

## **COLORADO SUPREME COURT**

### **RULES OF PROFESSIONAL CONDUCT STANDING COMMITTEE**

Approved Minutes of Meeting of the Full Committee

On

November 21, 2025

Seventy-Eighth Meeting of the Full Committee

The seventy-eighth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened on Friday, November 21, 2025, by Chair Judge Lino Lipinsky de Orlov. The meeting was entirely virtual. Judge Lipinsky initially took attendance.

Present at the meeting were Judge Lipinsky, Justice Maria Berkenkotter, Justice William Hood, Judge Bryon Large, Katayoun Donnelly, Thomas E. Downey, Jr., Margaret Funk, Marcy Glenn, April Jones, Matthew Kirsch, Marianne Luu-Chen, Julia Martinez, Stephen Masciocchi, Cecil Morris, Noah Patterson, Troy Rackham, Alexander Rothrock, Marcus Squarrell, Robert Steinmetz, David Stark, James Sudler, Eli Wald, Fred Yarger, J.J. Wallace, and Jessica Yates.

Committee members with excused absences were Judge Adam Espinosa, Nancy Cohen, Cynthia Covell, Scott L. Evans, Lois Lupica, Henry Reeve, and Judge John Webb.

**1. CALL TO ORDER.** Judge Lipinsky called the meeting to order at 12:02 p.m. Judge Lipinsky welcomed the members in attendance.

**2. APPROVAL OF MINUTES OF SEPTEMBER 26, 2025, MEETING.** A member moved to approve the minutes, which another member seconded. A vote was taken on motion to approve the minutes. The motion passed unanimously.

**3. OLD BUSINESS.** Discussion of Possible Amendments to Rule 1.5 in light of the enactment of HB 25-1090 (J. Yates). Ms. Yates presented on the proposal from the Rule 1.5 subcommittee. The subcommittee members were Marianne Luu-Chen, Margaret Funk, Steve Masciocchi, Cecil Morris, Henry Reeve, Alec Rothrock, Marcus Squarrell, Rob Steinmetz, Jamie Sudler, Eli Wald, and Jessica Yates. The subcommittee proposed revising Rule 1.5(h)(3) to clarify that using the form flat fee agreement satisfies Rule 1.5(h), while making clear that the form may not suffice for all purposes. The subcommittee modeled that change on similar language found in Rule 1.5(c)(7) regarding the sufficiency of the use of the form contingent fee agreement.

The subcommittee also proposed revisions to the comments to Rule 1.5. Specifically, the subcommittee proposed adding a new comment 3 to inform lawyers that other law may apply, citing the C.R.S. reference found in HB 25-1090. The subcommittee also discussed whether substantive changes should be made to Rule 1.5's form fee agreements to ensure compliance with HB 25-1090. There was a general recognition of the desirability of having fully compliant form fee agreements available to the legal community. However, the subcommittee also recognized that there was no consensus regarding what fee agreement language would comply with HB

25-1090. As a result, the subcommittee did not propose revisions to the form fee agreements appended to Rule 1.5.

After Ms. Yates reported on the proposed revisions, a member of the bar reached out to suggest revisions to Rule 2.4, Lawyer Serving as Third-Party Neutral. The proposed revision was to add comment 2A, which would state: “A third-party neutral offering services, including an offer of services through a fee agreement, may be required to comply with other law pertaining to the offer of services. *E.g.*, C.R.S. § 6-1-737 (addressing requirements to disclose certain pricing information).”

The Chair opened up the subject for discussion. A member raised an issue about the proposed reference to the statute in Comment 3. The member suggested that the citation to “*E.g.*” should not be italicized but also noted there is inconsistency in the Rules of Professional Conduct regarding the typeface for such citations. Another member raised the question of whether the Committee should reference the statute in the form flat fee agreement itself or at least provide some disclaimer in the form fee agreement to inform lawyers that other law may apply. The member was concerned that some lawyers may not carefully study the comments and may rely on the form flat agreement without appreciating that statutory changes may implicate the use of the form agreement.

A subcommittee member explained that because of the significant uncertainty about how and to whom C.R.S. § 6-1-737 would apply, and whether the General Assembly would amend the statute in 2026, the subcommittee took a more minimalistic approach to proposed revisions to Rule 1.5. There was significant discussion about whether the disclaimer to be added to the form fee agreement in Rule 1.5 should be in brackets and not reference the statute versus being placed at the top of the form fee agreement with specific references to the statute.

Several members expressed the need to give Colorado lawyers a clear heads up about the statute and how it might be implicated in the fee agreement. A member suggested being as explicit as possible about the statutory reference to avoid confusion. Another member suggested that because the Committee does not know what the legislature might do in the future, it was important to keep the proposed revisions minimal with the understanding that the revisions could be rolled back if the legislature narrows the application of the statute.

Another member commented that the member has discussed application of HB 25-1090 with many practicing lawyers during the past months and has determined that there seems to be a consensus that the statute was needed and favored clarifying its potential impact on Colorado lawyers. The member supported the proposition that it would be prudent for the Committee to take a more minimalistic approach to revising Rule 1.5.

A member supported adding language directly to the form agreements. There are a number of places in the forms that already direct the lawyer to add information. The member expressed the view that any lawyer who just uses the form and makes no changes to it and doesn't fill in the blanks and doesn't add information in place of the bracketed text is unlikely to be influenced by the proposed revisions. The member suggested that the Committee would be doing lawyers a favor to include something in the forms themselves.

A member suggested that the effect and scope of HB 25-1090 would be a good subject for a *Colorado Lawyer* article to be published as soon as possible after the statute takes effect to educate lawyers about the statutory changes and practical ways to comply with the statutory changes. A member expressed agreement but noted that there can be a very long lead time to publish a *Colorado Lawyer* article. The article may not be published until the end of the next legislative session, which could render much of the guidance moot.

After a robust discussion, Chair Lipinsky proposed a straw poll on recommending bracketed language in the form agreements. The purpose of the straw poll was to determine whether there is a consensus among members of the Committee that there should be some reference in the forms to the statute. Judge Large abstained from the straw poll voting. The other members voted unanimously that there should be some language in the form agreements alerting users to the statutory change.

The discussion shifted to where the language advising Colorado lawyers of the statutory change should appear. Some members suggested including the language in a black box before the form. Other members suggested putting the proposed language conspicuously in the form agreements themselves. A member suggested that for each of the two forms, there be specific language advising the user of the forms that they should consult other law to ensure that the form agreements, as revised, are compliant with other laws, including C.R.S. § 6-1-737, but not in a way that suggests the form does not comply with C.R.S. § 6-1-737. The member expressed the view that lawyers must make their own judgments about how the revisions to the proposed form agreements would comply with the Rules, C.R.S. § 6-1-737, and potentially other law.

After a significant discussion about the proposal, Chair Lipinsky took a straw poll on the proposed language and each of the proposed amendments. A member moved to amend the subcommittee's proposal to add language in italics and brackets at the top of the form fee agreements that would say "C.R.S. § 6-1-737 or other law may require lawyers to add other language to the following form" and amend the subcommittee's proposal to add language in italics and brackets at the bottom of the form fee agreements that would say "C.R.S. § 6-1-737 or other law may require lawyers to add other language to the above form." The motion was seconded. A vote was taken on the motion. Judge Large and Noah Patterson abstained. The other members voted unanimously in favor of the motion.

A member suggested that the Committee should take this language and add the language in the second sentence of Rule 1.5(c)(7), relating to contingent fee agreements, and Rule 1.5(h)(3) relating to flat fee agreements. Another member expressed a concern that revising Rule 1.5(c)(7) and Rule 1.5(h)(3) would go further than what is needed. After further discussion, there was no clear consensus to support additional revisions.

A motion was made to approve the subcommittee's proposal with the addition of the language to be included at the top and bottom of the form fee agreements. The motion was seconded. A vote was taken on the entire package, which included (1) the initial recommendations of the subcommittee; and (2) adding the language in italics and brackets at the top and bottom of

the form fee agreements. Judge Large and Noah Patterson abstained. The other members voted unanimously in favor of the proposed revisions to Rule 1.5 and form fee agreements.

4. **ADJOURNMENT.** Judge Lipinsky expressed the Committee's appreciation for the significant and expeditious work of the subcommittee. Judge Lipinsky reported that he would forward the proposed revisions to the Supreme Court for consideration. The meeting was adjourned at 2:56 p.m.

Respectfully submitted,

Troy R. Rackham, Secretary