

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

## **AGENDA**

January 23, 2026, 9:00 a.m.  
The Supreme Court Conference Room and via Webex

Webex link:

<https://judicial.webex.com/judicial/j.php?MTID=mcf5f57452067378d39d3c02a861306aa>

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1. Call to Order [Judge Lipinsky].
  2. Approval of minutes for November 21, 2025, meeting [to come].
  3. Old business:
    - a. Report on the Supreme Court's adoption of the changes reflecting the enactment of House Bill 25-1090 and the AI-related changes [Judge Lipinsky].
    - b. Report from the Rule 6.5 subcommittee [Jessica Yates] [attachment 1].
  4. New business.
  5. Adjournment.

Upcoming meeting dates: April 24, 2026; July 24, 2026; and September 25, 2026.

Judge Lino Lipinsky, Chair  
Colorado Court of Appeals  
[lino.lipinsky@judicial.state.co.us](mailto:lino.lipinsky@judicial.state.co.us)

# Attachment 1

**lipinsky, lino**

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**From:** Jessica Yates <j.yates@csc.state.co.us>  
**Sent:** Tuesday, January 13, 2026 1:01 PM  
**To:** lipinsky, lino  
**Cc:** Kim Pask; David Stark; Kristin Bronson; Tracy Harper; Toni-Anne Nunez; tones\_d1; Elisa Overall; Sarah Lipka; Tom Downey; Lois Lupica <lois.lupica@cedproject.org>; espinosa, adam; noah.patterson@coag.gov  
**Subject:** [EXTERNAL] Transmittal of Rule 6.5 Subcommittee/Agenda Item for January 23  
**Attachments:** Model to Rule 6.5 Redline .pdf; Model to Rule 6.5 Clean.pdf; Rule 6.5 Clean.pdf; Rule 6.5 Redline.pdf

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Judge Lipinsky,

On behalf of the subcommittee focused on Colorado Rule of Professional Conduct 6.5, we are attaching proposed changes to Rule 6.5 as well as a new model policy for clinics to consider using in recruiting and onboarding volunteer lawyers and LLPs.

As you may recall, this subcommittee was created after a Committee discussion about the requirement of obtaining informed consent for a limited scope representation in nonprofit and court-annexed limited legal services programs – something that current Comment [2] to Rule 6.5 addresses, but not in a way that acknowledges the context of clinic-type settings. Through discussions with stakeholders, we identified other ambiguities in whether or how the Rules of Professional Conduct should apply in these settings. The proposed changes to Rule 6.5 and its comments are informed by those discussions.

The same discussions highlighted the need for guidance to nonprofit organizations offering clinics and similar limited legal services programs. While lawyers and LLPs continue to be responsible for their own compliance with their respective Rules of Professional Conduct, clinic organizers are generally the first point of contact with both prospective clients and volunteer lawyers/LLPs. As such, they have the opportunity to adopt policies and procedures to provide a solid foundation upon which volunteers can assist clients in a manner consistent with their professional obligations. The model policy is aimed at helping clinic organizers in the development of their own policies and procedures that would be communicated to volunteers.

In addition to myself as Chair, the core subcommittee members are (with affiliations where they are not members of the Standing Committee):

Kristin Bronson (Colorado Lawyers Committee)  
Tom Downey  
Judge Adam Espinosa  
Tracy Harper (Catholic Charities)  
Sarah Lipka (Colorado Legal Services)  
Lois Lupica  
Toni-Anne Nunez (formerly DBA/Metro Volunteer Lawyers)  
Elisa (“Emo”) Overall (Access to Justice Commission)  
Noah Patterson  
Dave Stark

We also reached out to numerous other clinic stakeholders (many thanks to Kristin Bronson for identifying them and facilitating contact) to hear their comments and concerns.

Knowing that several of our subcommittee members are not members of the Standing Committee on the Rules of Professional Conduct, I have invited them to attend the Standing Committee’s meeting Friday January 23 at 9 a.m., and they may want to provide a few comments and/or answer questions about how their organizations would use the model policy. (If we are able to place this item towards the beginning of the agenda, I’m sure that would be appreciated.)

Thanks, and I look forward to discussing this proposal with the full Committee Friday January 23.

- Jessica Yates, Attorney Regulation Counsel

## **Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs**

**(a)** A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, must comply with the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), except as provided otherwise by this Rule. A lawyer providing services under this Rule:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest;

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter;

(3) is subject to Rule 1.5 and Rules 1.15A-1.15E only if the lawyer or the sponsoring program collects fees for lawyer services from participating clients; and

(4) is subject to Rule 1.16(d)'s requirement to surrender papers and property to which the client is entitled only if the lawyer or the sponsoring program collects and retains papers and property from participating clients, and is subject to Rule 1.16A only if the lawyer creates a client file. Program administrative information is not subject to this Rule.

**(b)** Except as provided in paragraph (a)(2) of this Rule, Rule 1.10 is inapplicable to a representation governed by this Rule.

**(c)** A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation, pursuant to Rule 1.2(c).

### **COMMENT**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services--such as legal advice or the completion of legal forms that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. In many such programs, the representation may terminate under the terms of the program after a single meeting, phone call, or other interactive communication. Such programs typically do not charge for their services, and do not collect and retain money, documents, or property from the clients they serve. Likewise, such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] The communication necessary to obtain the informed consent of a client participating in a short-term limited legal services program will vary according to the circumstances. See Rule 1.0(e) and Comments [6] and [7]. The communication may include a statement that a full-scope representation might be

advisable but is not being offered. Rule 1.2(c) requires that the limited scope of the legal services provided be reasonable under the circumstances. Rule 1.2(c) does not require that the client's informed consent be given in writing or signed by the client. Programs offering short-term limited legal services may obtain the informed consent of the client prior to a client's interaction with a participating lawyer. If such programs make the client's participation in the program contingent on the client giving informed consent, a participating lawyer may rely on that program's communications and procedures to meet the requirement imposed by Rule 1.2(c).

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

## Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter, must comply with the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), except as provided otherwise by this Rule. A lawyer providing services under this Rule:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; ~~and~~

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter;

(3) is subject to Rule 1.5 and Rules 1.15A-1.15E only if the lawyer or the sponsoring program collects fees for lawyer services from participating clients; and

(4) is subject to Rule 1.16(d)'s requirement to surrender papers and property to which the client is entitled only if the lawyer or the sponsoring program collects and retains papers and property from participating clients, and is subject to Rule 1.16A only if the lawyer creates a client file. Program administrative information is not subject to this Rule.

(b) Except as provided in paragraph (a)(2) of this Rule, Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation, pursuant to Rule 1.2(c).

### COMMENT

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services--such as legal advice or the completion of legal forms that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. In many such programs, the representation may terminate under the terms of the program after a single meeting, phone call, or other interactive communication. Such programs typically do not charge for their services, and do not collect and retain money, documents, or property from the clients they serve. Likewise, Ssuch programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

~~[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the~~

~~client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.~~ The communication necessary to obtain the informed consent of a client participating in a short-term limited legal services program will vary according to the circumstances. See Rule 1.0(e) and Comments [6] and [7]. The communication may include a statement that a full-scope representation might be advisable but is not being offered. Rule 1.2(c) requires that the limited scope of the legal services provided be reasonable under the circumstances. Rule 1.2(c) does not require that the client's informed consent be given in writing or signed by the client. Programs offering short-term limited legal services may obtain the informed consent of the client prior to a client's interaction with a participating lawyer. If such programs make the client's participation in the program contingent on the client giving informed consent, a participating lawyer may rely on that program's communications and procedures to meet the requirement imposed by Rule 1.2(c).

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

## **Navigating Limited Legal Services in Colorado – A Model Policy for Programs**

### **Preamble**

The Model Policy for Nonprofit and Court-Annexed Limited Legal Services Programs provides a recommended robust and ethically grounded framework for delivering crucial, short-term legal assistance. While the Colorado Rules of Professional Conduct (Colo. RPC) and the similar Colorado Licensed Legal Paraprofessional Rules of Professional Conduct (Colo. LLP RPC) set forth the minimum requirements for the conduct of lawyers and LLPs, there is little guidance available to legal services programs striving to ensure that its staff and volunteers understand the intersection between those rules and the brief, limited representation of clients through clinics or similar platforms.

These two sets of Rules of Professional Conduct regulate lawyers and LLPs, not legal services programs. But if programs do not ensure that certain important communications with clients occur, the lawyers and LLPs providing services will be obligated to do so, impacting the available time of volunteers and undermining a program's ability to ensure that communications with prospective and actual clients are accurate and consistent. Likewise, if programs are not clear on important issues like fees and client documents, they risk confusion or even legal exposure, and the participating lawyers and LLPs could be in violation of their professional obligations. Solid program policies can help avoid these problems.

This model policy is aimed at the type of short-term limited legal services envisioned by Colo. RPC 6.5 and Colo. LLP RPC 6.5. For example, a regularly occurring community clinic or one-time "legal event" designated for a particular day and venue can offer the opportunity for program participants to consult with a licensed lawyer or LLP, and then the lawyer-client or LLP-client relationship ends. Other programs offering other types of limited-scope representations might find value in portions of the model policy. The model policy is designed to have sections that will be helpful to any program offering limited legal services.

Because each program is different, program organizers should evaluate which sections of the model policy are appropriate for a particular program and tailor them as needed. For example, community clinic programs are unlikely to accept for safekeeping any client documents. But programs offering limited scope representations that may span several consultations over weeks or months may decide it is appropriate to retain client documents. Programs in this latter category would need a different document retention policy than the one set forth in the model policy.

Likewise, this model policy is aimed at programs in which all legal services are provided without charging any fees to the clients. Any lawyers or LLPs working in a program that accepts fees for

legal services would need to comply with all fee-related provisions of the applicable Rules of Professional Conduct.

Further, if a program intends to collect advance funds for necessary costs, such as the cost of filing and serving a document, the lawyers or LLPs working in that program are responsible for complying with rules pertaining to costs and expenses. The program may conclude that it should handle these communications on behalf of legal practitioners to explicitly state what costs could be incurred and how any advance payment of costs will be safeguarded.

While this model policy is focused on programs that offer services covered by Colo. RPC 6.5, attorneys may provide unbundled legal services outside of a clinic model including limited appearances within a court case, providing advice or brief service, and drafting pleadings. See Colo. R.P.C. 1.2(c); C.R.C.P. 121 §1-1(5); C.A.R. 5(e). This model policy is intended for legal clinics as set out in R.P.C. 6.5 and is not intended to address unbundled legal services in other contexts.

### ***Recommended Model Policy\****

\* Bracketed language needs to be replaced with descriptions from the program before finalizing any policy.

#### **I. Introduction**

This program serves [*description of constituents*] by providing short-term limited legal services through licensed lawyers and/or legal paraprofessionals. [*Optional description of services can be provided here.*] This program has determined that Colo. RPC 6.5 and Colo. LLP RPC 6.5 (Nonprofit and Court-Annexed Limited Legal Services Programs) apply to this program. While this program does not offer full-scale legal representation, it is committed to safeguarding the interests of both clients and participating lawyers/LLPs and responsible legal practice.

#### **II. Scope of Services**

This program offers pro bono short-term limited legal services, such as [*description of types of services, such as understanding a legal document, advice on options after receiving legal notice, completing legal forms*] in the areas of [*description of areas of law or types of legal problems, such as landlord-tenant disputes, protection orders, consumer protection, or small claims*]. These services are not intended to be comprehensive or ongoing, and unless this program affirmatively informs the volunteer lawyers and LLPs otherwise, the services as to any specific legal issue or matter will not continue after the pro bono legal practitioner meets with a program participant requesting limited legal services. This typically occurs the same day that services are sought.

The program will communicate to [*fill in with description of constituent group or individuals within a group*] that its short-term limited legal services are not full-scale representations and may not result in any resolution of any given legal issue. The program will strive to use clear and direct language to help program participants understand that the participating lawyers and LLPs are not volunteering to appear in court or act in a representative capacity.

If the program has an option of allowing the short-term limited legal services to be provided over the course of more than one meeting, the program will expressly inform the client as to when the services end. While a lawyer-client or LLP-client relationship will briefly exist for purposes of delivering those services, the relationship will terminate when the lawyer or LLP provides the offered limited services, and there will be no ongoing representation of the client under this program.

A client can return to the program on a later date and present the same or similar legal issue or question. Any subsequent consultations do *not* constitute an ongoing representation of the client. This subsequent consultation may involve the same or different lawyers or LLPs as a prior consultation, but regardless, the volunteers will not be expected to retain information from that prior consultation.

### III. Conflicts

All participating lawyers and LLPs are required to comply with all of their applicable rules of professional conduct, with the specific exceptions set forth by Colo. RPC 6.5 or Colo. LLP RPC 6.5.

While lawyers and LLPs are not expected to conduct conflict checks when participating in the program, they are expected to consider their actual knowledge of their own clients and their matters as well as their actual knowledge of their firm's clients and matters in deciding whether a conflict exists. Upon being assigned a client or client matter, if a licensed lawyer or LLP has actual knowledge of a conflict of interest as defined in Colo. RPC 1.7 or Colo. LLP RPC 1.7 (Conflict of Interest: Current Clients) or Colo. RPC 1.9(a) or Colo. LLP RPC 1.9(a) (Duties to Former Clients), they must not provide any services to the client. Likewise, if a licensed lawyer or LLP has actual knowledge that another lawyer or LLP in their firm is disqualified with respect to the specific matter, they must not proceed with the limited representation. *See* Colo. RPC 1.10 or Colo. LLP RPC 1.10.

### IV. Fees

This program does not charge program participants for requesting or obtaining short-term limited legal services, and does not permit participating lawyers and/or LLPs to charge fees for such services.

## V. Informed Consent

Pursuant to Colo. RPC 1.2(c) and Colo. LLP RPC 1.2(c), this program will obtain the informed consent of clients requesting short-term limited legal services. Colo. RPC 1.0(e) and Colo. LLP RPC 1.0(e) define “informed consent” as “the agreement by a person to a proposed course of conduct” after the lawyer or LLP “has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”

Pursuant to Comment [2] to Colo. RPC 6.5, which also applies to LLPs, this program obtains the informed consent of all participating clients prior to a client’s interaction with a participating lawyer or LLP. This program will inform program participants that short-term limited legal services by their nature do not involve the analysis of and recommendations for complex factual or legal situations, and typically no extensive legal research will be performed. The program will inform program participants seeking short-term limited legal services that they will not receive full-scope representation through the program, and they might not reach a resolution of any particular legal question or issue. If someone decides to become a client of the program by receiving short-term limited legal services, they still are free to seek the services of a lawyer or LLP outside the program. Indeed, clients may be advised to seek those professional services. While Comment [2] to Colo. RPC 6.5 allows lawyers and LLPs to rely on this program’s informed consent procedures and communications, each participating lawyer or LLP is free to supplement this disclosure in communications with individual clients provided that the communication is consistent with this program’s policies.

The Rules of Professional Conduct for both lawyers and LLPs do not require documentation of the agreement of the client to receive short-term limited legal services.

*Option 1:* However, this program has determined that such documentation is an appropriate policy. The program will obtain and maintain such documentation as follows: [description of documentation policies, such as a signature under an informed consent clinic check-in form, a contemporaneous note from program staff or volunteer attorney or LLP indicating that the client has provided informed consent, or submission of a web-based request for services where the web page includes the informed consent].

*Option 2:* This program does not maintain such documentation, but individual volunteer lawyers and LLPs are free to do so.

## VI. Professional Liability Insurance\*

\* This model policy sets forth two options: one for an insured program, and one for an uninsured program. Either option should be carefully reviewed and tailored to accurately state the existence of insurance and its applicability.

*Option 1:* This program carries professional liability insurance that applies to the short-term limited legal services provided by its volunteer lawyers or LLPs who are licensed and currently in good standing to practice in the state of Colorado. [If applicable: Volunteers federally authorized to practice in Colorado also may be covered by this program's professional liability insurance if their provision of legal services for this program is within the scope of their federal authorization.] This program strongly encourages any other lawyer who wishes to volunteer but is not licensed by Colorado or is registered as inactive in Colorado to review C.R.C.P. 204.6 for the process of applying for pro bono counsel certification.

*Option 2:* This program does not carry professional liability insurance that applies to its volunteer lawyers or LLPs. However, many professional liability policies that lawyers or LLPs obtain for their private practice may provide coverage for these volunteer activities as well. Volunteers seeking more information should consult with their carriers.

## VII. Confidentiality

Volunteer lawyers and/or LLPs must comply with Colo. RPC 1.6 and Colo. LLP RPC 1.6 (Confidentiality of Information), as applicable. Sometimes clients request that their communications with a volunteer occur in the presence of—and even with the involvement of—another person, such as a family member, friend or neighbor. The presence of that third person can affect the enforceability of the lawyer-client privilege or LLP-client privilege in certain circumstances, such as if anyone within the communication is required to testify in a later proceeding. Some exceptions to the possibility of waiver of the privilege have been articulated in case law, such as the use of translators, interpreters or others necessary to assist in the legal communication.

The program expects each volunteer to verbally confirm with the client that the client understands that the presence of another person could affect the ability to keep their information confidential and the communications confidential.

*Option under Confidentiality:* This program requires that if any client wishes to have a third party, other than a person necessary for the communication to be understood, be present for or participate in a consultation, the volunteer lawyer or LLP must verbally confirm with the client that they understand that the presence of another person could

affect the ability to keep their information confidential and the communications confidential. The client then must provide informed consent, documented by the volunteer lawyer or LLP, clinic staff or client.

#### VIII. Advising More Than One Client With The Same Legal Issue On Identical Facts

This program permits two or more clients with the same legal issue to simultaneously request short-term limited legal services when they have materially identical facts applicable to that issue, and want to meet with the same legal practitioner to receive those services when there is not a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to the other. For example, two roommates renting an apartment unit may jointly request such services for a problem with their landlord. Volunteer lawyers and LLPs must follow applicable conflict rules, namely Colo. RPC 1.7 or Colo. LLP RPC 1.7, to determine whether there would be a conflict in providing short-term representations to one or both parties. If a volunteer lawyer or LLP believes that there could be a conflict in providing legal advice or other short-term limited legal services to the clients, the volunteer should either request that the program assign each client the client's own volunteer lawyer or LLP in a manner consistent with Rule 1.7, or if the conflict is waivable, confirm such a waiver in writing. If the conflict is not waived, the assigned volunteers should not communicate with each other about their respective representations of the different clients.

#### IX. Client Documents

This program will inform clients that the program does not retain client documents after the consultation between the volunteer lawyer or LLP and the client has concluded. If the client believes that a subsequent consultation will occur, the client must take the client documents with them. Volunteer lawyers and LLPs also must not offer to retain documents on behalf of the clients they serve.

*Optional alternative:* This program retains client documents in certain circumstances. This program will inform volunteer lawyers and LLPs about those circumstances and provide additional guidance on how to effectuate the program's policies.

#### X. In-Person Solicitation

Program volunteer lawyers and LLPs must comply with Colo. RPC 7.3 and Colo. LLP RPC 7.3 (Solicitation of Clients), respectively. With a few exceptions, these rules generally prohibit lawyers and LLPs from soliciting business by live person-to-person contact "when a significant motive" is "pecuniary gain" that may accrue to the practitioner or the practitioner's firm. Accordingly, this program does not permit a participating lawyer or LLP to offer their services

outside of the program's pro bono limited legal services unless the participating lawyer or LLP is offering to do so on a pro bono basis with no reasonable expectation of recovering fees in the matter.

Further, if a lawyer or LLP offers services that are not limited legal services covered by Colo. RPC 6.5 or Colo. LLP RPC 6.5, then none of the exceptions within that rule apply, and the lawyer or LLP is responsible for compliance with all applicable rules of professional conduct.

## Navigating Limited Legal Services in Colorado – A Model Policy for Programs

### Preamble

The Model Policy for Nonprofit and Court-Annexed Limited Legal Services Programs provides a recommended robust and ethically grounded framework for delivering crucial, short-term legal assistance. While the Colorado Rules of Professional Conduct (Colo. RPC) and the similar Colorado Licensed Legal Paraprofessional Rules of Professional Conduct (Colo. LLP RPC) set forth the minimum requirements for the conduct of lawyers and LLPs, there is little guidance available to legal services programs striving to ensure that its staff and volunteers understand the intersection between those rules and the brief, limited representation of clients through clinics or similar platforms.

These two sets of Rules of Professional Conduct regulate lawyers and LLPs, not legal services programs. But if programs do not ensure that certain important communications with clients occur, the lawyers and LLPs providing services will be obligated to do so, impacting the available time of volunteers and undermining a program's ability to ensure that communications with prospective and actual clients are accurate and consistent. Likewise, if programs are not clear on important issues like fees and client documents, they risk confusion or even legal exposure, and the participating lawyers and LLPs could be in violation of their professional obligations. Solid program policies can help avoid these problems.

This model policy is aimed at the type of short-term limited legal services envisioned by Colo. RPC 6.5 and Colo. LLP RPC 6.5. For example, a regularly occurring community clinic or one-time "legal event" designated for a particular day and venue can offer the opportunity for program participants to consult with a licensed lawyer or LLP, and then the lawyer-client or LLP-client relationship ends. Other programs offering other types of limited-scope representations might find value in portions of the model policy. The model policy is designed to have sections that will be helpful to any program offering limited legal services.

Because each program is different, program organizers should evaluate which sections of the model policy are appropriate for a particular program and tailor them as needed. For example, community clinic programs are unlikely to accept for safekeeping any client documents. But programs offering limited scope representations that may span several consultations over weeks or months may decide it is appropriate to retain client documents. Programs in this latter category would need a different document retention policy than the one set forth in the model policy.

Likewise, this model policy is aimed at programs in which all legal services are provided without charging any fees to the clients. Any lawyers or LLPs working in a program that accepts fees for

legal services would need to comply with all fee-related provisions of the applicable Rules of Professional Conduct.

Further, if a program intends to collect advance funds for necessary costs, such as the cost of filing and serving a document, the lawyers or LLPs working in that program are responsible for complying with rules pertaining to costs and expenses. The program may conclude that it should handle these communications on behalf of legal practitioners to explicitly state what costs could be incurred and how any advance payment of costs will be safeguarded.

While this model policy is focused on programs that offer services covered by Colo. RPC 6.5, attorneys may provide unbundled legal services outside of a clinic model including limited appearances within a court case, providing advice or brief service, and drafting pleadings. See Colo. R.P.C. 1.2(c); C.R.C.P. 121 §1-1(5); C.A.R. 5(e). This model policy is intended for legal clinics as set out in R.P.C. 6.5 and is not intended to address unbundled legal services in other contexts.

### **Recommended Model Policy\***

\* Bracketed language needs to be replaced with descriptions from the program before finalizing any policy.

#### I. Introduction

This program serves [description of constituents] by providing short-term limited legal services through licensed lawyers and/or legal paraprofessionals. [Optional description of services can be provided here.] This program has determined that Colo. RPC 6.5 and Colo. LLP RPC 6.5 (Nonprofit and Court-Annexed Limited Legal Services Programs) apply to this program. While this program does not offer full-scale legal representation, it is committed to safeguarding the interests of both clients and participating lawyers/LLPs and responsible legal practice.

#### II. Scope of Services

This program offers pro bono short-term limited legal services, such as [description of types of services, such as understanding a legal document, advice on options after receiving legal notice, completing legal forms] in the areas of [description of areas of law or types of legal problems, such as landlord-tenant disputes, protection orders, consumer protection, or small claims]. These services are not intended to be comprehensive or ongoing, and unless this program affirmatively informs the volunteer lawyers and LLPs otherwise, the services as to any specific legal issue or matter will not continue after the pro bono legal practitioner meets with a program participant requesting limited legal services. This typically occurs the same day that services are sought.

The program will communicate to [fill in with description of constituent group or individuals within a group] that its short-term limited legal services are not full-scale representations and may not result in any resolution of any given legal issue. The program will strive to use clear and direct language to help program participants understand that the participating lawyers and LLPs are not volunteering to appear in court or act in a representative capacity.

If the program has an option of allowing the short-term limited legal services to be provided over the course of more than one meeting, the program will expressly inform the client as to when the services end. While a lawyer-client or LLP-client relationship will briefly exist for purposes of delivering those services, the relationship will terminate when the lawyer or LLP provides the offered limited services, and there will be no ongoing representation of the client under this program.

A client can return to the program on a later date and present the same or similar legal issue or question. Any subsequent consultations do *not* constitute an ongoing representation of the client. This subsequent consultation may involve the same or different lawyers or LLPs as a prior consultation, but regardless, the volunteers will not be expected to retain information from that prior consultation.

### III. Conflicts

All participating lawyers and LLPs are required to comply with all of their applicable rules of professional conduct, with the specific exceptions set forth by Colo. RPC 6.5 or Colo. LLP RPC 6.5.

While lawyers and LLPs are not expected to conduct conflict checks when participating in the program, they are expected to consider their actual knowledge of their own clients and their matters as well as their actual knowledge of their firm's clients and matters in deciding whether a conflict exists. Upon being assigned a client or client matter, if a licensed lawyer or LLP has actual knowledge of a conflict of interest as defined in Colo. RPC 1.7 or Colo. LLP RPC 1.7 (Conflict of Interest: Current Clients) or Colo. RPC 1.9(a) or Colo. LLP RPC 1.9(a) (Duties to Former Clients), they must not provide any services to the client. Likewise, if a licensed lawyer or LLP has actual knowledge that another lawyer or LLP in their firm is disqualified with respect to the specific matter, they must not proceed with the limited representation. See Colo. RPC 1.10 or Colo. LLP RPC 1.10.

### IV. Fees

This program does not charge program participants for requesting or obtaining short-term limited legal services, and does not permit participating lawyers and/or LLPs to charge fees for such services.

#### V. Informed Consent

Pursuant to Colo. RPC 1.2(c) and Colo. LLP RPC 1.2(c), this program will obtain the informed consent of clients requesting short-term limited legal services. Colo. RPC 1.0(e) and Colo. LLP RPC 1.0(e) define “informed consent” as “the agreement by a person to a proposed course of conduct” after the lawyer or LLP “has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”

Pursuant to Comment [2] to Colo. RPC 6.5, which also applies to LLPs, this program obtains the informed consent of all participating clients prior to a client’s interaction with a participating lawyer or LLP. This program will inform program participants that short-term limited legal services by their nature do not involve the analysis of and recommendations for complex factual or legal situations, and typically no extensive legal research will be performed. The program will inform program participants seeking short-term limited legal services that they will not receive full-scope representation through the program, and they might not reach a resolution of any particular legal question or issue. If someone decides to become a client of the program by receiving short-term limited legal services, they still are free to seek the services of a lawyer or LLP outside the program. Indeed, clients may be advised to seek those professional services. While Comment [2] to Colo. RPC 6.5 allows lawyers and LLPs to rely on this program’s informed consent procedures and communications, each participating lawyer or LLP is free to supplement this disclosure in communications with individual clients provided that the communication is consistent with this program’s policies.

The Rules of Professional Conduct for both lawyers and LLPs do not require documentation of the agreement of the client to receive short-term limited legal services.

*Option 1:* However, this program has determined that such documentation is an appropriate policy. The program will obtain and maintain such documentation as follows: [description of documentation policies, such as a signature under an informed consent clinic check-in form, a contemporaneous note from program staff or volunteer attorney or LLP indicating that the client has provided informed consent, or submission of a web-based request for services where the web page includes the informed consent].

*Option 2:* This program does not maintain such documentation, but individual volunteer lawyers and LLPs are free to do so.

## VI. Professional Liability Insurance\*

\* This model policy sets forth two options: one for an insured program, and one for an uninsured program. Either option should be carefully reviewed and tailored to accurately state the existence of insurance and its applicability.

*Option 1:* This program carries professional liability insurance that applies to the short-term limited legal services provided by its volunteer lawyers or LLPs who are licensed and currently in good standing to practice in the state of Colorado. [If applicable: Volunteers federally authorized to practice in Colorado also may be covered by this program's professional liability insurance if their provision of legal services for this program is within the scope of their federal authorization.] This program strongly encourages any other lawyer who wishes to volunteer but is not licensed by Colorado or is registered as inactive in Colorado to review C.R.C.P. 204.6 for the process of applying for pro bono counsel certification.

*Option 2:* This program does not carry professional liability insurance that applies to its volunteer lawyers or LLPs. However, many professional liability policies that lawyers or LLPs obtain for their private practice may provide coverage for these volunteer activities as well. Volunteers seeking more information should consult with their carriers.

## VII. Confidentiality

Volunteer lawyers and/or LLPs must comply with Colo. RPC 1.6 and Colo. LLP RPC 1.6 (Confidentiality of Information), as applicable. Sometimes clients request that their communications with a volunteer occur in the presence of—and even with the involvement of—another person, such as a family member, friend or neighbor. The presence of that third person can affect the enforceability of the lawyer-client privilege or LLP-client privilege in certain circumstances, such as if anyone within the communication is required to testify in a later proceeding. Some exceptions to the possibility of waiver of the privilege have been articulated in case law, such as the use of translators, interpreters or others necessary to assist in the legal communication.

The program expects each volunteer to verbally confirm with the client that the client understands that the presence of another person could affect the ability to keep their information confidential and the communications confidential.

*Option under Confidentiality:* This program requires that if any client wishes to have a third party, other than a person necessary for the communication to be understood, be present for or participate in a consultation, the volunteer lawyer or LLP must verbally confirm with the client that they understand that the presence of another person could

affect the ability to keep their information confidential and the communications confidential. The client then must provide informed consent, documented by the volunteer lawyer or LLP, clinic staff or client.

#### VIII. Advising More Than One Client With The Same Legal Issue On Identical Facts

This program permits two or more clients with the same legal issue to simultaneously request short-term limited legal services when they have materially identical facts applicable to that issue, and want to meet with the same legal practitioner to receive those services when there is not a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to the other. For example, two roommates renting an apartment unit may jointly request such services for a problem with their landlord. Volunteer lawyers and LLPs must follow applicable conflict rules, namely Colo. RPC 1.7 or Colo. LLP RPC 1.7, to determine whether there would be a conflict in providing short-term representations to one or both parties. If a volunteer lawyer or LLP believes that there could be a conflict in providing legal advice or other short-term limited legal services to the clients, the volunteer should either request that the program assign each client the client's own volunteer lawyer or LLP in a manner consistent with Rule 1.7, or if the conflict is waivable, confirm such a waiver in writing. If the conflict is not waived, the assigned volunteers should not communicate with each other about their respective representations of the different clients.

#### IX. Client Documents

This program will inform clients that the program does not retain client documents after the consultation between the volunteer lawyer or LLP and the client has concluded. If the client believes that a subsequent consultation will occur, the client must take the client documents with them. Volunteer lawyers and LLPs also must not offer to retain documents on behalf of the clients they serve.

*Optional alternative:* This program retains client documents in certain circumstances. This program will inform volunteer lawyers and LLPs about those circumstances and provide additional guidance on how to effectuate the program's policies.

#### X. In-Person Solicitation

Program volunteer lawyers and LLPs must comply with Colo. RPC 7.3 and Colo. LLP RPC 7.3 (Solicitation of Clients), respectively. With a few exceptions, these rules generally prohibit lawyers and LLPs from soliciting business by live person-to-person contact "when a significant motive" is "pecuniary gain" that may accrue to the practitioner or the practitioner's firm. Accordingly, this program does not permit a participating lawyer or LLP to offer their services

outside of the program's pro bono limited legal services unless the participating lawyer or LLP is offering to do so on a pro bono basis with no reasonable expectation of recovering fees in the matter.

Further, if a lawyer or LLP offers services that are not limited legal services covered by Colo. RPC 6.5 or Colo. LLP RPC 6.5, then none of the exceptions within that rule apply, and the lawyer or LLP is responsible for compliance with all applicable rules of professional conduct.