

COLORADO SUPREME COURT

RULES OF PROFESSIONAL CONDUCT STANDING COMMITTEE

Approved Minutes of Meeting of the Full Committee

On

September 26, 2025

Seventy-Seventh Meeting of the Full Committee

The seventy-seventh meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:03 a.m. on Friday, September 26, 2025, by Chair Judge Lino Lipinsky de Orlov. Judge Lipinsky initially took attendance.

Present at the meeting in person were Judge Lipinsky (Chair), Katayoun Donnelly, Justice William Hood, Judge Bryon Large, Lois Lupica, Marianne Luu-Chen, Stephen Masciocchi, Cecil Morris, Troy R. Rackham, James Sudler, J.J. Wallace, and Jessica Yates.

Present for the meeting by virtual appearance were Judge Adam Espinosa, Margaret Funk, Noah Patterson, Dick Reeve, Alec Rothrock, Marcus Squarrell, Robert Steinmetz, Eli Wald, and Fred Yarger.

Committee members with excused absences were Nancy Cohen, Cynthia Covell, Thomas Downey, Scott Evans, Marcy Glenn, April Jones, Matthew Kirsch, Julia Martinez, David Stark, and Judge John Webb. Justice Maria Berkenkotter also had an excused absence.

1. CALL TO ORDER. Judge Lipinsky called the meeting to order at 9:04 a.m. He welcomed the members in attendance and virtually.

2. ANNOUNCEMENTS. Chair Lipinsky noted that Jason Lynch resigned from the Committee because he accepted a new position in Massachusetts. Chair Lipinsky thanked Mr. Lynch for his service.

Chair Lipinsky also reported that Committee member Erika Holmes died on August 1. He noted her numerous contributions to the profession, including her work on the Committee, leadership role in proposing the recent amendments on limited representation, and service as Chair of the Colorado Bar Association Ethics Committee. A celebration of Erika's life is scheduled for City Park on October 8, 2025, at 5 p.m. The Committee had a moment of silence to honor her memory.

3. APPROVAL OF MINUTES FOR JULY 25, 2025, MEETING. A member moved to approve the minutes, which another member seconded. A vote was taken on the motion to approve minutes. The motion passed unanimously.

4. OLD BUSINESS.

a. Report on the Committee’s Recommendations for AI-Related Amendments to the Rules. Judge Lipinsky reported that the Supreme Court set a public hearing on the proposed AI-related amendments to the Rules for December 17, 2025, at 3:30 p.m. The deadline to provide written comments on the proposed amendments is December 1, 2025, at 4:00 p.m. The deadline to submit a request to speak at the public hearing is December 5, 2025, at 4:00 p.m. If any member of the Committee wishes to speak at the public hearing, the member needs to submit a request by the deadline.

b. Legal Technology Advisory Committee. Judge Lipinsky said that the Supreme Court had agreed with the Committee’s recommendation for creation of a new Legal Technology Advisory Committee. In a September 15, 2025, press release, Chief Justice Márquez said the Advisory Committee was “designed to guide attorneys, licensed legal paraprofessionals, other legal professionals, judicial officers, and members of the public on the appropriate use of generative artificial intelligence (AI) and other advanced technologies and their impact on the practice of law, professional ethics, and the judiciary.” She announced that the Advisory Committee will be comprised of twelve appointed members, including “judicial officers, clerks of court, legal practitioners, and subject matter experts, whom the Chief Justice will appoint” and will develop “guidance materials that focus on safeguarding the integrity of the legal system, supporting access to justice, protecting client confidentiality, encouraging innovation, and ensuring competent client service.” The Chief Judge charged the Advisory Committee with submitting its initial recommendations to her by October 1, 2026.

c. Report from the Rule 1.2 Subcommittee. Judge Lipinsky presented in the absence of Judge Espinosa, who was called away to cover a hearing. Judge Lipinsky discussed the proposed amendments to Rule 1.2(c) and comments to the Rule, as shown in attachment 3 to the meeting materials. A member commented that he agreed with the proposed amendments but was interested in OARC’s position on them. Ms. Yates provided the perspective of OARC and said she supports the proposed amendments. A member asked about the genesis of the proposal. Judge Lipinsky explained that the Standing Committee formed the subcommittee to consider whether amendments to Rule 1.2(c) and comments to Rule 1.2 were necessary and appropriate in light of the recent limited representation amendments to C.A.R. 5(e), C.R.C.P. 11(b), and C.R.C.P. 311(b). A motion was made to approve the proposed amendments. The motion was seconded. Judge Large abstained. The motion passed with a unanimous vote of all members who were present and participated.

d. Report from the Rule 6.5 Subcommittee. Jessica Yates presented on the issue. The subcommittee is obtaining comments on possible amendments to Rule 6.5 from stakeholders of legal services organizations and operators of legal clinics. Ms. Yates explained that the subcommittee has researched the practices and procedures of the state’s legal clinics for obtaining informed consent from participants, and she noted there are nuanced differences between those policies and procedures. Ms. Yates said she anticipated that the subcommittee will present proposed amendments to Rule 6.5 at the Committee’s January 2026 meeting.

e. **Update on 2023 Amendments to ABA Model Rule 1.16.** Steve Masciocchi presented on the jurisdictions that have considered the ABA’s amendments to Model Rule 1.16. (He provides the Committee with regular updates on the topic.) He reported that Arizona, North Dakota, and Wyoming adopted the amended Rule and comments; Maryland adopted the amended Rule and comments except for the second sentence of comment 2; and Oregon adopted the amended Rule but not the comments. Florida and Massachusetts adopted the amended Rule with revisions, while California, Idaho, and Utah rejected it. Alaska, D.C., Indiana, New York, and Washington are considering the amended Rule. Mr. Masciocchi added that ABA Formal Opinion 513 provides an interpretation of the Rule.

Ms. Yates said that, from the Office of Attorney Regulation Counsel’s (OARC) perspective, a wait-and-see approach to the amendments was prudent. She noted that OARC often hears from members of the public who express concern and skepticism about lawyers and that the public may question why a state rejected a Model Rule that addresses lawyers’ duty to detect and avoid involvement in a client’s criminal or fraudulent conduct.

The Committee agreed to take no action on the proposed amendments to Rule 1.16 at this time.

5. NEW BUSINESS.

Discussion of Possible Amendments to Rule 1.5 in Light of the Enactment of HB 25-1090. Ms. Yates discussed the impact of HB 25-1090, a copy of which is in the meeting materials, on Colorado lawyers. Although the General Assembly enacted the bill primarily to address landlord-tenant issues, its scope is much broader. For example, the bill includes new section 6-1-737(2)(a), which provides that:

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.

As relevant to lawyers, section 6-1-737(2)(b) establishes a safe harbor that says a person is compliant with subsection (2)(a) if the person “does not use deceptive, unfair, and unconscionable acts or practices related to the pricing of goods, services, or property” *if* “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” *and* the person “clearly and conspicuously discloses . . . (A) the factors that that determine the total price”; (B) “any mandatory fees associated with the transaction”; and (C) “that the total price of the services may vary.”

Language in Rule 1.5 indicates that use of the form representation agreements included in the Rules are sufficient. In light of the enactment of HB 25-1090, however, a lawyer could, in

theory, fully comply with Rule 1.5 but nonetheless violate the statute. Accordingly, Ms. Yates suggested that the Committee consider amendments to Rule 1.5 to avoid conflicts between the Rule and HB 25-1090. Ms. Yates suggested forming a subcommittee for this purpose.

She explained the history of the bill and explained that it did not get the Colorado Bar Association's attention until it had passed. There may be proposals during the next legislative session to exempt certain industries or professions, but it would be speculative at this time to attempt to predict whether legislators would propose such exemptions and whether they would be adopted.

A member noted that the ABA amended Model Rule 1.13 following Congress's adoption of the Sarbanes-Oxley Act to conform the Model Rule to the Act. The member suggested the possibility of obtaining guidance as to whether the Supreme Court would like the Committee to proposed amendments to Rule 1.5 to conform the Rule to HB 25-1090. The member noted that, if the Supreme Court decided that the bill interfered with the Supreme Court's exclusive jurisdiction to regulate the practice of law, it would not be necessary to consider amendments to Rule 1.5 based on the bill.

Justice Hood commented that, without speaking for the full Court, the Court is unlikely to draw a hard line on the scope of HB 25-1090 based on separation of powers principles and would likely welcome proposed amendments to the Rules.

A member urged the formation of a subcommittee to consider the issue. The member suggested that it would be helpful to provide the Court with proposed Rule amendments or, if the Committee does not propose amendments, a memorandum explaining why it concluded that no Rule amendments were warranted to address HB 25-1090.

A member expressed concerns about the timing of the subcommittee's work because the bill will become effective in January 2026. The member questioned whether a subcommittee could complete its work and submit a presentation to the Committee in sufficient time before the bill's effective date. Chair Lipinsky noted that the Committee could schedule a special meeting, if necessary.

Chair Lipinsky suggested forming a subcommittee to provide a report to the Committee by the end of October. He would then convene a special meeting of the Committee to consider the subcommittee's report and recommendations. Chair Lipinsky asked for volunteers to serve on the subcommittee. Ms. Yates agreed to chair the subcommittee. The members of the subcommittee will be Margaret Funk, Marianne Luu-Chen, Stephen Masciocchi, Cecil Morris, Dick Reeve, Marcus Squarrell, Robert Steinmetz, James Sudler, and Eli Wald. (Alec Rothrock also volunteered to serve on the subcommittee.)

b. Report on the CBA's AI Task Force. Judge Lipinsky informed the Committee that the CBA formed a task force to consider lawyer use of AI. The task force's goals include developing guidelines for lawyer use of AI; drafting technology-related amendments to the Rules, including possible amendments to Rules 1.1, 5.3, and 5.4; recommending expansion of the LLP program; and considering Rule amendments to allow nonlawyer ownership of firms and revenue-sharing with nonlawyers. The task force will form working groups in October. Those

working groups will make recommendations in November. The task force will then present those recommendations to the Executive Council of the Colorado Bar Association in December. The Committee members said they look forward to learning more about the task force.

5. ADJOURNMENT. A motion was made to adjourn at 10:07 a.m. The motion was seconded. The motion carried.

Respectfully submitted,

Troy R. Rackham, Secretary