COLORADO SUPREME COURT

RULES OF PROFESSIONAL CONDUCT STANDING COMMITTEE

Approved Minutes of Meeting of the Full Committee
On
January 23, 2026
Seventy-Ninth Meeting of the Full Committee

The seventy-ninth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened on Friday, January 23, 2026, by Chair Judge Lino Lipinsky de Orlov. Judge Lipinsky took attendance.

Present in person were Judge Lino S. Lipinsky de Orlov (Chair), Justice Maria Berkenkotter, Judge Adam Espinosa, Judge Bryon Large, Cynthia Covell, Matthew Kirsch, Julia Martinez, Stephen Masciocchi, Troy Rackham, Henry Reeve, Alexander Rothrock, David Stark, Fred Yarger, Jessica Yates, and J.J. Wallace.

Present virtually were Judge John R. Webb, Nancy Cohen, Katayoun Donnelly, Thomas E. Downey, Jr., Scott L. Evans, Margaret Funk, Marcy Glenn, Marianne Luu-Chen, Cecil Morris, Noah Patterson, Marcus Squarrell, Robert Steinmetz, and James Sudler.

Sarah Lipka of Colorado Legal Services attended as a guest.

Committee members with excused absences were Justice William Hood, April Jones, Lois Lupica, and Eli Wald.

1. CALL TO ORDER. Judge Lipinsky called the meeting to order at 9:03 a.m. Judge Lipinsky welcomed the members.

2. APPROVAL OF MINUTES OF NOVEMBER 21, 2025. A member moved to approve the minutes, which another member seconded. A vote was taken on the motion to approve the minutes. The motion passed unanimously.

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]. Chair Judge Lipinsky noted that the Colorado Supreme Court approved the proposed revisions to Rule 1.5 relating to HB 25-1090. The Court also approved the proposed revisions related to artificial intelligence. Justice Berkenkotter personally expressed the Court's appreciation for the Committee's extraordinary efforts on the AI-related changes. Judge Lipinsky thanked all members of the AI subcommittee by name. Judge Lipinsky said he informed the American Bar Association (ABA) about the changes.

b. Report from the Rule 6.5 subcommittee [J. Yates]. Ms. Yates presented on the proposed revisions to Rule 6.5 and its comments, which are reflected in the packet circulated to the Committee. Ms. Yates explained the background and purpose of Rule 6.5. The Rule limits conflict-checking obligations in a clinic setting. When the Committee previously discussed Rule 1.2(c), it considered whether a lawyer in a clinic setting needs to obtain informed consent from the client or prospective client for the limited scope of the representation. The proposed revisions attempt to address some of the gaps in Rule 6.5 and include new provisions.

Ms. Yates explained that, although many of the Rules still apply in a clinic setting, there are specific circumstances involved in the provision of legal services in a clinic setting that render some of the Rules inapplicable. For example, because a lawyer in a clinic setting is likely not collecting any papers or financial information, the rules regarding retaining client files or surrendering client files may not apply. Additionally, Ms. Yates explained that the major objective of the proposed revisions to Rule 6.5 and the comments is to attempt to relieve lawyers of some of the obligations of informed consent when the clinic is already doing that for clients or prospective clients. Most clients or prospective clients in a clinic setting seek a limited amount of advice to help them navigate the process of resolving their legal issue or identifying legal issues so they can navigate to an appropriate full scope representation. The provision of legal advice or services in a clinic setting is not a full scope representation. Even so, it is important for lawyers in a clinic setting to ensure that the clients or prospective clients understand that the lawyers must keep information confidential and the individuals can communicate candidly about their legal issue. Most of the clinics have in place policies and agreements with the clients or prospective clients that clearly outline the process, which obviates the need for a volunteer lawyer to spend time reviewing basic background rules for the consultation.

Ms. Yates noted that Ms. Lipka of Colorado Legal Services (CLS) participated in the subcommittee discussions and was invited to comment on the proposed revisions from the perspective of a clinic operator. Ms. Lipka spoke in favor of the proposed revisions to Rule 6.5 and said they would provide clarity for clinic operators and volunteers.

Ms. Yates then addressed the proposed revisions to the Model Policy also included in the meeting packet. The Model Policy is the result of feedback from stakeholders. The Model Policy will provide guidance to clinics and clinic operators, although adoption would not be required. Ms. Yates explained that the proposed Model Policy references LLPs and their potential participation in the clinic setting. The preamble to the LLP Rules advises LLPs to review the lawyer Rules of Professional Conduct for comments and other provisions, including model policies. The proposed Model Policy would help clinics provide ethical guidance to their volunteer lawyers. In most situations, the clinic assumes the responsibility for informing the public about the meaning of being a client in the program and obtaining the client's or prospective client's informed consent.

Ms. Yates invited comments on the proposed Model Policy. A member asked how the proposed Policy would be promulgated. It would be added to the Rules and the stakeholders would promote it to their clinics and other clinic sponsors. A *Colorado Lawyer* article, CLEs, and a story in the semi-monthly OARC newsletter would educate Colorado lawyers about the Model Policy.

Another member asked if the proposed Model Policy would appear after the comments to Rule 6.5. A subcommittee member explained that this is what is intended but it is up to the Court to determine its location in the Rules.

Another member asked if the Model Policy should refer to the comments to Rule 6.5. In response, several members noted that Rule 6.1 does not refer to the model pro bono policy. Some members expressed the desire to have a consistent approach between Rule 6.1 and Rule 6.5.

A member suggested there could be risks if the Committee adopted a Model Policy that lawyers or clinics did not follow. The member expressed concern that adopting the Policy would encourage lawyers and clinics to adopt it immediately, but that implementing the Policy without robust procedures and documentation could present greater risks and less protection for the clinics than not following the Policy diligently. In response, a subcommittee member explained that the stakeholders unanimously supported the adoption of a Model Policy that could be adapted to suit the needs of particular clinics or providers. The stakeholders agreed that a Model Policy would fill gaps where clinics had previously attempted ad hoc solutions in the absence of a policy.

Ms. Lipka explained that CLS already has policies and procedures in place. Adopting a Model Policy would be less beneficial for such organizations than for smaller organizations. Ms. Lipka also said that, after the Policy is adopted, CLS and other organizations could adjust it as new experiences or gaps occur.

A member commented that Rule 6.5 is voluntary and only applies to individual lawyers. A member who worked with a pro bono clinic suggested that the Policy would be very helpful to that and other clinics.

Judge Lipinsky requested comments on the language of the Model Policy. A member referenced the terms "full scale" or "full scope," and suggested these terms should be used consistently in discussions of limited legal services. The subcommittee members agreed with the need for consistency in the nomenclature used.

Several members raised the issue of attorney work product and protection of attorney-client communications in the clinic setting. Members discussed whether the Committee should encourage or permit a participating lawyer or LLP to offer services outside the clinic program for a reduced fee. Another member raised the issue of whether the Model Policy needs to be revised to permit a lawyer to enter into a contingent fee agreement with a clinic participant whose legal matter involves a fee-shifting clause in a contract or a fee-shifting statute. There was a significant discussion about whether the Model Policy would discourage lawyers participating in clinics from taking on a full-service representation through a contingency fee or fee-shifting model. Several members expressed the view that the Model Policy Section X's limitation could be counterproductive because it would discourage taking an engagement where there might be attorney-fee shifting by statute or otherwise.

Members of the subcommittee explained that the subcommittee generally is comfortable with using the nomenclature "full scope" representation to be consistent with terminology used elsewhere in the rules. The subcommittee members expressed skepticism about using new

terminology in the Rules or Model Policy because they use specific language and it is best to incorporate the language that the clinics use.

There was a robust discussion regarding the solicitation issue. The subcommittee considered a number of options to address the risk of violating the solicitation rule. Subcommittee members walked through the language in Section X of the Model Policy, the first few sentences of which came directly from Rule 7.3. Most of the stakeholders and clinics use, in their own agreements, similar language to the last two sentences in the first paragraph of Section X.

A member noted that, first, the Committee could consider striking the sentence that begins "Accordingly," as shown below:

> 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~~.

Second, the Committee could revise the Model Policy to provide an option for recovering fees in fee-shifting or contingent fee situations. Under this proposal, the language of Section X of the Model Rule would say: "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, on a contingent fee basis with no expectation of fee in the absence of a recovery, or when the client's legal matter involves the potential to recover attorney fees through contractual or statutory fee shifting."

A member asked whether any solicitation at a clinic is proper or would violate Rule 7.3 because it would involve one-on-one contact, which increases the risk of improper solicitation. The member voiced support for striking the last sentence of Section X of the Model Policy. The member noted that the ABA's Free Legal Answers has encountered problems when the volunteer lawyers participate to obtain business. This problem exemplifies the member's concerns under Rule 7.3.

A member commented that one reason the clinics take a strict non-solicitation position is that taking a case from the clinic creates an ambiguous situation for the clinic and its malpractice insurance. If the lawyer represents the client in a matter outside the clinic, it could create a gap in coverage or problems for the malpractice insurance applicable to clinics.

A member voiced support for striking the sentence because of Rule 7.3 and because the alternative language would suggest that it may be proper to do something that Rule 7.3 prohibits.

A member asked about the last sentence that says, "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." The member wanted to know what the intention of the language was. A subcommittee member explained that the subcommittee's intention is to be broad because some clinics have a narrow focus, while other clinics provide broader services that may not be covered by Rule 6.5. Another member suggested that the first sentence of the last paragraph in Section X of the Model Policy opens the door to solicitation.

Ms. Lipka expressed the view that, from CLS's perspective, it is important that the proposed Model Policy does not open the door to potential solicitation under Rule 7.3. There has been a long history of interpreting solicitation strictly in the clinic context. Ms. Lipka explained that most of the clinic participants have family law issues and there is significant concern that a clinic could become a means by which volunteer lawyers could solicit family law clients.

A member asked if the Model Policy could simply use the language contained in Rule 6.1(b)(1) and the related comments. Subcommittee members considered this issue but did not support it because, in the clinic context, the lawyer's interaction with the client is short-term. Because the context is limited, converting the interaction with the client at the clinic to a full scope representation would not be consistent with the situations that clinics face most often. As a result, it would probably be better to strike the "accordingly" sentence from Section X of the Model Policy rather than preserving the sentence to address a situation that does not frequently occur.

Another member voiced support for striking the "accordingly" sentence from Section X of the Model Policy because it suggests that it would not be permissible for a lawyer to take on a case if the lawyer volunteered at a clinic, which is not the Model Policy's intention. Another member voiced support for striking the "accordingly" sentence in Section X of the Model Policy for the same reason. The clinic is a short-term commitment that concludes when the participant leaves the clinic.

Judge Lipinsky called for a straw vote on whether members wanted to strike the sentence. The results of the straw poll were unanimous in favor of striking the sentence.

The Committee then discussed Section VII of the proposed Model Policy, which addresses confidentiality. Subcommittee members explained that lawyers do not create work product while at the clinic. They mostly provide oral advice or suggestions to a clinic participant in person, over the phone, or via a remote platform. As a result, it may be unnecessary to address work product and attorney-client privilege issues because those details may be unnecessary in a Model Policy that focuses on spotting issues that may occur in a clinic without providing too much detail.

A member suggested revising the term "lawyer-client privilege" in Section VII of the Model Policy to "attorney-client privilege." The member explained that, because "attorney-client privilege" is a term of art based on the statute, for consistency, the Committee should use it rather than "lawyer-client privilege."

A member asked about the meaning of "anyone within the communication." There was some discussion about the term and whether it created ambiguities. Another member suggested

deleting the phrase "anyone within the communication" in Section VII and replacing it with "a third person." Several members voiced support for that proposal.

Another member suggested replacing the phrase "anyone within the communication" in Section VII to "anyone participating in the communication" because it is clearer and includes both the clinic participant and the lawyer providing the advice. Another member suggested replacing the phrase "anyone within the communication" in Section VII with "any person involved in the communication" because the paragraph uses "involved" earlier in the paragraph. Another member suggested using the term "anyone who witnessed the communication." A subcommittee member explained that this issue is nuanced but was designed to simply identify the issue for clinic participants. The purpose of the paragraph is to warn lawyer participants in a clinic that the presence of a third-party could mean that the communications are not privileged. As a result, the member suggested removing the language after the word "circumstances," so that the paragraph would say:

> 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.

Ms. Lipka voiced support for striking the phrase. The Committee reached a consensus on striking the phrase.

A member suggested amending the proposed revision to Rule 6.5(b). Rule 6.5(a)(2) explains that a "lawyer is subject to Rule 1.10 only if the lawyer." While the references to Rules 6.5(a)(2) and 6.5(b) are redundant, the Model Rule also contains the redundancy. Members discussed whether to remove the redundancy or mirror the Model Rule.

A member also commented on proposed Rule 6.5(a)(4). The member explained that imposing the requirement of surrendering papers is sensible but suggested that the proposed Rule 6.5(a)(4)'s reference to Colo. RPC 1.16(d) implies there would be more obligations than appropriate in a clinic setting. Members of the subcommittee explained that the language in proposed Rule 6.5(a)(4) is designed to address situations where participants leave documents with the clinic (such as an immigration clinic). When that happens, there are obligations to surrender papers to the client despite the clinic setting.

A member noted that Rule 1.16(d) also requires a lawyer to take steps to protect the client upon withdrawal, which would not be applicable to a short-term clinic setting. The language in Rule 6.5(a)(4) would provide that the only applicable part of Rule 1.16(d) is the obligation to surrender papers.

A member suggested revising Rule 6.5(a)(4) to provide that the obligations imposed by Rule 1.16(d) apply only to the limited obligation to surrender papers. Another member suggested tracking the language in Rule 6.5(a)(1) and (2) by saying in (4) that "is subject to Rule 1.16(d)'s requirement to surrender papers or property to which the client is entitled only if the lawyer received papers from the client at the clinic."

A member expressed concern about the first clause of Rule 6.5(a)(4). The language seems to impose obligations on lawyers when the clinic may maintain the participants' papers or property. The language may be unfair to the volunteer lawyers at a clinic.

A member suggested that the purpose of Rule 6.5(b) is to clarify that, if a lawyer's participation in a clinic results in a conflict, the conflict should not be imputed to the entire firm.

Ms. Yates expressed her appreciation to the Committee members for their thoughtful feedback. The subcommittee will consider the feedback and make additional revisions to proposed Rule 6.5 and the Model Policy.

4. NEW BUSINESS [Judge Lipinsky]**.** Judge Large explained that the ABA House of Delegates is considering potential revisions to Model Rule 1.14 at the February meeting of the ABA House of Delegates. Colorado's delegates to the ABA House of Delegates are interested in any feedback on the proposed revisions to Model Rule 1.14. The ABA House of Delegates meeting is scheduled for February 9, 2026. Several members suggested sending the proposed Model Rule 1.14 revisions to the Trust and Estates Section of the Colorado Bar Association for review and comment.

5. ADJOURNMENT. A motion was made and seconded to adjourn the meeting. The motion carried. The meeting was adjourned at 10:49 a.m.

6. NEXT MEETINGS. The next meetings of the Committee will be on April 24, 2026; July 24, 2026; and September 25, 2026.

Respectfully submitted,

Troy R. Rackham, Secretary