COLORADO SUPREME COURT

RULES OF PROFESSIONAL CONDUCT STANDING COMMITTEE

Approved Minutes of Meeting of the Full Committee
On
July 25, 2025
Seventy-Sixth Meeting of the Full Committee

The seventy-sixth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:03 a.m. on Friday, July 25, 2025, by Chair Judge Lino Lipinsky de Orlov. Judge Lipinsky initially took attendance.

Present at the meeting in person were Judge Lino S. Lipinsky de Orlov (Chair), Justice William Hood, Judge Adam Espinosa, Matthew Kirsch, Troy R. Rackham, Marcus L. Squarrell, J.J. Wallace, and Jessica Yates.

Present for the meeting by virtual appearance were Nancy L. Cohen, Cynthia F. Covell, Katayoun Donnelly, Thomas E. Downey, Jr., Marcy G. Glenn, April D. Jones, Judge Bryon M. Large, Lois Lupica, Marianne Luu-Chen, Julia Martinez, Stephen G. Masciocchi, Noah Patterson, Alexander R. Rothrock, James S. Sudler, and Judge John R. Webb.

Committee members with excused absence were Scott L. Evans, Margaret Funk, Erika Holmes, Jason Lynch, Cecil E. Morris, Jr., Henry R. Reeve, Robert W. Steinmetz, David W. Stark, Eli Wald, and Fred Yarger.

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 APRIL 25, 2025, MEETING. A member moved to approve the minutes for the Committee's April 25, 2025, meeting, which another member seconded. A vote was taken on the motion to approve the minutes. The motion passed unanimously.

3. OLD BUSINESS.

a. Report from the Rule 1.10(e) Subcommittee [Steve Masciocchi]. Mr. Masciocchi presented on the work of the subcommittee considering possible amendments to Rule 1.10(e) to conform to the Model Rule. Mr. Masciocchi discussed the history of the screening language of the Rule based on his review of the minutes of a 2006 Committee meeting and the purpose of the screening provision — to avoid imputation of one lawyer's conflict of interest to the whole firm and to permit mobility between firms while preserving client confidences. Mr. Masciocchi noted other jurisdictions' screening rules, as reflected in the chart contained in attachment 2 to the meeting materials. He presented the various arguments in favor and against the Model Rule approach. Many lawyers and judges think screening is a big firm problem, but it also affects lawyers in medium sized and small firms when those lawyers move

laterally. The Rules were modernized to allow lawyers to have greater flexibility in moving from one firm to another. Things have changed dramatically since 2006 relating to a firm's ability to implement screens through use of technology. Software provides effective ethics walls and ensures that the screen is effective throughout the firm's representation of clients. Personnel at the firm cannot inadvertently access information or documents that they could before the technological improvements. Mr. Masciocchi opened the issue up for the Committee's discussion.

There was not a great deal of discussion. The Chair asked whether adoption of the Model Rule language should be put to a vote today. A member asked how the issue came before the Committee. Mr. Masciocchi explained the genesis of the issue as discussed at the last Committee meeting. A member expressed the view of expanding the subcommittee to evaluate the issue and make a recommendation as to whether to adopt the ABA Model Rule language rather than voting on that issue now. The member explained there is a perception in clients' minds that lawyers can switch sides and that confidentiality will not be maintained, which counsels taking a closer look at the issue. The Chair noted that the subcommittee formed at the last Committee meeting only has three members — Mr. Masciocchi, Mr. Stark, and Professor Wald — and was not charged with making a recommendation on adopting the Model Rule language. Another member noted that evaluation of the imputation and screening issues is very difficult and that it is important to consider the clients' perception in making decisions.

Another member voiced support for expanding the subcommittee and obtaining more diverse viewpoints. The member suggested that the issue is not binary. Colorado's Rule hinders the mobility of lawyers, but its effect is fairly minor because the imputation only applies to lawyers who move firms and only if the lawyers "substantially participated" in the previous representation. Another member expressed agreement with expanding the subcommittee and noted that this Committee has a guiding principle of trying to mirror the Model Rules as much as possible. Adhering to the Model Rule would provide consistency and clarity. A member agreed that the subcommittee should evaluate whether Colorado should adopt the Model Rule language.

At the conclusion of the discussion, Judge Lipinsky appointed four additional members to the subcommittee: Ms. Covell, Ms. Donnelly, Ms. Glenn, and Mr. Rothrock. The expanded subcommittee will provide a further report at the September 26 Committee meeting.

b. Report from the AI subcommittee [Julia Martinez]. Ms. Martinez presented on the status of the subcommittee's recommendations. She noted that the Committee had previously voted in favor of adding a new Scope section 20A and revising comment 8 to Rule 1.1 to reflect the Model Rule language, but it voted against a standalone technology Rule (proposed Rule 1.19):

Scope section 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
>
> 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 subcommittee proposed moving some of the language of comment 1 to the rejected proposed Rule 1.19 to a proposed new comment 9 to Rule 1.1:

> 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.

The proposed comment 9 to Rule 1.1 would provide important information that lawyers would be more likely to consider in a Rule comment than in a scope section, based on the subcommittee's belief that lawyers are more likely to read comments to Rules than scope sections. The Rules referenced in proposed comment 9 are those that artificial intelligence (AI) most frequently implicates; the references are not intended to eliminate consideration of other Rules. The concept behind the proposed comment is that AI may impact, but does not change, a lawyer's obligations under the Rules. After explaining the proposed revisions, Ms. Martinez opened the matter up for discussion.

A member agreed that it would be a good idea to include the language in proposed comment 9, but wondered if it was a good idea to refer to specific Rules in the comment rather than simply saying, "a lawyer's use of technology, particularly AI, can implicate a number of Rules."

Another member suggested revising the numbering of the comment to 9A to indicate that the comment does not appear in the Model Rule. The member also suggested revising the language to say "particularly" rather than "including." The member suggested that the proposed comment should also note that AI also implicates other Rules. A subcommittee member explained that the comment is numbered 9 because there are currently no comments 9 or 10 to Rule 1.1, and that the Committee previously used an "A" for a new comment that appears between two existing comments. Further, using 9A for the comment when there is no comment 9 or comment 10 may confuse readers and publishers.

A member voiced support for new scope section 20A, but suggested it is redundant of proposed comment 9. The member said it would be preferable to place the language of comment 9 in the scope section of the Rules to make clear that scope section 20A applies to all the Rules. Ms. Martinez explained that proposed comment 9A supplements scope section 20A, which the Committee already approved.

A different member suggested there is no need for comment 9 because its concept is already included in comment 20A. A member of the subcommittee advocated for comment 9 because it is important that lawyers consider the implications of AI use on their other professional obligations, such as the duty to charge reasonable fees. Including the cross-references in comment 9 would educate lawyers that use of AI can impact their ethical considerations arising under other Rules.

A member of the subcommittee explained that the subcommittee spent a great deal of time discussing whether to reference Rules in comment 9 and, if so, which ones. Ultimately, a majority of the subcommittee members believed it was critical to cross-reference specific Rules to educate lawyers. Another member suggested that the cross-references to Rules in comment 9 could create confusion because some of the cross-references are not obvious and there are no references to AI in the Rules that are cross-referenced.

A member suggested that the language, "[r]eliance on technology does not diminish the lawyer's duty to exercise independent judgment in the representation of a client," is the most important part of the proposed comment 9. The member suggested that this sentence addresses the current uncertainty involved with AI and that, so long as this sentence is retained, it may be permissible to remove some of the cross-references in the proposed comment.

Ms. Martinez explained that the subcommittee started by looking at every Rule to determine whether it should be amended to address lawyer use or misuse of AI or whether the Rule should be referenced in a comment identifying the Rules that AI implicates. The subcommittee decided on the more limited cross-references in proposed comment 9 because AI-related revisions to Rules now may soon become outdated or unnecessary in light of the rapid evolution of technology and its impact on legal practice. The subcommittee's guiding principle was to avoid doing too much and thereby requiring frequent future AI-related revisions to Rules.

A member expressed the view that cross-referencing the Rules in comment 9 is not problematic because the cross-referenced Rules are more limited and the cross-references (1)

allow flexibility; (2) put lawyers on notice of important obligations under the Rules; and (3) point lawyers in the right direction. The member voiced support for the proposed new comment.

A member voiced support for using the letter A in the number of the proposed comment because use of "A" indicates that a comment is Colorado-specific. The member referenced comments to Rules 1.4 and 3.8 that include an "A" in their number. The member suggested making the proposed comment 8A to avoid confusion and clearly indicate it is a Colorado-specific comment.

Accordingly, there are three proposed amendments to the proposed comment 9. First, a motion was made to amend the proposed comment 9 to substitute the word "particularly" for "including." The vote was five in favor and nine against, with several members abstaining.

Second, a motion was made to amend proposed comment 9 to insert the word "other" in the first sentence, which would read, "A lawyer's use of technology, particularly artificial intelligence, can implicate a number of *other* Rules, including . . . ." The proposed amendment passed with fourteen votes in favor and one against.

The third proposed amendment was to revise the numbering to 8A rather than 9 to clarify that the comment is Colorado-specific. A member noted that, in 2006, the Committee explained to the Supreme Court that an "A" in the number of a nonuniform comment indicates that it differs from the Model Rules. After discussion, the committee took a vote on the third proposed amendment. The vote failed with five voting in favor, seven voting against, and five members abstaining.

A vote was taken on the proposed comments to Rule 1.1, as amended. The vote carried with sixteen voting in favor, one voting against, and one abstention.

The Chair will submit the approved proposed amendments to the Supreme Court. The Chair thanked the subcommittee members for their outstanding work and diligence.

c. Report from the Rule 1.2 Subcommittee [Judge Lipinsky]. Ms. Holmes, who formerly chaired the subcommittee, has taken a leave of absence from her practice and the Committee, so Judge Lipinsky presented the subcommittee's report, which is attachment 4 in the meeting materials. The recent revisions to the Colorado Rules of Civil Procedure and Appellate Rule 5(e) that expanded lawyers' permitted limited representation of clients may require revisions to Rule 1.2. The subcommittee had initially considered adding a reference to Appellate Rule 5(e) to Rule 1.2, but decided to pause its work until the Court had acted on the proposed limited representation amendments to Rule 11(b) and 311(b) of the Rules of Civil Procedure

In December 2024, the Supreme Court adopted amendments to C.R.C.P. 11(b) and C.R.C.P. 311(b) that expanded lawyers' permissible limited representation of clients. The amended language referred to "limited legal services" rather than "limited representation." The subcommittee decided not to revise the term "limited representation" in Rule 1.2 because other Rules use "limited representation."

The Chair walked through the proposed revisions and the reasons for them. After doing so, the Chair opened the topic open for discussion.

A member suggested that proposed comment 6A would be clearer if it referred to procedural rules rather than rules generally to avoid confusing court rules with the Rules of Professional Conduct. Another member suggested revising the proposed amendment to Rule 1.2(c) to say a "lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances, *limited representation is permitted by applicable court rules*, and the client gives informed consent." (Proposed revision emphasized.)

A member raised the issue of whether the proposed examples of limited scope representation in the proposed amendment to comment 6 were clear. He acknowledged that the current language is antiquated and confusing. But the proposed revisions may also be confusing because, for example, the representation provided to a policyholder by a lawyer retained by the insurer may be limited beyond not providing coverage advice. The lawyer also may not be able to assert counterclaims on behalf of the policyholder, for example. Further, the lawyer may not be permitted to take certain positions, such as seeking dismissal of covered claims but not uncovered claims. The member also suggested that the proposed language is inconsistent or potentially inconsistent with CBA Formal Ethics Op. 91. The member said it is important that the examples in the comment address carveouts from the representation of the client. Another member agreed and noted it would be a conflict for the lawyer to represent an insured while also asserting or evaluating claims against the insurer. A member suggested including a cross-reference to Rule 1.16, which addresses "declining or terminating representation." Rule 1.16 says that "[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation." The subcommittee needs to reevaluate proposed comment 6 to evaluate the Committee members' concerns.

The Chair walked through the subcommittee's other proposed changes and took straw votes on them. First, a straw poll was taken on the subcommittee's recommendation to delete the last sentence of Rule 1.2(c) ("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)."). The consensus of the Committee was to delete the sentence.

The second issue was whether to revise Rule 1.2(c) as follows: "A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances, *is permitted by applicable court rules*, and the client gives informed consent." (Proposed revision emphasized.) A member wondered whether the addition of this language could actually limit the scope of limited representation. Another member suggested that this concept can be addressed through a comment that explains that what is reasonable under the circumstances depends on the facts, including whether the court's or other applicable rules allow limited representation of the client.

The subcommittee will consider the Committee's feedback and discuss further revisions to the proposed amendments in light of this discussion. The subcommittee will report back at the next Committee meeting.

d. Report from the Subcommittee Reviewing References to "Nonlawyer" in the Rules [Lois Lupica]. Ms. Lupica presented on the subcommittee's work, which is described in greater detail in attachment 5 to the meeting materials. The subcommittee has no specific recommendation for Rule revisions because of the absence of a national consensus on the nomenclature to use for legal professionals who are not members of the bar. The subcommittee urged the Committee to revisit this issue as the national discussion evolves and a national consensus on the nomenclature is achieved.

A member noted that, from a regulatory perspective, it is important to have uniform terminology to address at least three categories of people: (1) lawyers (e.g., who are authorized to practice law generally); (2) people authorized to practice law in limited situations (e.g., LLPs or legal technicians in agencies); and (3) people not authorized to practice law. Thus, if the Committee considers changes to the nomenclature, it should mirror the nomenclature that the regulatory bodies use.

e. Report from the Rule 6.5 Subcommittee [Jessica Yates]. Ms. Yates reported that the subcommittee is looking at changes to Rule 6.5 and the accompanying comments, as well as a model policy for legal clinics. The subcommittee has drafted proposed changes to the Rule, proposed comments, and a proposed model policy for clinics. She explained the nuances of the issue for clinics. The subcommittee is obtaining additional comments from clinic providers and expects to have more guidance and potentially proposed revisions for the discussion at the September 2025 Committee meeting.

4. NEW BUSINESS.

a. Report on the District Court of Colorado's Adoption of a "Civility Code" [Judge Lipinsky]. Judge Lipinsky presented on the nonbinding civility code that the United States District Court for the District of Colorado recently adopted. The civility code emanates from the American College of Trial Lawyers. It will provide guidance to, but will not be binding on, lawyers and will not subject lawyers to discipline through the District Court's Committee on Conduct. Additionally, the Civil Rules Committee is considering a civility rule proposed by the CBA Professionalism Coordinating Council and approved by the Denver Bar and Colorado Bar Associations. The Civil Rules Committee will consider whether to adopt the proposed civility rule at its September meeting.

b. Style Subcommittee. In light of the discussion regarding whether to include an "A" in the number of a proposed nonuniform comment, a member raised whether the Committee should form a subcommittee on style to ensure consistency among the numbers in the Rules and comments. There was not a consensus among the Committee members on whether to form a style subcommittee.

5. ADJOURNMENT. A motion to adjourn was made at 11:27 a.m. The motion carried. The next meeting of the Committee will be on September 26, 2025.

Respectfully submitted,

Troy R. Rackham, Secretary