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

AGENDA

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

Webex link:
https://judicial.webex.com/judicial/j.php?MTID=m9a2bf73fe7553a62e34deffea950613a

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1. Call to Order [Judge Lipinsky].

2. Approval of minutes for April 25, 2025, meeting [attachment 1].

3. Old business:

   a. Report from the Rule 1.10(e) subcommittee [Steve Masciocchi] [attachment 2].

   b. Report from the AI subcommittee [Julia Martinez] [attachment 3].

   c. Report from the Rule 1.2 subcommittee [Judge Lipinsky] [attachment 4].

   d. Report from the subcommittee reviewing references to "nonlawyer" in the Rules [Lois Lupica] [attachment 5].

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

4. New business.

   a. Report on the District Court of Colorado's adoption of a "civility code" [Judge Lipinsky].

5. Adjournment.

Upcoming meeting dates: September 26, 2025; January 23, 2026; and April 24, 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
April 25, 2025
Seventy-Fifth Meeting of the Full Committee

The seventy-fifth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:00 a.m. on Friday, April 25, 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 W. Hood, III, Katayoun Donnelly, Judge Adam Espinosa, Matthew Kirsch, Judge Bryon M. Large, Julia Martinez, Stephen G. Masciocchi, Marcus L. Squarrell, David W. Stark, James S. Sudler, Eli Wald, J.J. Wallace, and Jessica Yates.

Present for the meeting by virtual appearance were Thomas E. Downey, Jr., Scott L. Evans, Margaret B. Funk, Lois Lupica, Cecil E. Morris, Jr., Robert Steinmetz, and Judge John Webb.

Nancy L. Cohen, Cynthia F. Covell, Marcy G. Glenn, Erika L. Holmes, April D. Jones, Marianne Luu-Chen, Jason Lynch, Noah Patterson, Troy R. Rackham, Henry R. Reeve, Alexander R. Rothrock, and Fred Yarger were excused.

1. CALL TO ORDER. Judge Lipinsky called the meeting to order at 9:00 a.m.

2. APPROVAL OF MINUTES FOR JANUARY 24, 2025, MEETING. On motion duly made and seconded, the Committee unanimously approved the minutes for its January 24, 2025, meeting.

3. OLD BUSINESS.

a. Report on the proposed amendments addressing outdated cross-references in the Rules [Judge Lipinsky]. Judge Lipinsky reported that the Colorado Supreme Court adopted the proposed amendments addressing outdated cross-references in the Rules on February 6, 2025, effective immediately. He thanked Stephen Masciocchi and Jessica Yates for their painstaking work in scouring the Rules to identify the outdated cross-references.

b. Report from the Rule 6.5 Subcommittee [Jessica Yates]. Ms. Yates reported that the Rule 6.5 Subcommittee is continuing to consider amendments to the Rule and is consulting with non-profit legal service organizations to ensure any amendments did not result in unanticipated adverse consequences.

c. Report from the AI Subcommittee [Julia Martinez]. Ms. Martinez reviewed the Subcommittee's prior recommendations and the Committee's straw votes on those proposals at

previous meetings. She noted that, at its July 26, 2024, meeting, the Committee had taken straw votes in favor of the proposed addition of section [20A] to the Scope section of the Rules and the proposed revision to comment 8 to Rule 1.1.

The Committee then discussed the Subcommittee's proposal to add a new standalone Rule on technology, which would be numbered 1.19. In response to the Committee's prior comments on proposed Rule 1.19, the Subcommittee shortened the comments to the proposed Rule and added a definition of "AI tools."

Judge Lipinsky reported that he had asked Mary McDermott, Lead Senior Counsel at the ABA Center for Professional Responsibility, whether the ABA was considering any AI-related amendments to the Model Rules or comments. Ms. McDermott said that the ABA was not considering any such amendments and that she would be interested in learning about any such amendments to the Colorado Rules. A member said that the ABA House of Delegates had considered changes to the Rules to address issues created by lawyer use and misuse of artificial intelligence and had concluded the existing Rules were sufficient for this purpose. The member noted that the ABA Center for Professional Responsibility had issued Opinion 512, which addresses use of AI.

A member commented it was not necessary for Colorado to go first in adopting a new Rule on technology. He reminded the Committee that Colorado had adopted its version of Rule 4.4(b), addressing inadvertent production, before the ABA had amended the analogous Model Rule, but only after years of debate. He acknowledged lawyers need direction regarding the proposed use of artificial intelligence and said that the language of proposed Rule 1.19 would be more appropriate in the 5 series of Rules. In addition, the member questioned the placement of "[a] lawyer" at the beginning of the proposed Rule and said the language did not make clear what specific technology-related conduct could result in a violation of the Rule.

A member followed up on that point, saying that the proposed Rule did not specify what a lawyer should or should not do regarding use of artificial intelligence. The member added that, unlike other Series 1 Rules, the proposed Rule did not provide specific guidance. He said that comment 4 to the proposed Rule was unhelpful because it did not identify what "reasonable efforts" a lawyer should take when using AI tools. In addition, the member said that the statement, "third party representations are not a substitute for independent investigation," did not make clear what categories of third parties may or should be consulted or the nature or scope of the independent investigation.

Another member said that, unlike the other Series 1 Rules, the proposed Rule did not specify a lawyer's obligations and questioned whether adopting the proposed Rule could be read as suggesting that lawyers have an obligation to use AI tools. In general, Rules should not raise issues without provide specific guidance to lawyers.

The Committee discussed the merits of taking the lead in amending the Rules to reflect lawyer use and misuse of AI and adopting a standalone technology rule. A member said that it would be prudent to wait to adopt a technology Rule until AI had further developed. Another member said that lawyers are already using AI tools and reported on a recent order from the

District of Colorado regarding hallucinations in a court filing. Judge Lipinsky noted that Thomson Reuters and Lexis are making their AI tools available to law students for free and, as a result, young lawyers are accustomed to using those resources.

Justice Hood reminded that Committee that the Supreme Court is more likely to act on specific recommendations than on general suggestions. Justice Berkenkotter said the Court expects to receive recommendations from the Committee.

A member said the proposed standalone Rule and the accompanying comments read more like an ethics opinion than a Rule. He said he does not support such a Rule and would prefer that the Committee propose that the Court adopt the comments to Rule 1.19 as comments to existing Rules. He specifically recommended that the Committee propose adoption of proposed comment 8 to Rule 1.1 and Scope section [20A]. Another member reminded the Committee that the Court adopted Colorado's version of comment 8 to Rule 1.1 to put lawyers on notice that they were not prohibited from using email. Judge Large commented that his office has not struggled to find applicable rules when lawyers misuse AI.

A member asked about the status of the Committee's recommendation that the Supreme Court form a Standing Technology Committee. Judge Lipinsky said the Court was still considering this recommendation.

A judge on the Committee described his use of Thomson Reuters' Co-Counsel tool to prepare a draft order. Although he did not issue the draft order, it was close to what he wanted. He expressed the opinion that Rules 1.3, 1.6, and 3.3 are sufficient to regulate the use of AI tools.

A member recommended taking separate votes on each of the Subcommittee's proposals.

On motion duly made and seconded, the Committee voted 12 to 5 against recommending adoption of proposed Rule 1.19. Judge Large abstained.

On motion duly made and seconded, the Committee voted 9 to 8 to incorporate the language of the proposed comments to proposed Rule 1.19 into comments to existing Rules. Judge Large abstained. Ms. Martinez said that the Subcommittee would consider whether the language of the proposed comments — including the comments that the Subcommittee had previously withdrawn — should be added to existing comments.

On motion duly made and seconded, the Committee voted 15 to 2 against adding a definition of "AI Tools" to Scope section [20A]. Judge Large abstained.

On motion duly made and seconded, the Committee voted 17 to 0 to recommend the new Scope section [20A], with a friendly amendment to replace "may be held accountable" with "may be disciplined" in the last sentence. Judge Large abstained.

On motion duly made and seconded, the Committee voted 17-0 to recommend the proposed amendment to comment 8 to Rule 1.1. Judge Large abstained.

Ms. Martinez said that the Subcommittee would likely present its final report at the Committee's next meeting. Following its discussion of that report, the Committee would formally vote on all the proposed AI-related amendments to the Rules and comments it wished to present to the Supreme Court.

Judge Lipinsky thanked Ms. Martinez for her work on the AI Subcommittee over the past two years. Justice Berkenkotter commended Ms. Martinez for her leadership skills and willingness to take on this difficult project.

d. Update on ABA Model Rule 1.16 [Steve Masciocchi]. Mr. Masciocchi updated his previous reports on the states that have adopted, rejected, considered, or are considering the August 2023 amendments to ABA Model Rule 1.16. Four states have amended their respective versions of Rule 1.16. Wyoming and Maryland adopted the language of the Model Rule, while Massachusetts and Oregon revised their versions of the Rule but did not adopt the Model Rule text. Thus far, only Wyoming has adopted verbatim the amendments to both the Model Rule text and all the accompanying comments. Florida adopted a version of the Model Rule with language referring to "reasonable belief" and "know or should know." Alaska, Arizona, the District of Columbia, New York, North Dakota, and Washington are considering amendments to their respective versions of the Rule.

Mr. Masciocchi will continue to monitor various jurisdictions' consideration of Model Rule 1.16.

e. Report from the Rule 1.2 Subcommittee [Judge Lipinsky]. Judge Lipinsky reported that Erika Holmes was taking a one-year sabbatical from her practice. He said that the Subcommittee expects to present proposed amendments to Rule 1.2(c) and the comments to Rule 1.2 at the Committee's next meeting.

f. Report from the Subcommittee reviewing the references to "nonlawyers" in the Rules [Lois Lupica]. Ms. Lupica said that the Subcommittee expects to present a report at the next Committee meeting.

4. NEW BUSINESS.

a. Report on HB 25-1090 [Jessica Yates]. Ms. Yates led a discussion of HB25-1090, entitled "Protections Against Deceptive Pricing Practices," which the General Assembly had enacted and Governor Polis had signed into law.

The legislation adds a new section 6-1-737 to the Colorado Consumer Protection Act that requires disclosure of the total price of any goods or services:

> 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.

§ 6-1-737(2)(a). Although the accompanying legislative declaration refers to landlords and tenants, the new statute is not limited to landlord-tenant transactions. The legislation will take effect on January 1, 2026.

The Committee discussed whether the legislation will apply to lawyers' fee agreements and whether it may provide an exemption for lawyers who comply with Rule 1.5. Section 6-1-737(2)(b)(ii) contains an exception if the person offering the goods or services does not "use deceptive, unfair, and unconscionable acts or practices" and "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."

Several members raised concerns that the legislation may interfere with the Supreme Court's regulation of lawyers. Ms. Yates reminded the Committee that the Colorado Supreme Court held in *Crowe v. Tull*, 126 P.3d 196, 205, 207 (Colo. 2006), that attorneys may be found liable for violating the Colorado Consumer Protection Act and that there was no inconsistency between the Act and the attorney regulatory system. Several members noted the need to inform lawyers that the legislation may apply to their fee agreements. The Committee discussed the possibility of an Attorney General opinion interpreting the scope of the legislation. A member suggested drafting a *Colorado Lawyer* article to educate the Bar regarding the legislation.

b. Report on recent amendments to the Local Rules of the United States District Court for the District of Colorado [Mr. Masciocchi]. Mr. Masciocchi reported that the United States District Court had amended the attorney rules in its local rules to change the standard of proof in disciplinary proceedings from "clear and convincing evidence" to "preponderance of the evidence." The "preponderance" standard conflicts with the "clear and convincing standard" that the ABA adopted and that appears in the Colorado disciplinary rules. The Committee discussed how the conflicting standards may impact disciplinary proceedings in the United States District Court and the need to educate the Bar about this development.

c. Report on possible amendments to Rule 1.10 [Mr. Masciocchi]. Mr. Masciocchi noted the differences between Colorado's Rule 1.10 and the Model Rule. Colorado Rule 1.10(e) sets a more stringent standard than does the Model Rule for when a lawyer may be screened from matters handled by the lawyer's former firm. Mr. Masciocchi recommended that the Committee consider a possible amendment to the Colorado Rule to conform to the Model Rule. A member who served on the Committee when Colorado Rule 1.10 was adopted said that the Colorado amendment was intended to limit movement between firms.

The Committee voted to form a Subcommittee to consider changes to Rule 1.10. Mr. Masciocchi, Mr. Stark, and Professor Wald volunteered to serve on the Subcommittee.

5. ADJOURNMENT. On motion duly made and seconded, the Committee voted unanimously to adjourn the meeting at 11:45 am. The next meeting of the Committee will be conducted on July 25, 2025, with subsequent meetings on September 26, 2025; January 23, 2026; and April 24, 2026.

Respectfully submitted,

Marcus L. Squarrell and
Lino Lipinsky de Orlov,
Acting Secretaries

Attachment 2

STATE ADOPTION OF MODEL RULE 1.10(a)(2) –
UNILATERAL SCREENING TO AVOID IMPUTATION OF CONFLICTS

Same or substantively the same as MR – screening avoids imputation regardless of lawyer's level of involvement in matter	Connecticut, Delaware, D.C., Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Mississippi, Montana, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming (22)
Does not allow screening to avoid imputation	Alabama, Alaska, Arkansas, Florida, Georgia, Kansas, Missouri, Nebraska, Oklahoma, South Carolina, Virginia, West Virginia (13)
Screening avoids imputation if lawyer did not "substantially participate" or have "substantial involvement" in matter	California, Colorado, New Hampshire, Vermont (Nevada & New Mexico similar – see below)
Screening avoids imputation unless lawyer had "primary responsibility" for matter	Arizona, Indiana, New Jersey
Screening avoids imputation if lawyer has no info protected by Rules 1.6 or 1.9, or the info the lawyer possesses is "unlikely to be significant in the matter"	Minnesota, New York, North Dakota, Ohio
Sui generis	Louisiana: Cannot imputation if conflict arises from a pending adjudicative proceeding Massachusetts: Cannot avoid imputation unless lawyer has no Rule 1.6 or 1.9 info **or** had no involvement in matter and no info sufficient to provide substantial benefit to new firm's client New Mexico: Can avoid imputation if lawyer had no substantial role in matter **and** has no info protected by Rules 1.6 or 1.9 Nevada: Can avoid imputation if lawyer had no substantial role in **or** primary responsibility for the matter Wisconsin: Can avoid imputation if lawyer performed no more than "minor and isolated services" in the matter

Relevant Pages from the Standing Committee's 2006 Report on Proposed Changes to Model Rule 1.10

client's cause in the subsequent representation are relevant factors. The Comment also clarifies that when a lawyer's representation of one client in a multiple client representation is terminated, the lawyer may not represent a remaining client against a former member of the client group. It also deletes several confusing paragraphs (formerly [4] and [5]) related to the movement of lawyers between firms, and a paragraph (formerly [7]) that placed the burden of proof on disqualification issues on the firm whose disqualification is sought.

The Standing Committee recommends adoption of New Model Rule 1.9 and its Comment in their entirety.

Rule 1.10 - Imputation of Conflicts of Interest

Current Colorado Rule 1.10 is substantially the same as the Prior Model Rule, and the New Model Rule makes no substantial amendments. The principal change is to New Model Rule 1.10(a), which contains a new exception to the general rule that imputes conflicts under Rules 1.7 and 1.9 to all members of a law firm. Under the new exception, there is no imputation where the individually disqualified lawyer's conflict is based on the lawyer's personal interest under Rule 1.7(a)(2). As an example, new Paragraph [3] of the Comment states that the disqualifying interest of a lawyer based upon the lawyer's personal beliefs ordinarily would not be imputed but, on the other hand, the disqualifying interest of a lawyer based on the lawyer's ownership interest in the opposing party would

be imputed. New Paragraph [4] also clarifies that the imputation imposed under New Model Rule 1.10(a) does not apply to conflicts of non-lawyer employees of the firm or to lawyer conflicts if the events giving rise to the conflict occurred while the lawyer was a law student. The Standing Committee supports all of these revisions.

There is considerable controversy among the jurisdictions and commentators as to whether screening should be permitted to overcome imputed disqualification when a lawyer from one private law firm moves to another firm. Like Current Colorado and Prior Model Rules 1.10, New Model Rule 1.10 does not authorize screening in this context. A number of state supreme courts, after review of the New Model Rules, have rejected the ABA position and adopted rules that permit screening in the private lawyer context, under certain and varying circumstances. All jurisdictions that have adopted a version of the New Model Rules permit screening when a government lawyer moves from government service to the private sector; that authorization also appears in both Prior and New Model Rule 1.11.

The reasons for and against unilateral screening (or screening not coupled with client consent) to cure conflicts arising out of firm-to-firm movement of lawyers have been debated almost endlessly over the years. Proponents of screening assert that the realities of modern law practice mandate a modern

approach to this issue. Screening proponents say that the existence of multistate and multinational law firms, coupled with ever-increasing attorney mobility, requires some endorsement of screening to avoid automatic imputed disqualification of masses of lawyers. The alternative, according to the proponents, is to virtually prohibit lawyers from moving between firms; stated more colorfully, lawyers who join a large firm become "Typhoid Marys," forever relegated to that firm for the balance of their careers. Opponents of unilateral screening believe that it sacrifices the rights of the former client, who should be able to take comfort knowing that its former lawyer will not move to a new firm that represents an adverse party in the same or a related matter, which could put the former lawyer in a position to prejudice the former client.

Complicating the matter further is the treatment of this issue by courts, particularly federal courts. A number of courts have not felt constrained to apply the ethics rules of the state in which the court sits when it comes to matters of disqualification of lawyers based on conflicts of interest. (This is true even in jurisdictions, including Colorado, where the federal court has adopted all or part of the state rules of professional conduct.) A number of courts have permitted unilateral screening even when the controlling ethics rules do not authorize screening, reasoning that the courts' interest in attorney disqualification is not necessarily the same as the interest of a state lawyer disciplinary authority. Thus,

lawyers sometimes find themselves in the uncomfortable position of *not* being disqualified by a court (typically, but not always, a federal court) while being subject to the risk of state discipline because the representation constitutes a continuing violation of the state version of Rule 1.10. While this conundrum (which is in most cases self-inflicted) should not be the decisive factor in determining whether to permit unilateral screening, there is an obvious benefit to consistent treatment of the same problem by the courts and state disciplinary authorities. In a similar vein, a number of state bar ethics committees have intimated that screening should be permitted, even when the state ethics rules do not expressly authorize it. Illustrative is CBA Formal Opinion 88.

A majority of the Standing Committee believes that unilateral screening should be permitted in certain limited circumstances. A majority of the Committee also believes that screening should not be permitted where the screened lawyer substantially participated in the former client's representation at the prior firm. Thus, the Standing Committee proposes that New Model Rule 1.10 be modified to permit unilateral screening – and the avoidance of imputed disqualification – where the personally disqualified lawyer's involvement in the matter while at the former firm was greater than the threshold established by Rule 1.9(b),[5] but below

[5] Under New Model Rule 1.9(b)(2), a moving lawyer is not personally disqualified unless, while at the former firm, that lawyer had acquired information

Footnote continued on next page

substantial participation. Under this formulation, a lawyer who substantially participated in the representation at the prior firm cannot be screened without client consent. There undoubtedly will be occasions when it is difficult to determine whether a lawyer substantially participated in the representation. At one end, there is no doubt that a lawyer who had primarily responsibility for the representation would be deemed to have substantially participated. At the other extreme, a first year associate whose work on the case was limited and did not extend to legal strategy, would not be deemed to have substantially participated. The Standing Committee recommends the following new subsection (e) to New Model Rule 1.10:

> (e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:
>
> (1) the matter is not one in which the personally disqualified lawyer substantially participated;
>
> (2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;
>
> (3) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer's prior

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protected by Rules 1.6 and 1.9(c) that is material to the matter. If the moving lawyer is not personally disqualified, then there is no basis under New Model Rule 1.10(a) for imputed disqualification of other members of the lawyer's new firm.

representation and the screening procedures to be employed) to the affected former clients and the former clients' current lawyers, if known to the personally disqualified lawyer, to enable the former clients to ascertain compliance with the provisions of this Rule; and

(4) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.

The Standing Committee concluded that no comment language is necessary to accompany Proposed Rule 1.10(e).

The Standing Committee recommends adoption of New Model Rule 1.10 but with a new section (e) that permits unilateral screening (and the avoidance of imputed disqualification) where a lawyer changes firms but did not substantially participate in the representation of the client at the former firm. The Committee also recommends adoption of the Comment to New Model Rule 1.10 without change.

Rule 1.11 - Special Conflicts of Interest for Former and Current Government Officers and Employees

Current Colorado Rule 1.11 is substantially the same as the Prior Model Rule, both of which permit screening in many circumstances where a government lawyer joins a private law firm. This situation has long been distinguished from

the private lawyer situation, discussed above in connection with Rule 1.10. New Model Rule 1.11(b) continues this treatment.

In addition, the New Model Rule clarifies that for purposes of conflicts of interest and disqualification, individual lawyers who formerly served as public officers or government employees are not subject to New Model Rule 1.9(a) and (b). Both current and former public officers and government employees must comply with the "former client" confidentiality requirements of New Model Rule 1.9(c). The Standing Committee believes that New Model Rule 1.11 would be strengthened by the inclusion of language similar to that used in Proposed Rule 1.10(e)(3) and (4), which defines the notice that a moving lawyer must provide to the lawyer's former clients and their current lawyers, and requires the personally disqualified lawyer and the partners of the new firm to reasonably believe that the anticipated screening is likely to be effective.

The Comment to New Model Rule 1.11 includes helpful revisions and several new provisions, including a clarification in new Paragraph [2] that New Model Rule 1.10 is not applicable to the conflicts addressed in New Model Rule 1.11.

The Standing Committee recommends adoption of New Model Rule 1.11, but recommends revisions in section (b)(2) and (3) to conform to the language used in

Proposed Rule 1.10(e)(3) and (4). The Committee recommends adoption of the Comment to New Model Rule 1.11 in its entirety.

Rule 1.12 - Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

New Model Rule 1.12 is substantially the same as both the Current Colorado and Prior Model Rules, except that the ABA has broadened the reach of the rule to encompass third-party neutrals. The Standing Committee approves of this change. The Committee believes that New Model Rule 1.12, like New Model Rule 1.11, would be strengthened by the inclusion of language similar to that used in Proposed Rule 1.10(e)(3) and (4), to define the notice that a disqualified lawyer must provide to parties in a matter in which the lawyer formerly participated as a judge or third-party neutral, and to require the personally disqualified lawyer and the partners of the new firm to reasonably believe that the anticipated screening is likely to be effective.

The Standing Committee recommends adoption of New Model Rule 1.12 with changes that correspond to the language used in Proposed Rule 1.10(e)(3) and (4). The Committee recommends adoption of the New Model Rule Comment in its entirety.

Rule 1.13 - Organization As Client

Current Colorado Rule 1.13 is identical to Prior Model Rule 1.13. New Model Rule 1.13 makes some important changes that are best considered in their

American Bar Association
CPR Policy Implementation Committee

Variations of the ABA Model Rules of Professional Conduct

RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

Attachment 3

Memorandum

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

From: Artificial Intelligence Subcommittee

Date: July 16, 2025

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

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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 a new comment to Rule 1.1.

On April 25, 2025, the Standing Committee voted in favor of sending two proposals from the AI subcommittee to the Colorado Supreme Court: a new Scope [20A] and a revised comment [8] to Rule 1.1.

New Scope [20A]

> [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.

Revised Comment [8] to Rule 1.1

> 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.

The Standing Committee voted against a proposed new Rule 1.19. The proposed rule and comments are appended to this memorandum for convenience.

Following the votes, the Standing Committee directed the AI subcommittee to consider whether any language from the comments to proposed new Rule 1.19 ought to be incorporated into a comment or comments elsewhere in the Rules.

The AI subcommittee has conferred and recommends proposing a new comment [9] to Rule 1.1, as follows:

[9] A lawyer's use of technology, particularly artificial intelligence, can implicate a number of Rules, including, without limitation, those governing 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)). Reliance on technology does not diminish the lawyer's duty to exercise independent judgment in the representation of a client.

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.

Attachment 4

Memo

To: Standing Committee on the Rules of Professional Conduct

From: Subcommittee on Rule 1.2(c)

Re: Proposed Revisions to Rule 1.2(c) and Comments

Date: July 6, 2025

Background

At its October 27, 2023 meeting, the Supreme Court Standing Committee on the Rules of Professional Conduct (the Standing Committee) formed a subcommittee (the Rule 1.2(c) Subcommittee) to consider whether proposed revisions to C.A.R. 5(e) regarding "limited representation," if adopted, would require amendments to Colo. RPC 1.2(c).

At the January 26, 2024 meeting of the Standing Committee, the Rule 1.2(c) Subcommittee recommended that C.A.R. 5(e) be added to the list of rules referenced in the second sentence of Colo. RPC 1.2(c) regarding "limited representation." The Standing Committee approved this proposed amendment to Colo. RPC 1.2(c). The Supreme Court elected to defer consideration of the proposed amendment to Colo. RPC 1.2(c), however, until pending proposed revisions to C.A.R. 5(e) were resolved.

On May 16, 2024, the Supreme Court adopted revisions to C.A.R. 5(e) to replace the term "limited representation" with the term "limited legal services" and expand upon those services that an attorney may provide to a self-represented party in a civil appeal. The revisions to C.A.R. 5(e) were made at the recommendation of the Rules of Appellate Procedure Committee following a proposal made by an informal group of appellate practitioners, access to justice leaders, and Court of Appeals judges. The informal group had undertaken a multiyear period of study to conclude that the prior version of C.A.R. 5(e) unnecessarily restricted the limited legal services attorneys could provide to otherwise self-represented parties in civil appellate proceedings. The proposal, and ultimately the revisions to C.A.R. 5(e), utilized the term "limited legal services," which appears in Colo. RPC 6.5, rather than the term "limited representation." By permitting attorneys to assist with discrete appellate tasks, such as drafting briefs and providing strategic advice, an access to justice goal of the new amendments to C.A.R. 5(e) was to help bridge the gap between full representation and self-representation.

At the July 26, 2024 meeting of the Standing Committee, the Rule 1.2(c) Subcommittee reiterated its recommendation that C.A.R. 5(e) be added to the list in the second sentence in Colo. RPC 1.2(c). Additionally, the Rule 1.2(c) Subcommittee recommended revisions to Comments 6 and Comment 7, and a new Comment 6A. The recommendations included replacement of "limited representation" terminology with the

term “limited legal services,” as had been done in the revised C.A.R. 5(e). After discussion with the Standing Committee, which included the observation that the proposed approach may be “the tail wagging the dog,” it was agreed that the Rule 1.2(c) Subcommittee should reconvene to consider the issues that the Standing Committee discussed.

On December 19, 2024, the Supreme Court adopted revisions to C.R.C.P. 11(b) and C.R.C.P. 311(b) that tracked the May 2024 revisions to C.A.R. 5(e). Here too, the revisions replaced the term “limited representation” with the term “limited legal services” and, with the same access to justice goals in mind, expanded upon the limited legal services an attorney may provide to a self-represented litigant.

A March 12, 2025 meeting of the Rule 1.2(c) Subcommittee included guests Judge Daniel Taubman and Attorney Regulation Counsel Jessica Yates. Despite the use of the term “limited legal services” in the procedural rules revised in 2024, the Rule 1.2(c) Subcommittee and guests discussed the difficulty of replacing “limited representation” in Rule 1.2(c) with “limited legal services.” The Rule 1.2(c) Subcommittee revisited some of the same concerns that the Standing Committee raised at its July 26, 2024 meeting. A primary obstacle to incorporation of the term “limited legal services” is that the term “representation” is used throughout the Rules of Professional Conduct. The Rule 1.2(c) Subcommittee decided that a simpler solution would be to eliminate the reference to specific procedural rules in Rule 1.2(c) and, instead, to refer to the procedural rules revised in 2024 regarding “limited legal services” as *examples* of limited scope representations.

1. **Proposed Revision to Colo. RPC 1.2(c) and Addition of Comment 6A, Colo. RPC 1.2.**

The second sentence of Rule 1.2(c) references the provision of “limited representation” under C.R.C.P. 11(b) and C.R.C.P. 311(b). The second sentence of Colo. RPC 1.2(c) is unique to Colorado, as ABA Model Rule 1.2(c) is limited to the first sentence.

As of the December 19, 2024 revisions, C.R.C.P. 11(b) and C.R.C.P. 311(b) now utilize the term “limited legal services” instead of “limited representation.” Additionally, as of the May 2024 revisions to C.A.R. 5(e), that appellate rule utilizes the term “limited legal services” instead of “limited representation.”

The Rule 1.2(c) Subcommittee contends that the Supreme Court revisions to C.R.C.P. 11(b), C.R.C.P. 311(b), and C.A.R. 5(e) require revision of Rule 1.2(c). The Rule 1.2(c) Subcommittee considered two approaches to revision. The first approach would be to add C.A.R. 5(e) to the list of procedural rules referenced therein and replace the term “limited representation” with “limited legal services.” This approach appears to likely also require explanation that the provision of limited legal services is a form of limited representation contemplated by the first sentence of Rule 1.2(c). A second approach is to eliminate the second sentence of Rule 1.2(c) by moving it to a Comment, revising it to

update the procedural rule references, and clarifying that the identified procedural rules are examples of limited representations under Rule 1.2(c).

The Rule 1.2(c) Subcommittee recommends the second approach as the more elegant solution. To that end, the Rule 1.2(c) Subcommittee proposes eliminating the second sentence of Rule 1.2(c) and the addition of Comment 6A per the attachment.

2. Proposed Revision of Comment 6, Colo. RPC 1.2

While not part of its original charge, the Rule 1.2(c) Subcommittee considered the entirety of Rule 1.2 and Comments thereto and would be remiss to not seize upon this opportunity to point out the lack of clarity in the current Comment 6 and recommend its revision. Comment 6 is currently the same as its ABA counterpart.

Rule 1.2(c) provides that the scope or objectives, or both, may be limited. However, the present Comment 6 only references the scope of the representation. The Rule 1.2 Subcommittee proposes adding the word "objectives" to the first sentence for clarity.

The Rule 1.2(c) Subcommittee contends that the limited representation example of insurance defense counsel in the current Comment 6 is unclear, confusing, and does not accurately describe the scope of that common limited representation. The Rule 1.2 Subcommittee proposes the revisions per the attachment to clarify the limited representation example.

3. Proposed Revision to Comment 7, Colo. RPC 1.2

Like Comment 6, the present Comment 7 lacks clarity in its omission of the terms "scope" and "objectives." The Rule 1.2 Subcommittee proposes revisions for clarity per the attachment. The present Comment 7 to Colo. RPC 1.2 is the same as the ABA counterpart.

4. Proposed Revision to Comment 8, Colo. RPC 1.2

The present Comment 8 to Rule 1.2 does not include reference to "limited representation," despite the material use of that term in Rule 1.2(c). The Rule 1.2 Subcommittee proposes revisions for clarity per the attachment. The present Comment 8 to Colo. RPC 1.2 is the same as the ABA counterpart.

REDLINED VERSION OF THE PROPOSED REVISIONS

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(c) A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. ~~A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).~~

COMMENT

Agreements Limiting Scope of Representation

[6] The scope or objectives of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. ~~When a lawyer~~ For example, when an insurer has ~~been~~ retained ~~by an insurer~~ a lawyer to represent an insured, ~~for example,~~ the ~~representation may~~services the lawyer provides to the insured may exclude assistance with coverage disputes between the insured and the insurer; in a civil case, a lawyer and a client may agree that the scope of the services provided to the client will be limited to ~~matters related to the insurance coverage. A limited~~assistance with a single dispositive motion; and in a dissolution of marriage case, a lawyer and a client may agree that the scope of the services provided to the client will be limited to assistance with temporary orders. Limited representation may be appropriate because the client has limited objectives for ~~the~~seeking representation. The limited representation~~. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations~~ provided may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[6A] Rules addressing a lawyer's limited representation of a client include, but are not limited to, C.R.C.P. 11(b); C.R.C.P. 121, § 1-1(5); C.R.C.P. 311(b); and C.A.R. 5(e).

[7] Although this Rule affords the lawyer and client substantial latitude to limit the scope and objectives of the representation provided to the client, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to providing advice through a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See Rule 1.1.

[8] ~~All agreements~~Agreements concerning a lawyer's limited representation of a client, like all agreements concerning a lawyer's representation of a client, must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.5, 1.8, and 5.6.

CLEAN VERSION OF THE PROPOSED REVISIONS

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(c) A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

COMMENT

Agreements Limiting Scope of Representation

[6] The scope or objectives of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, when an insurer has retained a lawyer to represent an insured, the services the lawyer provides to the insured may exclude assistance with coverage disputes between the insured and the insurer; in a civil case, a lawyer and a client may agree that the scope of the services provided to the client will be limited to assistance with a single dispositive motion; and in a dissolution of marriage case, a lawyer and a client may agree that the scope of the services provided to the client will be limited to assistance with temporary orders. Limited representation may be appropriate because the client has limited objectives for seeking representation. The limited representation provided may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[6A] Rules addressing a lawyer's limited representation of a client include, but are not limited to, C.R.C.P. 11(b); C.R.C.P. 121, § 1-1(5); C.R.C.P. 311(b); and C.A.R. 5(e).

[7] Although this Rule affords the lawyer and client substantial latitude to limit the scope and objectives of the representation provided to the client, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to providing advice through a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See Rule 1.1.

[8] Agreements concerning a lawyer's limited representation of a client, like all agreements concerning a lawyer's representation of a client, must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.5, 1.8, and 5.6.

Attachment 5

July 17, 2025

To: Judge Lipinsky
Chair, Standing Committee on the Rules of Professional Conduct

From: The Sub-Committee on the Use of the Term "Nonlawyer" in the Rules of Professional Conduct

Re: The Use of the Term "Nonlawyer" in the Colorado Rules of Professional Conduct

The Sub-Committee on the Use of the Term "Nonlawyer" in the Rules of Professional Conduct (the "Sub-committee") met a number of times over the past months to discuss the use of the term "nonlawyer" in the Colorado Rules of Professional Conduct. There has been growing discussion within the legal profession expressing concerns about the use of the term "nonlawyer."

The reasons cited by proponents of the elimination of this term

It frames allied professional in the negative: The current terminology characterizes an entire spectrum of professionals exclusively by what they lack rather than acknowledging their substantive qualifications, specialized expertise, and professional credentials. This deficit-based approach fails to recognize the valuable skills, training, and knowledge these professionals contribute to legal practice.

It has the potential to diminish professional standing: Many qualified professionals who collaborate with attorneys—including paralegals, legal assistants, compliance officers, accountants, appraisers, financial advisors, and other specialists—consider the current terminology demeaning and reductive of their professional contributions. This language can undermine the increasingly collaborative and interdisciplinary nature of contemporary legal practice.

It is a barrier to professional integration: Given the legal profession's commitment to diversity, equity, and inclusion, terminology that diminishes or marginalizes allied professionals creates conflicts with these core values and may deter qualified individuals from pursuing careers within the broader legal services ecosystem.

What jurisdictions have eliminated the term nonlawyer in their Rules of Professional Conduct?

No jurisdiction in the United States, however, has yet modified its Rules of Professional Conduct to eliminate the term "non-lawyer." The term nonlawyer also appears in the regulatory rules in the U.K. although the UK also uses the term "non-authorized person" as a common alternative in a number of contexts.

The Australian Solicitors' Conduct Rules uses the terms, "lay associates of law practices", "non-qualified entities" and "Australian lawyers who are not Australian legal practitioners," rather than "nonlawyer." The Australian regulatory system seems to favor more specific descriptive terms for different categories of professionals rather than the broad "non-lawyer" designation.

We conducted a comprehensive term search of the Colorado Rules of Professional Conduct to identify all instances where "nonlawyer" appears (see attached search results). It appears in Rules 5.3, 5.4, 5.7, and 7.2 eleven times. It also appears in a number of Official Comments.

What terms could Colorado use instead of nonlawyer?

The Sub-committee discussed and considered the following substitute terms:

- **Allied Legal Professionals:** For individuals who work directly within the legal field but are not licensed attorneys (e.g., paralegals, legal assistants, court personnel). This term has been specifically recommended by the Institute for the Advancement of the American Legal System (IAALS).

- **Allied Business Professionals:** For professionals in business, compliance, or related fields who interact with legal matters but operate primarily outside traditional legal practice.

In every instance where "nonlawyer" appears in the Colorado Rules, one or both of these terms would be an appropriate substitute. We also recognized if Colorado were to substitute these terms, a new definition of "Legal Professional" should be included in Rule 1.0.

What are the obstacles presented by modifying the Rules of Professional Conduct to eliminate the term nonlawyer?

Stakeholder Consensus: Building agreement among courts, bar associations, practitioners, and affected professional groups requires extensive consultation and compromise.

Jurisdictional Variation: If Colorado were to substitute another term or terms for the term "nonlawyer," it would be the first state to do so.

Legal Precedent Integration: Existing case law, ethics opinions, and regulatory interpretations reference current terminology, potentially necessitating an analysis of how changes may affect established precedents.

Implementation Costs: Updating rules, training materials, continuing education programs, and regulatory guidance may involve financial and administrative resources.

Conclusion

The Sub-committee has no specific recommendation at this time. We urge the Standing Committee to revisit this issue as the national discussion evolves.

Term search results for the term "nonlawyer" in the Colorado Rules of Professional Conduct (not including annotations)

Synopsis, Rule 5.3 (title)

Rule 1.6 Comment [18] line 16

Rule 1.10 Comment [4] lines 2 & 6

Rule 2.4 Comment [3] line 1

Rule 3.8 Comment [6] line 2

Rule 4.2 Comment [4] line 4

Rule 5.3 Title

Rule 5.3 line 1

Rule 5.3 (b) line 1

Rule 5.3 Comment [1] lines 2, 3, 6 & 7

Rule 5.3 Comment [2] line 6

Rule 5.3 Comment [3] subheading

Rule 5.3 Comment [3] lines 1, 7, 12 & 13

Rule 5.3 Comment [4] line 1

Rule 5.4 (a) line 1

Rule 5.4 (a)(4) line 1

Rule 5.4 (b) line 1

Rule 5.4 (d)(1) line 1

Rule 5.4 (d)(2) line 1

Rule 5.4 (f) line 1 (with a Rule specific definition of nonlawyer)

Rule 5.4 Comment [1] lines 3, 4, 7 & 8

Rule 5.4 Comment [2] lines 4, 5 & 6

Rule 5.5 Comment [2] lines 4 & 6

Rule 5.7 (b) line 3

Rule 5.7 Comment [8] line 8

Rule 7.2 (4) line 1

Rule 7.2 Comment [5] line 16

Rule 7.2 Comment [8] lines 1, 4 & 6

Rule 7.5 Comment [1] line 10