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a. Report on the proposed amendments addressing outdated cross-references in the Rules [Judge Lipinsky]. Judge Lipinsky reported that the Colorado Supreme Court adopted the proposed amendments addressing outdated cross-references in the Rules on February 6, 2025, effective immediately. He thanked Stephen Masciocchi and Jessica Yates for their painstaking work in scouring the Rules to identify the outdated cross-references.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