee was to educate ourselves as to the capabilities of generative AI technology and the literature discussing implications for the Rules of such technologies.[1] In our early discussions, we reached a consensus on four principles. First, we agreed that, generally speaking, a lawyer's use of generative AI technology does not and should

[1] The AI subcommittee suggests the following two videos, available on YouTube, as useful overviews: Prof. Harry Surden, *GPT-4 and Law: ChatGPT Applies Copyright Law*, YouTube (March 22, 2023), *available at* https://www.youtube.com/watch?v=nqZcrhR8yPU; Prof. Harry Surden, *How GPT/ChatGPT Work – An Understandable Introduction to the Technology*, YouTube (April 22, 2023), *available at* https://www.youtube.com/watch?v=IMAhwv5dn8E. Additional resources are included in the Appendix to this Memorandum.

not diminish the lawyer's obligations under the Rules. Second, we agreed that there is a need to draw lawyers' attention to that first principle. Third, we agreed that any proposed amendments should be crafted so as not to discourage the responsible and beneficial use of AI technologies in ways that benefit clients and increase access to justice. Finally, we agreed that, while recent advances specifically in generative AI technology inspired our review, we should avoid the trap of proposing too-specific amendments which may soon be rendered obsolete by further advances and instead use language which will retain relevance over time. These principles guided our subsequent discussions, and we remain united as to their value, even when we do not agree on their application.

Next, we divided our subcommittee into working groups and methodically reviewed each rule, as well as the Preamble to and Scope section of the Rules, to consider the need for any amendment to the text or comments. Once we narrowed our list, we reconvened. After months of vigorous discussion and revision, we settled on proposing to the Standing Committee the amendments that follow in this memorandum.

We did not reach unanimous consensus as a subcommittee as to each of the following proposals. But we did unanimously agree to bring each of them to the Standing Committee. Where there was disagreement among the subcommittee members, we have included a minority view arguing against the specific amendment.

We recognize that the proposals which follow would interact with one another in various ways. For example, adoption of a new Rule 1.19, as detailed below, may obviate the need for some of the other proposals. We agreed to present these proposals to the Standing Committee as a "menu" of proposals, so to speak, from which the Standing Committee may select in a variety of combinations. We ask that the Standing Committee initially consider each proposal individually and then, after reaching some level of consensus, consider or ask the AI subcommittee to prepare a cohesive package to be presented to the Colorado Supreme Court.

Recommendations

I. New Scope [21]

The AI subcommittee recommends proposing the addition of a new Scope [21] in the Preamble and Scope of the Rules and renumbering, but not changing, the current Scope [21] to Scope [22], as follows:

> [21] Technology, including artificial intelligence and similar innovations, plays an increasing role in the practice of law, but that role does not diminish a lawyer's responsibilities under these Rules. A lawyer who uses, directly or indirectly, technology in performing or delivering legal services may be held accountable for a resulting violation of these Rules.
>
> [~~21~~22] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide

general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

The use of technology is pervasive in the practice of law. Moreover, the ways Colorado lawyers use technology is constantly evolving, implicating lawyers' professional responsibilities in novel ways.[2] Thus, the subcommittee believes that Colorado lawyers would benefit from express notice that the Rules broadly apply to a lawyer's use of technology in the lawyer's legal practice. Because "note[s] on Scope provide general orientation" to lawyers reviewing the Colorado Rules of Professional Conduct,[3] the AI subcommittee recommends adding a new Scope [21].

In making this recommendation, the AI subcommittee notes that at least one sister jurisdiction's bar association recommends including a statement about the importance of competence with technologies, including artificial intelligence, in the preamble to that state's rules of professional conduct.[4]

II. Comment [8] to Rule 1.1

The AI subcommittee recommends proposing an amendment to Colorado Rule of Professional Conduct 1.1, Comment [8] to adopt the language in current Comment [8] to ABA Model Rule 1.1, as follows:

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with ~~and changes in communications and other~~ relevant technology~~ies~~, engage in continuing study and education, and comply with all continuing legal education

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[2] For instance, trends point to the rapid adoption of generative AI technologies in law firms. LexisNexis reported in January 2024 that ninety percent of surveyed legal executives expect to increase investment in generative AI technologies over the next five years; that fifty-three percent of Am Law 200 firms have purchased generative AI tools and forty-five percent are using those tools for legal work; and that forty-three percent of Am Law 200 leaders reported their firm has a dedicated budget to invest in the growth opportunities presented by generative AI. *See New Survey Data from LexisNexis Points to Seismic Shifts in Law Firm Business Models and Corporate Legal Expectations Due to Generative AI*, LEXISNEXIS (Jan. 31, 2024), *available at* https://www.lexisnexis.com/community/pressroom/b/news/posts/new-survey-data-from-lexisnexis-points-to-seismic-shifts-in-law-firm-business-models-and-corporate-legal-expectations-due-to-generative-ai.

[3] Colo. RPC, Scope [21].

[4] *See* Report and Recommendations of New York State Bar Association Task Force on Artificial Intelligence, at 54 (Mar. 2024), *available at* https://nysba.org/app/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf.

requirements to which the lawyer is subject. ~~See Comments [18] and [19] to Rule 1.6.~~

The proposed revision has several benefits. First, it would make the Colorado comment identical to the current Comment [8] to ABA Model Rule 1.1. With the revision, lawyers reviewing the Colorado comment would benefit from the guidance and commentary addressing the Model Rule comment and any identical comments adopted in sister jurisdictions.

Second, the proposed revision puts Colorado lawyers on notice that the duty of competence broadly implicates a lawyer's use of any technology in legal practice—including artificial intelligence—rather than the narrower set of "communications" technologies. The latest generation of AI tools for lawyers have applications far beyond communication tools. In addition, subcommittee members felt that the language "changes in communications" in the Colorado rule was no longer necessary, as the use of email and similar communication technology is now ubiquitous in legal practice.

Third, the proposed revision would simplify and clarify Comment [8]. Subcommittee members agreed that Comment [8]'s reference to Rule 1.6 Comments [18] and [19] potentially creates confusion about which Colorado Rules implicate a lawyer's use of technology in legal practice, and that the cross reference should be omitted in the revised Comment [8]. The current Comment [8] could give rise to a false impression that only Comments [18] and [19] to Rule 1.6 discuss a lawyer's use of technology. But the subject of technology currently and potentially arises in other areas within the Rules, for instance, in the proposed amendments to Comment [3] to Rule 5.3, below, and in the proposed new Scope [21], above. The AI subcommittee thus recommends excising the too-narrow reference to Rule 1.6 Comments [18] and [19] from Comment [8]. In doing so, the AI subcommittee acknowledges that an alternate solution is to expand Comment [8]'s references to include all Rules and comments that discuss a lawyer's use of technology. The AI Subcommittee disfavors this approach, however, because Comment [8] would be in need of revision each time a new reference to technology is added to a Rule or Comment.

III. Rule 5.3

A. Proposed Amendments

The majority of the members of the AI subcommittee recommend certain amendments to the text of Colorado Rule of Professional Conduct 5.3, as well as certain comments to Rule 5.3

Rule 5.3 addresses a lawyer's duty to supervise nonlawyer assistants. A lawyer with direct supervisory authority over nonlawyer assistants is responsible for implementing procedures and policies that ensure that the nonlawyers' conduct is "compatible with the professional obligations of the lawyer." As noted, "[t]he reasoning behind Model Rule 5.3 is that clients hire lawyers to

represent them and while they understand that lawyers may delegate aspects of their work to law firm staff, they expect lawyers to appropriately supervise the performance of those services."[5]

Over recent decades, dramatic technological advances that have changed how lawyers and clients communicate (e-mail), how confidential documents are stored (cloud computing), and how discovery is conducted (e-discovery). Recognizing these changes, in 2012 the American Bar Association (ABA) revised Model Rule 5.3 to change the word "assistants" to "assistance" in the Rule title and in the first clause. This modification recognized that lawyers' work is often assisted not only by individuals, such as legal assistants and investigators, but also by entities, and non-corporeal electronic tools such as electronic discovery vendors and "cloud computing" providers. The ABA Ethics 20/20 Commission's thinking in adopting these revisions to Model Rule 5.3 was explained as follows:

> Model Rule 5.3 was adopted in 1983 and was designed to ensure that lawyers employ appropriate supervision of nonlawyers. Although the Rule has been interpreted to apply to lawyers' use of nonlawyers within and outside the firm, the Commission concluded that additional comments would help to clarify the meaning of the Rule with regard to the use of nonlawyers outside the firm.
>
> As an initial matter, nonlawyer services are provided not only by individuals, such as investigators or freelancing paralegals outside the firm, but also by entities, such as electronic discovery vendors and "cloud computing" providers. To make clear that the Rule applies to nonlawyer services of all kinds, even services performed by entities, the Commission decided to recommend a change in the title of Model Rule 5.3 from "Nonlawyer Assistants" to "Nonlawyer Assistance."[6]

With the advent of digital tools employing artificial intelligence, the scope of assistance relied upon by lawyers has broadened even further. Generative AI tools have advanced to the point where many lawyers are currently using AI tools to conduct legal research, to draft pleadings and to prepare legal briefs. The proposed amendments that follow attempt to reflect the conclusion that lawyers who use an AI tool must have the professional responsibility to ensure that the AI tool's "conduct is compatible with the professional obligations of the lawyer," in the same way that an attorney has the professional responsibility to review a document initially prepared by a legal assistant.

We are in the early days of the development of AI tools that will assist lawyers in the practice of law. Currently, to use AI tools in the practice of law, the lawyer has to provide a query, or a prompt, and the tool, relying on AI, produces a response. Lawyers can ask these tools to draft a motion, based upon provided information, or to develop a contract provision that

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[5] Katherine Medianik, *Artificially Intelligent Lawyers: Updating the Model Rules of Professional Conduct in Accordance with the New Technological Era*, 39 CARDOZO L. REV. 1497, 1520 (2018).

[6] *See Ethics 20/20 Proposal to Amend Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants)* (Feb. 27, 2012), *available at* https://www.legalethicsforum.com/blog/2012/02/ethics-2020-proposal-on-rule-53-responsibilities-regarding-nonlawyer-assistants.html.

includes specific terms. The resulting legal documents could be delivered to clients, opposing counsel, or other parties without the lawyer's review. AI tools today can also be used to conduct conversations with human beings, and the person may not know they are communicating with an AI chatbot. Such tools could be used by lawyers to interact with clients, potential clients, and others. The AI output may reflect a "hallucination" or produce inaccurate, limited or sub-par work product that would not be "compatible with the professional obligations of the lawyer." The proposed amendments to Rule 5.3 are guided by the opinion of the majority of the AI subcommittee that, as with the case of a human assistant's work product, a lawyer ought to be responsible for AI output.

We also considered anticipated future advances in artificial intelligence that may mimic the work of a human assistant. A recent article detailed what are called "AI Agents" currently in development that can "act with independent agency to pursue its goals in the world."[7] As observed, "without any new leaps in technology whatsoever—just some basic tools glued onto a standard language model—you'd have what is called an 'AI agent,'" that could work on the lawyer's behalf answering client questions, delegating assignments or preparing work-products autonomously. The proposed amendments to Rule 5.3 would require lawyer supervision of the use of autonomous, technological agents of this kind, in the same way the lawyer is responsible for the actions of human agents and subordinates.

The proposed amendments to the text of Rule 5.3 principally involve replacing some uses of the word "person" with "nonlawyer" and are intended to make clear that the requirements and responsibilities of a lawyer to supervise those that provide assistance in the practice of law applies to non-human AI agents.

1. Proposed Amendments to the Text of Rule 5.3

The proposed amendments to the text in Rule 5.3 are as follows:

With respect to nonlawyers' assistance employed by, ~~or~~ retained by, ~~or~~ associated with, or used by a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the ~~person's~~ nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the ~~person's~~ nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

[7] Kelsey Piper, *AI "agents" could do real work in the real world. That might not be a good thing.* (Mar. 29, 2024), *available at* https://www.vox.com/future-perfect/24114582/artificial-intelligence-agents-openai-chatgpt-microsoft-google-ai-safety-risk-anthropic-claude.

(c) a lawyer shall be responsible for conduct of such a ~~person~~ nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the ~~person~~ nonlawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

2. Proposed Amendments to Comments to Rule 5.3

In addition to amendments to the text of the Rule, the majority of the AI subcommittee supports amendments to the comments to Rule 5.3. What follows are two options: (i) amendments to existing Comments [1], [2], and [3] to Rule 5.3; and (ii) two new proposed comments to Rule 5.3. Consistent with the "menu" approach the AI subcommittee is taking in its presentation of proposals, the Standing Committee may wish to choose only one of these options, should it determine any amendments to the comments to Rule 5.3 are warranted.

The comments to Rule 5.3 illustrate a number of arrangements whereby lawyers rely on the work of others, including persons who are not lawyers, in delivering legal services. The proposed edits to these comments are intended to make clear that the arrangements covered by Rule 5.3 include the use of AI technologies, in particular autonomous AI agents. The supporters of the proposed changes believe they are necessary because the existing text is written in terms that suggest only human assistance is contemplated by Rule 5.3.

i. Proposed Amendments to Existing Comments

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who act ~~work~~ on firm matters do so ~~act~~ in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer. "Nonlawyer" includes technologies that rely on artificial intelligence or other innovations that act on behalf of the lawyer.

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees, ~~or~~ independent contractors, or technological systems act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants

appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. A lawyer's responsibility to supervise nonlawyer assistants includes managing and monitoring the use of technologies that rely on artificial intelligence or other innovations to act on behalf of the lawyer. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, ~~and~~ using an Internet-based service to store client information, and using technologies that rely on artificial intelligence or other innovations that enable such technologies to act on behalf of the lawyer. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience, ~~and~~ reputation, and capabilities of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

ii. Two New Proposed Comments

The duty to supervise nonlawyer assistants under Rule 5.3 includes the duty to ensure that the lawyer's use on firm matters of AI tools that are capable of performing work historically performed by human nonlawyer assistants does not violate any of the Rules.

The scope of this Rule encompasses nonlawyers whether human or not. Under this Rule, lawyers are obligated to supervise the work of technology utilized in the provision of legal services and to understand the technology well enough to ensure compliance with the lawyer's ethical duties.

B. Minority View of AI Subcommittee on the Proposed Revisions to Rule 5.3

A minority of the AI subcommittee opposes the proposed amendments to the text and comments of Rule 5.3.

The minority believes that the supervision rules can only apply to humans. The diligence required to appropriately select and employ/deploy sophisticated technological tools is already

fairly encompassed within Rule 1.1. The concept of supervision—at least as embodied in the Rules—simply does not apply to non-humans.

1. Rule 5.3's "Reasonable Efforts" Standard Assumes the Ability to Interact with a Human in a Supervisory Capacity, Something Not Readily Found (If At All) in Generative AI Tools

Rules 5.1 (supervisory lawyers supervising other lawyers) and 5.3 (lawyers supervising nonlawyers) have many parallels and are also very similar to the ABA model rules. The idea of a requirement to make "reasonable efforts" to ensure others' compliance with a lawyer's ethical obligations also has been explained in the comments. For example, two comments to Rule 5.1 state:

> [2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property *and ensure that inexperienced lawyers are properly supervised*.
>
> [3] *Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary*. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

(emphasis added). Likewise, comment [3] to Rule 5.3 currently states in part:

> *The extent of this obligation will depend upon the circumstances*, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality.

(emphasis added). So, to be somewhat colloquial, the answer to the question of what constitutes "reasonable efforts" to supervise is "it depends."

Notwithstanding that the comments do not provide a bright line to define supervision, human lawyers have readily adapted to that uncertainty. The ease of adaptation arises from our

individual and collective experiences as human beings. Supervision involves two-way communication: training the supervisee, direction by the supervisor, the ability of the subordinate to ask questions of the supervisor, the ability of the supervisor to review the work at issue, the ability of the subordinate to get feedback on the work at issue, and the supervisor's ability to trust (or not trust) that the supervisee has learned from that feedback to incorporate into future work product and work performance. This is why a lawyer may need to supervise a new employee very closely, and then provide relatively little supervision to a long-term employee with no performance issues.

By contrast, generative AI—the technological tool that gave rise to the AI subcommittee—does not readily provide for that two-way communication in a way that would satisfy the lawyer that the tool has "learned the lesson." Generative AI tools, to date, do not have a singular, one-to-one relationship with the user. It is possible that at some point technology will evolve in that way, but currently generative AI tools "learn" in a variety of ways unknown to the end user. A user might decide through repeated usage that the tool is reliable, but that determination in all likelihood does not arise from the two-way communication and feedback mechanism humans use when they discuss "supervision."

Instead, the question of reliability of the tool, and specifically whether a lawyer has vetted the tool and used it appropriately, is best addressed as a diligence question under Rule 1.3.

2. Even If the Basic Concepts of Supervision Can Eventually Be Applied to AI, Doing So Through Rule 5.3 Would Lead to Ill-Advised Consequences

Moreover, the minority drafting this summary has two specific concerns about applying Rule 5.3(c) to non-human nonlawyer assistance.

Concern #1

Current Rule 5.3(c) states:

> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
> (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

While this rule (which is modeled after the ABA model rules) does not expressly create a safe harbor for lawyers whose rogue employee engages in misconduct, the implication of (c) is that a lawyer could do all the right things, in terms of training and supervising employees, and an employee still might commit serious misdeeds. For example, a nonlawyer could be angry at a supervising lawyer and decide to retaliate by releasing confidential client information through social media, even though the lawyer carefully trained the nonlawyer to never disclose client

information through any means. It may be days, weeks, or longer before the lawyer or client realizes what has happened, with no practical way to avoid the consequences.

Accordingly, comment [1] currently includes the following: "Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer."

Notably, Rule 5.1(c) contains a materially identical standard for when a supervisory lawyer can be held responsible for a rule violation by another lawyer.

Placing that standard in a national Westlaw search generates 183 case citations. While it appears that most of these cases involve significant failures to supervise either more junior attorneys or nonlawyer assistants, often implicating the entirety of either Rule 5.1 or 5.3, the broad use of the standard across the country points to a real risk of unintended consequences if Colorado were to apply the paragraph (c) standard to non-humans through a new comment to Rule 5.3.

Generative AI platforms may perform many tasks traditionally performed by humans, but to the best of our knowledge, the platforms do not have the capacity to have bad motives that would compel or "persuade" a platform to do something it had been explicitly trained not to do. Accordingly, a "rogue employee" safe harbor seems inappropriate.

Concern #2

The standard set forth in paragraph (c) of Rules 5.1 and 5.3 does not lend itself to generative AI platforms, because there could be times when a lawyer should be responsible for the so-called conduct of such a platform through circumstances other than (c)(1) or (c)(2).

A hypothetical illustrates these concerns. Let's say a lawyer subscribes to a hypothetical AI platform that responds to client phone calls with basic case updates and a schedule of key upcoming dates. The platform does this by reviewing attorney and paralegal notes made in the client's electronic file, and communicates this information to the client through sophisticated voice comprehension and response tools.

But how Rule 5.3 can apply to this lawyer's use of the AI platform is unclear.[8] What does it mean to say that the lawyer has made "reasonable efforts" to supervise this AI platform? Monitor the occasional phone call with the platform and the client? Or have those calls recorded and review a sample? How would a lawyer tell that platform that the lawyer would like it to provide more of an explanation of what is expected at court appearances? If that request exceeds

[8] This issue of supervising an AI product under Rule 5.3 is separate from a lawyer's duties to appropriately vet an AI product under Rule 1.3 before purchase and deployment. One could argue that it is easier to vet and test the product featured in the hypothetical, but much harder to supervise the individual transactions between the tool and a human in a law firm setting.

the ability of the platform, is that technological limitation a defense to the supervision obligation of the lawyer?

Then assume that this platform misinforms a client about the next court appearance, a very important court appearance. The paralegal notes read, "Tuesday, June 12, 2024." The AI platform reading those notes simply told the client the date of the case appearance was June 12, not recognizing that the reference to Tuesday should have flagged a potential error, since June 12 is a Wednesday. The client fails to show up at the court appearance held on Tuesday, June 11, relying on the June 12 date.

It is hard to see how the standard in paragraph (c) could apply in this hypothetical. The lawyer would not know that a client was misinformed of an upcoming deadline or hearing date until the client had missed it. Indeed, the lawyer might not even know that the AI system malfunctioned, because the lawyer might think the client wrote the date down wrong. Only if the call between the AI platform and client had been recorded would the lawyer know the truth, perhaps not until long after the consequences could be mitigated or avoided. Yet, paragraph (c) would suggest the lawyer perhaps is not responsible.

Perhaps the lawyer used a well-known and vetted platform. Perhaps the lawyer used a lesser-known platform and performed little due diligence in selecting it. Perhaps the inability of the platform to flag potentially incorrect information in the file was not previously known to any user. Perhaps the real problem was that the platform provided incomplete information by referring only to the date and not the day of the week, and the lawyer had been put on notice of this limitation through earlier experience. Many outside viewers would suggest that the liability of the lawyer might be different in these various scenarios.

Some members of the AI subcommittee were concerned that without articulating a standard for vicarious responsibility, a lawyer would be strictly liable for the errors of a generative AI platform. Those agreeing with the minority position set forth here do not believe that the Rules of Professional Conduct default to strict liability when there is no standard expressed in a rule or its comments. Instead, it would be appropriate for other rules to caution lawyers about all types of technological tools, and rely on the ABA Standards for Imposing Sanctions to establish—with other factors recognized by the Colorado Supreme Court—what sanction might be appropriate given the lawyer's mindset associated with the violative conduct.[9]

[9] Arguably, the potential for confusion as to whether a lawyer is subject to vicarious liability is a result of conferring agency on an AI tool. By expanding the definition of "nonlawyer" to include "technologies that rely on artificial intelligence," the proposed revision to Comment [1] to Rule 5.3 unnecessarily ascribes autonomy and intentionality to AI platforms. At least for now, every AI platform is deployed (or switched on) by a person. If the AI tool is not treated as autonomous, whether the person deploying the AI platform is a lawyer or a nonlawyer under the supervision of the lawyer, the responsibilities of the lawyer for the lawyer's actions and the responsibilities of the lawyer for the actions of supervised nonlawyers are addressed by the existing Rules. The ambiguities discussed in Concern #2 arise only because the AI tool is treated as an entity and not as a tool. If the AI tool is viewed as a tool, the only meaningful error in the hypothetical is the failure by the lawyer or the human nonlawyer assistant to verify the output of

Accordingly, a minority of the AI subcommittee would not apply Rule 5.3 to nonhumans.

IV. New Rule 1.19

A. Proposed New Rule 1.19

A majority of the members of the AI subcommittee recommend that the Standing Committee approve for the Supreme Court's consideration a new, standalone Rule 1.19 addressing technology. The majority believes that a separate technology rule is necessary and appropriate in light of lawyers' increasing use of AI tools.

The proposed Rule and accompanying Comments are as follows:

Rule 1.19. Use of Technology

A lawyer shall make reasonable efforts to ensure that the lawyer's use of technology, including artificial intelligence (AI) technology, in the lawyer's practice conforms to the Rules of Professional Conduct.

COMMENT

[1] Although technological tools, particularly generative AI tools, can provide substantial assistance to lawyers, they also present risks if used improperly. A lawyer's use of technology can implicate a number of Rules, including those governing competence (Rule 1.1), fees (Rule 1.5), preservation of a client's confidential information (Rule 1.6), meritorious claims and defenses (Rule 3.1), candor toward the tribunal (Rule 3.3), responsibilities of a partner or supervisory lawyer (Rule 5.1), responsibilities of a subordinate lawyer (Rule 5.2), responsibilities regarding nonlawyer assistance (Rule 5.3), and bias (Rule 8.4(g)).

[2] Consistent with comment [8] to Rule 1.1, a lawyer should engage in continuing study and education to keep abreast of technology-related changes in the practice of law, including changes related to the use of AI.

[3] Overreliance on technological tools risks reducing the lawyer's exercise of independent judgment. For example, AI-generated outputs should be analyzed for accuracy and bias, supplemented, and improved, if necessary, to ensure that the content accurately furthers the client's interests, consistent with these Rules. A lawyer should review any information or text obtained from a technological tool and should not assume that such information or text is accurate or complete without exercise of the lawyer's independent judgment.

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the AI platform. The error is no different than failing to check the output of a voice to text transcription of a date.

[4] Consistent with a lawyer's duty under Rule 1.5, a lawyer may use technological tools to create work product efficiently and may charge for actual time spent (e.g., crafting or refining generative AI inputs and prompts, or reviewing and editing generative AI outputs). A lawyer should not charge hourly fees for the time saved by using technological tools. Costs associated with such tools may be charged to the client in compliance with applicable law, to the extent consistent with the fee agreement.

[5] Consistent with comment [18] to Rule 1.6, when providing a technological tool with information relating to the representation of a client, the lawyer should take reasonable precautions to prevent the information from coming into the hands of unintended recipients. The lawyer should periodically monitor the provider of the lawyer's technological tools to learn about any changes in the tools that might affect the confidentiality of information in the lawyer's possession, custody, or control.

[6] A lawyer's duty under Rule 3.1 not to bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, includes the duty to review and verify any citation to a legal or other authority obtained through the use of a technological tool. This duty to verify also implicates a lawyer's duty under Rule 3.3 not to make a false statement of fact or law to a tribunal or fail to correct a false statement that the lawyer previously made to the tribunal.

[7] The duty of a partner or supervisory lawyer under Rule 5.1 includes the duty to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the use of technological tools by all lawyers in the firm conforms to the Rules. Managerial and supervisory lawyers should establish clear policies regarding the permissible uses of generative AI and other technologies and make reasonable efforts to ensure that the firm adopts measures, including training, that give reasonable assurance that the conduct of the firm's lawyers and nonlawyers complies with their professional obligations when using technological tools.

[8] Consistent with the responsibilities of a subordinate lawyer under Rule 5.2, a subordinate lawyer should not use technological tools at the direction of a supervisory lawyer in a manner that violates the subordinate lawyer's duties under the Rules.

[9] The duty of a partner and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm under Rule 5.3 includes the duty to ensure that the firm has in effect measures giving reasonable assurance that the use of technological tools by a nonlawyer employed or retained by or associated with a lawyer is compatible with the professional obligations of the lawyer. Similarly, the duty of a lawyer having direct supervisory authority over a nonlawyer under Rule 5.3 includes making reasonable efforts to ensure that the nonlawyer's use of technological tools is compatible with the professional obligations of the lawyer.

[10] The duty to supervise nonlawyer assistants under Rule 5.3 includes the duty to ensure that the lawyer's use on firm matters of technological tools that are capable of

performing work historically performed by human nonlawyer assistants does not violate any of the Rules.

[11] Consistent with Rule 8.4(g), a lawyer should take reasonable steps to identify and address biases appearing in the outputs of technological tools.

1. The Need for a New, Standalone Technology Rule

A separate Rule of Professional Conduct addressing technology was unnecessary before the advent of generative AI technology. AI technology took a major leap forward on November 30, 2022, when OpenAI launched ChatGPT[10]—a chatbot and virtual assistant premised on the large language model (LLM) of machine learning.[11] The user submits queries to ChatGPT, which provides near-instantaneous, narrative responses. As contrasted with AI tools that include neural networking,[12] the responses are predictions of the appropriate text based on the vast amounts of data the developers used to train the tool. ChatGPT determines what words to provide users by reviewing and analyzing the text it has learned. This process will echo any biases in the learned text.

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[10] This report refers to ChatGPT for illustrative purposes only, primarily because it was the first generative AI tool in widespread use and because the cases addressing lawyer misuse of generative AI refer to that tool. But ChatGPT does not have a monopoly on the market. For example, Anthropic has released an LLM tool called Claude and Google has released a tool called Gemini. And on May 13, 2024, OpenAI introduced an enhanced version of its product — ChatGPT 4o. *See* Kylie Robison, *OpenAI releases GPT-4o, a faster model that's free for all ChatGPT users* (May 13, 2024), *available at* https://www.theverge.com/2024/5/13/24155493/openai-gpt-4o-launching-free-for-all-chatgpt-users. A comparison of the features and possible risks inherent in the different AI tools is beyond the scope of this report.

[11] In the interest of brevity, this report does not provide an extensive discussion of the theory underlying and technical aspects of AI technology. Numerous articles, reports, and other sources provide background information regarding the development, functioning, benefits, and risks of AI. Notably, the American Association for the Advancement of Science received funding from the National Institute of Standards and Technology to develop resources for judges "as they address an increasing number of cases involving artificial intelligence." Those resources, which are available online, also provide helpful background information for lawyers interested in learning the fundamentals of artificial intelligence. *See Artificial Intelligence and the Courts: Materials for Judges* (Sept. 2022), *available at* https://www.aaas.org/ai2/projects/law/judicialpapers.

[12] Amazon Web Services defines a neural network as "a method in artificial intelligence that teaches computers to process data in a way that is inspired by the human brain. It is a type of machine learning process, called deep learning, that uses interconnected nodes or neurons in a layered structure that resembles the human brain." *What is a Neural Network?*, *available at* https://aws.amazon.com/what-is/neural-network/ (last visited July 9, 2024).

Generative AI materially differs from earlier forms of technology, such as computerized legal research, e-mail, and cloud storage.[13] Unlike these electronic resources, AI performs functions that, until recently, many believed only a human could undertake. For example, AI can draft text addressing legal topics that incorporates legal authorities pulled from Westlaw or LEXIS, review and summarize vast amounts of information nearly instantaneously, and draft questions for depositions or oral arguments. Thus, generative AI represents an exponential leap over, and not merely an incremental improvement on, prior electronic resources.

Thought leaders in law recognized the promise and pitfalls of the powerful new AI tools as early as 2019. At its August 2019 meeting, the House of Delegates of the American Bar Association approved Resolution 112, which urged courts and lawyers "to address the emerging ethical and legal issues relating to the usage of [AI] in the practice of law."[14] The resolution specifically noted the "(1) bias, explainability, and transparency of automated decisions made by AI; (2) ethical and beneficial usage of AI; and (3) controls and oversight of AI and the vendors that provide AI."

The report accompanying the resolution does not mention generative AI, although it discusses a then-novel AI tool that "could have text-based conversations with individuals." In addition, the report notes that lawyers are already using AI for, among other tasks, electronic discovery and predictive coding, assessing the likely outcome of litigation through "the method of predictive analytics," contract management, reviewing large numbers of documents as part of due diligence for corporate transactions, searching company records to detect bad behavior preemptively, and legal research.

The report asserts that, "[g]iven the transformative nature of AI, it is important for courts and lawyers to understand how existing and well established ethical rules may apply to the use of AI." In words that are prescient at a time when some lawyers are misusing generative AI to create legal filings including fictitious legal citations, known as "hallucinations," the report observes, "some tasks . . . should not be handled by today's AI technology, and a lawyer must know where to draw the line. At the same time, lawyers should avoid underutilizing AI, which could cause them to serve their clients less efficiently. Ultimately, it's a balancing act." While the report identified several Model Rules that AI implicates, it did not recommend specific AI-related amendments to the Rules. As best the AI subcommittee can determine, so far no state has done so.

Upon OpenAI's release of ChatGPT, lawyers discovered that it could produce facially plausible legal writing containing citations to what appear to be legal authorities. But judges and opposing counsel quickly discovered hallucinations in ChatGPT-generated motions and briefs that the lawyer failed to review. Consequently, the lawyers who submitted unreviewed

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[13] Lawyers have been using artificial intelligence for more than forty years; for example, since the 1970s, Westlaw and LEXIS have responded to queries with lists of legal authorities presented in order of relevance. AI in the form of proprietary algorithms determinates the relevance of the authorities.

[14] *Available at* https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/112-annual-2019.pdf.

ChatGPT-written filings suffered public humiliation and, in some cases, were ordered to pay sanctions. *See, e.g., Park v. Kim*, 91 F.4th 610, 612 (2d Cir. 2024); *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 449 (S.D.N.Y. 2023); *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898, at *1 (Colo. O.P.D.J. Nov. 22, 2023); *Kruse v. Karlen*, No. ED 111172, 2024 WL 559497, at *4 (Mo. Ct. App. Feb. 13, 2024); *Will of Samuel*, 82 Misc. 3d 616, 619, 206 N.Y.S.3d 888, 891 (N.Y. Sur. 2024).

In response to lawyers' misunderstanding and misuse of AI, in 2023, Justice Maria Berkenkotter of the Colorado Supreme Court and Judge Lino Lipinsky de Orlov of the Colorado Court of Appeals wrote an article for *Colorado Lawyer* to educate lawyers and judges regarding the ethical risks associated with use of the technology (*Colorado Lawyer* article). They believed that lawyers needed prompt guidance regarding the ethical implications of AI; such guidance could not wait until the Standing Committee proposed AI-related amendments to the Rules.

By the time the *Colorado Lawyer* article appeared in the January-February issue of the publication,[15] the legal world had experienced another major technological shift. In late 2023, vendors such as Westlaw and LEXIS[16] unveiled their own generative AI products. Those products limit legal citations to verified sources in the vendors' databases, which makes output results containing hallucinations less likely. But the new legal generative AI tools remain imperfect.

These tools couple the drafting capabilities of ChatGPT with computerized legal research functions to allow lawyers to input queries that produce text containing bona fide hyperlinked legal citations. A click on the hyperlink allows the user to access and check the cited authority. Moreover, the Westlaw and LEXIS tools allow lawyers and firms with sufficient resources to develop their own proprietary body of data they can use to educate the tool. For example, a firm can teach the tool through its own motions, briefs, contracts, memorandums, and other documents.

In addition to the AI legal tools noted above, law firms can now employ AI-powered chatbots to interact with potential clients and clients, such as by submitting questions intended to clarify a prospective client's needs. Personal injury firms can employ AI tools to search news articles for information regarding accident victims to whom the AI tool can then send a solicitation.

Judges are also employing generative AI. Earlier this year, a judge on the Eleventh Circuit cited ChatGPT's responses to his queries regarding whether an in-ground trampoline is a part of "landscaping." *See Snell v. United Specialty Ins. Co.*, 102 F.4th 1208, 1225 (11th Cir.

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[15] Maria Berkenkotter & Lino Lipinsky de Orlov, *Artificial Intelligence and Professional Conduct: Considering the Ethical Implications of Using Electronic Legal Assistants*, Colo. Law. at 20 (Jan./Feb. 2024).

[16] Other legal vendors offer similar tools; this report is not intended to provide a list of, a commentary on, or an endorsement of such products.

2024) (Newsom, J., concurring).[17] Other courts have expressed skepticism regarding ChatGPT-generated factual information. *See M.B. v. New York City Dep't of Educ.,* No. 22 Civ. 6405, 2024 WL 1343596, at *4 (S.D.N.Y. Mar. 30, 2024) (rejecting argument regarding prevailing attorney market rates premised, in part, on information gleaned from ChatGPT); *J.G. v. New York City Dep't of Educ.*, No. 23 CIV. 959, 2024 WL 728626, at *7 (S.D.N.Y. Feb. 22, 2024) ("In claiming here that ChatGPT supports the fee award it urges, the Cuddy Law Firm does not identify the inputs on which ChatGPT relied. It does not reveal whether any of these were similarly imaginary. It does not reveal whether ChatGPT anywhere considered a very real and relevant data point: the uniform bloc of precedent . . . in which courts in this District and Circuit have rejected as excessive the billing rates the Cuddy Law Firm urges for its timekeepers."); *Pegnatori v. Pure Sports Techs. LLC*, No. 23-CV-01424, 2023 WL 6626159, at *5 (D.S.C. Oct. 11, 2023) (rejecting ChatGPT's definition of "foam"); *In re Vital Pharm.*, 652 B.R. 392, 398 (Bankr. S.D. Fla. 2023) ("In preparing the introduction for this Memorandum Opinion, the Court prompted ChatGPT to prepare an essay about the evolution of social media and its impact on creating personas and marketing products. . . . It listed five sources in all. As it turns out, none of the five seem to exist. For some of the sources, the author is a real person; for other sources, the journal is real. But all five of the citations seem made up, which the Court would not have known without having conducted its own research.").[18]

In addition, a recent ethics opinion from the State Bar of Michigan acknowledges that AI tools could benefit lawyers and judges: "there are times when, properly used, AI is an asset for the legal community, such as creating accurate content for pleadings and legal summaries, providing efficiency in docket management and legal research, and supplying answers to questions based on algorithms used by technological programs."[19] And an advisory opinion from the West Virginia Judicial Investigation Commission concludes that, with proper safeguards, "[a] judge may use AI for research purposes" and for "drafting opinions or orders . . . with extreme caution," so long as the judge does not rely on AI "to decide the outcome of a case." The advisory opinion likens a generative AI tool to a law clerk: "the judge must decide which way he/she wants to rule and let the program know in advance to ensure that the product conforms with the decision rendered by the judge." As with "the final draft of the law clerk, the judge must review it to ensure that it is what the judge wishes to convey to the parties in any given case and make changes where needed."[20]

For these reasons, a majority of the AI subcommittee disagrees with the minority's concern that Colorado should not adopt a new rule on technology because the implications of

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[17] In his concurrence, Judge Newsom discusses at length the primary benefits and risks of tools premised on LLM technology. *See Snell v. United Specialty Ins. Co.*, 102 F.4th 1208, 1226-34 (11th Cir. 2024) (Newsom, J., concurring).

[18] Significantly, the few judges who described their use of generative AI in opinions demonstrated their acknowledgement of the benefits and limitations of the technology, as well as the importance of verifying the results generated.

[19] https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155.

[20] https://www.courtswv.gov/sites/default/pubfilesmnt/2023-11/JIC%20Advisory%20Opinion%202023-22_Redacted.pdf.

lawyer use and misuse of AI are not yet fully understood. To the contrary, the technology is here and lawyers and judges are drafting documents with it. The majority believes that sufficient knowledge of the impact of AI on the Rules exists to proceed with a standalone technology rule.

The subcommittee is divided on whether the Colorado Supreme Court should adopt separate technology-related amendments to each of the affected Rules (and, where appropriate, the comments to those Rules), or whether the court should approve an overarching new rule that addresses lawyer use of technology. The majority recommends the latter rather than sprinkling technology-related amendments across the Rules without an accompanying overarching Rule that places those amendments in context.

The subcommittee voted unanimously to provide the Standing Committee with a menu of options, including recommending the proposed standalone rule and revisions to the specific Rules and comments that AI implicates. These two options are not mutually exclusive. The Supreme Court could adopt both a standalone technology rule and technology-related revisions to targeted Rules and comments.

The majority urges the Standing Committee to recommend the proposed standalone rule to the Supreme Court.

2. The Rules that Technology Implicates

Lawyers' use of technology potentially implicates several of the Rules. The subcommittee reviewed each of the Rules to assess which are affected by lawyer use and misuse of such technology.

The subcommittee agreed unanimously that the revolution in technology implicates the Rules governing competence (Rule 1.1), fees (Rule 1.5), preservation of a client's confidential information (Rule 1.6), meritorious claims and defenses (Rule 3.1), candor toward the tribunal (Rule 3.3), responsibilities of a partner or supervisory lawyer (Rule 5.1), responsibilities of a subordinate lawyer (Rule 5.2), responsibilities regarding nonlawyer assistance (Rule 5.3), and bias (Rule 8.4(g)).

This portion of the report does not provide a detailed analysis of the technological implications of each of these Rules; such analyses appear in other parts of this report. Rather, it provides the language of the proposed standalone technology Rule and explains the comments to that Rule.

The proposed standalone technology Rule consists of a single sentence: "A lawyer shall make reasonable efforts to ensure that the lawyer's use of technology, including artificial intelligence (AI) technology, in the lawyer's practice conforms to the Rules of Professional Conduct." While certain of the Rules currently refer to technology, notably, none requires a lawyer to make reasonable efforts to ensure that the lawyer's use of technology conforms to the Rules.

For example, the current version of comment [8] to Rule 1.1 states:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, and changes in communications and other relevant technologies, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. See Comments [18] and [19] to Rule 1.6.

(As noted in part II of this report, the subcommittee is recommending that comment [8] be amended to conform to the analogous comment in the Model Rules.) But comment [8] addresses the steps that a lawyer must take to maintain technological competence; it does not require a lawyer to take actions to ensure that the lawyer's use of technology complies with the Rules. Although this principle may be implicit, the majority believes this point should appear expressly in a Rule to educate lawyers and to heighten lawyer awareness of the potential consequences of use of AI and other technologies.

The proposed new Rule 1.19 contains eleven comments:

Comment 1

The first comment summarizes the Rules that lawyer use of technology potentially implicates. Those Rules are identified on page 19 above.

Comment 2

Consistent with comment [8] to Rule 1.1, comment 2 to proposed Rule 1.19 reiterates lawyers' need to remain abreast of changes in technology, including changes relating to AI. For the reasons noted above, the majority believes that lawyers cannot ignore AI and other technologies that are already impacting the practice of law.

Comment 3

Comment 3 alerts lawyers that they must exercise independent judgment when using technological tools and specifically notes that overreliance on technology creates the risk that a lawyer will not exercise independent judgment. The comment states that a lawyer should review any information or text obtained from a technological tool and should not assume that such information or text is accurate or complete without exercise of the lawyer's independent judgment.

Comment 4

Comment 4 addresses the efficiencies lawyers can achieve through use of AI and notes that the reasonableness of a lawyer's fee may be impacted if the lawyer seeks to recover fees for work that could have been performed in less time through use of AI. As the Florida Bar noted, "Rule 1.5 prohibits attorneys from collecting an unreasonable fee. The increased efficiency from

the proper use of generative AI must not result in duplicate charges or falsely inflated billable hours." Fla. Bar Advisory Op. 24-1 (Feb. 5, 2024).

Comment 5

Comment 5 speaks to the confidentiality concerns associated with use of technology. Many lawyers may not appreciate that AI tools may employ the information inserted in queries to further teach the tool. Thus, a lawyer may compromise the confidentiality of information input into ChatGPT in the form of a query. The comment thus states that, when using technological tools, a lawyer should take reasonable precautions to prevent information relating to the representation of a client from coming into the hands of unintended recipients. Further, the comment advises that a lawyer should periodically monitor the provider of the lawyer's technological tools to learn about changes in the tools that the confidentiality of client information.

Comment 6

Comment 6 discusses the risk that text generated through a technological tool may include inaccurate or incomplete information, including, as noted above, hallucinations in place of valid legal citations. The comment specifies that a lawyer using a technological tool should remain mindful of the duty not to bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, includes the duty to review and verify citations obtained through the use of the tool. In addition, the comment notes that this duty to verify also implicates a lawyer's duty under Rule 3.3 not to make a false statement of fact or law to a tribunal or fail to correct a false statement that the lawyer previously made to the tribunal.

Comment 7

Comment 7 concerns the duty of partners or supervisory lawyers to make reasonable efforts to ensure that the lawyers at the firm are using technological tools consistently with the Rules. The comment states that managerial and supervisory lawyers should establish clear policies regarding the permissible uses of generative AI and other technologies.

Comment 8

Similarly, Comment 8 speaks to subordinate lawyers' use of technology and specifically notes that a subordinate lawyer should not use technological tools at the direction of a supervisory lawyer in a manner that violates the subordinate lawyer's duties under the Rules.

Comment 9

Comment 9 explains that a lawyer with managerial authority has a duty to ensure that the firm has in effect measures giving reasonable assurance that use of technological tools by nonlawyers employed or retained by or associated with the lawyer is compatible with the lawyer's professional obligations. This duty includes making reasonable efforts to ensure that

use of technological tools by the nonlawyers whom the lawyer directly supervises is compatible with the professional obligations of the lawyer.

Comment 10

Comment 10 explains that the duty to supervise nonlawyer assistants under Rule 5.3 includes the duty to ensure that the lawyer's use of technological tools that are capable of performing work historically performed by human nonlawyer assistants does not violate any of the Rules. This comment implicitly acknowledges that technological tools can perform tasks that, until recently, only humans were capable of performing.

Comment 11

Finally, Comment 11 alerts lawyers to take reasonable steps to identify and address biases appearing in the outputs of technological tools.

3. Why Colorado Cannot Wait to Adopt a Standalone Technology Rule

A minority of the subcommittee has expressed the view that the Supreme Court's consideration of a separate rule regarding technology would be premature on two grounds: we do not yet fully understand the implications of lawyer use and misuse of AI and Colorado should allow the American Bar Association and other jurisdictions to take the lead on recommending and adopting amendments to the Rules. The majority respectfully disagrees.

As explained above, AI tools have arrived; lawyers and judges are employing them. We know that some lawyers have not considered their duties under the Rules when submitting AI-generated court filings peppered with hallucinated citations. The cases addressing lawyers' misuse of ChatGPT tell us that lawyers need guidance and warning regarding the risks of using technology.

For this reason, the majority believes waiting for the American Bar Association and other jurisdictions to propose or adopt technology-related amendments to the Rules would be imprudent. A number of jurisdictions, including California, New York, and Florida,[21] have issued guidelines regarding lawyers' use of AI. While such guidelines do not possess the force of a Rule of Professional Conduct, they highlight many of the concerns regarding lawyer use of AI stated above. Those concerns will not disappear. Rather, as AI usage becomes more widespread, the need to protect the public from members of the bar who misunderstand and misuse such technology will only increase. Lawyers can disregard guidelines but are bound by the Rule of Professional Conduct. The majority believes that adoption of a standalone rule on technology is critical to protecting members of the public.

[21] Cal. State Bar Standing Comm. on Professional Responsibility and Conduct, Practical Guidance for the Use of Generative AI in the Practice of Law, Nov. 16, 2023; Florida Bar Ethics Op. 24-1, Jan. 19, 2024; N.Y.S. Bar Association Report and Recommendations of the N.Y. State Bar Association Task Force on AI, Marh 2024.

A minority of the subcommittee takes the position that proposing technology-related amendments to the Rules can be read as an endorsement of certain technological tools. The majority interprets the proposed technology-related amendments, not as an endorsement, but as an acknowledgement that the technology is available and that lawyers and judges are using it. In addition, the minority questions whether the current technological tools lack sufficient accuracy and transparency for lawyers to use them without undue risk. But this assertion only underscores the need for a new, standalone Rule on technology. As noted above, since late 2023, generative AI tools have been available to lawyers through respected legal vendors. If experience shows that those tools do not consistently produce accurate results, lawyers should be particularly cautious about employing them.

For these reasons, a majority of the members of the AI subcommittee urge the Standing Committee to adopt proposed Rule 1.19.

B. Minority Report Opposing Proposed Rule 1.19

1. Introduction

Proposed Rule 1.19 should not be adopted for three reasons. First, the proposed rule is unnecessary because it simply requires a lawyer to "use reasonable efforts to ensure" that the use of AI in the lawyer's practice conforms to the Rules. The comments then cite the numerous rules that may apply. Second, no states have adopted such a rule and neither has the American Bar Association. It would be unwise to depart from the ABA Model Rules where there is not problematic conduct that falls outside the scope of an existing rule. Third, such a rule is premature and will cause confusion and uncertainty for lawyers and regulators. The technology affecting the practice is law is changing at a breakneck pace and a rule intended to regulate AI may be outdated before we know it.

2. The Proposed Rule is Unnecessary

The current Rules cover the issues and conduct the proposed rule seeks to address. A review of the comments to the proposed rule shows a list of cross-references and citations to the various current rules that apply to the use of AI and technology in general. These comments show that there is no need for a new rule.

For example, Rule 1.1 adequately addresses, as is, competent use of AI, common mistakes, and even the possibility of incompetent non-use. *People v. Crabill*, a Colorado disciplinary case, demonstrates the point.[22] In *Crabill*, which resolved on a stipulation, the Presiding Disciplinary Judge, the Respondent, and Attorney Regulation Counsel had no trouble concluding that the use of sham GPT case law violated several of the Rules. Similarly, Rules 1.2(a) and 1.4(a)(2), combined, effectively address AI as means, complete with a duty to

[22] *People v. Crabill*, 2023 WL 8111898, at *1 (Colo. O.P.D.J. Nov. 22, 2023).

"reasonably consult" with clients. Rule 1.3, as is, covers the trade-off between increased speed and the possibility of serving and managing a larger client base. Rule 1.6(a) aptly addresses AI casting a broad confidentiality net but allowing the use of AI even when confidential information is disclosed via informed consent and implied authority, subject to 1.6(c) and cmt. [18]. Even Rules 5.1 and 5.3 adequately cover supervision.

In sum, we do not need any revisions to the Rules, and at most what we need are clarifications in comments, not rule revisions, let alone a new rule.

3. Neither the ABA nor Other States Have Adopted Such a Rule

The proposed rule appears to be motivated by the well-intentioned desire to guide lawyers' conduct and to offer advice to lawyers using or considering using generative AI. It is important to note that no state has adopted a new rule of professional conduct such as is proposed in Rule 1.19. Instead, other states have offered court guidance, advisories, and ethics opinions to give lawyers important information about AI and how it might be used and abused in their practice. Colorado lawyers need this information but not in an unnecessary rule. Unfortunately, Colorado does not have such a court-approved vehicle for guidance and education of lawyers regarding the risks and benefits of AI. A CBA Ethics opinion, CLEs presented by the Office of Attorney Regulation Counsel and/or the CBA, or an article in Colorado Lawyer might be the appropriate way to convey this information.

The Colorado Supreme Court has often taken the position that it is unwise to be first in adopting a rule not listed in the ABA Model Rules, in part out of a concern for rule uniformity, in a day and age in which some Colorado lawyers have regional and even national law practices. It has been the Supreme Court's practice to let others go first and see what success and what difficulties other states have before drafting a new rule. An example is the LLP Program. Colorado waited to see how Utah and Arizona did before authorizing a program. We benefitted from this wait and see approach and learned what we should and should not do for our own program.

As an alternative to adopting the proposed Rule 1.19, the Standing Committee may inquire whether the Supreme Court would like it to forward its proposed rule for consideration by the American Bar Association's Center for Professional Responsibility.

4. The Scope and Capability of Technology Is Rapidly Changing

It is likely that yet another or a different rule or guidance might be necessary next year. Rather than adopting a new rule, it would be more appropriate to, at most, propose changes and additions to the comments to our rules to explain how problematic conduct regarding AI and other technology falls within the current rules. The proposed addition of Scope [21] is sufficient to implement the principles agreed upon by the AI subcommittee. New Scope [21] would advise

a lawyer that the use of AI does not diminish the lawyer's obligations under the Rules and would draw a lawyer's attention to that first principle.

In conclusion, the minority of the AI subcommittee view the proposed new Rule to be an unnecessary repetition of the current Rules and comments, untimely, and lacking uniformity with the current ABA Model Rules. The Standing Committee should reject the rule.

Appendix

Rules

Colo. RPC, Scope

Proposed new Scope [21]

Rule 1.1

Colo. RPC 1.1 with comments

ABA Model RPC 1.1 with comments

Proposed Amendments to Comment [8] to Colo. RPC 1.1

Redline

Final

Rule 5.3

Colo. RPC 5.3 with comments

ABA Model RPC 5.3 with comments

Proposed Amendments to Colo. RPC 5.3

Redline to text and comments

Final

New Proposed Rule 1.19

Cases

Park v. Kim, 91 F.4th 610, 612 (2d Cir. 2024)

J.G. v. NY Dept. Educ., 23 Civ. 959 (PAE), (SDNY Feb. 22, 2024)

Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 449 (S.D.N.Y. 2023)

People v. Crabill, No. 23PDJ067, 2023 WL 8111898, at *1 (Colo. O.P.D.J. Nov. 22, 2023)

Kruse v. Karlen, No. ED 111172, 2024 WL 559497, at *4 (Mo. Ct. App. Feb. 13, 2024)

Will of Samuel, 82 Misc. 3d 616, 619, 206 N.Y.S.3d 888, 891 (N.Y. Sur. 2024)

ABA and State Guideline Documents

American Bar Association, House of Delegates Resolution 112 (Aug. 2019)

Mich. Judicial Ethics Opinion JI-155 (Oct. 2023)

West Virginia Judicial Investigation Commission Advisory Opinion 2023-22 (Oct. 2023)

Cal. State Bar Standing Comm. on Professional Responsibility and Conduct, Practical Guidance for the Use of Generative AI in the Practice of Law (Nov. 16, 2023)

Fla. Bar Comm. Proposals on Generative AI Ethics Guidelines Florida Bar Ethics Op. 24-1, (Jan. 2024)

Report and Recommendations of N.Y. State Bar Association Task Force on Artificial Intelligence (Mar. 2024)

Penn. Bar Association and Phila. Bar Association Opinion on Ethical Issues Regarding the Use of Artificial Intelligence (May 2024)

Publications

Maria Berkenkotter & Lino Lipinsky de Orlov, *Artificial Intelligence and Professional Conduct: Considering the Ethical Implications of Using Electronic Legal Assistants*, Colo. Law. at 20 (Jan./Feb. 2024)

Jeremy Conrad, *AI & Legal Ethics. Time to Revisit the Rules?*, Washington Lawyer (Sept./Oct. 2023)

Richard Fang, et al., LLM Agents can Autonomously Hack Websites (Feb. 16, 2024)

Katherine Medianik*, Artificially Intelligent Lawyers: Updating the Model Rules of Professional Conduct in Accordance with the New Technological Era*, 39 CARDOZO L. REV. 1497, 1520 (2018)

John Murph, *Test Driving ChatGPT. Risks, Opportunities & Regulation*, Washington Lawyer (Sept./Oct. 2023)

Kelsey Piper, *AI "agents" could do real work in the real world. That might not be a good thing.* (Mar. 29, 2024)

Kylie Robison, *OpenAI releases GPT-4o, a faster model that's free for all ChatGPT users* (May 13, 2024)

Artificial Intelligence and the Courts: Materials for Judges (Sept. 2022)

Ethics 20/20 Proposal to Amend Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) (Feb. 27, 2012)

New Survey Data from LexisNexis Points to Seismic Shifts in Law Firm Business Models and Corporate Legal Expectations Due to Generative AI, LEXISNEXIS (Jan. 31, 2024)

Attachment 3

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 25-1090

BY REPRESENTATIVE(S) Sirota and Ricks, Bacon, Bird, Boesenecker, Brown, Clifford, Duran, English, Froelich, Garcia, Hamrick, Jackson, Joseph, Lieder, Lindsay, Lindstedt, Mabrey, Rutinel, Zokaie, McCluskie, Phillips, Story, Titone;
also SENATOR(S) Weissman and Cutter, Amabile, Ball, Exum, Gonzales J., Hinrichsen, Jodeh, Kipp, Kolker, Michaelson Jenet, Rodriguez, Sullivan, Wallace, Winter F., Coleman.

CONCERNING PROTECTIONS AGAINST DECEPTIVE PRICING PRACTICES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that the purposes and policies of this act are to:

(a) Clarify and reiterate the law governing the setting and communication of prices in Colorado, including landlord obligations regarding setting and communicating the price of rent and other costs to residential tenants; and

(b) Protect people, including tenants, who experience deceptive, unfair, or unconscionable pricing of goods, services, or property in the state.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(2) Therefore, the general assembly further declares that this act should be broadly interpreted to achieve its intended purposes and policies.

SECTION 2. In Colorado Revised Statutes, **add** 6-1-737 as follows:

6-1-737. Requirement to disclose certain pricing information - landlords and tenants - remedies - rules - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CLEARLY AND CONSPICUOUSLY" OR "CLEAR AND CONSPICUOUS" MEANS THAT A REQUIRED DISCLOSURE IS EASILY NOTICEABLE AND UNDERSTANDABLE, INCLUDING IN ALL OF THE FOLLOWING WAYS:

(I) FOR A COMMUNICATION THAT IS ONLY VISUAL OR ONLY AUDIBLE, THE DISCLOSURE MUST BE MADE THROUGH THE SAME MEANS BY WHICH THE COMMUNICATION IS PRESENTED;

(II) FOR A COMMUNICATION THAT IS BOTH VISUAL AND AUDIBLE, SUCH AS A TELEVISION ADVERTISEMENT, THE DISCLOSURE MUST BE MADE SIMULTANEOUSLY IN BOTH THE VISUAL AND AUDIBLE PORTIONS OF THE COMMUNICATION, EVEN IF THE COMMUNICATION REQUIRING THE DISCLOSURE IS MADE THROUGH ONLY VISUAL OR AUDIBLE MEANS;

(III) FOR A VISUAL DISCLOSURE, THE DISCLOSURE MUST BE DISTINGUISHABLE BY ITS SIZE, CONTRAST, AND LOCATION; THE LENGTH OF TIME FOR WHICH IT APPEARS; AND OTHER CHARACTERISTICS FROM ACCOMPANYING TEXT OR OTHER VISUAL ELEMENTS SO THAT IT IS EASILY NOTICEABLE, READABLE, AND UNDERSTANDABLE TO ORDINARY PERSONS;

(IV) FOR AN AUDIBLE DISCLOSURE, INCLUDING BY TELEPHONE OR STREAMING VIDEO, THE DISCLOSURE MUST BE DELIVERED IN A VOLUME, SPEED, AND CADENCE SUFFICIENT FOR ORDINARY PERSONS TO EASILY HEAR AND UNDERSTAND IT;

(V) IN ANY COMMUNICATION USING AN INTERACTIVE ELECTRONIC MEDIUM, SUCH AS THE INTERNET OR SOFTWARE, THE DISCLOSURE MUST BE UNAVOIDABLE;

(VI) THE DISCLOSURE USES DICTION AND SYNTAX UNDERSTANDABLE TO ORDINARY PERSONS AND MUST APPEAR IN EACH LANGUAGE IN WHICH THE REPRESENTATION REQUIRING THE DISCLOSURE APPEARS;

(VII) THE DISCLOSURE MUST NOT BE CONTRADICTED OR MITIGATED BY, OR INCONSISTENT WITH, ANYTHING ELSE IN THE COMMUNICATION REQUIRING THE DISCLOSURE; AND

(VIII) THE DISCLOSURE MUST COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION (1)(a) FOR EACH MEDIUM THROUGH WHICH IT IS RECEIVED BY A PERSON, INCLUDING AN ELECTRONIC DEVICE OR FACE-TO-FACE COMMUNICATION.

(b) "COMMON AREAS" HAS THE MEANING SET FORTH IN SECTION 38-12-502 (2).

(c) "DELIVERY NETWORK COMPANY" HAS THE MEANING SET FORTH IN SECTION 8-4-126 (1)(c).

(d) (I) "DWELLING UNIT" HAS THE MEANING SET FORTH IN SECTION 38-12-502 (3).

(II) "DWELLING UNIT" DOES NOT INCLUDE COMMON AREAS.

(e) "FOOD AND BEVERAGE SERVICE ESTABLISHMENT" MEANS:

(I) A RETAIL FOOD ESTABLISHMENT, AS DEFINED IN SECTION 25-4-1602 (14);

(II) AN ALCOHOLIC BEVERAGES DRINKING PLACES INDUSTRY, AS DEFINED IN SECTION 39-26-105 (1.3)(a)(I);

(III) A BREW PUB, DISTILLERY PUB, OR VINTNER'S RESTAURANT, AS THOSE TERMS ARE DEFINED IN SECTION 44-3-103; OR

(IV) A RETAIL PORTION OF A BREWERY, DISTILLERY, OR WINERY, AS THOSE TERMS ARE DEFINED IN SECTION 44-3-103, THAT SELLS BEVERAGES FOR CONSUMPTION ON THE PREMISES.

(f) "GOVERNMENT CHARGE" MEANS A FEE OR CHARGE IMPOSED ON

CONSUMERS BY A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY, UNIT, OR DEPARTMENT, INCLUDING TAXES OR FEES THAT ARE IMPOSED BY, PAID TO, OR PASSED ON TO A GOVERNMENT, INCLUDING A LOCAL GOVERNMENT ENTITY OR OTHER UNIT OF LOCAL GOVERNMENT, OR A POLITICAL SUBDIVISION OF THE STATE, INCLUDING A GOVERNMENT-CREATED SPECIAL DISTRICT.

(g) "LANDLORD" HAS THE MEANING SET FORTH IN SECTION 38-12-502 (5).

(h) "MANDATORY SERVICE CHARGE" MEANS A MANDATORY FEE, CHARGE, OR AMOUNT THAT A FOOD AND BEVERAGE SERVICE ESTABLISHMENT ADDS TO A CUSTOMER'S, GUEST'S, OR PATRON'S BILL.

(i) "PRICING INFORMATION" MEANS INFORMATION RELATING TO AN AMOUNT A PERSON MAY PAY.

(j) "RENTAL AGREEMENT" HAS THE MEANING SET FORTH IN SECTION 38-12-502 (7).

(k) "SHIPPING CHARGE" MEANS A FEE OR CHARGE THAT REFLECTS THE ACTUAL COST THAT A PERSON INCURS TO SEND PHYSICAL GOODS TO A PERSON.

(l) "TENANT" HAS THE MEANING SET FORTH IN SECTION 38-12-502 (9).

(m) (I) "TOTAL PRICE" MEANS THE MAXIMUM TOTAL OF ALL AMOUNTS, INCLUDING FEES AND CHARGES, THAT A PERSON MUST PAY FOR A GOOD, SERVICE, OR PROPERTY, INCLUDING ANY ADDITIONAL MANDATORY GOODS, SERVICES, OR PROPERTIES.

(II) "TOTAL PRICE" INCLUDES ALL AMOUNTS THAT:

(A) MUST BE PAID TO PURCHASE, ENJOY, OR UTILIZE A GOOD, SERVICE, OR PROPERTY; OR

(B) ARE NOT REASONABLY AVOIDABLE BY THE PERSON.

(III) "TOTAL PRICE" DOES NOT INCLUDE A GOVERNMENT CHARGE OR

SHIPPING CHARGE UNLESS INCLUDED AT THE OPTION OF THE PERSON OFFERING, DISPLAYING, OR ADVERTISING THE GOOD, SERVICE, OR PROPERTY.

(2) (a) A PERSON SHALL NOT OFFER, DISPLAY, OR ADVERTISE AN AMOUNT A PERSON MAY PAY FOR A GOOD, SERVICE, OR PROPERTY UNLESS THE PERSON OFFERING, DISPLAYING, OR ADVERTISING THE GOOD, SERVICE, OR PROPERTY CLEARLY AND CONSPICUOUSLY DISCLOSES THE TOTAL PRICE FOR THE GOOD, SERVICE, OR PROPERTY AS A SINGLE NUMBER WITHOUT SEPARATING THE TOTAL PRICE INTO SEPARATE FEES, CHARGES, OR AMOUNTS. THE TOTAL PRICE FOR THE GOOD, SERVICE, OR PROPERTY MUST BE DISCLOSED MORE PROMINENTLY THAN ANY OTHER PRICING INFORMATION FOR THE GOOD, SERVICE, OR PROPERTY.

(b) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, A PERSON IS COMPLIANT WITH SUBSECTIONS (2)(a) AND (3)(b) OF THIS SECTION IF THE PERSON DOES NOT USE DECEPTIVE, UNFAIR, AND UNCONSCIONABLE ACTS OR PRACTICES RELATED TO THE PRICING OF GOODS, SERVICES, OR PROPERTY AND IF THE PERSON:

(I) IS A FOOD AND BEVERAGE SERVICE ESTABLISHMENT THAT, IN EVERY OFFER, DISPLAY, OR ADVERTISEMENT FOR THE PURCHASE OF A GOOD OR SERVICE, INCLUDES WITH THE PRICE OF THE GOOD OR SERVICE OFFERED, DISPLAYED, OR ADVERTISED A CLEAR AND CONSPICUOUS DISCLOSURE OF THE PERCENTAGE OR AMOUNT OF ANY MANDATORY SERVICE CHARGE AND AN ACCURATE DESCRIPTION OF HOW THE MANDATORY SERVICE CHARGE IS DISTRIBUTED;

(II) CAN DEMONSTRATE THAT THE PERSON IS OFFERING SERVICES FOR WHICH THE TOTAL PRICE OF THE SERVICE CANNOT REASONABLY BE KNOWN AT THE TIME OF THE OFFER DUE TO FACTORS THAT DETERMINE THE TOTAL PRICE THAT ARE BEYOND THE CONTROL OF THE PERSON OFFERING THE SERVICE, INCLUDING FACTORS THAT ARE DETERMINED BY CONSUMER SELECTIONS OR PREFERENCES OR THAT RELATE TO DISTANCE OR TIME, AND CLEARLY AND CONSPICUOUSLY DISCLOSES:

(A) THE FACTORS THAT DETERMINE THE TOTAL PRICE;

(B) ANY MANDATORY FEES ASSOCIATED WITH THE TRANSACTION; AND

(C) THAT THE TOTAL PRICE OF THE SERVICES MAY VARY.

(III) CAN DEMONSTRATE THAT THE PERSON IS GOVERNED BY AND COMPLIANT WITH APPLICABLE FEDERAL LAW, RULE, OR REGULATION REGARDING PRICE TRANSPARENCY FOR THE PURPOSES OF THE TRANSACTION AT ISSUE, INCLUDING, BUT NOT LIMITED TO:

(A) THE FEDERAL "TRUTH IN SAVINGS ACT", 12 U.S.C. SEC. 4301 ET SEQ.;

(B) THE FEDERAL "ELECTRONIC FUND TRANSFER ACT", 15 U.S.C. SEC. 1693 ET SEQ.;

(C) SECTION 19 OF THE "FEDERAL RESERVE ACT", 12 U.S.C. SEC. 461 ET SEQ., AS AMENDED;

(D) THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 ET SEQ.;

(E) THE FEDERAL "HOME OWNERSHIP AND EQUITY PROTECTION ACT", 15 U.S.C. SEC. 1639;

(F) THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. 80a-1 ET SEQ.;

(G) THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940", 15 U.S.C. SEC. 80b-1 ET SEQ.; OR

(H) THE FEDERAL REGULATION BEST INTEREST REGULATION IN 17 CFR 240.15l-1 PURSUANT TO THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. 78a ET SEQ.;

(IV) CAN DEMONSTRATE THAT ANY FEES, COSTS, OR AMOUNTS CHARGED IN ADDITION TO THE TOTAL PRICE WERE:

(A) ASSOCIATED WITH SETTLEMENT SERVICES, AS DEFINED BY THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2602 (3); AND

(B) NOT REAL ESTATE BROKER COMMISSIONS OR FEES;

(V) CAN DEMONSTRATE THAT THE PERSON IS PROVIDING BROADBAND INTERNET ACCESS SERVICE ON THEIR OWN OR AS PART OF A BUNDLE, AS DEFINED IN 47 CFR 8.1 (b), AND IS COMPLIANT WITH THE BROADBAND CONSUMER LABEL REQUIREMENTS ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN FCC 22-86 ON NOVEMBER 14, 2022; OR

(VI) CAN DEMONSTRATE THAT THE PERSON IS A CABLE OPERATOR OR DIRECT BROADCAST SATELLITE PROVIDER AND IS COMPLIANT WITH TRUTH IN BILLING AND ADVERTISING REQUIREMENTS SPECIFIED IN 47 CFR 76.310.

(c) (I) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, A DELIVERY NETWORK COMPANY IS COMPLIANT WITH SUBSECTIONS (2)(a) AND (3)(b) OF THIS SECTION IF THE DELIVERY NETWORK COMPANY DOES NOT USE DECEPTIVE, UNFAIR, AND UNCONSCIONABLE ACTS OR PRACTICES RELATED TO THE PRICING OF GOODS, SERVICES, OR PROPERTY AND:

(A) CLEARLY AND CONSPICUOUSLY DISCLOSES, AT THE POINT WHEN A CONSUMER VIEWS AND SELECTS A VENDOR OR GOODS OR SERVICES FOR PURCHASE, THAT AN ADDITIONAL FLAT FEE, VARIABLE FEE, OR PERCENTAGE FEE IS CHARGED, INCLUDING THE AMOUNT OF OR, IN THE CASE OF A VARIABLE FEE THAT IS DEPENDENT ON CONSUMER SELECTIONS OR DISTANCE AND TIME, THE FACTORS DETERMINING THE FEE, ANY MANDATORY FEES ASSOCIATED WITH THE TRANSACTION, AND THAT THE TOTAL PRICE OF THE SERVICES MAY VARY;

(B) PROVIDES AN ACCURATE DESCRIPTION OF THE RECIPIENTS AND PURPOSES OF THE ADDITIONAL FLAT FEE, VARIABLE FEE, OR PERCENTAGE FEE IN CONCISE LANGUAGE; AND

(C) DISPLAYS, AFTER A CONSUMER SELECTS A VENDOR OR GOODS OR SERVICES FOR PURCHASE BUT BEFORE COMPLETING THE TRANSACTION, A SUBTOTAL PAGE THAT ITEMIZES THE PRICE OF THE GOODS OR SERVICES FOR PURCHASE AND THE ADDITIONAL FLAT FEE, VARIABLE FEE, OR PERCENTAGE FEE THAT IS INCLUDED IN THE TOTAL PRICE.

(II) A DELIVERY NETWORK COMPANY MAY DISPLAY THE INFORMATION REQUIRED BY THIS SUBSECTION (2)(c) AS FOLLOWS:

(A) BY DISPLAYING ALL OF THE INFORMATION SPECIFIED IN

SUBSECTION (2)(c)(I) OF THIS SECTION ON THE SAME PAGE; OR

(B) BY USING CONCISE LANGUAGE DISPLAYED VIA REASONABLE AND ACCESSIBLE MEANS AS DEFINED BY THE ATTORNEY GENERAL BY RULE.

(d) SUBSECTION (2)(a) OF THIS SECTION DOES NOT REQUIRE A LANDLORD OR LANDLORD'S AGENT TO INCLUDE, IN THE DISCLOSURE OF THE TOTAL PRICE FOR A DWELLING UNIT, THE ACTUAL COST CHARGED BY A UTILITY PROVIDER FOR SERVICE TO A TENANT'S DWELLING UNIT.

(3) (a) A PERSON SHALL NOT MISREPRESENT THE NATURE AND PURPOSE OF PRICING INFORMATION FOR A GOOD, SERVICE, OR PROPERTY, INCLUDING:

(I) THE REFUNDABILITY OF AN AMOUNT CHARGED;

(II) THE IDENTITY OF A GOOD, SERVICE, OR PROPERTY FOR WHICH AN AMOUNT IS CHARGED;

(III) THE RECIPIENT OF AN AMOUNT CHARGED FOR THE GOOD, SERVICE, OR PROPERTY; AND

(IV) THE ACTUAL PRICE OF THE GOOD, SERVICE, OR PROPERTY FOR WHICH AN AMOUNT IS CHARGED.

(b) UPON OFFERING, DISPLAYING, OR ADVERTISING AN AMOUNT A PERSON MAY PAY FOR A GOOD, SERVICE, OR PROPERTY AND BEFORE A PERSON CONSENTS TO PAY FOR THE GOOD, SERVICE, OR PROPERTY, THE PERSON OFFERING, DISPLAYING, OR ADVERTISING THE GOOD, SERVICE, OR PROPERTY SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THE NATURE AND PURPOSE OF PRICING INFORMATION FOR THE GOOD, SERVICE, OR PROPERTY THAT IS NOT PART OF THE TOTAL PRICE FOR THE GOOD, SERVICE, OR PROPERTY, INCLUDING:

(I) THE REFUNDABILITY OF THE AMOUNT CHARGED FOR THAT GOOD, SERVICE, OR PROPERTY THAT IS NOT PART OF THE TOTAL PRICE;

(II) THE IDENTITY OF THAT GOOD, SERVICE, OR PROPERTY FOR WHICH AN AMOUNT IS CHARGED THAT IS NOT PART OF THE TOTAL PRICE; AND

(III) THE RECIPIENT OF THE AMOUNT CHARGED FOR THAT GOOD, SERVICE, OR PROPERTY THAT IS NOT PART OF THE TOTAL PRICE.

(4) A LANDLORD OR THE LANDLORD'S AGENT SHALL NOT REQUIRE A TENANT TO PAY A FEE, CHARGE, OR AMOUNT:

(a) RELATED TO THE PROVISION OF UTILITIES THAT IS ABOVE THE AMOUNT CHARGED BY THE UTILITY PROVIDER FOR SERVICE TO THE TENANT'S DWELLING UNIT, EXCEPT IN ACCORDANCE WITH SECTION 38-12-801 (3)(a)(VI);

(b) THAT INCREASES BY MORE THAN TWO PERCENT OVER THE COURSE OF A RENTAL AGREEMENT OF ONE YEAR OR LESS, EXCEPT FOR THE COST OF UTILITIES PROVIDED TO THE TENANT'S DWELLING UNIT;

(c) RELATED TO THE PAYMENT OF PROPERTY TAXES;

(d) RELATED TO THE PROCESSING OF RENT OR OTHER PAYMENTS IF A MEANS OF PAYMENT THAT IS COST-FREE TO THE TENANT IS NOT REASONABLY ACCESSIBLE BY THE TENANT;

(e) RELATED TO THE OVERDUE PAYMENT OF A FEE, CHARGE, OR AMOUNT THAT IS NOT RENT;

(f) FOR A GOOD, SERVICE, OR PROPERTY NECESSARY TO COMPLY WITH THE RESPONSIBILITIES OR OBLIGATIONS OF A LANDLORD OR THE LANDLORD'S AGENT, INCLUDING THE LANDLORD'S RESPONSIBILITY TO PROVIDE A HABITABLE LIVING ENVIRONMENT IN ACCORDANCE WITH SECTION 38-12-503;

(g) ABOVE THE TOTAL PRICE OF THE GOOD, SERVICE, OR PROPERTY FOR WHICH AN AMOUNT IS CHARGED, EXCEPT AS PROVIDED IN SECTION 38-12-801 (3)(a)(VI);

(h) FOR A GOOD, SERVICE, OR PROPERTY NOT ACTUALLY PROVIDED;

(i) FOR THE MAINTENANCE OF COMMON AREAS; OR

(j) THAT VIOLATES THIS SECTION.

(5) (a) A PERSON THAT VIOLATES ANY OF THE REQUIREMENTS OR PROHIBITIONS OF THIS SECTION ENGAGES IN A DECEPTIVE, UNFAIR, AND UNCONSCIONABLE ACT OR PRACTICE.

(b) (I) IN ADDITION TO ANY REMEDIES OTHERWISE PROVIDED BY LAW OR IN EQUITY, PURSUANT TO A GOOD FAITH BELIEF THAT A VIOLATION OF ANY PROVISION OF THIS SECTION HAS OCCURRED IN A DISPUTE BETWEEN A LANDLORD AND A TENANT OVER A RESIDENTIAL PROPERTY OR A LESSOR AND A LESSEE OF A COMMERCIAL PROPERTY, A PERSON AGGRIEVED BY A VIOLATION MAY SEND A WRITTEN DEMAND TO THE ALLEGED VIOLATOR FOR REIMBURSEMENT OF ANY FEES, CHARGES, OR AMOUNTS IN VIOLATION OF THIS SECTION PAID BY THE AGGRIEVED PERSON OR A GROUP OF SIMILARLY SITUATED AGGRIEVED PERSONS, FOR THE ACTUAL DAMAGES SUFFERED, AND FOR THE ALLEGED VIOLATOR TO CEASE VIOLATING THIS SECTION. THE AGGRIEVED PERSON MAY NOTIFY THE ALLEGED VIOLATOR OF THEIR REFUSAL TO PAY ANY FEES, CHARGES, OR AMOUNTS THAT VIOLATE THIS SECTION.

(II) IF AN ALLEGED VIOLATOR DECLINES TO MAKE FULL LEGAL TENDER OF ALL FEES, CHARGES, AMOUNTS, OR ACTUAL DAMAGES DEMANDED OR REFUSES TO CEASE CHARGING THE AGGRIEVED PERSON AND THOSE SIMILARLY SITUATED THE FEES, CHARGES, OR AMOUNTS IN VIOLATION OF THIS SECTION WITHIN FOURTEEN DAYS AFTER THE RECEIPT OF A WRITTEN DEMAND SENT PURSUANT TO SUBSECTION (5)(b)(I) OF THIS SECTION, IN ADDITION TO ANY OTHER DAMAGES AVAILABLE BY LAW OR IN EQUITY, THE PERSON IS LIABLE FOR ACTUAL DAMAGES PLUS AN INTEREST RATE OF EIGHTEEN PERCENT PER ANNUM COMPOUNDED ANNUALLY.

(c) (I) A PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION DOES NOT NEED TO SEND A WRITTEN DEMAND, OR SATISFY ANY OTHER PRE-SUIT REQUIREMENT, BEFORE ASSERTING A CLAIM BASED ON A VIOLATION OF THIS SECTION.

(II) NOTHING IN THIS SECTION LIMITS REMEDIES AVAILABLE ELSEWHERE BY LAW OR IN EQUITY.

(6) THIS SECTION DOES NOT APPLY TO A PERSON GOVERNED BY FEDERAL LAW THAT PREEMPTS STATE LAW.

(7) THE ATTORNEY GENERAL MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

SECTION 3. In Colorado Revised Statutes, 6-1-720, **amend** (1) introductory portion as follows:

6-1-720. Ticket sales - deceptive trade practice - definitions. (1) NOTWITHSTANDING SECTION 6-1-737, a person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

SECTION 4. In Colorado Revised Statutes, 38-12-801, **amend** (3)(a)(VI) as follows:

38-12-801. Written rental agreement - prohibited clauses - copy - tenant - applicability - definitions. (3) (a) A written rental agreement must not include:

(VI) A provision that requires a tenant to pay a:

(A) Markup or fee for a service for which the landlord is billed by a third party; except that a written rental agreement may include a provision that requires a tenant to pay either a markup or fee in an amount that does not exceed two percent of the amount that the landlord was billed or a markup or fee in an amount that does not exceed a total of ten dollars per month, but not both. This subsection (3)(a)(VI) does not preclude a prevailing party from recovering an amount equal to any reasonable attorney fees awarded by a court pursuant to subsection (3)(a)(II) of this section; OR

(B) FEE, CHARGE, OR AMOUNT THAT VIOLATES ANY PART OF SECTION 6-1-737;

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2026; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Julie McCluskie SPEAKER OF THE HOUSE OF REPRESENTATIVES	James Rashad Coleman, Sr. PRESIDENT OF THE SENATE
Vanessa Reilly CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Esther van Mourik SECRETARY OF THE SENATE

APPROVED_____
(Date and Time)

_____
Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

Attachment 4

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

PROPOSED REVISIONS FOR THE 2024 LOCAL RULES CYCLE

The Advisory Committee on the Local Rules of Practice and Procedure considered two proposed amendments to the Local Rules of Practice. There were **2** comments submitted for the 2024 local rules cycle, both of which were revised and approved by the Committee. One of the approved comments was an amendment that clarified a pre-existing rule and the other was a proposal for reform of the court's local attorney rules regarding professional responsibility and discipline.

The following compilation presents the proposed rule changes formatted to reflect the existing rule in its current state, the proposed revision featuring redlined edits, and the final version of the rule with incorporated edits.

Rules with proposed revisions

Section I – Civil Rules

D.C.COLO.LCivR 8.1 – In Forma Pauperis Party and Prisoner Pleadings
- (a) Review of In Forma Pauperis Party Pleadings

Section V – Attorney Rules

D.C.COLO.LAttyR 2 – Standards of Professional Conduct
- (a) Standards of Professional Conduct

D.C.COLO.LAttyR 4 – Attorney Self-Reporting Requirements
- (a) When Self-Reporting is Required

D.C.COLO.LAttyR 6 – Disciplinary Panel and Committee on Conduct
- (b) Committee on Conduct

D.C.COLO.LAttyR 7 – Complaints and Grounds for Discipline
- (b) Ground for Discipline
- (e) Resolution of the Complaint by the Committee on Conduct
- (f) Disciplinary Panel Hearings and Orders

D.C.COLO.LAttyR 12 – Confidential and Public Matters
- (b) Public Matters
- (d) Annual Report

Comment 2024-1
D.C.COLO.LCivR 8.1
In Forma Pauperis Party and Prisoner Pleadings

Submitted by magistrate judge. Suggestion to extend initial review to cases wherein a pro se party pays a filing fee.

Existing rule	Proposed revision	Final w/ revision
(a) Review of In Forma Pauperis Party Pleadings. A judicial officer designated by the Chief Judge shall review the pleadings of a party who is allowed to proceed without prepayment of filing fees to determine whether the pleadings should be dismissed summarily. A judicial officer may request additional facts or documentary evidence necessary to make this determination. A party who seeks leave to proceed without prepayment of filing fees shall use the procedures, forms, and instructions available on the court's website or from the office of the clerk.	**(a) Review of Pro Se and In Forma Pauperis Party Pleadings.** A judicial officer designated by the Chief Judge shall review the pleadings of a pro se party or a party who is allowed to proceed without prepayment of filing fees to determine whether the pleadings should be dismissed summarily. The designated judicial officer may use the assistance of the Pro Se Division in making the determination. A judicial officer may request additional facts or documentary evidence necessary to make this determination. The time for filing an answer or response shall be tolled until the designated judicial officer determines that the pleadings should not be dismissed summarily at which time the judicial officer shall issue an order directing service of the order and the pleadings on the defendant(s) or respondent(s). A party who seeks leave to proceed without prepayment of filing fees shall use the procedures, forms, and instructions available on the court's website or from the office of the clerk.	**(a) Review of Pro Se and In Forma Pauperis Party Pleadings.** A judicial officer designated by the Chief Judge shall review the pleadings of a pro se party or a party who is allowed to proceed without prepayment of filing fees to determine whether the pleadings should be dismissed summarily. The designated judicial officer may use the assistance of the Pro Se Division in making the determination. A judicial officer may request additional facts or documentary evidence necessary to make this determination. The time for filing an answer or response shall be tolled until the designated judicial officer determines that the pleadings should not be dismissed summarily at which time the judicial officer shall issue an order directing service of the order and the pleadings on the defendant(s) or respondent(s). A party who seeks leave to proceed without prepayment of filing fees shall use the procedures, forms, and instructions available on the court's website or from the office of the clerk.

Comment 2024-2
D.C.COLO.LAttyR 2
Standards of Professional Conduct

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
(a) Standards of Professional Conduct. Except as provided by Subdivision (b) or order or rule of the United States Bankruptcy Court for the District of Colorado, the Colorado Rules of Professional Conduct (Colo. RPC) are adopted as standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado.	**(a) Standards of Professional Conduct.** Except as provided by Subdivision (b) or order or rule of the United States Bankruptcy Court for the District of Colorado, the Colorado Rules of Professional Conduct (Colo. RPC) are adopted as standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado. A judicial officer may impose additional standards of professional conduct by practice standard or order, the violation of which constitutes grounds for discipline under D.C.COLO.LAttyR 7(b)(1).	**(a) Standards of Professional Conduct.** Except as provided by Subdivision (b) or order or rule of the United States Bankruptcy Court for the District of Colorado, the Colorado Rules of Professional Conduct (Colo. RPC) are adopted as standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado. A judicial officer may impose additional standards of professional conduct by practice standard or order, the violation of which constitutes grounds for discipline under D.C.COLO.LAttyR 7(b)(1).

Comment 2024-2
D.C.COLO.LAttyR 4
Attorney Self-Reporting Requirements

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
(a)(2) Suspension or Disbarment by Another Court. If the attorney is suspended or disbarred for any reason by any court, the attorney shall give, no later than 14 days after the date the disciplinary order enters, written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of the disciplinary action. An order of suspension or disbarment that is stayed or appealed must be reported.	**(a)(2) Suspension, ~~or~~ Disbarment, or Revocation of Pro Hac Vice Status by Another Court.** If the attorney is suspended or disbarred for any reason by any court, the attorney shall give, no later than 14 days after the date the disciplinary order enters, written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of the disciplinary action. An order of suspension or disbarment that is stayed or appealed must be reported. An order revoking pro hac vice status shall be reported by the affected attorney within 14 days of the entry of the order.	**(a)(2) Suspension, Disbarment, or Revocation of Pro Hac Vice Status by Another Court.** If the attorney is suspended or disbarred for any reason by any court, the attorney shall give, no later than 14 days after the date the disciplinary order enters, written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of the disciplinary action. An order of suspension or disbarment that is stayed or appealed must be reported. An order revoking pro hac vice status shall be reported by the affected attorney within 14 days of the entry of the order.

Comment 2024-2
D.C.COLO.LAttyR 6
Disciplinary Panel and Committee on Conduct

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
(b) **Committee on Conduct**. The court has established a standing Committee on Conduct (the Committee) consisting of 12 members of the bar of this court.... To be eligible for appointment to the Committee, an attorney shall certify that the attorney satisfies the following: (1) has been practicing law for at least 10 years, with no discipline imposed; (2) is licensed to practice by the Colorado Supreme Court; (3) has been a member of and in good standing with the bar of this court for at least 5 years, with no discipline imposed; (4) has experience that makes the applicant especially qualified to investigate matters governed by the disciplinary rules of the court and the Colorado Rules of Professional Conduct.	(b) **Committee on Conduct**. The court has established a standing Committee on Conduct (the Committee) consisting of 12 members of the bar of this court.... To be eligible for appointment to the Committee, an attorney shall certify that the attorney satisfies the following: (1) has been practicing law for at least 10 years, with no discipline imposed; ~~(2) is licensed to practice by the Colorado Supreme Court;~~ ~~(3)~~(2) has been a member of and in good standing with the bar of this court for at least 5 years, with no discipline imposed; ~~(4)~~(3) has experience that makes the applicant especially qualified to investigate matters governed by the disciplinary rules of the court and the Colorado Rules of Professional Conduct.	(b) **Committee on Conduct**. The court has established a standing Committee on Conduct (the Committee) consisting of 12 members of the bar of this court.... To be eligible for appointment to the Committee, an attorney shall certify that the attorney satisfies the following: (1) has been practicing law for at least 10 years, with no discipline imposed; (2) has been a member of and in good standing with the bar of this court for at least 5 years, with no discipline imposed; (3) has experience that makes the applicant especially qualified to investigate matters governed by the disciplinary rules of the court and the Colorado Rules of Professional Conduct.

Comment 2024-2
D.C.COLO.LAttyR 7
Complaints and Grounds for Discipline

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
(b) Grounds for Discipline. Grounds for discipline include: (1) a violation or attempted violation of the Standards of Professional responsibility.	**(b) Grounds for Discipline.** Grounds for discipline include: (1) a violation or attempted violation of the Standards of Professional responsibility or of a practice standard or order imposing additional standards of professional conduct.	**(b) Grounds for Discipline.** Grounds for discipline include: (1) a violation or attempted violation of the Standards of Professional responsibility or of a practice standard or order imposing additional standards of professional conduct.

Comment 2024-2
D.C.COLO.LAttyR 7
Complaints and Grounds for Discipline

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
(e) Resolution of the Complaint by the Committee on Conduct. (1) Dismissal of the Complaint. If the Committee concludes that the complaint is without merit or that other grounds justify its dismissal, including that the Committee, after investigation, cannot find by clear and convincing evidence grounds for discipline outlined in Subdivision (b) above, then the Committee shall send a letter signed by the chairperson or vice- chairperson of the Committee advising the complainant and the respondent.	**(e) Resolution of the Complaint by the Committee on Conduct.** (1) Dismissal of the Complaint. If the Committee concludes that the complaint is without merit or that other grounds justify its dismissal, including that the Committee, after investigation, cannot find by ~~clear and convincing evidence~~ a preponderance of the evidence grounds for discipline outlined in Subdivision (b) above, then the Committee shall send a letter signed by the chairperson or vice- chairperson of the Committee advising the complainant and the respondent.	**(e) Resolution of the Complaint by the Committee on Conduct.** (1) Dismissal of the Complaint. If the Committee concludes that the complaint is without merit or that other grounds justify its dismissal, including that the Committee, after investigation, cannot find by a preponderance of the evidence grounds for discipline outlined in Subdivision (b) above, then the Committee shall send a letter signed by the chairperson or vice- chairperson of the Committee advising the complainant and the respondent.

Comment 2024-2
D.C.COLO.LAttyR 7
Complaints and Grounds for Discipline

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
(f) Disciplinary Panel Hearings and Orders. After the respondent has filed an answer, an evidentiary hearing may be scheduled by the Panel. The Panel or a judicial officer appointed by the Panel may issue orders regarding discovery and other pre-hearing matters. A respondent against whom charges have been filed shall be entitled to representation by counsel at the expense of the respondent. The chairperson of the Committee shall appoint one or more of its members to prosecute the charges. If the charges are sustained by clear and convincing evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent. A respondent who is suspended or disbarred shall be enjoined from practicing law before this court, and the judgment shall so recite. Any violation of the judgment shall be deemed a content of court.	**(f) Disciplinary Panel Hearings and Orders.** After the respondent has filed an answer, an evidentiary hearing may be scheduled by the Panel. The Panel or a judicial officer appointed by the Panel may issue orders regarding discovery and other pre-hearing matters. A respondent against whom charges have been filed shall be entitled to representation by counsel at the expense of the respondent. The chairperson of the Committee shall appoint one or more of its members to prosecute the charges. If the charges are sustained by ~~clear and convincing evidence~~ a preponderance of the evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent. A respondent who is suspended or disbarred shall be enjoined from practicing law before this court, and the judgment shall so recite. Any violation of the judgment shall be deemed a content of court.	**(f) Disciplinary Panel Hearings and Orders.** After the respondent has filed an answer, an evidentiary hearing may be scheduled by the Panel. The Panel or a judicial officer appointed by the Panel may issue orders regarding discovery and other pre-hearing matters. A respondent against whom charges have been filed shall be entitled to representation by counsel at the expense of the respondent. The chairperson of the Committee shall appoint one or more of its members to prosecute the charges. If the charges are sustained by a preponderance of the evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent. A respondent who is suspended or disbarred shall be enjoined from practicing law before this court, and the judgment shall so recite. Any violation of the judgment shall be deemed a content of court.

Comment 2024-2
D.C.COLO.LAttyR 12
Confidential and Public Matters

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
(b) Public Matters. The public shall have access to the following: (1) orders for admission, reinstatement, readmission, relief from the rule of good standing, disability inactive status, censure, suspension, disbarment, and dismissal after a response has been filed; and (2) charges submitted to the Panel, the answer of the respondent to the charges, and the hearings of the Panel on the charges.	**(b) Public Matters.** The public shall have access on the Court's website HERE to the following: (1) orders for admission, reinstatement, readmission, relief from the rule of good standing, disability inactive status, censure, suspension, disbarment, and dismissal after a response has been filed; and (2) charges submitted to the Panel, the answer of the respondent to the charges, and the hearings of the Panel on the charges.	**(b) Public Matters.** The public shall have access on the Court's website HERE to the following: (1) orders for admission, reinstatement, readmission, relief from the rule of good standing, disability inactive status, censure, suspension, disbarment, and dismissal after a response has been filed; and (2) charges submitted to the Panel, the answer of the respondent to the charges, and the hearings of the Panel on the charges.

Comment 2024-2
D.C.COLO.LAttyR 12
Confidential and Public Matters

Submitted by district judge. One of a series of suggestions regarding professional responsibility and discipline for attorneys.

Existing rule	Proposed revision	Final w/ revision
[no existing rule]	**(d) Annual Report.** The Committee shall submit to the court by January 10 of each year a report detailing the number of complaints and charges filed in the previous year, the violations charged and disposition of each complaint or charge considered, and an accounting of the receipt of funds by and expenses of the Committee along with any additional comments, requests, or suggestions the Committee deems appropriate.	**(d) Annual Report.** The Committee shall submit to the court by January 10 of each year a report detailing the number of complaints and charges filed in the previous year, the violations charged and disposition of each complaint or charge considered, and an accounting of the receipt of funds by and expenses of the Committee along with any additional comments, requests, or suggestions the Committee deems appropriate.