Colorado Supreme Court Standing Committee On The Colorado Rules Of Professional Conduct

Agenda

July 24, 2026, 9:00 a.m.
The Supreme Court Conference Room and via Webex

Webex link:
https://judicial.webex.com/judicial/j.php?MTID=mbacd99c80e68736dd6324d84e010dede

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1. Call to Order [Judge Lipinsky].

2. Approval of minutes for April 24, 2026, meeting [attachment 1].

3. Recognition of Cindy Covell's and Marcus Squarrell's service on the Committee.

4. Old business:

   a. Report from the Rule 6.5 subcommittee [Jessica Yates] [attachment 2].

   b. Report on the enactment of HB 26-1421 and SB 26-174 [Jessica Yates] [attachment 3].

   c. Report on states' adoption of Model Rule 1.16 [Steve Masciocchi] [attachment 4].

5. New business.

   a. Report on the Colorado Bar Association's AI Task Force's recommendations [Gene Commander, guest] [attachment 5].

   b. Report on other states' AI-related amendments to their ethics rules [Steve Masciocchi] [attachment 6].

c. Report on the proposed changes to the ABA's Model Rules of Professional Conduct [Judge Large] [attachment 7].

6. Adjournment.

Upcoming meeting dates: **October 2, 2026** (note change in meeting date); and January 22, 2027.

Judge Lino Lipinsky, Chair
Colorado Court of Appeals
lino.lipinsky@judicial.state.co.us

Attachment 1

COLORADO SUPREME COURT
RULES OF PROFESSIONAL CONDUCT STANDING COMMITTEE

Approved Minutes of Meeting of the Full Committee
on
April 24, 2026
Eightieth Meeting of the Full Committee

The eightieth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened on Friday, April 24, 2026, by Chair Judge Lino S. Lipinsky de Orlov. Judge Lipinsky took attendance.

Present in person were Judge Lipinsky (Chair), Justice Maria Berkenkotter, Nancy Cohen, Cynthia Covell, Katayoun Donnelly, Judge Adam Espinosa, Margaret Funk, Matthew Kirsch, Judge Bryon Large, Julia Martinez, Noah Patterson, Alexander Rothrock, Marcus Squarrell, David Stark, and Jessica Yates.

Present virtually were Thomas E. Downey, Jr., Marcy Glenn, April Jones, Lois Lupica, Marianne Luu-Chen, Cecil Morris, Robert Steinmetz, Jamie Sudler, and Judge John R. Webb.

Also present were guests Tracy Harper of Catholic Charities, Sarah Lipka of Colorado Legal Services, and Toni-Anne Nunez of Mi Casa.

Committee members with excused absences were Scott L. Evans, Justice William Hood, Stephen Masciocchi, Troy Rackham, Henry Reeve, Eli Wald, and Fred Yarger.

1. CALL TO ORDER.

Judge Lipinsky called the meeting to order shortly after 9:00 a.m. He advised members that the meeting would utilize an AI-enabled Webex transcription tool for internal note-taking. Members and guests introduced themselves for the record.

2. APPROVAL OF MINUTES OF JANUARY 23, 2026, MEETING.

A motion was made and seconded to approve the minutes of the January 23, 2026 meeting. No corrections were offered. The motion passed unanimously.

3. OLD BUSINESS

Report from the Rule 6.5 Subcommittee.

Ms. Yates thanked the members of the subcommittee and outside stakeholders who had assisted in the drafting process, including representatives of clinic providers. She stated that their operational experience had helped the subcommittee identify practical issues not apparent from the text of the existing rule.

Ms. Yates explained that the principal revisions since the prior meeting concerned the treatment of Rule 1.16 in the short-term limited legal services context. The subcommittee concluded that the prior proposal required additional precision because volunteer lawyers in clinic settings enter into a genuine but temporary attorney-client relationship, and the rule should recognize that reality without imposing the full range of obligations associated with conventional ongoing representation.

She explained that the draft had therefore separated prior references to Rule 1.16 into distinct paragraphs addressing different duties, including termination of representation, surrender of papers or property, and client-file obligations.

Members first discussed paragraph (4), which concerns termination of representation. Some members suggested that the text should expressly reference Rule 1.16(A), while others noted that the intended cross-reference might instead be to Rule 1.16(b). The Committee discussed whether the text should state that the lawyer is "subject to Rule 1.16" or "subject to the requirements of Rule 1.16," with several members favoring wording that more clearly identified the applicable portions of the rule.

The Committee then turned to paragraph (5), which addresses papers, property, and client-file obligations. A member asked whether the paragraph was intended to apply only to originals, noting that many clinics receive copies rather than original records. In response, participants familiar with immigration and family law clinics stated that clients frequently bring mixed sets of originals and copies, and programs often immediately return whatever documents are presented after making copies when resources permit.

Members then engaged in extensive discussion regarding the phrase "client file." Several members noted that modern client files are rarely unitary collections of papers and instead may consist of emails, electronic scans, notes, and materials held in multiple locations. One member expressed concern that the phrase "creates a client file" suggested a formal process inconsistent with Rule 1.16 jurisprudence, under which a file may simply consist of whatever materials exist relating to the representation.

Other members responded that many Rule 6.5 clinics do not create any file for a one-time thirty-minute consultation and that the proposal sought to make clear that volunteer lawyers should not be deemed to have created a file merely because a clinic collected intake information.

Representatives of clinic providers described varying practices. Some clinics maintain no file for brief consultations and return all documents immediately. Other programs create electronic files if the client later requires additional services. Certain clinics preparing powers of attorney or similar documents retain copies so elderly clients may later obtain replacements.

The Committee next debated the proposed phrase "or the sponsoring program." Several members expressed concern that retaining this language could impose obligations on a volunteer lawyer based on documents collected or retained by an organization with which the lawyer had only a one-day relationship. Other members noted that sponsoring organizations often function operationally as law offices and that some responsible lawyer should bear obligations concerning retained materials.

One member proposed deleting the phrase "or the sponsoring program" entirely. Another suggested that, if the concern involved lawyers who direct clinic operations, separate language should address lawyers managing such programs rather than imposing duties on all volunteers.

The Committee then discussed alternative limiting language for paragraph (5). Suggestions included:

(1) retaining the phrase "only if the lawyer creates a client file";

(2) revising the text to read "only if the lawyer has a client file";

(3) revising the text to read "only if the lawyer retains documents or information relating to the representation of the client"; and

(4) eliminating the final limiting clause and relying on the opening language of the paragraph.

Some members favored the "retains documents or information" formulation because it focuses on possession of materials rather than metaphysical questions about what constitutes a file. Others believed that formulation might sweep too broadly and inadvertently include informal notes or temporary materials.

Several members emphasized that the central policy objective of Rule 6.5 is to encourage volunteer participation in pro bono clinics. They cautioned that imposing uncertain file retention duties could discourage lawyers from serving. Other members emphasized that vulnerable clients may later need copies of applications, affidavits, or other materials prepared during clinic representation, and that the rule should not inadvertently leave such clients unprotected.

The Committee also discussed whether explanatory comments should accompany any revision. Proposed comment language would clarify that: (a) Rule 6.5 does not require a volunteer lawyer to create a file solely because the lawyer participates in a clinic; (b) program administrative records such as intake sheets are not necessarily part of a client file; and (c) when a lawyer independently retains substantive client materials, ordinary obligations under Rule 1.16 may apply.

Ms. Yates stated that the subcommittee's broader objective was to move key obligations from comments into rule text wherever feasible so that volunteer lawyers could understand their duties without navigating multiple comments and cross-references.

After substantial discussion, the Chair concluded that further drafting refinement would be beneficial. No final vote was taken on the proposed language. The Rule 6.5 subcommittee was requested to continue its work and return with revised language for future consideration.

4. NEW BUSINESS.

a. ABA Amendments to Model Rule 1.14.

Judge Lipinsky discussed the recent amendments to American Bar Association Model Rule 1.14 concerning clients with diminished capacity or decision-making limitations. Members observed that the revised model language appeared clearer and less paternalistic than earlier formulations.

The Committee formed a subcommittee to study the amendments and consider whether the Committee should recommend conforming changes to the Colorado Rules. Mr. Rothrock agreed to serve as chair and Ms. Covell, Ms. Donnelly, Ms. Funk, and Ms. Luu-Chen also volunteered to participate. The subcommittee will report back at a future meeting.

b. Legislative Update.

Ms. Yates provided an update regarding HB 26-1421, which would impact the regulation of the legal profession in Colorado by addressing nonlawyer ownership interests in law firms. The Committee also discussed SB 26-174, which concerns lead-generation marketing practices.

Members discussed possible implications for access to justice, innovation in delivery of legal services, preservation of the Supreme Court's regulatory authority, and consumer protection. No formal action was taken.

c. Committee Membership and Terms.

Judge Lipinsky advised that several committee members' terms would expire in coming months and encouraged members to consider renewal. He thanked the members whose service was concluding and expressed appreciation for their contributions to the Committee's work.

d. AI Developments.

Members briefly discussed developments involving artificial intelligence, including use of AI tools for proofreading publicly available documents. Members also noted that other jurisdictions have begun adopting procedural rules requiring disclosure of AI-generated evidence or addressing deepfake concerns.

5. FUTURE MEETINGS.

The Committee confirmed that the next meeting would be held on July 24, 2026. The fall meeting date was changed to October 2, 2026, to accommodate scheduling conflicts.

6. ADJOURNMENT.

There being no further business, a motion to adjourn was made, seconded, and approved unanimously. The meeting was adjourned.

Respectfully submitted,

J.J. Wallace, Acting Secretary

Attachment 2

COLORADO SUPREME COURT
ATTORNEY REGULATION COUNSEL

Attorneys' Fund for Client Protection
Unauthorized Practice of Law

July 15, 2026

Via Email: lino.lipinsky@judicial.state.co.us
Judge Lino S. Lipinsky de Orlov
2 East 14th Avenue
Denver, CO 80203

Re: Subcommittee Transmittal for Proposed Changes to Colo. RPC 6.5 and Comments, and Proposed Model Policy

Dear Judge Lipinsky:

On behalf of the subcommittee formed to review and propose changes to Colo. RPC 6.5, Nonprofit and Court-annexed Limited Legal Services Programs (the "Subcommittee"), we hereby tender the following proposal for consideration by the Standing Committee on the Rules of Professional Conduct. This is the third time we have presented to the Standing Committee, and we hope we have fully addressed concerns expressed by its members.

Background:

As you may recall, the Subcommittee was created months ago after the Committee discussed the requirement to obtain 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 and 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, so they could set clear policies for their volunteer lawyers and LLPs. Indeed, organizational policies that are consistent with volunteers' professional obligations may help assure prospective and current volunteers that participating in a clinic does not materially increase their risk of legal exposure in the practice of law. Accordingly, the Subcommittee developed and tendered as an addendum to Rule 6.5 such guidance entitled "Navigating Limited Legal Services in Colorado – A Model Policy for Programs" ("Model Policy").

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.

Our first presentation to this Committee was January 23, 2026. Our April 15, 2026 transmittal memo summarized feedback we received during that meeting and changes made to address that feedback. This transmittal memo summarizes feedback received during the April 24, 2026 meeting and changes made to address that feedback.

Changes from Proposal as Presented April 24, 2026

The full Committee in April focused most of its feedback on the proposed changes to the text of Colo. RPC 6.5, namely the provisions addressing the applicability of Colo. RPC 1.16(d) and Colo. RPC 1.16A. Members of the

Committee offered suggested edits during and immediately after the meeting, including separating the single section that had addressed the applicability of these two rules into a discrete section addressing each rule. Feedback from individual members of the Committee included that: Rule 6.5 should not inadvertently and erroneously suggest that all lawyers/LLPs must create a "client file" in any representation of a client; and the Rules of Professional Conduct do not apply directly to clinic programs, so it may not be appropriate to refer in the rule to any obligations of a "sponsoring program" in conjunction with the possibility that a clinic might retain client documents.

The Subcommittee met and discussed Committee members' feedback and suggested edits to the proposal. It agreed on a version of those suggested edits.

The Subcommittee has made no further changes to the Model Policy.

Attached are:

- Proposed changes to Colo. RPC 6.5 and Comments redlined against the current Colo. RPC 6.5 and Comments
- A redline with yellow highlights showing where changes were made from the proposal tendered to the Committee at the April 24, 2026 meeting
- Clean version of proposed changes to Colo. RPC 6.5 and Comments
- Clean version of the proposed Model Policy

As always, please let me know if you have any questions.

Sincerely,

Jessica E. Yates
Attorney Regulation Counsel

JEY/kp
Enclosures

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 the provisions of Rule 1.16 regarding termination of the representation only if the lawyer's representation of the client continues beyond the short-term limited legal services as established and defined by the program pursuant to the program's terms and conditions for participating clients; and

(5) is subject to the requirement in Rule 1.16(d) to surrender papers and property to which the client is entitled only if the lawyer collects and retains papers or property from participating clients; and

(6) is subject to Rule 1.16A only if the lawyer creates a client file. Program administrative information is not part of "a client's file" for purposes of Rule 1.16A.

(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, ~~S~~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] ~~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.

Changes from April 24, 2026, see yellow highlighting

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;

(4) is subject to the provisions of Rule 1.16~~’s provisions~~ regarding termination of the representation only if the lawyer’s representation of the client continues beyond the short-term limited legal services as established and defined by the program pursuant to the program’s terms and conditions for participating clients; and

(5) is subject to ~~Rule 1.16A and~~ the requirement in 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~~or property from participating clients; and

(6) ~~, and~~ is subject to Rule 1.16A only if the lawyer creates a client file~~, and is subject to Rule 1.16A only if the lawyer creates a client file.~~. Program administrative information is not part of “a client’s file” ~~part~~for purposes of ~~of the client file~~Rule 1.16A.

(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 terminates 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, ~~S~~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] ~~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]. For example, the communication could include a statement that a full-scope representation is 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, but it 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 a program conditions a client's participation 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;

(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 the provisions of Rule 1.16 regarding termination of the representation only if the lawyer's representation of the client continues beyond the short-term limited legal services as established and defined by the program pursuant to the program's terms and conditions for participating clients; and

(5) is subject to the requirement in Rule 1.16(d) to surrender papers and property to which the client is entitled only if the lawyer collects and retains papers or property from participating clients; and

(6) is subject to Rule 1.16A only if the lawyer creates a client file. Program administrative information is not part of "a client's file" for purposes of Rule 1.16A.

(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).

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[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 their 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 a clinic model, including limited appearances within a court case, providing advice or brief service, and drafting pleadings. See Colo. RP.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 Colo. RPC 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 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-scope legal representation, it is committed to safeguarding the interests of both clients and participating lawyers/LLPs and to 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 who requests 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 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 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 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. Someone who decides to become a client of the program by receiving short-term limited legal services is 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 providing 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 for 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 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 attorney-client privilege or LLP-client privilege in certain circumstances. 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 orally 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 orally 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 or LLP'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 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 retain the client documents. 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.

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.

Attachment 3

Colorado Bans Private Equity Fee Sharing and Lead Generation: A Primer on HB26-1421 and SB26-174

COURSE BOOK VERSION 1.0

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Colorado Bans Private Equity Fee Sharing and Lead Generation
July 17, 2026

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Source Code: LI071726W

1290 Broadway, Suite 1700, Denver, Colorado 80203 | (303) 860-0608
clereception@cobar.org | cle.cobar.org

AGENDA

12:00 pm: **Colorado Bans Private Equity Fee Sharing and Lead Generation: A Primer on HB26-1421 and SB26-174**

The Colorado Legislature recently passed two laws that may impact your practice. First, HB26-1421 bans "Alternate Business Structures" allowing non-lawyer ownership in law firms, co-counseling with ABS firms, and certain types of Managed Services Organization arrangements in Colorado. Second, SB26-174 bans what is commonly known as "lead generation" for Colorado law firms. Specifically, it bans buying or selling leads or cases on a per-lead or per-case basis. It does not prohibit traditional legal marketing, legal directories, or using non-profits like the CBA to acquire cases. Join Kevin Cheney and Jason Wesoky, two of the primary authors of both bills, as they break down the new laws and how they impact the practice of law in Colorado.

*Presented by **Kevin Cheney, Esq.,** Cheney Galluzzi & Howard, LLC, and **Jason Wesoky, Esq.,** Ogborn Mihm LLP.*

BIOGRAPHICAL INFORMATION

FACULTY

Kevin Cheney, Esq., is the managing partner of Cheney Galluzzi & Howard, LLC. Kevin co-founded CGH at his dining room table with his best friend from law school the day they got admitted to the bar. Nine and a half years later, the firm has grown to 6 lawyers and 24 staff members and helps hundreds of people per year. Kevin is most proud of the fact that CGH has tried 17 cases to verdict over the last few years and that it is routinely selected as one of the best places to work—across all industries—in the State of Colorado. When he isn't working, Kevin enjoys dancing to electronic music at Red Rocks and hanging out with his wife, Reena, and their giant Newfoundland, Mr. Pancake.

Jason Wesoky, Esq., grew up in Colorado, attended college at Miami University in Oxford, Ohio where he was a Division I swimmer all four years, and then went to Catholic University of America Law School in Washington, D.C. where he graduated Magna Cum Laude and was selected to be the student commencement speaker. Jason worked for a year in D.C. and Baltimore doing civil litigation. In 2002, he moved back to his home state of Colorado where he worked for two top 100 law firms and clerked for United Court of Appeals for the Tenth Circuit judge Timothy Tymkovich. Jason's has worked at Perkins Coie, Brownstein, Frank Azar's, Darling Milligan, and now Ogborn Mihm. His accomplishments and trial work have been recognized by his peers and various publications, including Super Lawyers, where he has been a Rising Star and Super Lawyer since 2013. He is current President of the Colorado Trial Lawyers Association and recently became a member of ABOTA. Jason has first-chaired 20 jury trials, dozens of other bench trials/arbitrations/dipositive hearings and has argued more than 20 cases before various courts of appeal, including the Tenth Circuit, the Colorado Court of Appeals, and the Colorado Supreme Court.

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SECTION 1

Colorado Bans Private Equity Fee Sharing and Lead Generation: A Primer on HB26-1421 and SB26-174

CBA
CLE

Presented by

Kevin Cheney, Esq.
Cheney Galluzzi & Howard, LLC
Denver, CO

Jason Wesoky, Esq.
Ogborn Mihm LLP
Denver, CO

An Act

SENATE BILL 26-174

BY SENATOR(S) Roberts, Ball, Benavidez, Bridges, Cutter, Daugherty, Exum, Kipp, Rodriguez, Snyder, Wallace, Coleman;
also REPRESENTATIVE(S) Carter and Soper, Garcia, Clifford, Hamrick, Lindsay, Mabrey, Nguyen, Phillips, Rutinel.

CONCERNING THE PROHIBITION OF LEAD GENERATION MARKETING FOR LEGAL SERVICES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 6-1-105, **add** (1)(tttt) as follows:

6-1-105. Unfair or deceptive trade practices - definitions.

(1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(tttt) VIOLATES SECTION 6-1-741.

SECTION 2. In Colorado Revised Statutes, **add** 6-1-741 as follows:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

6-1-741. Lead generation legal marketing - deceptive trade practice - enforcement - penalties - rules - definitions - legislative declaration.

(1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) CONSISTENT WITH RULES ADOPTED BY THE COLORADO SUPREME COURT REGARDING THE PRACTICE OF LAW BY ATTORNEYS AND LICENSED LEGAL PARAPROFESSIONALS, TRADITIONAL LEGAL MARKETING ALLOWS ATTORNEYS AND LAW FIRMS TO ADVERTISE THEIR SERVICES WHILE CLEARLY IDENTIFYING THEMSELVES AND ALLOWING CONSUMERS TO MAKE INFORMED DECISIONS REGARDING THEIR LEGAL REPRESENTATION;

(b) LEAD GENERATION LEGAL MARKETING FOR LEGAL SERVICES INVOLVES THIRD PARTIES THAT SOLICIT CONSUMERS WHO MAY NEED LEGAL SERVICES BY OBTAINING THE CONSUMER'S PERSONAL INFORMATION AND INFORMATION ABOUT THE CONSUMER'S LEGAL ISSUE AND THEN SELLING THAT INFORMATION TO ATTORNEYS OR LAW FIRMS;

(c) LEAD GENERATION LEGAL MARKETING FOR LEGAL SERVICES IS INHERENTLY MISLEADING TO CONSUMERS BECAUSE THE PERSON CONDUCTING THE LEAD GENERATION LEGAL MARKETING PURPORTS TO BE AN ATTORNEY OR REPRESENTATIVE FROM A LAW FIRM BUT IS ACTUALLY NOT AN ATTORNEY OR LAW-FIRM REPRESENTATIVE;

(d) LEAD GENERATION LEGAL MARKETING FIRMS TYPICALLY USE "BAIT-AND-SWITCH" TACTICS, "LOOK-ALIKE" ADVERTISING, IMPERSONATION, FRAUD, AND OTHER DECEPTIVE ADVERTISING PRACTICES TO TARGET INJURED OR VULNERABLE CONSUMERS WHO ARE IN NEED OF LEGAL REPRESENTATION;

(e) LEAD GENERATION LEGAL MARKETING ALSO MISLEADS THE ATTORNEYS OR LAW FIRMS THAT PURCHASE THE CONSUMER INFORMATION FROM THE LEAD GENERATION LEGAL MARKETING ORGANIZATION BECAUSE THE CONSUMER INFORMATION IS OFTEN SOLD TO MULTIPLE FIRMS, THE INFORMATION IS ERRONEOUS, OR THE INFORMATION DOES NOT REPRESENT A VIABLE LEGAL CASE;

(f) BECAUSE OF THE HARM THAT LEAD GENERATION LEGAL MARKETING CAN HAVE ON CONSUMERS, ATTORNEYS, AND THE LEGAL

PROFESSION, IT IS IMPERATIVE THAT THIS PRACTICE BE PROHIBITED IN THE STATE AND ENFORCED THROUGH CIVIL AND CRIMINAL PENALTIES;

(g) CIVIL AND CRIMINAL VIOLATIONS RELATED TO THE PRACTICE OF LEAD GENERATION LEGAL MARKETING ARE CAPABLE OF BEING ENFORCED BY THE ATTORNEY GENERAL AND THE STATE'S DISTRICT ATTORNEYS UNDER THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, AND THE COLORADO CRIMINAL CODE, INCLUDING, BUT NOT LIMITED TO, CRIMINAL IMPERSONATION, FRAUD, AND RACKETEERING; AND

(h) THEREFORE, IT IS IN THE BEST INTEREST OF COLORADANS TO PROHIBIT PERSONS THAT CONDUCT LEAD GENERATION LEGAL MARKETING FOR LEGAL SERVICES FROM DOING BUSINESS IN THE STATE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) (I) "LEAD GENERATION LEGAL MARKETING" MEANS ANY FORM OF MARKETING IN WHICH AN ATTORNEY, LAW FIRM, OR LICENSED LEGAL PARAPROFESSIONAL PAYS MONEY OR OTHER COMPENSATION TO A THIRD PARTY TO RECEIVE INFORMATION ABOUT A POTENTIAL CLIENT OR CASE, WHICH INFORMATION MAY INCLUDE THE POTENTIAL CLIENT'S CONTACT INFORMATION OR INFORMATION ABOUT THE POTENTIAL CLIENT'S LEGAL ISSUE.

(II) "LEAD GENERATION LEGAL MARKETING" INCLUDES MARKETING IN WHICH COMPENSATION IS PROVIDED TO A THIRD PARTY DIRECTLY, INDIRECTLY, ON A PER-LEAD OR PER-CASE BASIS, OR AS A SUBSCRIPTION MODEL AND INCLUDES COMPENSATION MADE THROUGH INTERMEDIARIES, AFFILIATES, OR OTHER ENTITIES.

(III) "LEAD GENERATION LEGAL MARKETING" DOES NOT INCLUDE THE SHARING OF FEES BETWEEN LICENSED ATTORNEYS, LAW FIRMS, OR LICENSED LEGAL PARAPROFESSIONALS SO LONG AS THE FEES ARE SHARED IN COMPLIANCE WITH STATE LAW AND RULES ADOPTED BY THE COLORADO SUPREME COURT.

(b) (I) "TRADITIONAL LEGAL MARKETING" MEANS MARKETING DONE BY AN ATTORNEY, LAW FIRM, OR LICENSED LEGAL PARAPROFESSIONAL, OR BY A THIRD PARTY ON BEHALF OF AN ATTORNEY, LAW FIRM, OR LICENSED

LEGAL PARAPROFESSIONAL, DURING WHICH MARKETING THE ATTORNEY, LAW FIRM, OR LICENSED LEGAL PARAPROFESSIONAL THAT IS ADVERTISING THEIR SERVICES IS CLEARLY IDENTIFIED TO THE CONSUMER.

(II) "TRADITIONAL LEGAL MARKETING" INCLUDES, BUT IS NOT LIMITED TO, SEARCH ENGINE OPTIMIZATION, PAY-PER-CLICK INTERNET ADVERTISING, RADIO ADVERTISING, TELEVISION ADVERTISING, STREAMING ADVERTISING, BILLBOARD ADVERTISING, AND LISTING IN LEGAL DIRECTORIES IN WHICH THE NAME OR IDENTITY OF THE ATTORNEY, LAW FIRM, OR LICENSED LEGAL PARAPROFESSIONAL IS CLEARLY DISCLOSED.

(3) CONSISTENT WITH RULES ADOPTED BY THE COLORADO SUPREME COURT REGARDING THE PRACTICE OF LAW BY ATTORNEYS AND LICENSED LEGAL PARAPROFESSIONALS, AND UNLESS A PERSON MEETS THE CRITERIA DESCRIBED IN SUBSECTION (4) OF THIS SECTION, A PERSON SHALL NOT:

(a) PAY MONEY OR OTHER COMPENSATION FOR LEAD GENERATION LEGAL MARKETING SERVICES IN THE STATE;

(b) ENGAGE IN THE PRACTICE OF LEAD GENERATION LEGAL MARKETING IN THE STATE; OR

(c) SELL LEADS TO AN ATTORNEY, LAW FIRM, OR LICENSED LEGAL PARAPROFESSIONAL IN THE STATE.

(4) A PERSON MAY SOLICIT A POTENTIAL CLIENT OR MARKET FOR LEGAL SERVICES IN THE STATE IF THE PERSON IS:

(a) AUTHORIZED BY THE COLORADO SUPREME COURT TO PRACTICE LAW IN THE STATE;

(b) WORKING ON BEHALF OF A PERSON AUTHORIZED BY THE COLORADO SUPREME COURT TO PRACTICE LAW IN THE STATE, AND THE PERSON WHO IS AUTHORIZED TO PRACTICE LAW IN THE STATE OR THE LAW FIRM OR BUSINESS FOR WHICH THE PERSON WORKS IS CLEARLY IDENTIFIED IN ANY ADVERTISEMENT, MARKETING MATERIAL, INFORMATION, OR RESOURCES; OR

(c) A NONPROFIT ORGANIZATION THAT ENGAGES IN LEGAL SERVICES IN THE STATE.

(5) THIS SECTION DOES NOT PROHIBIT A PERSON FROM ENGAGING IN THE PRACTICE OF TRADITIONAL LEGAL MARKETING.

(6) (a) A COURT MAY ORDER INJUNCTIVE RELIEF IN A CIVIL ACTION BROUGHT PURSUANT TO THIS SECTION.

(b) AN ATTORNEY, LAW FIRM, OR LICENSED LEGAL PARAPROFESSIONAL OR ANY CONSUMER WHO HAS BEEN AFFECTED BY LEAD GENERATION LEGAL MARKETING MAY BRING A CIVIL ACTION TO ENFORCE THIS SECTION.

(c) IF A PERSON IS HELD TO BE IN VIOLATION OF THIS SECTION AS A RESULT OF A CIVIL ACTION, THE CLAIMANT IS ENTITLED TO DAMAGES IN THE AMOUNT OF TEN THOUSAND DOLLARS PER VIOLATION, PLUS REASONABLE ATTORNEY FEES AND COSTS.

(7) THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY MAY BRING A CRIMINAL ACTION AGAINST A PERSON THAT ENGAGES IN THE PRACTICE OF LEAD GENERATION LEGAL MARKETING IF THE ATTORNEY GENERAL OR DISTRICT ATTORNEY DETERMINES THAT THE PERSON'S ACTIONS CONSTITUTE A CRIME PURSUANT TO THE COLORADO CRIMINAL CODE, INCLUDING:

(a) CRIMINAL IMPERSONATION, AS DESCRIBED IN SECTION 18-5-113;

(b) OFFENSES INVOLVING FRAUD, AS DESCRIBED IN ARTICLE 5 OF TITLE 18;

(c) RACKETEERING ACTIVITY, AS DEFINED IN SECTION 18-17-103 (5); OR

(d) ANY OTHER CRIME UNDER COLORADO LAW.

(8) THE ATTORNEY GENERAL MAY ADOPT ANY RULES NECESSARY TO ENFORCE THIS SECTION.

(9) THIS SECTION DOES NOT LIMIT THE COLORADO SUPREME COURT'S RULE-MAKING AUTHORITY, DECISION-MAKING AUTHORITY, OR ENFORCEMENT AUTHORITY RELATED TO THE PRACTICE OF LAW IN THE STATE, INCLUDING THE UNAUTHORIZED PRACTICE OF LAW.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie,
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED on Wednesday June 3rd 2026 at 4:30pm
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

An Act

HOUSE BILL 26-1421

BY REPRESENTATIVE(S) Mabrey and Caldwell, Brown, Carter, Duran, Garcia, Hamrick, Jackson, Joseph, Lieder, Lindsay, McCormick, Nguyen, Rutinel, Sirota, Titone, Willford, Zokaie, McCluskie, Bacon;
also SENATOR(S) Daugherty and Frizell, Amabile, Benavidez, Kipp, Snyder, Coleman.

CONCERNING PROHIBITING CERTAIN COMPENSATION ARRANGEMENTS IN THE LEGAL PROFESSION, AND, IN CONNECTION THEREWITH, CREATING THE "COLORADO LEGAL PRACTICE INTEGRITY AND FEE-SHARING PROHIBITION ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 4 to article 93 of title 13 as follows:

PART 4
COLORADO LEGAL PRACTICE INTEGRITY AND
FEE-SHARING PROHIBITION ACT

13-93-401. Short title.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THE SHORT TITLE OF THIS PART 4 IS THE "COLORADO LEGAL PRACTICE INTEGRITY AND FEE-SHARING PROHIBITION ACT".

13-93-402. Legislative declaration.

(1) THE GENERAL ASSEMBLY FINDS THAT:

(a) THE RULES OF THE COLORADO SUPREME COURT GOVERNING THE PRACTICE OF LAW UNDERSCORE THAT THE INDEPENDENT PROFESSIONAL JUDGMENT OF LAWYERS IS ESSENTIAL TO THE FAIR ADMINISTRATION OF JUSTICE AND RESTRICT THE SHARING OF LEGAL FEES WITH NONLAWYERS AND NONLAWYER OWNERSHIP OR CONTROL OF A LAW FIRM;

(b) FINANCIAL ARRANGEMENTS THAT PROVIDE NONLAWYERS WITH AN ECONOMIC INTEREST IN LAW FIRMS AND THEIR FEES, REVENUES, OR CASE OUTCOMES, HOWEVER STRUCTURED, THREATEN A LAWYER'S DUTIES OF LOYALTY TO THEIR CLIENT, CONFIDENTIALITY, AND PROFESSIONAL INDEPENDENCE;

(c) EVEN MINIMAL NONLAWYER OWNERSHIP OR PROFIT PARTICIPATION IN LAW FIRMS COMPROMISES PUBLIC TRUST IN THE LEGAL PROFESSION;

(d) ALTERNATIVE BUSINESS STRUCTURES HAVE INCREASINGLY BEEN USED TO CIRCUMVENT LONGSTANDING PROHIBITIONS ON NONLAWYER OWNERSHIP OF LAW FIRMS AND THE CONCOMITANT SHARING OF ATTORNEY FEES; AND

(e) COLORADO HAS A COMPELLING INTEREST IN REGULATING THE PROVISION OF LEGAL SERVICES AFFECTING COLORADO CLIENTS, REGARDLESS OF WHERE A LAWYER OR LAW FIRM IS LOCATED.

(2) THE GENERAL ASSEMBLY THEREFORE DECLARES THAT THE PURPOSES OF THIS PART 4 ARE TO:

(a) PROHIBIT NONLAWYER OWNERSHIP AND FEE SHARING IN THE PROVISION OF LEGAL SERVICES TO THIRD PARTIES;

(b) PREVENT CONTRACTUAL FORMALITIES OR OUT-OF-STATE ENTITIES FROM CIRCUMVENTING THIS PROHIBITION;

(c) PROTECT CLIENTS AND THE INTEGRITY OF THE LEGAL PROFESSION IN COLORADO; AND

(d) PROVIDE EFFECTIVE ADDITIONAL ENFORCEMENT MECHANISMS FOR PROFESSIONALS AND CLIENTS IN COLORADO.

(3) IT IS NOT THE INTENT OF THE GENERAL ASSEMBLY TO:

(a) PROHIBIT OR RESTRICT THE ABILITY OF CREDITORS OR LAWFUL ASSIGNEES OF CLAIMS TO ENFORCE THE CLAIMS, INCLUDING THROUGH THE USE OF LAWYERS; OR

(b) ALTER LONGSTANDING PRACTICES RELATED TO DEBT COLLECTION IF LEGAL SERVICES ARE RENDERED IN COMPLIANCE WITH APPLICABLE RULES OF PROFESSIONAL CONDUCT.

13-93-403. Definitions.

AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ALTERNATIVE BUSINESS STRUCTURE" MEANS AN ENTITY OR ORGANIZATIONAL STRUCTURE, WHEREVER ORGANIZED OR DENOMINATED, THAT:

(a) EITHER:

(I) ECONOMICALLY PARTICIPATES IN, PROVIDES, OR HOLDS ITSELF OUT AS PROVIDING LEGAL SERVICES TO THIRD PARTIES OR THAT EXERCISES CONTROL OVER THE PROVISION OF LEGAL SERVICES TO THIRD PARTIES; OR

(II) SHARES IN PROFITS OR PERCENTAGES OF LEGAL FEES OR AMOUNTS AWARDED TO OR RECEIVED BY A LAWYER OR LAW FIRM AS A RESULT OF THE PROVISION OF LEGAL SERVICES, DIRECTLY OR INDIRECTLY, REGARDLESS OF WHETHER THE ENTITY OR ORGANIZATIONAL STRUCTURE EXERCISES ANY CONTROL OVER LEGAL SERVICES; AND

(b) IS OWNED BY, IS CONTROLLED BY, OR ECONOMICALLY PARTICIPATES IN OR IS FEE SHARING WITH, DIRECTLY OR INDIRECTLY, ONE OR MORE NONLAWYERS.

(2) (a) "ECONOMICALLY PARTICIPATES IN" INCLUDES EXERCISING AUTHORITY OR CONTROL OVER LEGAL REPRESENTATION, LEGAL STRATEGY, LEGAL FEE DETERMINATION, SETTLEMENT DECISIONS, OR THE ALLOCATION OF LEGAL FEES; FEE-SHARING ARRANGEMENTS; EQUITY INTERESTS; PROFIT- OR REVENUE-SHARING ARRANGEMENTS; EQUITY OPTIONS; WARRANTS; CONVERTIBLE OR CONTINGENT EQUITY INTERESTS; PHANTOM EQUITY; OR ANY OTHER ARRANGEMENT, HOWEVER STRUCTURED OR DESCRIBED, THAT PROVIDES A NONLAWYER WITH A FINANCIAL INTEREST IN LEGAL FEES, LAW FIRM REVENUE, OR LAW FIRM PROFITABILITY.

(b) "ECONOMICALLY PARTICIPATES IN" DOES NOT INCLUDE A FINANCIAL INTEREST ARISING SOLELY FROM THE OWNERSHIP OR ASSIGNMENT OF A CLAIM IF THE PERSON DOES NOT DIRECT OR CONTROL THE PROFESSIONAL JUDGMENT OF A LAWYER.

(3) (a) "LAW FIRM" MEANS A PARTNERSHIP, PROFESSIONAL COMPANY, SOLE PROPRIETORSHIP, EMPLOYER OF A LAWYER WHO IS DIRECTLY EMPLOYED AS IN-HOUSE COUNSEL OR LICENSED UNDER A SINGLE-CLIENT CERTIFICATION, OR OTHER ENTITY THROUGH WHICH A LAWYER, LLP, OR COMBINATION OF LAWYERS, LLPS, OR BOTH PROVIDE LEGAL SERVICES, WHICH ENTITY:

(I) OPERATES FOR PROFIT IN COMPLIANCE WITH RULE 5.4 OF THE COLORADO RULES OF PROFESSIONAL CONDUCT AND RULE 265 OF THE COLORADO RULES OF CIVIL PROCEDURE; AND

(II) COMPLIES WITH COLORADO LAW AND SUPREME COURT RULES GOVERNING LAW FIRM OWNERSHIP AND FEE SHARING.

(b) "LAW FIRM" DOES NOT INCLUDE AN ALTERNATIVE BUSINESS STRUCTURE OR MANAGED SERVICES ORGANIZATION.

(4) (a) "LAWYER" MEANS AN INDIVIDUAL WHO IS LICENSED TO PRACTICE LAW IN ANY JURISDICTION IN THE UNITED STATES.

(b) "LAWYER" DOES NOT INCLUDE AN LLP.

(5) (a) "LEGAL FEE" MEANS ANY PAYMENT, COMPENSATION, REMUNERATION, OR OTHER FINANCIAL CONSIDERATION CHARGED, ASSESSED, COLLECTED, OR RECEIVED FOR THE PROVISION OF LEGAL SERVICES,

REGARDLESS OF HOW THE PAYMENT IS DESCRIBED, STRUCTURED, OR ALLOCATED.

(b) "LEGAL FEE" INCLUDES:

(I) CONTINGENT FEES, FLAT FEES, HOURLY FEES, HYBRID FEES, SUCCESS FEES, PERFORMANCE-BASED COMPENSATION, OR ANY OTHER ARRANGEMENT THAT COMPENSATES A LAWYER OR LAW FIRM BASED ON THE PROVISION OF LEGAL SERVICES TO A CLIENT;

(II) ANY PORTION OF A SETTLEMENT, VERDICT, JUDGMENT, AWARD, RECOVERY, OR PAYMENT RECEIVED ON BEHALF OF A CLIENT THAT IS ALLOCATED TO THE LAWYER OR LAW FIRM AS COMPENSATION FOR LEGAL SERVICES;

(III) ANY AMOUNT PAID BY A CLIENT OR THIRD PARTY FOR LEGAL REPRESENTATION, LEGAL COUNSELING, LEGAL ADVOCACY, LEGAL INVESTIGATION, LEGAL ANALYSIS, NEGOTIATION, DEMAND SERVICES, OR LITIGATION-RELATED ACTIVITIES;

(IV) RETAINERS, DEPOSITS, ADVANCED FEES, OR SECURITY AMOUNTS INTENDED TO SECURE PAYMENT FOR LEGAL SERVICES, WHETHER REFUNDABLE OR NONREFUNDABLE; AND

(V) ANY REVENUE OR FINANCIAL BENEFIT DERIVED FROM LEGAL SERVICES, INCLUDING REVENUE COLLECTED THROUGH AFFILIATED ENTITIES, SUBSIDIARIES, TECHNOLOGY PLATFORMS, SERVICE PROVIDERS, OR FEE COLLECTION INTERMEDIARIES.

(c) "LEGAL FEE" DOES NOT INCLUDE:

(I) PAYMENTS MADE SOLELY FOR NONLEGAL GOODS OR SERVICES, INCLUDING PURELY ADMINISTRATIVE, CLERICAL, OR OPERATIONAL SUPPORT, IF THE PAYMENTS ARE REASONABLY SEPARABLE FROM COMPENSATION FOR LEGAL SERVICES;

(II) ORDINARY COURSE REIMBURSEMENTS OF COSTS OR EXPENSES ADVANCED BY THE LAWYER OR LAW FIRM, INCLUDING COURT FILING FEES, EXPERT FEES, TRANSCRIPT COSTS, AND OTHER PASS-THROUGH EXPENSES NOT CONSTITUTING COMPENSATION FOR LEGAL SERVICES;

(III) LAWFUL WAGES, SALARIES, BENEFITS, OR DISCRETIONARY BONUSES PAID TO A NONLAWYER EMPLOYEE OF A LAW FIRM FOR SERVICES RENDERED IN THE ORDINARY COURSE OF THEIR EMPLOYMENT;

(IV) AMOUNTS RECOVERED ON A CLAIM BY A PERSON THAT OWNS OR HAS BEEN ASSIGNED THE CLAIM IF THE RECOVERY DOES NOT CONSTITUTE COMPENSATION FOR LEGAL SERVICES; OR

(V) ANY STATUTORY OR CONTRACTUAL ENTITLEMENT TO ATTORNEY FEE REIMBURSEMENT HELD BY A LAW FIRM'S CLIENT OR DIRECT EMPLOYER.

(6) "LEGAL SERVICES" MEANS ANY OF THE FOLLOWING WHILE ACTING IN A REPRESENTATIVE CAPACITY CONCERNING A LEGAL RIGHT ARISING IN WHOLE OR IN PART IN COLORADO:

(a) PROTECTING, DEFENDING, OR ENFORCING THE LEGAL RIGHTS OR DUTIES OF ANOTHER PERSON;

(b) REPRESENTING ANOTHER PERSON BEFORE A TRIBUNAL OR, ON BEHALF OF ANOTHER PERSON, DRAFTING PLEADINGS OR OTHER PAPERS FOR A PROCEEDING BEFORE A TRIBUNAL;

(c) COUNSELING, ADVISING, OR ASSISTING ANOTHER PERSON IN CONNECTION WITH THAT PERSON'S LEGAL RIGHTS OR DUTIES;

(d) EXERCISING LEGAL JUDGMENT IN PREPARING LEGAL DOCUMENTS FOR ANOTHER PERSON;

(e) EXERCISING LEGAL JUDGMENT TO ADVISE ANOTHER PERSON ABOUT THE LEGAL EFFECT OF A PROPOSED ACTION OR DECISION;

(f) EXERCISING LEGAL JUDGMENT TO ADVISE ANOTHER PERSON ABOUT LEGAL REMEDIES OR POSSIBLE COURSES OF LEGAL ACTION AVAILABLE TO THAT PERSON;

(g) EXERCISING LEGAL JUDGMENT TO SELECT A LEGAL DOCUMENT FOR ANOTHER PERSON OR TO PREPARE A LEGAL DOCUMENT FOR ANOTHER PERSON OTHER THAN SOLELY AS A TYPIST OR SCRIVENER;

(h) EXERCISING LEGAL JUDGMENT TO REPRESENT OR ADVOCATE FOR

ANOTHER PERSON IN A NEGOTIATION, SETTLEMENT, CONFERENCE, MEDIATION, OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING; AND

(i) SOLICITING FEES FOR SERVICES INVOLVING THE EXERCISE OF LEGAL JUDGMENT.

(7) "LICENSED LEGAL PARAPROFESSIONAL" OR "LLP" MEANS A LICENSED LEGAL PARAPROFESSIONAL LICENSED UNDER PART 3 OF THIS ARTICLE 93.

(8) "MANAGED SERVICES ORGANIZATION" MEANS A PERSON OTHER THAN A LAWYER, LLP, OR LAW FIRM THAT PROVIDES ADMINISTRATIVE, OPERATIONAL, FINANCIAL, MARKETING, MANAGEMENT, OR OTHER NONLEGAL BUSINESS SERVICES TO A LAWYER OR LAW FIRM.

(9) "NONLAWYER" MEANS AN INDIVIDUAL WHO IS NOT LICENSED TO PRACTICE LAW IN ANY UNITED STATES JURISDICTION OR IS NOT AUTHORIZED TO PRACTICE LAW BY THE COLORADO SUPREME COURT.

(10) (a) "NONPROFIT ORGANIZATION" MEANS A CHARITABLE ORGANIZATION, AS DEFINED IN SECTION 39-26-102 (2.5).

(b) A NONPROFIT ORGANIZATION IS NOT AN ALTERNATIVE BUSINESS STRUCTURE AND DOES NOT ECONOMICALLY PARTICIPATE IN THE PROVISION OF LEGAL SERVICES SOLELY BY VIRTUE OF THE NONPROFIT ORGANIZATION'S RELATIONSHIP WITH A LAWYER OR LAW FIRM, INCLUDING WHERE THE LAWYER OR LAW FIRM EARNS LEGAL FEES.

(11) "SUBSTANTIAL BUSINESS IN COLORADO" MEANS THAT A LAW FIRM GENERATES MORE THAN TEN PERCENT OF THE LAW FIRM'S ANNUAL REVENUE FROM LEGAL SERVICES PERFORMED FOR CLIENTS.

13-93-404. Prohibition on nonlawyer ownership and fee sharing with nonlawyers.

(1) A LAWYER OR LAW FIRM SHALL NOT, IN CONNECTION WITH PROVIDING LEGAL SERVICES:

(a) SHARE WITH, PAY TO, ALLOCATE TO, DISTRIBUTE TO, OR PROVIDE ANY PORTION OF LEGAL FEES OR REVENUES, WHETHER GROSS OR NET, OR

ANY OTHER FINANCIAL BENEFIT DERIVED FROM LEGAL SERVICES, DIRECTLY OR INDIRECTLY, HOWEVER DENOMINATED OR STRUCTURED, TO ANY ALTERNATIVE BUSINESS STRUCTURE OR NONLAWYER, OTHER THAN LAWFUL WAGES, SALARIES, BENEFITS, OR DISCRETIONARY BONUSES PAID TO NONLAWYER EMPLOYEES OF THE LAW FIRM FOR SERVICES RENDERED IN THE ORDINARY COURSE OF THEIR EMPLOYMENT;

(b) ENTER INTO ANY FINANCIAL, CONTRACTUAL, OWNERSHIP, MANAGEMENT, MARKETING, CO-COUNSEL, REFERRAL, OR FEE-ALLOCATION ARRANGEMENT WITH AN ALTERNATIVE BUSINESS STRUCTURE, WHICH ARRANGEMENT RELATES TO PROVIDING LEGAL SERVICES;

(c) FORM A PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, OR OTHER ENTITY RECOGNIZED UNDER COLORADO LAW WITH A NONLAWYER IF ANY OF THE ACTIVITIES OF THE ENTITY CONSIST OF PROVIDING LEGAL SERVICES; OR

(d) PRACTICE WITH OR IN THE FORM OF A PROFESSIONAL COMPANY THAT IS AUTHORIZED TO PROVIDE LEGAL SERVICES FOR PROFIT IF:

(I) A NONLAWYER OWNS ANY INTEREST IN THE PROFESSIONAL COMPANY; EXCEPT THAT A FIDUCIARY REPRESENTATIVE OF THE ESTATE OF A LAWYER OR LLP MAY HOLD THE STOCK OR INTEREST OF THE LAWYER OR LLP FOR A REASONABLE TIME DURING ADMINISTRATION OF THE ESTATE; OR

(II) A NONLAWYER HAS THE RIGHT TO DIRECT OR CONTROL THE PROFESSIONAL JUDGMENT OF A LAWYER.

(2) HOW A COMPENSATION ARRANGEMENT IS CHARACTERIZED DOES NOT AFFECT WHETHER THIS SECTION APPLIES TO THE COMPENSATION ARRANGEMENT.

(3) NOTHING IN THIS SECTION:

(a) PREVENTS A CLIENT FROM DIRECTING THE CLIENT'S LAWYER;

(b) PROHIBITS AN ARRANGEMENT IN WHICH ALL OF THE FOLLOWING ARE SATISFIED:

(I) THE CONTRACT FOR THE ARRANGEMENT PROVIDES FOR A

SPECIFIC, PREDETERMINED DOLLAR AMOUNT FOR CLEARLY DEFINED LEGAL SERVICES;

(II) A PAYMENT IS NOT MADE, DIRECTLY OR INDIRECTLY, FOR THE REFERRAL OF LEGAL SERVICES OR THE PURCHASE OF A LEAD FOR A POTENTIAL CLIENT OR CASE;

(III) THE FEE UNDER THE ARRANGEMENT IS NOT CONTINGENT UPON, TIED TO, OR OTHERWISE DEPENDENT ON THE ECONOMIC OUTCOME OF ANY MATTER OR THE AMOUNT RECOVERED AND IS NOT ADJUSTED, REFUNDED, CREDITED, OR OTHERWISE MODIFIED BASED ON THE ECONOMIC OUTCOME OR RECOVERY;

(IV) THE PRIMARY PURPOSE OF THE ARRANGEMENT IS NOT THE PURSUIT OR RECOVERY OF MONETARY DAMAGES ON BEHALF OF A CLIENT; AND

(V) THE FEE UNDER THE ARRANGEMENT IS SOLELY FOR IDENTIFIED SERVICES AND IS NOT PART OF, CONDITIONED UPON, OR COMBINED WITH ANY OTHER ARRANGEMENT THAT PROVIDES FOR COMPENSATION BASED ON REFERRALS, CASE OUTCOMES, OR THE CLIENT'S RECOVERY; OR

(c) LIMITS OR REDUCES THE RIGHT OF A CLIENT OR EMPLOYER OF A LAWYER TO SEEK AND COLLECT OR SETTLE A PAYMENT ON ACCOUNT OF A STATUTORY OR CONTRACTUAL ENTITLEMENT TO ATTORNEY FEE REIMBURSEMENT.

13-93-405. Restrictions on arrangements with managed services organizations.

(1) A LAWYER OR LAW FIRM PROVIDING LEGAL SERVICES SHALL NOT COMPENSATE OR ENGAGE A MANAGED SERVICES ORGANIZATION IN ANY MANNER UNLESS THE COMPENSATION PAID TO THE MANAGED SERVICES ORGANIZATION IS NOT CONTINGENT UPON OR CALCULATED AS A PERCENTAGE OF LEGAL FEES, REVENUES, OR PROFITS AND IS NOT DETERMINED BY REFERENCE TO RECOVERIES, SETTLEMENTS, JUDGMENT AWARDS, OR CASE OUTCOMES.

(2) NOTHING IN THIS SECTION PROHIBITS COMPENSATION, INCLUDING FLAT FEE OR HOURLY PAYMENTS, OR ENGAGEMENT OF MANAGED SERVICES

ORGANIZATIONS THAT IS NOT EXPRESSLY PROHIBITED BY THIS SECTION.

13-93-406. Enforcement - private right of action - remedies.

(1) A PERSON DESCRIBED IN SUBSECTION (2) OF THIS SECTION MAY ENFORCE THIS PART 4 BY BRINGING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION.

(2) THE FOLLOWING PERSONS MAY ENFORCE THIS PART 4:

(a) A PERSON TO WHOM A LAWYER OR LAW FIRM PROVIDES LEGAL SERVICES, WHICH LEGAL SERVICES ARE ALLEGED TO BE IN VIOLATION OF THIS PART 4; OR

(b) EXCEPT AS SET FORTH IN SUBSECTION (3) OF THIS SECTION, A LAW FIRM DOING SUBSTANTIAL BUSINESS IN COLORADO THAT HAS SUFFERED OR MAY SUFFER A LOSS IN REVENUE DUE TO VIOLATIONS OF THIS PART 4 BY ANOTHER LAW FIRM, WHICH LAW FIRM DOING SUBSTANTIAL BUSINESS IN COLORADO MAY ONLY SEEK INJUNCTIVE OR DECLARATORY RELIEF AND DISGORGEMENT PURSUANT TO SUBSECTION (5)(b) OF THIS SECTION.

(3) A LAW FIRM DESCRIBED IN SUBSECTION (2)(b) OF THIS SECTION MAY BRING A CIVIL ACTION TO ENFORCE THIS PART 4 ONLY IF THE LAW FIRM HAS PROVIDED WRITTEN NOTICE OF THE ALLEGED VIOLATION TO THE ATTORNEY GENERAL AND THE ATTORNEY GENERAL HAS NOT COMMENCED A CIVIL ACTION AGAINST THE ALLEGED VIOLATOR BEFORE OR WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTICE.

(4) (a) THE FOLLOWING REMEDIES ARE AVAILABLE FOR VIOLATIONS OF THIS PART 4:

(I) FOR A PERSON DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION, AND IN ADDITION TO ANY OTHER REMEDIES AVAILABLE FOR A VIOLATION OF THIS PART 4, ECONOMIC DAMAGES IN THE AMOUNT OF THE LEGAL FEES PAID TO THE LAWYER, LAW FIRM, OR OTHER PERSON IN VIOLATION OF THIS PART 4;

(II) INJUNCTIVE RELIEF;

(III) DECLARATORY RELIEF; AND

(IV) ANY OTHER RELIEF THE CIRCUMSTANCES MAY REQUIRE.

(b) A PREVAILING PLAINTIFF IS ENTITLED TO RECOVER ANY REASONABLE ATTORNEY FEES AND COSTS PAID TO ENFORCE A VIOLATION OF THIS PART 4.

(5) (a) A LAWYER, LAW FIRM, OR OTHER PERSON THAT RECEIVES OR PAYS FUNDS IN VIOLATION OF THIS PART 4 IS LIABLE FOR DAMAGES IN THE AMOUNT OF THE FUNDS RECEIVED OR PAID IN VIOLATION OF THIS PART 4.

(b) IF A COURT DETERMINES THAT A LAWYER, LAW FIRM, OR OTHER PERSON HAS VIOLATED THIS PART 4, THE COURT SHALL ORDER THE FUNDS DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION TO BE DISGORGED AND PAID TO THE STATE TREASURER FOR DEPOSIT INTO THE GENERAL FUND; EXCEPT THAT ANY AMOUNTS AWARDED AS ECONOMIC DAMAGES TO A PLAINTIFF PURSUANT TO THIS SECTION SHALL BE OFFSET AGAINST THE AMOUNT OF DISGORGEMENT.

(6) A CONTRACT OR AGREEMENT IN VIOLATION OF THIS PART 4 IS DEEMED VOID.

13-93-407. Applicability - repeal.

(1) NOTHING IN THIS PART 4 SHALL BE CONSTRUED TO PROHIBIT:

(a) THE PLEDGING OF FUTURE REVENUES, LEGAL FEES, OR RECOVERIES AS COLLATERAL FOR A LOAN; OR

(b) LAWFUL WAGES, SALARIES, BENEFITS, OR DISCRETIONARY BONUSES PAID TO NONLAWYER EMPLOYEES OF A LAW FIRM FOR SERVICES RENDERED IN THE ORDINARY COURSE OF THEIR EMPLOYMENT;

(c) NONRECOURSE FUNDING PROVIDED TO A LAWYER OR LAW FIRM WITH RESPECT TO SPECIFIC, IDENTIFIED LEGAL REPRESENTATIONS, IN WHICH:

(I) THE FUNDING IS PROVIDED SOLELY FOR THE FEES OR EXPENSES OF SPECIFIC, IDENTIFIED LEGAL REPRESENTATIONS THAT HAVE COMMENCED OR FOR WHICH THE LAWYER OR LAW FIRM HAS BEEN RETAINED AND NOT FOR THE SOLICITATION OR ACQUISITION OF FUTURE CLIENTS OR MATTERS;

(II) THE RETURN OF THE PERSON PROVIDING THE FUNDING IS LIMITED TO A MULTIPLE OF THE FUNDED AMOUNT OR A RATE OF INTEREST ON THE FUNDED AMOUNT AND DOES NOT CONSTITUTE A SHARE OF LEGAL FEES, LAW FIRM REVENUE, AND LAW FIRM PROFITS; AND

(III) THE PERSON PROVIDING THE FUNDING HAS NO RIGHT TO PARTICIPATE IN OR RECEIVE ANY PORTION OF LEGAL FEES, LAW FIRM REVENUE, OR LAW FIRM PROFITS EXCEPT FROM THE PROCEEDS OF THE SPECIFIC, IDENTIFIED LEGAL REPRESENTATIONS; OR

(d) THE PROVISION OF LEGAL SERVICES PROVIDED SOLELY IN CONNECTION WITH ADMINISTRATIVE MATTERS ARISING UNDER FEDERAL LAW OR BEFORE A FEDERAL AGENCY.

(2) NOTHING IN THIS PART 4 LIMITS THE COLORADO SUPREME COURT'S RULE-MAKING, DECISIONAL, OR ENFORCEMENT AUTHORITY AS TO THE PRACTICE OF LAW IN COLORADO, INCLUDING AS TO THE UNAUTHORIZED PRACTICE OF LAW AND PROFESSIONAL INDEPENDENCE OF LAWYERS AND LLPS.

(3) (a) NOTHING IN THIS PART 4 PROHIBITS A LAWYER OR LAW FIRM THAT PROVIDES LEGAL SERVICES TO A NONPROFIT ORGANIZATION OR INDIVIDUALS WHO RECEIVE BENEFITS FROM THE NONPROFIT ORGANIZATION FROM REMITTING TO A NONPROFIT ORGANIZATION THAT PROVIDES OR SUPPORTS LEGAL SERVICES OR ACCESS-TO-JUSTICE SERVICES ANY FEES OR REVENUES EARNED FROM ITS REPRESENTATION.

(b) A NONPROFIT ORGANIZATION THAT PROVIDES OR SUPPORTS LEGAL SERVICES OR ACCESS-TO-JUSTICE SERVICES IS NOT SUBJECT TO THIS PART 4.

(4) THIS PART 4 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2029.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring and contracts and agreements entered into or renewed on or after the applicable effective date of this act.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

on Thursday June 4th 2026 at 12:30pm

APPROVED ______________________
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

Two New Colorado Laws Reshaping Practice

SB 26-174: Lead Generation Ban & HB 26-1421: Nonlawyer Ownership

Presenters: **Kevin Cheney & Jason Wesoky**

1

Who We Are & Why We're Teaching This

We didn't just read these bills — **we wrote them**.

The Through-Line

Both laws address the same threat: **outside money trying to get between people and their lawyers.**

- **SB 26-174** attacks it at the intake end — lead generation
- **HB 26-1421** attacks it at the ownership end — PE/ABS structures

How to Follow Along

You have both bills. We'll cite sections so you can follow along in real time.

Five minutes of questions after each part.

2

PART 1 OF 2

SB 26-174

The Lead Generation Ban

Statutory citations from §6-1-741

3

The Problem We Were Solving

Statutory Findings — §6-1-741(1)

The Core Harm — §6-1-741(1)

Lead-gen outfits solicit injured and vulnerable consumers, harvest their personal info and case details, and sell them to firms.

Inherently Misleading — §6-1-741(1)(c)

The person doing the soliciting looks like an attorney or firm — but isn't.

Tactics Named — §6-1-741(1)(d)

Bait-and-switch, look-alike advertising, impersonation, fraud.

The Double Harm — §6-1-741(1)(e)

Consumers get misled AND firms buying the leads get burned — same lead sold to multiple firms, bad info, non-viable cases.

This isn't marketing regulation — it's consumer protection. That's why it lives in the Consumer Protection Act.

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How the Sausage Got Made

The Bad Actors

Brokers who solicit injured consumers, harvest their contact info and case details, and sell them per-lead to firms.

Opposition Was Minimal

Only one firm opposed publicly; broad support otherwise — this signals the bill wasn't controversial within the profession.

Why CPA + Criminal Enforcement?

We wanted it strong enough — civilly AND criminally — to actually stop the conduct, not just penalize it.

The **$10,000-per-violation plus criminal exposure** is deterrence calibrated to change behavior, not punitive overkill.

5

What the Statute Actually Prohibits

Core Mechanic — §6-1-741(2)(a)(I)

Paying a third party to receive information about a potential client or case.

Every Payment Form — §6-1-741(2)(a)(II)

Per-lead, per-case, subscription, and compensation through intermediaries or affiliates.

Three Prohibited Acts — §6-1-741(3)

Pay for lead-gen; engage in lead-gen; or sell leads to a CO attorney or firm.

NOT Prohibited — §6-1-741(2)(a)(III)

Fee-sharing between licensed attorneys, firms, or LLPs done in compliance with CO rules — this matters for legitimate co-counsel referrals.

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Safe Harbor: Traditional Marketing vs. Prohibited Lead Gen

✅ **GREEN — Expressly Allowed**

Traditional marketing — §6-1-741(2)(b)(II):

- SEO
- Pay-per-click internet advertising
- Radio, TV, and streaming ads
- Billboards
- Legal directory listings where the firm or attorney is clearly identified

Also allowed — §6-1-741(4):

- Anyone authorized to practice in CO
- A person working on behalf of a clearly-identified CO-authorized firm
- A nonprofit providing legal services

🚫 **RED — Prohibited Lead Generation**

- Paying a third party per-lead or per-case for consumer info
- Buying or selling harvested consumer contact and case info
- Subscription arrangements to receive leads
- Any of the above through intermediaries or affiliates
- Look-alike or impersonation advertising that doesn't clearly identify the firm

The Test: Is the firm clearly identified to the consumer, and is the consumer reaching you directly rather than having their info harvested and resold? Clear identity + direct contact = traditional. Harvested-and-sold + per-lead pricing = prohibited.

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Gray Area: Google Local Services Ads (LSAs)

Our Read: LSAs Are Permissible

LSAs display the actual lawyer and firm names and a clickable list of lawyers the consumer chooses from. Functionally that's a **legal directory** — expressly protected under §6-1-741(2)(b)(II).
The consumer sees who they're choosing and clicks through to that identified firm — no harvesting, no resale to multiple firms.

The Counter-Argument

The carve-out says pay-per-click; LSAs are arguably pay-per-lead, and per-lead is the trigger word in the prohibition.

Our Answer

The pricing label isn't what the statute targets — **the harm is.**
Clear firm identity + consumer choice from a named list + direct contact + no resale = directory-like, not the harvest-and-resell mechanic the statute prohibits.

The Gray-Area Test

This doubles as the test attendees can apply to other vendors:

- Is the firm clearly identified?
- Does the consumer choose directly?
- Is there no harvesting or resale to multiple firms?

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Enforcement: Who Can Come After You

Civil — §6-1-741(6)

Injunctive relief; civil action by an affected attorney, firm, or LLP **OR** any affected consumer.

Damages — §6-1-741(6)(c)

$10,000 per violation plus reasonable attorney fees and costs.

Criminal — §6-1-741(7)

AG or DA may bring charges: criminal impersonation (§18-5-113), fraud (Article 5 of Title 18), racketeering (§18-17-103(5)).

Rulemaking — §6-1-741(8)

AG may adopt enforcement rules.

⚠ It's not just the AG — a **competitor firm or a burned consumer** can sue you directly.

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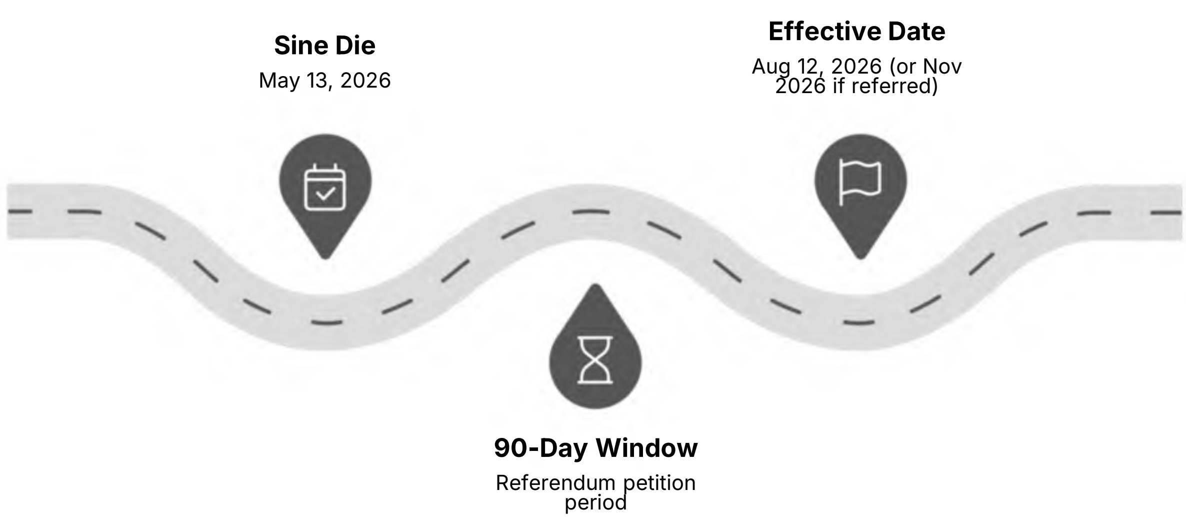
Effective Date & Referendum Watch



Key Dates

- Takes effect **12:01 a.m. Aug 12, 2026** (day after the 90-day post-adjournment window, assuming sine die May 13, 2026)
- Applies to conduct occurring on or after the effective date

Referendum Contingency

If a referendum petition is filed, the law does **not** take effect unless approved at the Nov 2026 general election. We're teaching this before that's fully settled but a referendum is VERY unlikely.

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Part 1 Takeaways — SB 26-174

1. **Per-lead and per-case buying and selling is out**
   Clearly-identified traditional marketing is fine.

2. **The line is clear**
   Clear firm identity + direct consumer contact + no resale = allowed. Harvested-and-sold + per-lead pricing = prohibited.

3. **Broad enforcement standing**
   Consumers and competitors — not just the AG — can enforce, at **$10,000 per violation.**

Questions?

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PART 2 OF 2

HB 26-1421

Nonlawyer Ownership, PE & Fee-Sharing

The Colorado Legal Practice Integrity and Fee-Sharing Prohibition Act

🚫 Bans

- Nonlawyer & PE ownership
- Fee-sharing with ABS firms
- MSO's (aka super vendors) with fees based on profit or revenue

✅ Allows

- Flat-fee or hourly MSO's
- Ordinary bank financing
- Fixed fee non-lawyer situations (but may not be ethical)

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The Problem We Were Solving

Statutory Findings — §13-93-402(1)

Core Principle — §13-93-402(1)

Independent professional judgment is essential to justice. Nonlawyer economic interests threaten loyalty, confidentiality, and independence.

Erosion of Trust — §13-93-402(1)(c)

Even minimal nonlawyer profit participation erodes public trust.

The Real Driver — §13-93-402(1)(d)

ABS structures were being used to circumvent longstanding Rule 5.4 prohibitions on nonlawyer ownership and fee-sharing.

Out-of-State Workaround — §13-93-402(1)(e)

Colorado's stated interest reaches arrangements regardless of where the firm is located.

Opposition came from some access-to-justice groups and one law firm (the same firm that opposed SB 174). The flat-fee exception was built to answer those concerns — not ignore them.

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The National Wave: Arizona as Cautionary Tale

Colorado Isn't an Outlier

- **California (enacted Jan 2026):** Blocks alternative firms from operating via arrangements with local firms
- **Illinois (introduced Feb 2026):** Similar; also bans fee-sharing with nonlawyer-run firms and reaches MSOs

Arizona's ABS Program — The Live Example

- Heavy concentration of mass-tort and PI firms
- A Fortress-tied entity holds 20% of an AZ PI firm through ABS
- AZ's own courts had to crack down on ABS firms generating leads for out-of-state lawyers

The Convergence

Arizona shows **both our bills in one ecosystem**:
That's why Colorado moved on **both fronts simultaneously.**

PE Ownership
→ HB 26-1421

Lead Gen for Out-of-State Firms
→ SB 26-174

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#1 Takeaway: You Cannot Co-Counsel with an ABS Firm

The Prohibition — §13-93-404(1)(b)

A CO lawyer or firm cannot enter any financial, contractual, ownership, management, marketing, co-counsel, referral, or fee-allocation arrangement with an Alternative Business Structure that relates to providing legal services.

What Is an ABS? — §13-93-403(1)

An entity that provides or controls legal services OR shares in legal fees or profits, AND is owned, controlled by, or fee-sharing with one or more nonlawyers — **"however organized or denominated,"** so labels don't save it.

Why This Is the Landmine

You partner with an out-of-state firm on a case; if that firm is PE-backed or ABS, the co-counsel or fee-split arrangement is **void (§13-93-406(6))** and exposes you.

Practical Instruction: Investigate your co-counsel's ownership structure before you split a fee. This is new homework for every referral relationship that crosses state lines, especially in AZ or UT.

15

Safe Harbor: What You CAN Still Do

Loan Collateral — §13-93-407(1)(a)

Pledge future revenue, fees, or recoveries as loan collateral. Ordinary bank financing is fine.

Staff Compensation — §13-93-407(1)(b)

Pay nonlawyer staff lawful wages, salaries, benefits, and discretionary bonuses. Your team is fine.

Nonrecourse Litigation Funding — §13-93-407(1)(c)

Allowed if the funder's return is a multiple or interest — NOT a share of fees, revenue, or profit — and the funder has no right to firm fees except from the specific funded matters' proceeds.

Flat-Fee & Hourly Vendors — §13-93-404(3)(b)

Vendor arrangements meeting the (3)(b) test are permitted.

Federal Administrative Matters — §13-93-407(1)(d)

Carve-out for federal administrative matters.

Nonprofits — §13-93-407(3)

Nonprofits providing or supporting legal or access-to-justice services are not subject to the Act.

16

MSOs: Why We Didn't Ban Them (and the Line We Drew)

What Is an MSO? — §13-93-403(8)

A non-lawyer or non-firm entity providing administrative, operational, financial, marketing, management, or other nonlegal business services to a firm.

Why We Couldn't Ban Them Outright

Doing so would sweep in every ordinary vendor a firm uses — billing, marketing, IT, case management. That's not the target.

The Actual Line — §13-93-405

MSO compensation is fine **UNLESS** it is:

- Contingent upon or calculated as a percentage of legal fees, revenues, or profits, OR
- Determined by reference to recoveries, settlements, judgment awards, or case outcomes

Flat fee and hourly are expressly fine — §13-93-405(2).

Anti-Circumvention Teeth

Characterization doesn't control (§13-93-404(2)). "Economically participates in" reaches equity, profit and revenue shares, options, warrants, phantom equity — **"however structured or described"** (§13-93-403(2)(a)).

The Rule: Fixed or defined fee = allowed. A cut of the money = banned.

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Worked Example: Rafi Law Group's MSO

The Structure (Public Record, Bloomberg Law)

Rafi split back-office functions — accounting, marketing, brand and IP, with brand being the biggest value — into an MSO and took a **$125M minority investment** into the MSO, not the law firm. Hired ethics counsel (Greenberg Traurig) to navigate.
Rafi's own framing: MSOs keep that separation so attorneys maintain independence.

How It Maps to Our Statute

This MSO-as-alternative-to-ABS model is permissible in Colorado **only if** the MSO's compensation — and the investor's return — is NOT a share of legal fees, revenue, profit, or outcomes.

The Honest Teaching Point

The public record shows the investment and the ethics counsel; it does **NOT** disclose the fee mechanics. And under our statute, **the fee mechanics are the whole ballgame.**
A $125M minority equity investor expects a return — if that return is economically derived from the serviced firms' legal fees, "however structured," §13-93-404(2) and the "economically participates in" definition are aimed squarely at it.

Takeaway: Outside investment and spinning off a management or brand company are NOT banned. Nonlawyers getting paid as a cut of legal fees, profit, or outcomes is. Rafi illustrates the model; the fee structure determines legality.

18

The Access-to-Justice Valve: The Flat-Fee Exception

The Story

LegalZoom and others advocated for a flat-fee exception so flat-fee, defined-scope service models could operate in Colorado — aimed at areas where reasonable-cost legal help is hard to find.

The §13-93-404(3)(b) Safe Harbor — ALL of the following must be true:

01

Specific, Predetermined Dollar Amount

For clearly defined legal services.

02

No Referral Payment or Lead Purchase

No payment for referral of legal services or purchase of a lead.

03

Not Contingent on Outcome

The fee is not contingent on or tied to the economic outcome or amount recovered.

04

Primary Purpose Is Not Monetary Damages

The primary purpose is not the pursuit or recovery of monetary damages.

05

Fee Is Solely for Identified Services

Not bundled with referral, outcome, or recovery-based compensation.

The bill is not anti-innovation or anti-consumer. It targets contingent and outcome-based nonlawyer participation while leaving room for flat-fee, defined-scope models. That's the access-to-justice balance.

19

Private Right of Action: The Unusual Mechanics

Who Can Sue — §13-93-406(2)

- A client who received legal services alleged to violate the Act
- A competing law firm doing substantial business in CO that suffered or may suffer revenue loss

The Competitor Catch — §13-93-406(3)

A competing firm must give the AG **written notice first** and can only proceed if the AG doesn't commence an action within **60 days.** The AG gets first look.

Where the Money Goes — §13-93-406(4)-(5)

Counterintuitive: disgorged funds go to the **state general fund**, NOT to the plaintiff firm.

- Competitor plaintiff: injunctive and declaratory relief + disgorgement to the state + reasonable attorney fees
- Directly-harmed client: economic damages (fees paid), offset against disgorgement
- Contracts violating the Act are **void — §13-93-406(6)**

If you sue a competitor under this, you're doing it to stop the conduct and recover fees — not for a damages windfall. That's by design.

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Sunset & Scope

1 **Aug 12, 2026**

Effective date (same as SB 174, subject to referendum contingency)

2 **Applies to Conduct & Contracts**

Conduct occurring and contracts entered into or renewed on or after the effective date — flag the **"renewed" trigger** for existing vendor and MSO contracts

3 **CO Supreme Court Authority Preserved**

Preserves CO Supreme Court authority over the practice of law and UPL — §13-93-407(2)

4 **Sept 1, 2029**

Repealed — §13-93-407(4). Built-in sunset so we can revisit as the market evolves. The world is changing fast.

The 2029 sunset is intentional — not permanent law. Built to allow revisiting as the market evolves.

21

Part 2 Takeaways — HB 26-1421

1. **Diligence your co-counsel**

   You can't split fees with an ABS or PE-backed firm. This is new homework for every cross-state referral relationship.

2. **The line is contingent versus fixed**

   MSOs, funders, and vendors are fine on flat, hourly, or defined fees — not on a cut of fees, profit, or outcomes.

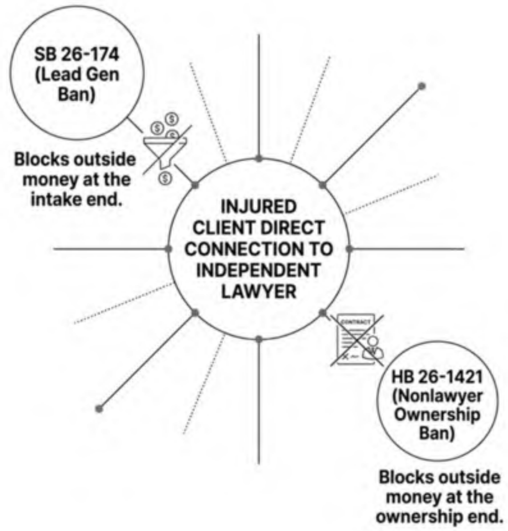
3. **Enforcement is AG-first and state-funded**

   Competitors can sue but the money goes to the state, not them. Sunset is Sept 1, 2029.

Questions — 5 minutes

22

Both Laws, One Principle



The Through-Line

Keep the injured client's lawyer **independent and directly connected to the client** — no one buying their way into the intake or the fee.

SB 26-174

Attacks outside money at the **intake end** — lead generation and harvested consumer data.

HB 26-1421

Attacks outside money at the **ownership end** — PE, ABS, and contingent nonlawyer fee participation.

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Closing

> "Both laws, one principle: keep the injured client's lawyer independent and directly connected to the client — no one buying their way into the intake or the fee."

We are happy to keep the conversation going.

Kevin Cheney

Colorado Trial Lawyers Association

Jason Wesoky

Colorado Trial Lawyers Association

Materials

You have both bills. Cite sections as you apply these rules in practice.

CBA CLE | VIRTUAL | THANK YOU

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Attachment 4

JOINT ORDER OF THE DEPARTMENTS OF THE
NEW YORK STATE SUPREME COURT, APPELLATE DIVISION

The Judicial Departments of the Appellate Division of the New York State Supreme Court, pursuant to the authority vested in them, do hereby amend Part 1200, Rule 1.16 (Rules of Professional Conduct) of Title 22 of the Official Compilation of the Codes, Rules, and Regulations of the State of New York, as follows, effective July 1, 2026 (deletions in ~~strikethrough~~, and additions underlined).

Rule 1.16. Declining, Modifying, or Terminating ~~Representation~~ an Engagement

(a) A lawyer shall ~~not accept employment on behalf of a person if the lawyer knows or reasonably should know that such person wishes to~~ make reasonable efforts to inquire into and assess the facts and circumstances of each engagement or prospective engagement, and to understand, at the outset and throughout the engagement, the risk that the engagement will result in a violation of these Rules or other law, in order to determine whether the lawyer may accept or continue the engagement, or instead must decline, modify, or terminate the engagement. Such inquiry shall be commensurate with the nature of the lawyer's practice, the informational resources available to the lawyer, the nature of the engagement, and the lawyer's familiarity with the particular client. A lawyer shall not accept an engagement or, where the engagement has commenced, shall, except as stated in paragraph (d), terminate or withdraw from the engagement, in any of the following circumstances:

(1) ~~bring a legal action, conduct a defense, or assert a position in a matter, or otherwise have steps taken for such person, merely for the purpose of harassing or maliciously injuring any person; or~~ The lawyer knows or reasonably should know, despite a discussion with the client or (if the lawyer considers it useful) with the prospective client regarding the limitations that these Rules or other law impose on the lawyer in carrying out the engagement, that the client or prospective client seeks to use or persists in using the lawyer's services for any of the following purposes:

(i) to bring a legal action, conduct a defense, or assert a position in a matter, or otherwise have steps taken, without a substantial purpose other than harassing or maliciously injuring another person;

(ii) to present a claim or defense in a matter that would be frivolous under Rule 3.1(b)(1);

(iii) to commit, assist, or further a crime or fraud; or

(2) ~~present a claim or defense in a matter that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of existing law~~ the lawyer knows or reasonably should know that the engagement will result in a violation of these Rules or other law;

(3) the lawyer's physical or mental condition materially impairs the lawyer's ability to carry out the engagement; or

(4) the lawyer is discharged.

(b) ~~[Reserved.]~~ A lawyer will not have violated paragraph (a) of this Rule if the lawyer reasonably believed that the lawyer's inquiry into and assessment of the facts and circumstances of an engagement were sufficient under this Rule, even if the lawyer's reasonable belief is subsequently determined to have been erroneous.
~~Except as stated in paragraph (d), a lawyer shall withdraw from the representation of a client when:~~
~~(1) the lawyer knows or reasonably should know that the representation will result in a violation of these Rules or of law;~~
~~(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;~~
~~(3) the lawyer is discharged; or~~
~~(4) the lawyer knows or reasonably should know that the client is bringing the legal action, conducting the defense, or asserting a position in the matter, or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person.~~

(c) Except as stated in paragraph (d), a lawyer may withdraw from ~~representing a client when~~ an engagement on behalf of a client if a reasonable lawyer would conclude that:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action with which the lawyer has a fundamental disagreement;

(5) the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees;

(6) [Reserved.] ~~the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;~~

(7) the client fails to cooperate in ~~the representation~~ or otherwise renders the ~~representation~~ engagement unreasonably difficult for the lawyer to carry out ~~employment effectively~~;

(8) the lawyer's inability to work with co-counsel indicates that the best ~~interest~~ interests of the client likely will be served by withdrawal;

(9) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the ~~representation~~ engagement effectively;

(10) the client ~~knowingly and freely assents to~~ provides informed consent to the lawyer's termination of the ~~employment~~ engagement;

(11) withdrawal is permitted under Rule 1.13(c) or other law;

(12) the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal; or

(13) the client insists that the lawyer pursue a course of conduct which is illegal or prohibited under these Rules.

(d) If permission for withdrawal from ~~employment~~ an engagement is required by the rules of a tribunal, a lawyer shall not withdraw from ~~employment~~ an engagement in a matter before that tribunal without its permission. When ordered to do so by a tribunal, however, a lawyer shall continue ~~representation~~ to carry out the engagement notwithstanding good cause for terminating the ~~representation~~ engagement.

(e) Even when withdrawal is otherwise permitted or required, upon termination of ~~representation~~ an engagement, a lawyer shall take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for ~~employment~~ engagement of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.

Dated: June 1, 2026

Hon. Dianne T. Renwick
Presiding Justice
First Judicial Department

Hon. Elizabeth A. Garry
Presiding Justice
Third Judicial Department

Hector D. LaSalle

Hon. Hector D. LaSalle
Presiding Justice
Second Judicial Department

Hon. Gerald J. Whalen
Presiding Justice
Fourth Judicial Department

Attachment 5

COLORADO BAR ASSOCIATION AI & INNOVATION TASK FORCE FINDINGS AND RECOMMENDATIONS

Introduction

Artificial intelligence (AI) is simply the next step in technology. Regarding the use of AI, one can choose to be the creator or the receiver of change. We recommend supporting a creator role that innovates to manage and manages to innovate. Just as we can't go back to reading case books in the firm library instead of Westlaw or LexisNexis, we can't ignore the arrival of AI. Yes, there is always risk with innovation but there is also the potential for great rewards. Our recommended approach is adopting innovation together with risk management, to maximize those rewards while minimizing the risks.

There is no one universal definition of AI. The AI systems currently most relevant to legal practitioners are the result of decades of prior development, catalyzed in the 2020s with the expansion of large language models underlying Generative AI ("GenAI") tools. Major frontier models are provided by companies such as Anthropic (Claude), OpenAI (GPT), and Google (Gemini), but a dizzying number of derivative or alternative GenAI tools are becoming available. GenAI and Agentic AI tools fit within artificial narrow intelligence ("ANI"), systems can help boost productivity and efficiency by automating repetitive tasks, enabling smarter decision making and optimization through trend analysis. On the horizon, with advances in quantum computing, is artificial general intelligence ("AGI"), the goal of which is to mimic human intelligence, but the timing and certainty of developing AGI remains uncertain. For now, legal practitioners need to become familiar with GenAI.

The Task Force has compiled a body of work product as a result of its investigation, including recordings and transcripts of interviews conducted with practitioners and other experts in the field of AI. These are organized for in a private SharePoint folder and are available for further review.

The members of the AI & Innovation Task Force and their email addresses are as follows:

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Background

The CBA AI & Innovation Task Force was created to spark a thoughtful discussion among Colorado lawyers about the role of artificial intelligence and related technologies in both the practice and business of law. Specifically, we aim to:

- Expand legal services to underserved communities across Colorado;
- Educate our members on the responsible and ethical use of AI;
- Provide clear guidance on the safe and effective integration of emerging technologies;
- Recommend updates to the Rules of Professional Conduct to better enable innovation;
- Modernize the practice of law to meet the demands of the 21st century; and
- Offer a roadmap for building practices that are more accessible to clients and more sustainable and profitable for lawyers.

Summary of Formal Recommendations

The Task Force's analysis of the six pillars discussed below produced thirty distinct recommendations. Many overlap conceptually because each working group approached the same underlying issues — risk management, vendor governance, billing practices, member education, public access — from a different vantage point. The thirteen recommendations below consolidate that work into a single set, organized by theme. They are intended to be read together: the principle running through all of them is that the CBA should enable adoption of artificial intelligence and related technologies while preserving the professional responsibilities that distinguish licensed legal services from any other AI-assisted business. The Task Force's formal recommendations are also discussed in greater detail with respect to each individual "pillar" below. The Task Force is comprised of members with varied opinions and viewpoints. Individual recommendations herein may not reflect unanimous consensus among the entire Task Force.

A. Access to AI Technology

The need for practitioners to be able to interact in real time with AI technology vendors and their products will become a priority, especially for practitioners in smaller firms. The CBA should explore the feasibility of hosting an annual in-person CBA AI & Innovation Summit & Expo funded by third-party sponsors who are interested in serving the legal technology needs of the CBA's members.

B. AI Governance, Security, and Risk Management

1. Adopt a risk-based framework for evaluating and using AI tools.

The CBA should recommend that lawyers and law firms evaluate AI tools based on the sensitivity of the information involved and the degree of action the system is permitted to take. Not all tools or uses present the same level of risk. Greater diligence is warranted where tools are used with confidential, personal, financial, health, or other sensitive client information, and where the tool is connected to firm systems or external workflows rather than serving merely as a limited drafting or research aid. The CBA should reference established AI risk-management frameworks — for example, the NIST AI Risk Management Framework, ISO/IEC 42001, and the OWASP Top 10 for LLM applications — and explain how each can be adapted to firms of different sizes. Baseline expectations for any deployed tool should include meaningful human oversight, confidentiality protections, clear disclosure of tool limitations, accountability for outputs, and ongoing review for accuracy and bias.

2. Emphasize product-specific safeguards and vendor data governance, not brand reputation.

Lawyers should focus on the actual safeguards of the product they are using rather than assuming that a well-known provider is necessarily sufficient. Practical guidance should direct lawyers to consider whether client data is used for model training, how long data is retained, who can access it, what third parties or subprocessors are involved, what administrative controls are available, and whether the tool operates in a more closed and governed environment. Because most practitioners rely on third-party vendors — for billing, discovery, payment processing, and increasingly for AI-specific services — the CBA should provide vendor-management guidance covering data-processing agreements, AI-specific contract provisions, and the lawyer's continuing duty as data controller regardless of vendor involvement.

3. Apply heightened scrutiny to highly autonomous and high-permission AI systems, and require corresponding technical governance.

The CBA should recommend heightened scrutiny for systems that can act with substantial autonomy, connect to firm systems, access client files, send communications, or trigger actions on external platforms. The concern is not agentic capability by itself, but the combination of broad permissions, limited supervision, and weak guardrails. Guidance should encourage meaningful constraints — scoped access, human approval gates, logging, monitoring, masking or anonymization of sensitive data, and clear deployment boundaries. Firms deploying such systems should maintain adequate technical governance capacity, whether in-house or through trusted partners, to evaluate open versus closed systems, audit data flows, and ensure compliance with confidentiality and professional-conduct obligations. This recommendation directly addresses the emerging "shadow AI" problem of attorneys building unvetted agentic tools without institutional oversight.

4. Provide lawyer-practical guidance calibrated to small and solo firms.

Many lawyers, particularly small and solo practitioners, will not be able to conduct deep technical reviews or afford the most robust enterprise offerings. At the same time, those firms may be the most tempted by these tools because the efficiency gains can be significant where staffing and administrative support are limited. The CBA should publish guidance that helps lawyers adopt these tools more safely rather than warning them away from use — encouraging legal or business tools with stronger default protections, surfacing managed-service-provider options for firms without internal capacity, and avoiding configurations that exceed the firm's ability to supervise.

C. Alternative Billing and Fee Structure

5. Encourage adoption of hybrid fee structures and expansion of alternative billing models.

The CBA should recommend that lawyers and law firms consider hybrid fee arrangements in matters that treat "AI-enhanceable" aspects of the work differently from the more judgment-intensive portions. Rather than choosing a single billing model for an entire engagement, lawyers should disaggregate the matter into its component facets and price each facet on the model best suited to it — flat or fixed fees for discrete deliverables that AI can substantially accelerate, with hourly or value-based fees for tasks that are judgment-intensive or which AI cannot meaningfully expedite. The CBA should publish non-exhaustive guidelines identifying the categories of work most amenable to flat-fee pricing (preparing complaints, written discovery, witness and exhibit lists, certain legal memoranda, standard transactional documents, first-pass review of e-discovery and document productions) and the categories that remain economically unaffected by AI and warrant traditional pricing (settlement negotiation, in-depth pleadings analysis, case strategy, client consultation, oral argument, depositions, and trial). The CBA should also encourage practitioners to consider contingency, subscription, and success-fee arrangements in matters traditionally billed hourly: as AI makes the "time required" variable more predictable, the historical obstacles to non-hourly pricing recede, and Colo. RPC 1.5 already recognizes that a "reasonable" fee can be based on factors other than time expended.

6. Reaffirm Colo. RPC 1.5 reasonableness in pricing AI-assisted work.

The reasonableness requirement of Colo. RPC 1.5 applies with full force to AI-assisted work. A fee that was reasonable when a task required hours of attorney time may not be justifiable when the same task can now be completed in minutes with AI assistance. Lawyers should periodically revisit their rates, fee schedules, and standard engagement terms to ensure that fees continue to reflect the time, skill, and responsibility actually required, the value delivered, and the prevailing market for similar services. Where AI use materially reduces the time or cost of a task, the fee charged to the client should reflect that efficiency. At the same time, the "value delivered" to a client may continue to reflect a practitioner's skill, institutional knowledge, or expertise in ways AI tools cannot meaningfully substitute or expedite, and the non-time factors in Rule 1.5 — novelty, difficulty, results obtained, the lawyer's experience and reputation, and the fixed-versus-contingent character of the fee — remain very much in play.

7. Require client disclosure and informed consent for AI-driven changes to billing.

Lawyers should disclose, in plain language at the outset of an engagement, the categories of AI tools they expect to use, the categories of tasks for which those tools will be deployed, and how that use is reflected in the proposed fee structure. Where AI use is material to the pricing of an engagement — for example, the offering of a flat fee in lieu of hourly billing for a particular facet of the matter — the engagement letter should reflect that arrangement and the client should affirmatively consent. This disclosure is consistent with a lawyer's existing duties of communication and candor under Rules 1.4 and 1.5(b) and provides clients with the information they need to evaluate the value they are receiving.

8. Develop CBA model engagement letter and fee agreement templates incorporating AI provisions.

The CBA should develop and make available model engagement letter and fee agreement templates that incorporate provisions appropriate for an AI-enabled practice. These templates should include sample language for hybrid fee arrangements, clear scoping of flat-fee deliverables, treatment of out-of-scope work, disclosure of AI use, allocation of responsibility for AI-related costs and licensing, confidentiality safeguards relevant to AI tools, and the lawyer's continuing duty of professional judgment notwithstanding the use of AI. Templates should be drafted to work for solo and small-firm practitioners as well as larger firms, and should be paired with brief practice notes explaining the rationale for each provision.

D. Multidisciplinary Practice and Access to Justice

9. Recognize technologists as essential participants in legal service delivery and encourage partnerships that bring advanced technology to underserved providers.

The CBA should acknowledge that data scientists, computer scientists, and other technology professionals are not peripheral support staff but can be co-designers and co-deliverers of legal services. Law firms and legal organizations should be encouraged to embed technologists within their teams to build, govern, and maintain AI-enabled tools — following models such as Stanford Law School's collaboration with the Los Angeles Superior Court. The CBA should also encourage and facilitate partnerships in which technology companies and technologist-driven entities provide advanced legal technology to legal aid organizations and pro bono providers at no cost, including training for staff — following the model demonstrated in Arizona's state bar foundation partnerships. Regulatory frameworks governing technologists' participation in legal services should be designed to enable innovation while maintaining lawyers' professional responsibility obligations; overly prescriptive rules risk creating a situation in which beneficial tools cannot be deployed, but regulation should be sufficient to protect the public and capable of iterative refinement as the landscape evolves.

10. Build access-to-justice innovation around problems, not tools — preserving accessibility, human oversight, and offline alternatives.

Before selecting any tool, the CBA should recommend asking what problem is being solved. Not every access-to-justice problem requires a technology solution, and lessons from other sectors (notably healthcare) show that organizations achieve better results when they identify the problem first and then ask whether technology, AI, or a non-technical intervention is the right answer. When technology is the right answer, courts, legal aid organizations, clinics, and volunteer programs should begin with low-risk, high-value uses — intake, information delivery, administrative support, and workflow improvement — before expanding to more complex public-facing applications. Any endorsed or supported tool should be mobile-friendly, plain-language, disability-accessible, and multilingual where feasible. Tools should improve service capacity, not replace legal judgment: such tools are aids in legal service delivery, not substitutes for the critical thinking, professional judgment, or individualized legal advice of a licensed legal professional. Finally, no person may be required to use an AI system or online platform as a condition of obtaining legal help, legal information, or access to a service pathway. A meaningful, reasonably accessible human alternative — by telephone, in person, or through a community-based provider — must remain available in every program that relies on AI-enabled intake or service delivery.

11. Develop a statewide access-to-justice innovation framework and promote targeted pilot projects, including a flagship Colorado Legal Information Assistant.

The CBA should convene legal aid providers, courts, law schools, libraries, technologists, and community organizations to identify priority use cases, share tested workflows, and establish common evaluation metrics for access-to-justice innovation in Colorado. Within that framework, the CBA should recommend pilot programs in high-volume civil matters where self-represented litigants face the greatest procedural friction. Priority domains and illustrative pilots include: (i) family law — guided interview tools that help parents complete parenting-plan worksheets, child-support calculations, and protection-order petitions, with attorney review before filing; (ii) consumer matters — automated debt-collection answer generators and fee-waiver assistants that draft responsive pleadings for review by legal aid attorneys; (iii) estate planning — small-estate affidavit and simple-will preparation tools paired with a licensed-attorney review step; (iv) housing — eviction-response assistants that surface tenant defenses and local resources in plain language; and (v) property-damage-only auto claims — guided tools that help self-represented claimants pursue small third-party recoveries where liability is clear and no injuries are involved. Each pilot should report on user comprehension, completion rates, staff time saved, and successful handoff to human assistance where needed, with results published so other jurisdictions and providers can learn from what works. As a flagship initiative operationalizing this recommendation, the CBA could pilot a bilingual, public-facing legal information assistant modeled on North Carolina's Legal Information Assistant (LIA), tied directly into the priority domains above and consistent with the governance principles in Recommendations 1, 3, and 10.

E. Structural Reform and Implementation

12. Issue a Colorado ethics opinion on Law Firm MSO arrangements.

The CBA Ethics Committee, in consultation with Pillar 6, should issue a Colorado ethics opinion on Management Services Organization (MSO) arrangements addressing permissible fee structures, scope of MSO-provided functions, disqualifying MSA provisions, confidentiality obligations in shared-services environments, conflict imputation across MSO-serviced firms, client disclosure expectations, and transition and termination mechanics. This is the single most consequential structural deliverable the Task Force can produce within its current charter. It requires no Supreme Court rule change, no new regulatory infrastructure, and no pilot program. It brings Colorado-specific visibility and expectations to activity already occurring under the Texas Opinion 706 framework, establishes a compliance floor that protects consumers and firms, and positions Colorado to address the broader law firm ownership question on its own timeline rather than one set by capital already in motion.

13. Provide ongoing member education, CLE programming, and pilot evaluation across all pillars.
The recommendations above will succeed only to the extent practitioners understand them. The CBA should sustain a layered education program covering: the risks of AI and agentic AI use, including hallucination, fabricated citations, and emerging cybersecurity vulnerabilities; the intersection of privacy, cybersecurity, and AI, including how data is stored and retrieved in AI models and what that means for confidentiality obligations; AI governance frameworks and how to choose between them, with particular attention to options for solo and small firms; vendor procurement and the additional contract terms AI introduces; and AI-related fee, disclosure, and competence obligations under Rules 1.1, 1.5, and 1.6. CLE programming, written practice guides, and member communications should be refreshed as the technology and regulatory landscape evolve. Where feasible, the CBA should support pilot programs — undertaken in cooperation with willing firms, courts, and legal aid providers — that collect anonymized data on client satisfaction, fee predictability, realization rates, completion and handoff rates in public-facing tools, and the categories of work for which alternative arrangements perform best, so that future CBA guidance can be refined based on actual Colorado experience.

Pillar 1:
Responsible Use & Regulation of AI

By: Jack L. Hobaugh and Miles Orton

Every business has risk and the first step towards creating and applying a risk program, whether it be business, privacy, cybersecurity, or AI, is the identification of risk. Risk is defined as the threat times the vulnerability (risk = threat * vulnerability). Of course, not all risks can be mathematically quantitatively assessed. For those risks we use qualitative analysis to determine if the risk is low, medium, high, or critical. Adoption of AI comes with new risks and provides potential mitigating solutions to others.

AI Specific Risks

- AI hallucinations (false or nonsensical statements, asserted with confidence)
- Shadow AI (the use of unapproved AI –similar to shadow IT)
- Harm to individuals: civil liberties, rights, physical or psychological safety, economic opportunity
- Harms can be caused by Bias, Overfitting to training data (model doesn’t work well for new data), Outliers and edge cases (situations outside of the training data)

- Group Harms: Mass surveillance, harms to freedom of assembly and protest due to tracking and profiling, potential deepening of racial and socio-economical inequalities.
- Societal harms: Harm to democratic participation and process, spread of disinformation, ideological bubbles / echo chambers, Deepfakes, Safety issues due to lack of human oversight, use of autonomous lethal military weapons
- Environmental harms can include high energy use (data centers) and carbon emissions
- Organizational harms can include reputational, cultural and societal, and economic: litigation / remediation / customer reimbursement.
- Potential Bias Categories: implicit (subconscious prejudices and stereotypes), sampling / statistical (errors due to non-representative samples), temporal (unbalanced data sampling over time), unfair bias, computational / machine (systematic error or deviation from the true value of a prediction that originates from a model's assumptions or the data itself), cognitive (inaccurate individual judgment or distorted thinking – can affect the training of the AI model), societal (bias in selecting data for model training), automation (users believing AI is always correct), selection (bias in selecting data for model training), confirmation (seeking out information to confirm existing beliefs), and projection (assuming others share our preferences, beliefs, and attitudes)

Attorney License Risks

Comment to Colorado Rules of Professional Conduct Rule 1.1:

> [9] A lawyer's use of technology, particularly artificial intelligence, can implicate a number of other Rules, including, without limitation, those governing communication (Rule 1.4), reasonable fees (Rule 1.5), preservation of a client's confidential information (Rule 1.6), meritorious claims and defenses (Rule 3.1), candor toward the tribunal (Rule 3.3), responsibilities of a partner or supervisory lawyer (Rule 5.1), responsibilities of a subordinate lawyer (Rule 5.2), responsibilities regarding nonlawyer assistance (Rule 5.3), communications concerning a lawyer's services (Rule 7.1), and bias (Rule 8.4(g)). Reliance on technology does not diminish the lawyer's duty to exercise independent judgment in the representation of a client.

Risk Mitigation

We have several options for the mitigation of risk:

- **Avoidance**: The risk is too high, and the cost/benefit analysis doesn't justify taking the risk. We will not pursue the project.
- **Reduction**: The risk can be reduced by adding security controls such as physical, administrative, and technical safeguards or for AI, a human in the loop (HITL).
- **Transference**: The risk is transferred to a third party, such as an insurance provider for cyber or AI insurance. Note that our responsibility for what happens is not transferred, just the risk. If there is a security incident, our firm is still on the hook for the consequences, but with insurance we will have help in paying for those consequences. Note

that insurance companies are still figuring out how to approach AI insurance – read the fine print.

- **Acceptance**: The risk has been acknowledged, but the firm is moving full speed ahead because the benefits are greater than the risk. This can be a choice when the cost of reduction is too high when compared with the revenue or opportunity of the firm. Startups can often be placed into this position.

Findings

The Task Force held interviews with several experts on the topic of responsible use and regulation of AI by legal practitioners. All agreed that AI governance in at least some form is important. Training and the avoidance of shadow AI emerged as common themes.

Formal Recommendations

1. Educate members on the risks associated with AI and AI agentic use.

Many of the risks associated with AI and agentic AI have been well documented, particularly attorneys submitting AI-generated briefs to the courts without verification of the AI generated hallucinations (e.g. made up cases). Identification of the risks of using AI, like the discovery of new cybersecurity vulnerabilities, will be a never-ending endeavor. CLE-based training and other communications from the CBA are recommended to keep members apprised on the risk environment.

2. Educate members on the benefits of adopting an AI governance framework (e.g., NIST AI RMF, ISO 24001, OWASP Framework, other)

Cybersecurity risk management frameworks, privacy risk management frameworks, and now AI risk management frameworks can be helpful in guiding AI governance, thus reducing the risk of AI. Members should be educated on how to chose a framework, and, as relevant, what options exist for smaller firms, such as solo practices, that do not have the resources internally to pursue and manage these frameworks. Managed service providers (MSP) can provide reasonable solutions for smaller firms and solo practitioners. The CBA can play an important role in how to choose between MSPs.

3. Educate members on the proposer procurement of AI vendors and vendors that use AI.

Most practitioners use third-party vendors, whether it be for payment processing, billing, discovery, etc. Some practitioners will pay vendors to develop AI solutions. These third-party vendors handle personal information and sometimes sensitive personal information. The attorney, or controller of the data remains responsible for the processing of that data by the third-party vendor under the instructions of the controller. Accordingly, vendors must be properly vetted and data protection agreements added for vendor data processing. AI adds another layer of vetting because vendors are incorporating AI in their data processing. Members must understand the additional contract clauses that must be addressed for AI. For the development of AI solutions, the procurer must understand the limitations, risks, and obligations involved with the delivered AI solution.

4. Educate members on the intersection of privacy, cybersecurity, and AI.

Privacy, cybersecurity, and AI are connected. The cybersecurity mantra (CIA triad) is protecting the confidentiality, integrity, and availability of data through the appropriate application of physical, administrative, and technical safeguards. Privacy for data subjects cannot exist without cybersecurity. AI governance expands on the concepts already present in privacy and cybersecurity risk frameworks. One of the main AI challenges is how the data is stored in AI models. AI models are not deterministic relational databases that can be easily adjusted and accessed with structured query language (SQL). AI models are tokens adjusted by weights that may not always provide the same answer because it is probabilistic. Additional care must be taken with personal information and AI models. The goal is trustworthy AI that promotes fairness, explainability, and transparency.

5. Keep members informed on the advances and risks of AI.

AI advances are coming at a fast pace. Solo non-technical practitioners are already building agentic AI solutions to help manage their practice. AI regulation is fragmented and in a state of flux, in part because a advances in AI models are coming at a rapid pace. The CBA can provide information necessary to comply with this evolving regulatory landscape and guidance on responsible use of AI and AI agents in legal practice.

Pillar 2:
Alternative Billing Arrangements

By: William C. Groh, III

Findings

The Task Force concludes that artificial intelligence and related technologies are accelerating a structural shift in how legal work is priced. The traditional billable hour works best in situations where time spent reasonably approximates the effort, skill, and value delivered. AI-assisted workflows are breaking that correlation for an increasing number of legal tasks. Activities such as drafting, first-pass document review, routine production of forms, pleadings, and transactional instruments once justified hours of associate time and large review teams. When paired with meaningful attorney oversight, AI can increasingly help practitioners complete these tasks at comparable quality levels and in a fraction of the time previously required. This dynamic will increasingly cause pricing models built solely around hours spent to fail to align the economic interests of lawyers and clients and invite fee disputes under Colo. RPC 1.5.

At the same time, current AI tools are still no substitute for an attorney's judgment or advocacy. In-depth case analysis, settlement negotiation, client counseling, depositions, oral arguments and trials all still require individualized attorney time and reflection. This shift, however, does not require practitioners to choose between hourly billing and flat fees. Practitioners should instead identify the discrete "facets" of legal work comprising their matters and assess the appropriate billing model for each. AI can substantially compress and commoditize some of these facets but not others. Hybrid fee arrangements that separately price each facet based on the appropriate model are a natural and defensible response.

Task Force interviews suggested significant risks if this shift is mismanaged. It is well recognized that lawyers must bill for time actually spent and cannot bill for the time they would have spent "but for" the use of technology. The issue runs deeper than that: AI tools will ultimately reshape fair-market *expectations* about how much time certain legal tasks "should" take. Lawyers who reject AI for tasks that it now safely completes in minutes risk overcharging clients in violation of the reasonableness requirement of Rule 1.5. Blanket flat fees are also not an automatic answer. Lawyers who shift to flat fees without adequate scoping risk underpricing complex matters, eroding quality, or creating incentives to underserve clients once the fee is fixed. Rules 1.4 and 1.5(b) likely entitle clients to be informed when AI is used on their matter and how that use affects what they pay. Confusion on these issues can lead to inconsistent practices and disclosures and unnecessary erosion of public trust.

The CBA should guide practitioners on the potential use of hybrid billing models to help them responsibly and ethically navigate billing in an AI-enabled environment. The CBA should provide guidelines as to which categories of work are appropriate for flat-fee or other alternative arrangements, how to scope and price those arrangements, what to disclose to clients, and how to document the role of AI in the matter. AI-supported alternative billing arrangements can deliver greater price predictability and better correlation between the value delivered and the fee charged.

Formal Recommendations

1. Encourage adoption of hybrid fee structures.

The CBA should recommend that lawyers and law firms consider hybrid fee arrangements in matters that treat "AI-enhanceable" aspects of the matter differently from the more judgment-intensive work. Rather than choosing a single billing model for an entire engagement, lawyers should disaggregate the matter into its component facets and price each facet on the model best suited to it. This should typically combine 1) flat or fixed fees for discrete deliverables that AI can substantially accelerate on the one hand, with 2) hourly or value-based fees for tasks that are either judgment-intensive or which AI cannot meaningfully expedite.

2. Identify and define the categories of legal work appropriate for flat or fixed fees.

The CBA should publish guidelines which identify the categories of legal work most amenable to flat-fee pricing in an AI-assisted environment. Potential categories may include preparing complaints, written discovery requests, witness lists, exhibit lists, certain legal memoranda, and standard transactional documents. These categories may also include initial review of transactional documents and pleadings, as well as first-pass review of e-discovery and document productions. The guidelines should be non-exhaustive while disclaiming technical advice or endorsement of specific AI providers or services. The guidelines should also remind CBA members to consistently reassess best practices in light of the continued and rapid development of the capability of AI tools.

3. Reserve hourly and value-based pricing for judgment-intensive work.

The CBA should also acknowledge the ongoing value of hourly or other value-based billing for categories of work which AI tools cannot meaningfully expedite. These categories include settlement negotiation, in-depth review and analysis of pleadings, case analysis and strategy, client consultation, preparation for and conduct of oral argument, preparation for and conduct of depositions, and trial. The CBA should encourage its members to recognize (and communicate to their clients) the facets of their matters which remain economically unaffected by AI and why.

4. Reaffirm Rule 1.5 reasonableness in pricing AI-assisted work.

The CBA should reaffirm that the reasonableness requirement of Colo. RPC 1.5 applies with full force to AI-assisted work. The CBA should emphasize that a previously reasonable fee for a task that once required hours of time may not be justifiable if the same task can now be completed in minutes with AI assistance. Lawyers should periodically revisit their rates, fee schedules, and standard engagement terms to ensure that fees continue to reflect the time, skill, and responsibility actually required, the value delivered, and the prevailing market for similar services. Where AI use materially reduces the time or cost of a task, the fee charged to the client should reflect that efficiency. At the same time, the "value delivered" to a client may continue to reflect a practitioner's skill, institutional knowledge or expertise in ways that AI tools cannot meaningfully substitute or expedite.

5. Consider expansion of contingency fees, success fees, and subscription models.

Non-hourly fee models are typically problematic because they assign risk over many variables. While these variables may include probability of success and collectability, the estimated time required may be the most important to a lawyer attempting to gauge whether a non-hourly fee model makes sense. While other variables remain, AI may make the "time required" variable more predictable and less imposing by expediting tasks that once took hours to complete. This trend could reduce overall uncertainty and risk associated with non-hourly fee models.

Contingency fees, subscription fees, and success fees may become more feasible in matters that have traditionally been billed hourly. Developing such arrangements would naturally require practitioners to consider factors other than time expended. Colo. RPC 1.5 specifically recognizes that a "reasonable" fee can be based on several factors other than just time expended. This includes the novelty and difficulty of the questions involved, the skill required to perform the legal service properly, the amount involved and the results obtained, the experience, reputation, and ability of the lawyer, and whether the fee is fixed or contingent.

The CBA should remind its members that while AI tools may erode "time spent" as a meaningful proxy for the value of certain types of legal work, the remaining Rule 1.5 factors remain very much in play. These developments present interesting opportunities for practitioners to develop non-hourly fee models.

A. Contingency Fees

By reducing the time and cost of certain tasks, AI tools may reduce the cost of advancing cases to a point where they are ready for trial or mature for settlement. This dynamic may broaden the range of matters where the result achieved is the most honest measure of value delivered. For example, commercial collection work, employment claims, tax controversies, and enforcement of judgments may feasibly lend themselves to contingency arrangements. Such work previously required the lawyer to accept both an outcome risk *and* substantial litigation cost. Should AI tools meaningfully reduce litigation cost, it may become more feasible for lawyers to accept the outcome risk in new areas of litigation.

B. Subscription Fees

Subscription fees involve payment of a fixed monthly or annual amount for defined access to counsel. These arrangements can deliver predictable revenue to the firm cost to the client. They can effectively serve areas like ongoing employment advice, regulatory monitoring, contract review, and general corporate counsel work, while squarely rewarding the lawyer's experience, judgment, and availability rather than hours logged. As AI tools make it easier to predict the time involved for certain facets of work in these areas, pricing based on subscription fees may become increasingly feasible.

C. Success Fees

Success fees, layered on top of a reduced hourly or flat base, can align lawyer and client incentives in transactional and litigation matters where a defined result — closing the deal, defeating dispositive motions, achieving a target settlement range — captures value that the hourly clock cannot.

In each case, the justification for the fee draws on non-time-related Rule 1.5 factors: the result achieved, the attorney's expertise and reputation, the difficulty and novelty of the matter, and the risk allocation embedded in the engagement. Practitioners adopting these structures should document that reasoning in the engagement letter, obtain informed client consent, and ensure that any contingency or success component complies with Rule 1.5(c)'s writing and signature requirements. Done thoughtfully, expanding contingency, subscription, and success-based pricing into traditionally hourly domains is not a workaround for the billable hour's decline — it is a more honest expression of how the legal profession has always been entitled to be compensated.

6. Require client disclosure and informed consent for AI-driven changes to billing.

The CBA should recommend that lawyers disclose, in plain language at the outset of an engagement, the categories of AI tools they expect to use, the categories of tasks for which those tools will be deployed, and how that use is reflected in the proposed fee structure. Where AI use is material to the pricing of an engagement, including the offering of a flat fee in lieu of hourly billing for a particular facet of the matter, the engagement letter should reflect that arrangement and the client should affirmatively consent to it. This disclosure is consistent with a lawyer’s existing duties of communication and candor under the Rules of Professional Conduct and provides clients with the information they need to evaluate the value they are receiving.

7. Develop CBA model engagement letter and fee agreement templates incorporating AI provisions.
The CBA should develop and make available to its members model engagement letter and fee agreement templates that incorporate provisions appropriate for an AI-enabled practice. These templates should include sample language for hybrid fee arrangements, clear scoping of flat-fee deliverables, treatment of out-of-scope work, disclosure of AI use, allocation of responsibility for AI-related costs and licensing, confidentiality safeguards relevant to AI tools, and the lawyer's continuing duty of professional judgment notwithstanding the use of AI. Templates should be drafted to work for solo and small-firm practitioners as well as larger firms, and should be paired with brief practice notes explaining the rationale for each provision.

8. Provide CLE programming and pilot programs to support the transition.
The CBA should provide CLE programming, written practice guides, and, where feasible, pilot programs to help its members consider and implement AI-supported alternative biling arrangements in their own practices. Programming should cover how to scope and price flat-fee deliverables, how to combine flat-fee and hourly components in a single matter, how to evaluate AI tools against the demands of Rule 1.1 competence and Rule 1.6 confidentiality, and how to communicate fee structures to clients. Pilot programs, undertaken in cooperation with willing firms and legal aid providers, should collect anonymized data on outcomes such as client satisfaction, fee predictability, realization rates, and the categories of work for which alternative fee structures perform best, so that future CBA guidance can be refined based on actual Colorado experience.

Pillar 3:
Responsible AI Adoption, Security, and Risk Management

By: Joel Hassel, Andy Frohardt, and Jason Vogel

Findings

The Task Force concludes that artificial intelligence and related technologies can materially improve law practice when adopted thoughtfully and matched to the sensitivity of the work being performed. As discussed, these tools may not replace but may help enhance practitioners' critical thinking and professional judgment. In the near term, the most realistic benefits for most Colorado lawyers are likely to come from drafting assistance, research support, intake, workflow management, summarization, and other operational tasks that preserve meaningful human review of outputs and accountability for final work product.

At the same time, the Task Force's stakeholder discussions identified significant risks, including inaccuracy, confidentiality concerns, unclear vendor terms, implementation burdens, and cybersecurity vulnerabilities. Those risks are not determined solely by whether a provider is large or well known. Rather, they turn on the actual safeguards of the specific product, including how data is used, retained, segregated, accessed, and governed. The Task Force further finds that small and solo firms may stand to benefit the most from these tools because they often have fewer people and less administrative support, but they may also face the greatest exposure because the most robust enterprise-grade solutions are frequently out of reach and they often lack the resources to build or independently audit sophisticated security controls on their own.

The Task Force also finds that systems capable of acting with substantial autonomy present distinct risks that differ from ordinary assistive tools. Agentic and autonomous systems are related, but not identical. An agentic system may use tools, follow workflows, and take actions across systems without necessarily operating independently. Autonomy is the stronger concept, where the system is permitted to continue acting with limited human intervention. In that setting, the security concern is not merely that a breach may expose confidential information. A compromised or poorly constrained system may also act with the "apparent authority" of the firm or organization by sending communications, triggering actions, or interacting with others through the firm's own accounts, permissions, or systems. For that reason, guidance to lawyers should distinguish between ordinary assistive AI tools and higher-risk systems that are connected to client files, firm infrastructure, or external-action workflows.

Formal Recommendations

1. Adopt a risk-based framework for evaluating AI tools.

The CBA should recommend that lawyers and law firms evaluate AI tools based on the sensitivity of the information involved and the degree of action the system is permitted to take. Not all tools or uses present the same level of risk. Greater diligence is warranted where tools are used with confidential, personal, financial, health, or other sensitive client information, and where the tool is connected to firm systems or external workflows rather than serving merely as a limited drafting or research aid.

This recommendation should be framed in lawyer-practical terms. The objective is not to require every attorney to master technical architecture, but to establish the principle that pre-implementation review of AI systems should closely correlate with the level of data sensitivity and operational authority.

2. Emphasize product-specific safeguards and data governance, not brand reputation alone.

The CBA should recommend that lawyers focus on the actual safeguards of the product they are using rather than assuming that a well-known provider is necessarily sufficient. Practical guidance should direct lawyers to consider issues such as whether client data is used for model training, how long data is retained, who can access it, what third parties or subprocessors are involved, what administrative controls are available, and whether the tool operates in a more closed and governed environment.

The CBA should discourage a "do-it-yourself" attitude when it comes to cybersecurity. Instead, the CBA should equip practitioners to ask the right questions and to understand that branding and market prominence are not substitutes for diligence. This is especially the case in a rapidly changing AI market where product terms and technical implementations can shift quickly.

3. Provide lawyer-practical guidance for safe adoption, especially for small and solo firms.

The CBA should recognize that many lawyers, particularly small and solo practitioners, will not be able to conduct deep technical reviews or afford the most robust enterprise offerings. At the same time, those firms may be the most tempted by these tools because the efficiency gains can be significant where staffing and administrative support are limited. The Task Force therefore recommends guidance that helps lawyers adopt these tools more safely rather than simply warning them away from use.

In practical terms, that means encouraging lawyers to prefer legal or business tools with stronger default protections over open consumer tools when client information is involved, to understand when a product appears to operate in a more closed and governed environment, and to avoid configurations that exceed the firm's ability to supervise and understand them. The recommendations should be realistic, understandable, and calibrated to the actual decision-making environment of ordinary practitioners.

4. Apply heightened caution to highly autonomous and high-permission systems.

The CBA should recommend heightened scrutiny for systems that can act with substantial autonomy, connect to firm systems, access client files, send communications, or trigger actions in external platforms. The concern is not agentic capability by itself, but the combination of broad permissions, limited supervision, and weak guardrails. Guidance in this area should encourage meaningful constraints such as scoped access, human approval gates, logging, monitoring, and technical protections around sensitive data, including masking or anonymization where appropriate.

The recommendation should also make clear that the risk in such systems is not limited to disclosure of information. As discussed, highly autonomous systems can create apparent authority issues. If compromised or misdirected, they may act through the firm's own systems, accounts, and permissions in ways that appear legitimate to clients, courts, counterparties, or the public. For that reason, these systems should be treated differently from ordinary assistive tools and should not be deployed casually.

Pillar Four:
Multidisciplinary Practice and the Expanding Role of Technologists in Legal Practice

By: Daniel Graham

Introduction

The CBA AI & Innovation Task Force conducted various stakeholder interviews to explore how artificial intelligence and related technologies are reshaping the practice of law. Several of these interviews bear on Pillar Four: Multidisciplinary Practice and the Expanding Role of Technologists in Legal Practice. Three key interviewees who spoke directly on these issues are:

- Judge Anni Foster of the Arizona Court of Appeals; and
- Professor David Freeman Engstrom and Natalie Knowlton of the Stanford Law School Deborah L. Rhode Center on the Legal Profession.

These interviews illuminate how AI is accelerating the transformation of legal practice into a multidisciplinary endeavor in which technologists play an increasingly central role—not as peripheral support staff, but as co-designers and co-deliverers of legal services.

Findings

The Task Force finds that AI is driving lawyers to form partnerships with technology professionals in ways that fundamentally reshape how legal services are designed and delivered. The below findings include concrete examples from Arizona and California, as articulated by the above-listed interviewees.

In Arizona, alternative business structures are built on this collaboration: lawyers partner with technologists to create streamlined client intake processes that efficiently triage matters and determine what goes to an attorney versus what can be handled by a paralegal or automated system. This collaboration is not supplementary—it is the core of the business plan for many of these new legal entities. Also in Arizona, an ABS entity partnered with the state bar foundation to provide Fortune 500-level legal technology to community legal services organizations for free, including training lawyers at those organizations to use the tools. This demonstrates how technologists can democratize access to tools that public-interest organizations likely could not afford on their own.

At the institutional level, Stanford Law School embeds lawyers, data scientists, and computer scientists directly inside the Los Angeles Superior Court—the largest trial court in the country—to develop high-leverage AI tools that go well beyond simple chatbots. One such tool flags defects in default judgments in debt-collection cases, a context in which as many as 40% of default judgments contain errors that should preclude judgment, and then directs the human user into the part of the case material where they can quickly address the defect. This reflects a sophisticated human-AI collaboration designed by technologists working within the court system—demonstrating that meaningful integration of AI into the justice system requires technologists working alongside legal professionals.

More broadly, AI is also enabling a tiered model of legal services in which technologists occupy distinct and essential roles across a spectrum of representation. Not every legal problem requires a highly paid attorney; the question is where on the spectrum a client's needs fall and how best to deliver services at that level. Self-represented litigants are already using AI to file well-crafted appeals, and courts are seeing cases with genuine merit that might not have otherwise been filed.

At the same time, the interviews identified significant risks. The future of the law firm sits at the intersection of capital, technology, and talent, and a critical concern is what happens when the automated AI workflows—the actual engines of production—are owned by private equity rather than by the law firms themselves, potentially hollowing out firms and concentrating innovation outside of professional oversight. Additionally, attorneys are creating their own agentic AI programs without institutional oversight—a "shadow IT" problem that requires in-house technologists to establish governance frameworks. Overly strict regulation, however, risks leaving stakeholders unable to use AI tools at all, so any regulatory approach must balance innovation with professional responsibility.

Formal Recommendations

1. Recognize technologists as essential participants in legal service delivery. The CBA should acknowledge that data scientists, computer scientists, and other technology professionals are not peripheral support staff but can be co-designers of legal services. Law firms and legal organizations should be encouraged to embed technologists within their teams to build, govern, and maintain AI-enabled tools, following the model demonstrated by Stanford's collaboration with the LA Superior Court.
2. Require technical governance capacity within law firms deploying AI. The CBA should recommend that firms deploying AI tools maintain adequate technical governance—including personnel with expertise to evaluate open versus closed AI systems, assess data sources, and ensure compliance with confidentiality and professional conduct obligations. This addresses the emerging "shadow AI" problem of attorneys building unvetted agentic tools without institutional oversight.
3. Encourage partnerships that bring advanced technology to underserved providers. The CBA should encourage and facilitate partnerships in which technology companies or technologist-driven entities provide advanced legal technology to legal aid organizations and pro bono providers at no cost, including training for staff, following the model demonstrated in Arizona's bar foundation partnerships.
4. Promote regulation that enables advancement and also maintains accountability for multidisciplinary innovation. Regulatory frameworks governing technologists' participation in legal services should be designed to both enable innovation and maintain lawyers' professional responsibility obligations. Overly prescriptive rules risk creating a situation where beneficial tools cannot be deployed. Nevertheless, regulation should be sufficient to protect the public while allowing operation within its confines, with iterative refinement as the landscape evolves.

Pillar 5: Access to Justice Innovation

By: Naomi Stokeld

Findings

The Task Force concludes that artificial intelligence and related technologies can enhance access to justice when implemented thoughtfully and designed with human needs in mind. These tools should support, rather than substitute, the critical thinking and professional judgment of licensed legal professionals. Meaningful human oversight must be present at both the input stage (how tools are selected, configured, and fed information) and the output stage (how results are reviewed, validated, and delivered to the public). In the near term, the most promising uses are those that expand the capacity of legal aid and pro bono providers, improve the public's ability to navigate legal processes, and deliver accurate, understandable legal information, always subject to review and accountability by a qualified human.

As with other topics, the Task Force's stakeholder interviews identified significant risks. The risks associated with this topic included inaccuracy and confidentiality concerns, implementation burdens, and the possibility that digital tools may exclude the very communities they are intended to serve. For that reason, innovation in this area should proceed cautiously and in phases, beginning with low-risk applications supported by strong governance and accessibility safeguards, all guided by meaningful human oversight, and with the preservation of non-digital and person-to-person alternatives.

Colorado should prioritize technologies that expand service capacity at the points where unmet legal need is greatest: intake and triage, plain-language legal information, guided document preparation, and rural outreach, provided each deployment preserves an accessible offline pathway. The CBA should also encourage pilot projects modeled on successful initiatives in other jurisdictions, such as statewide intake portals and legal information assistants, each designed so that qualified humans review the information fed into the tool and validate the outputs delivered to the public, with outcomes measured against defined benchmarks for usability, equity, reliability, and measurable impact on access.

Formal Recommendations

1. Start with the problem, not the technology.

Before selecting any tool, the threshold question is what problem we are trying to solve. Not every access-to-justice problem requires a technology solution, and lessons from other sectors (notably healthcare) show that organizations achieve better results when they identify the problem first and then ask whether technology, AI, or a non-technical intervention is the right answer. Many problems are best addressed through process change, staffing, partnerships, or community-based services rather than software. A hybrid posture in which human judgment determines which problems warrant a technology solution and which do not should guide every deployment. When technology is the right answer, the CBA should conduct meaningful diligence on available options, measured against the governance standards, before adoption.

2. Encourage phased adoption of access-to-justice technology.

The CBA should recommend that courts, legal aid organizations, clinics, and volunteer programs begin with low-risk, high-value uses of AI and related technology, particularly for intake, information delivery, administrative support, and workflow improvement, before expanding to more complex public-facing applications.

3. Adopt baseline governance standards for all AI-enabled access-to-justice tools.

The CBA should recommend minimum standards requiring human oversight, confidentiality protections, clear disclosure of tool limitations, accountability for outputs, and ongoing review for accuracy, bias, and reliability. (Refer to KP's vendor AI requirements.)

4. Require accessibility by design.

The CBA should recommend that any endorsed or supported technology be mobile-friendly, plain-language, disability-accessible, multilingual where feasible, and paired with non-digital pathways so that innovation does not exclude the very communities it is intended to serve.

5. Prioritize tools that improve service capacity, not replace legal judgment.

The CBA should recommend technologies that help lawyers and advocates serve more people more effectively, while making clear that such tools are aids in legal service delivery, not substitutes for the critical thinking, professional judgment, or individualized legal advice of a licensed legal professional.

6. Develop a statewide access-to-justice innovation framework.

The CBA should convene legal aid providers, courts, law schools, libraries, technologists, and community organizations to identify priority use cases, share tested workflows, and establish common evaluation metrics for access-to-justice innovation in Colorado.

7. Promote targeted pilot projects in high-volume civil matters.

The CBA should recommend pilot programs in high-volume civil matters where self-represented litigants face the greatest procedural friction. Priority domains and illustrative pilots include: (i) family law: guided interview tools that help parents complete parenting-plan worksheets, child-support calculations, and protection-order petitions, with attorney review before filing; (ii) consumer matters: automated debt-collection answer generators and fee-waiver assistants that draft responsive pleadings for review by legal aid attorneys; (iii) estate planning: small-estate affidavit and simple-will preparation tools paired with a licensed-attorney review step; (iv) housing: eviction-response assistants that surface tenant defenses and local resources in plain language; and (v) property-damage-only auto claims: guided tools that help self-represented claimants pursue small third-party recoveries where liability is clear and no injuries are involved. Each pilot should report on user comprehension, completion rates, staff time saved, and successful handoff to human assistance where needed, with results published so that other jurisdictions and providers can learn from what works and what does not.

As a flagship initiative operationalizing this recommendation, the CBA could pilot a bilingual, public-facing legal information assistant modeled on North Carolina's Legal Information Assistant (LIA), a tool that provides general civil legal information, multilingual responses, and referrals, while expressly disclaiming legal advice. A Colorado version would tie directly into the Rec. 7 priority domains above: landlord-tenant and eviction-response questions (housing), debt collection (consumer), protection orders and family-law process questions (family law), and simple-estate inquiries (estate planning). Consistent with the oversight principles established in Recommendations 3 and 5, the underlying content would be curated and periodically reviewed by licensed attorneys, outputs sampled and audited for accuracy and bias, and users given a clear pathway to reach a qualified human whenever their question exceeds the tool's scope.

8. Preserve human and offline alternatives.

Building on Recommendation 4, the CBA should expressly state that no person may be required to use an AI system or online platform as a condition of obtaining legal help, legal information, or access to a service pathway. A meaningful, reasonably accessible human alternative, by telephone, in person, or through a community-based provider, must remain available in every program that relies on AI-enabled intake or service delivery.

Pillar 6:
The Case for Colorado Guidance on Law Firm MSO Structures

Author: Todd Burnham, Founder & CEO, Burnham Law

Date: April 2026

A Pillar 6 Position Summary

Pillar 6 charges the Task Force with examining firm ownership beyond lawyers: lessons from key states, the sandbox concept, the MSO workaround, alternative service providers, and the ethical considerations that surround the unauthorized practice of law. Each of those five elements points, in different ways, to the same operational conclusion — Colorado should issue specific guidance on MSO arrangements, and it should do so in 2026.

1. Lessons Learned from Other Key States

The regulatory landscape across the U.S. provides a clear pattern of successes and failures regarding law firm ownership reform:

State	Program/Regime	Outcome & Status (as of 2026)
Arizona	Alternative Business Structure (ABS)	Eliminated Rule 5.4 in 2020. Licensed ~150 entities (including KPMG Law US). Attracted capital, tech platforms, and multidisciplinary providers.
Utah	Regulatory Sandbox	Struggled with adoption; participation fell from 39 entities (2022) to ~11 (late 2025). ABS portion closed Dec 2024; participants migrating to Arizona.

State	Program/Regime	Outcome & Status (as of 2026)
Washington	Limited License Legal Technician (LLLT)	Sunsetted June 2020. Failed on scope and economics (single practice area did not support a viable profession).

2. The Sandbox Concept

Sandboxes are administratively expensive. Utah operates a dedicated Innovation Office, a standing Legal Services Innovation Committee with monthly meetings, a multi-year reporting and evaluation framework, and an Ad Hoc Regulatory Reform Committee tasked with assessing outcomes. The IAALS evaluation of Utah's sandbox spans four reports and extends through 2027. That infrastructure produces rigorous data, but it requires regulatory capacity Colorado does not currently have committed. A Colorado sandbox is not foreclosed, but it is not the starting point. MSO guidance does not require a new office, a standing committee, or a seven-year pilot. It requires an ethics opinion. The sandbox concept is worth the Task Force's continued consideration as a framework for testing specific access-to-justice innovations, but it is a parallel track to MSO guidance, not a substitute.

3. The MSO Workaround

An MSO is a two-entity architecture. The law firm ("Law Co") remains wholly owned by licensed attorneys, employs the lawyers and client-facing personnel, receives all legal fees, and retains exclusive authority over the practice of law. A separate entity ("MSO"), typically with outside investor ownership, provides administrative and operational services under a Management Services Agreement - finance, marketing, HR, technology, facilities, back-office functions. Fees flow from Law Co to MSO under the MSA on a flat-fee, cost-plus, or similarly untethered basis.

The structure is not new. MSOs have been the compliance vehicle for capital participation in medical, dental, and veterinary practices for three decades, operating within equivalent corporate-practice restrictions. The legal adaptation is younger but tracking. Texas Opinion 706 (February 2025) is the first U.S. ethics opinion squarely addressing law firm MSOs. It drew two bright lines. Revenue-percentage management fees are impermissible fee-sharing; flat-fee or cost-plus structures are permitted. Lawyer equity in an MSO is permitted where the MSO does not practice law and professional judgment is preserved. Holland & Knight, Sidley Austin, DLA Piper, and Reed Smith have all published extensive commentary extending the 706 framework to practical MSA drafting. Colorado firms are already operating under this framework. A Colorado ethics opinion would provide clarity, raise the compliance floor, and establish Colorado-specific expectations rather than ceding the framework to out-of-state authorities.

4. Alternative Service Providers

ALSPs, matter support providers, and legal technology platforms operate largely outside the ownership debate because their primary clients are corporate purchasers and the attorney-client relationship is formed elsewhere. The pressure point for Pillar 6 is the growing overlap between AI-enabled platforms and the delivery of legal services directly to consumers. Arizona's ABS framework has licensed legal technology entities; Utah's sandbox has authorized software-only providers with lawyer oversight. Colorado's current framework addresses these categories through general UPL principles rather than structured guidance. MSO guidance does not resolve the ASP question, but it does not complicate it. The two workstreams are separable. MSO guidance addresses ownership and capital structure for traditional law firms. ASP and AI-delivery frameworks can proceed on a parallel track through the Task Force's broader AI pillars.

5. Ethical Considerations — Rule 5.4 and UPL

- The substantive concerns that support Rule 5.4 are independent professional judgment, client confidentiality, conflicts of interest, and the prohibition on the unauthorized practice of law. A properly structured MSO preserves each:
- Independence. Law Co remains owned and controlled by attorneys. The MSA explicitly reserves all professional judgment and matter-level decisions to the lawyer.
- Confidentiality. MSO personnel with access to privileged information are bound by equivalent confidentiality obligations through contract and operational controls.
- Conflicts. Shared MSO infrastructure is managed through informational barriers; client disclosure addresses residual concerns.
- UPL. The MSO provides administrative services only. Legal advice, strategy, and representation remain exclusively within Law Co.
- The ethical framework is not self-executing. It depends on specific MSA provisions, operational controls, and oversight mechanisms. A Colorado ethics opinion is the instrument that translates the framework into enforceable expectations.

Formal Recommendations

The CBA Ethics Committee, in consultation with Pillar 6, should issue a Colorado ethics opinion on MSO arrangements addressing: permissible fee structures, scope of MSO-provided functions, disqualifying MSA provisions, confidentiality obligations in shared-services environments, conflict imputation across MSO-serviced firms, client disclosure expectations, and transition and termination mechanics. This is the single most consequential deliverable Pillar 6 can produce within the Task Force's current charter. It requires no Supreme Court rule change, no new regulatory infrastructure, and no pilot program. It brings Colorado-specific visibility and expectations to activity already occurring, establishes a compliance floor that protects consumers and firms, and positions Colorado to address the broader ownership question on its own timeline rather than one set by capital already in motion.

Working draft for Pillar 6 internal discussion. Does not represent the position of the CBA AI & Innovation Task Force, the Colorado Bar Association, or Burnham Law.

Attachment 6

Proposed Amendments to the Rules of Professional Conduct Related to Artificial Intelligence

The State Bar seeks public input on proposed amendments to the Rules of Professional Conduct addressing the use of artificial intelligence.

Deadline: May 4, 2026, 11:59 p.m. (45 days)

Direct comments to

Comments should be submitted using the online Public Comment Form. The online form allows you to input your comments directly and can also be used to upload your comment letter and/or other attachments.

Background

The State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) is charged with addressing matters involving legal ethics to help California lawyers understand their ethical duties. The committee's work includes studying and recommending changes to the Rules of Professional Conduct. (See State Bar Board Book, Section 4.12 & Appen. B.)

On August 22, 2025, the State Bar of California received a letter from the California Supreme Court directing the State Bar to consider incorporating principals from its *2023 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* into the California Rules of Professional Conduct. The Court also directed the State Bar to consider any additional guidance in light of agentic artificial intelligence tools, which can enable systems to autonomously perform tasks or workflows without human prompting. In response, COPRAC has developed proposed amendments to the Rules of Professional Conduct to address the use of artificial intelligence in legal practice. COPRAC also proposed changes to the above-mentioned *Practical Guidance* and those proposed changes will be going before the Board of Trustees at its May 2026 meeting.

Generative artificial intelligence tools (such as ChatGPT, Claude, and Perplexity) are computer applications that can create text, images, or other content in response to user prompts. In the legal context, they may be used for tasks such as brainstorming, research, drafting, or summarizing information. While these tools can be helpful in streamlining some aspects of legal work, attorneys must use them in a manner consistent with their duties under the Rules of Professional Conduct. While the current rules already provide guidance and dictate how to use emerging technologies, including artificial intelligence (AI), due to the increasing proliferation of AI, as well as continued examples of fake or "hallucinated" content, including outdated, incomplete, or nonexistent legal authorities appearing in documents filed with the court, COPRAC proposed clarifying amendments to the Rules of Professional Conduct.

Discussion/proposal

The proposed amendments address attorneys' ethical obligations under the Rules of Professional Conduct, including Competence (rule 1.1), Communication with Clients (rule 1.4), Confidential Information of a Client (rule 1.6), Candor Toward the Tribunal (rule 3.3), Responsibilities of Managerial and Supervisory Lawyers (rule 5.1), and Responsibilities Regarding Nonlawyer Assistants (rule 5.3).

Amendments to rule 1.1 would:

- Include artificial intelligence as an example of relevant technology in current Comment [1].
- Add a new Comment [2] emphasizing that, when using technology, including artificial intelligence, a lawyer must independently review, verify, and exercise professional judgment regarding any output generated by the technology.

Amendments to rule 1.4 would:

- Add new Comment [5] clarifying that when a lawyer's use of technology, including artificial intelligence, presents a significant risk or materially affects the scope, cost, manner, or decision-making process of representation, the lawyer must communicate sufficient information regarding the use of technology to permit the client to make informed decisions regarding the representation. The comment also clarifies that this duty exists through the life of the representation based on the facts and circumstances, including the novelty of the technology, risks associated with the use of the technology, scope of representation, and sophistication of the client.

Amendments to 1.6 would:

- Add a new Comment [2] defining "reveal" to include exposing confidential information to technological systems, including AI tools where such exposure creates a material risk that the information may be used in a manner inconsistent with the lawyer's duty of confidentiality.

Amendment to 3.3 would:

- Add new Comment [3] clarifying that a lawyer's duty of candor toward the tribunal includes the obligation to verify the accuracy and existence of cited authorities, including ensuring no cited authority is fabricated, misstated, or taken out of context, before submission to a tribunal, including any cited authorities generated or assisted by artificial intelligence or other technological tools.

Amendments to 5.1 would:

- Modify existing Comment [1] to clarify that managerial lawyers must make reasonable efforts to establish internal policies and procedures governing the use of AI, in accordance with the Rules of Professional Conduct.

Amendments to 5.3 would:

- Modify the existing comment to clarify that a lawyer must give nonlawyer assistants appropriate instruction and supervision concerning all ethical aspects of their employment, including the use of technology in the provision of legal services, such as artificial intelligence.

At its March 13, 2026, meeting, COPRAC approved the proposed amendments to 1.1, 1.4, 1.6, 3.3, 5.1, and 5.3 for a 45-day public comment period.

Any fiscal/personnel impact

None

Background materials

- Proposed Amended Rules of Professional Conduct 1.1, 1.4, 1.6, 3.3, 5.1, and 5.3 (clean and redline)
- Letter from the California Supreme Court, dated August 22, 2025

Source

State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC)

Deadline

May 4, 2026, 11:59 p.m.

Direct comments to

Comments should be submitted using the online Public Comment Form. The online form allows you to input your comments directly and can also be used to upload your comment letter and/or other attachments.

For further questions, please email communications@calbar.ca.gov.

Supreme Court

In re Amendments to Article V, Rule 1.1	:
of the Supreme Court Rules	:
(Professional Conduct)	:
and Adoption of Interim	:
Generative AI Guidelines	:

O R D E R

Section 1. Article V, Rule 1.1 of the Supreme Court Rules is hereby amended as follows:

"Rule 1.1. Competence.

* * *

"[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, <u>including the benefits and risks associated with existing and developing technology,</u> engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject."

* * *."

Section 2. In conjunction with the foregoing amendment, this Court hereby adopts the attached "Interim Guidelines for the Ethical Use of Generative AI by Rhode Island Lawyers" and "Interim Guidelines for the Ethical Use of Generative AI by Rhode Island Judicial Officers." These Guidelines neither amend Article V (Rules of Professional Conduct) and Article VI (Code of Judicial Conduct) of the Supreme Court Rules nor carry the force of law. Rather, they are advisory in nature and serve to guide Rhode Island lawyers and judicial officers in their use of generative artificial intelligence tools in a manner consistent with their professional and ethical responsibilities. As such, they are subject to ongoing revision as the generative artificial intelligence landscape continues to evolve. Copies of the current Guidelines shall be made available on the Judiciary's website, www.courts.ri.gov.

Entered as an Order of this Court this 17th day of ***June, 2026***.

/s/
Suttell, C.J.

/s/
Robinson, J.

/s/

Lynch Prata, J.

/s/

Long, J.

INTERIM GUIDELINES FOR THE ETHICAL USE OF GENERATIVE AI BY RHODE ISLAND LAWYERS

Artificial intelligence has long been a feature of modern legal practice. Tools such as spell and grammar checkers, predictive typing, computer-based legal research, and e-discovery programs represent well-known and noncontroversial uses in most cases. The advent of generative artificial intelligence ("GAI") changes this calculus, however, because unlike preexisting artificial intelligence tools which perform discrete, repetitive tasks according to in-built programming, GAI tools independently produce original content such as text, audio, and video in a far more dynamic and sophisticated manner. These novel capabilities offer risk and reward for the practitioner in equal measure, promising the opportunity for greater output and efficiency but raising distinct ethical concerns in the process.

The use of GAI does not change the ethical responsibilities of lawyers, as was true with the introduction of computers and the internet. The following guidelines are intended to provide Rhode Island lawyers with direction and assistance for using GAI tools consistent with their duties and responsibilities under Article V of the Supreme Court Rules, the Rhode Island Rules of Professional Conduct. These guidelines offer a general, non-comprehensive rubric against which lawyers may measure their GAI use against their ethical obligations under the Rules of Professional Conduct.

The Supreme Court recognizes that GAI will continue to evolve quickly, and it expects that these guidelines may as well.

Lawyers with specific questions related to GAI use should request an advisory opinion from the Supreme Court's Ethics Advisory Panel.

Rule 1.1. Competence.

Rule 1.1 requires a lawyer to provide "competent representation to a client," with competence measured by "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Comment [6] to Rule 1.1 was recently amended by our Supreme Court to clarify that competent representation also includes the duty to "keep abreast of . . . the benefits and risks associated with existing and developing technology . . . ." Although this language does not demand lawyers adopt or use any particular technology such as GAI, it does require them, at a minimum, to remain aware of the nature, capabilities, applications, and limitations of such tools. To do otherwise may result in a violation of the duty of competency as GAI use continues to propagate throughout the legal industry. The widespread adoption of email represents an illustrative example of this principle in action. Once a novel, emerging technology, email quickly afforded lawyers the ability to work much more efficiently than using regular mail, eventually becoming ubiquitous in legal practice and establishing new expectations vis-à-vis the contours of competent representation. Given the fast pace of its development and growth, GAI may follow a similar path. And GAI, while it has the potential to automate routine tasks and enhance legal research, is known to hallucinate, fabricating responses that look legitimate to lawyers, like using fictitious cases. Lawyers must ensure that using GAI meets the duty to provide competent representation while also being cautious of its risks.

<u>Rule 1.3. Diligence.</u>

Rule 1.3 imposes a duty on lawyers to "act with reasonable diligence and promptness in representing a client." The Commentary to Rule 1.3 clarifies that this duty of diligence requires acting with dedication and commitment to the client's matters and interests and with zeal in advocating on the client's behalf, despite opposition, obstruction, or personal inconvenience to the lawyer.

Lawyers may find that adopting GAI tools enhances their ability to serve their clients. As such, they can integrate GAI tools into their practices to the extent they deem necessary or advantageous in the discharging their responsibilities. However, lawyers should not outsource so much of their practice to GAI tools that doing so dilutes their dedication and attention to clients and their matters and interests incommensurate with their duties under Rule 1.3.

<u>Rule 1.4. Communication.</u>

Rule 1.4 addresses a lawyer's duty to communicate with his or her clients, including the responsibility to "reasonably consult with the client about the means by which the client's objectives are to be accomplished." Rule 1.4(a)(2). It also includes the duty to "keep the client reasonably informed about the status of the matter," "promptly comply with reasonable requests for information," and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Rules 1.4(a)(3), (a)(4), and (b). Comment [1] to Rule 1.4 explains that these obligations are "necessary for the client effectively to participate in the representation . . . to promote more effective representation . . . [and to ensure that] the client [has] an understanding of the nature of the lawyer-client relationship . . . ."

As with Rule 1.1, this language does not affirmatively obligate lawyers to inform their clients every time they utilize GAI tools during a given representation. Rather, lawyers should communicate their GAI use to their clients when doing so advances the purposes of Rule 1.4. Relevant considerations include, but are not limited to, the significance of the GAI tool to accomplishing the task at hand, the importance of the task to the representation as a whole, the extent to which the client's knowledge of the lawyer's GAI use will advance the client's understanding of the representation, and the extent to which the client's knowledge of the lawyer's GAI use informs the client's evaluation of or confidence in the lawyer's work.

Notwithstanding, lawyers who have chosen to integrate GAI tools into their everyday practices to supplement substantive legal work or as more than a work supplement should consider disclosing such use to clients in a retainer or engagement agreement at the outset of the representation. This proactive disclosure will ensure the client understands the full scope of the lawyer's GAI activities before conducting any substantive work. A lawyer must certainly disclose the use of GAI when a client asks, or when he or she enters client information into a GAI system. <u>See</u> Rule 1.6.

Rule 1.5. Fees.

Rule 1.5 governs lawyers' fees and expenses. Pursuant to Rule 1.5(a), lawyers' fees must be reasonable under the circumstances. A non-exhaustive list of considerations for determining the reasonableness of a fee includes, but is not limited to, "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly." Rule 1.5(a)(1). Rhode Island law permits hourly, fixed, and/or contingent fee arrangements.

Under Rule 1.5(b), a lawyer must communicate to the client the basis upon which he or she shall charge for fees and expenses prior to or within a reasonable time after commencing the representation. This must be accomplished in writing, via a fee agreement, engagement letter, or other suitable document. It should set forth, at a minimum, "the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation." Rule 1.5, Comment [2].

GAI tools offer the promise of increased efficiency and work capacity, much like the shift from books to computers for legal research. However, it is critical to remember that a lawyer may only charge for the actual time spent on a task. For example, if a GAI tool allows a lawyer to provide a legal service in one hour instead of the usual two, the billable time would be one hour. Equally important is the need for fixed or contingent fees to accurately reflect the value of the work provided, as charging otherwise could lead to an unreasonable fee.

Charging for GAI-related expenses falls within the same rubric. Comment [1] to Rule 1.5 explains with respect to expenses that "[a] lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer." Accordingly, a lawyer may not charge a client for the expenses associated with operating a GAI tool used for everyday legal work but, rather, must treat such costs as office overhead because they are akin to routine expenses for rent, utilities, productivity software, and malpractice insurance. The reasonable out-of-pocket costs associated with obtaining access to specialty GAI tools which the lawyer does not regularly use may be charged to a client, by contrast, when requested by the client or when necessitated by the nature of the representation.

Finally, a lawyer may not charge a client for the costs relating to GAI training or learning how to use a particular GAI tool due to the lawyer's ongoing duty of competence. However, the lawyer may charge for the reasonable cost of learning how to operate a specific GAI tool requested by the client in furtherance of the representation.

Rule 1.6. Confidentiality.

Pursuant to Rule 1.6, a lawyer must treat as confidential all information related to a representation, regardless of source, unless the client gives his or her informed consent to disclosure, disclosure is impliedly authorized to carry out the representation, or a recognized exception applies. "The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance." Rule 1.6, Comment [1]. These duties also extend to former and prospective clients as well. See Rules 1.9 and 1.18.

The market is replete with GAI tools of many kinds, some advertised for general use and others intended specifically to serve particular industries like law. Moreover, some GAI tools are open in that they store the information input by users and the outputs produced by the tool. Other models operate using a closed system that does not store the information input or generated by the tool. Before using any GAI tool for legal work, a lawyer should read and understand the tool's Terms of Use, privacy policy, and/or related policies to ascertain such important facts as whether and to what extent the tool preserves the confidentiality and security of information, whether such obligations are enforceable, whether the lawyer is to be notified of a data breach or other security event, and whether the tool retains input information after the discontinuation of services. This understanding is crucial to ensure the lawyer's compliance with Rule 1.6 and to protect client information. Consultation with technology professionals may also be necessary to fully understand a tool's nature. This will ensure the lawyer does not utilize GAI tools which may store, disclose, or otherwise permit access to input client information by individuals outside the lawyer's firm or those inside the firm who should not have such access. It will also allow the lawyer to ascertain the tool's security defenses and the risk of possible data breaches.

Rules 1.7 and 1.10. Conflicts of Interest.

Lawyers are prohibited from representing a client when the representation involves a concurrent conflict of interest as defined in Rule 1.7(a), unless one or more of the exceptions enumerated in Rule 1.7(b) applies. When lawyers are associated in a firm, Rule 1.10(a) operates to extend a concurrent conflict of interest faced by one lawyer to all lawyers in the firm unless certain exceptions apply.

One remedy to cure the presence of a concurrent conflict of interest among the members of a firm is to screen the affected lawyer off from knowledge of or participation in the matter and apportioning him or her no part of the fee earned from the representation. Requirements for screening procedures are set forth in Rule 1.0(k) and include "the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law." When enacting such procedures, the implementing lawyer or lawyers must ensure that whatever GAI tools the firm uses are included such that the screened lawyer cannot access, inadvertently or otherwise, client information to which he or she should not have access. See also Rule 1.6.

Rule 1.18. Duties to Prospective Clients.

Rule 1.18 sets forth a lawyer's responsibilities to prospective clients, defined as those persons who discuss with a lawyer the possibility of forming a lawyer-client relationship with respect to a matter. See Rule 1.18(a). A lawyer's responsibilities to a prospective client include prohibitions on representing clients with interests materially adverse to those of the prospective client in the same or a substantially related matter, or revealing information learned from a prospective client except as permitted under Rule 1.9. See Rules 1.18(b) and (c). These restrictions apply even when no lawyer-client relationship ensues from the parties' initial discussions.

One fast-emerging GAI tool marketed to lawyers and law firms is a website chatbot or public-facing interactive GAI interface or "agent" that can engage with and/or screen site visitors in real time. These tools offer the ability to track and handle site traffic in a far more organized and dynamic way than traditional website analytics programs, potentially leading to increased business for the lawyer or firm without the need for human input. The impersonal nature of such communications does not lessen a lawyer's duties to persons seeking to potentially form a lawyer-client relationship, however. He or she owes such persons the same duties under Rule 1.18 as those with whom he or she interacts in person. Moreover, use of such tools may engender additional potential risks such as misrepresentation of the lawyer's services, the unintended acquisition of confidential information from a potential client, or the inadvertent creation of an attorney/client relationship.

Rule 2.1. Advisor.

Rule 2.1 obligates lawyers to "exercise independent professional judgment and render candid advice" when representing a client. The Commentary to Rule 2.1 makes clear that such advice may be given on purely legal grounds but may also stray into moral, ethical, social, political, economic, and other relevant areas as well. Whatever the subject, lawyer advice must be honest, candid, and based upon the lawyer's training, expertise, and experience.

Given their complexity, GAI tools may provide lawyers with a touchstone for investigating and responding to client inquiries and problems. While a lawyer may reasonably consult a GAI tool in the same way he or she would study a legal treatise, query a database like Westlaw or LexisNexis, or question an outside subject-matter expert, he or she should not substitute GAI output for his or her own advice. To do so would undermine the lawyer's duty to render candid guidance based upon his or her "independent" judgment and potentially call his or her competence and diligence into question. See Rules 1.1 and 1.3.

Rules 3.1 and 3.3. Meritorious Claims and Contentions and Candor Toward the Tribunal.

Rules 3.1 and 3.3 pertain to a lawyer's ethical duties to the courts as well as clients during litigation and other proceedings. Rule 3.1 requires, in part, that a lawyer "not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Rule 3.3(a) establishes that a lawyer cannot knowingly make a false statement of fact or law to a tribunal or fail to correct a material false statement of fact or law previously made to a tribunal, fail to disclose controlling authority to a tribunal adverse to the lawyer's position, or offer false evidence. Related Rules include Rule 4.1, which prohibits a lawyer from making a false statement of material fact or law to a third person, and Rule 8.4(c), which states that it is misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." These prohibitions apply to intentional as well as unintentional statements and actions.

It is important to remember that GAI tools, while helpful, are not without risks. As noted in the context of Rule 1.1 and competency, GAI tools are prone to hallucinations that produce false or fictitious information. In the legal context, GAI tool hallucinations may encompass citations to nonexistent or inapposite cases, inaccurate or misleading analysis of authority, and the inclusion or advocation of inapposite or unreliable arguments or positions. GAI tools have also produced outputs that include, endorse, or suggest unfair stereotypes, emphasize prejudices, or display biases. These risks underscore the need for caution and vigilance when using GAI tools in legal work.

Therefore, the role of a lawyer in using GAI tools is not just to rely on their outputs but to critically review and verify them. Before submitting or filing any documents or other work product created by, with, or through a GAI tool, a lawyer must review all such outputs for accuracy and correctness, verify citations and statements of fact or law, fix errors and misstatements, and revise false or misleading arguments and positions. This diligence is crucial to ensure the authenticity, factual accuracy, and absence of manipulation or misrepresentation in any GAI-produced, processed, or enhanced evidence or other exhibit upon which the lawyer relies and, by extension, help mitigate the risks of using GAI tools in legal work.

Rules 5.1 and 5.3. Lawyer Supervisory Responsibilities.

A lawyer's supervisory responsibilities are governed by Rules 5.1 and 5.3. Partners, managers, and supervisory lawyers must both make reasonable efforts to institute measures ensuring the lawyers and non-lawyer employees and independent contractors under their supervision conform to the Rules of Professional Conduct and supervise such persons to ensure their compliance with the Rules. Recognized compliance measures include, but are not limited to, "those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised." Rule 5.1, Comment [2]. Partners, managers, and supervisory lawyers are ultimately responsible for the conduct of the subordinate lawyers and non-lawyer employees and independent contractors they supervise. See Rules 5.1(c) and 5.3(c).

Partners, managers, and supervisory lawyers are responsible for a firm's use of GAI tools. They should establish policies that define the permissible scope of GAI use by their subordinates and ensure compliance with these policies and their professional obligations. This includes providing comprehensive training on key topics such as the basics of GAI technology and operation, confidentiality, privacy, data security best practices, professional ethics, and acceptable use cases. In the case of independent contractors, they must ensure that such third parties use GAI tools properly and ethically, protect the security and confidentiality of information (including through the implementation of confidentiality agreements), have and maintain the proper credentials, and can be held accountable in an appropriate legal forum when necessary.

Rules 7.1 through 7.5. Information About Legal Services.

The provisions governing lawyer advertising, Rules 7.1 through 7.5, chiefly prohibit lawyers from engaging in communications about the lawyer, his or her firm, or the services he or she provides that are false or misleading. See, e.g., Rules 7.1(a)-(c); Rule 7.3(b)(3); Rule 7.5(a). As with many areas of legal practice, GAI tools may be used to conduct lawyer advertising without the need for much, if any, human input. When employing such tools, whether in-house or through a third-party provider, a lawyer remains responsible for the content of the advertising. Therefore, he or she should ensure that the work product does not contravene the limitations set forth in Rules 7.1 through 7.5 before publication or broadcast.

Rules 8.3 and 8.4. Identifying and Reporting Professional Misconduct.

The legal profession has long defined itself as self-governing, wherein its members form the first line of defense against malfeasance by their fellows. See Preamble [10]. This duty is codified in Rules 8.3 and 8.4. Rule 8.4 defines the parameters of professional misconduct for lawyers, including committing a criminal act reflecting on the lawyer's honesty, trustworthiness, or fitness, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, or engaging in conduct prejudicial to the administration of justice. Rule 8.3(a) requires a lawyer to report the professional misconduct of another lawyer to the appropriate disciplinary authority when such misconduct "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects . . . ."

Given the increasingly-widespread adoption and use of GAI tools across the legal profession, courts and lawyer disciplinary bodies have begun levying sanctions against GAI misuse bearing on a lawyer's honesty and trustworthiness—most often, involving the inclusion of incorrect or misleading case and statutory citations and quotations in legal briefs and other documents. Lawyers must therefore exercise due diligence not only in reviewing their own GAI output as required under Rules 1.3, 3.1, and 3.3, but also with respect to the output of opposing counsel.

The discovery of such errors may require reporting to the tribunal during pending litigation or to the appropriate disciplinary authority outside litigation when, in the lawyer's reasoned judgment, the misconduct is "substantial." See Rule 8.3(a). Comment [3] to Rule 8.3 defines "substantial" to refer to "the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware." Accordingly, even a single incorrect citation may require reporting under appropriate circumstances.

INTERIM GUIDELINES FOR THE ETHICAL USE OF GENERATIVE AI BY RHODE ISLAND JUDICIAL OFFICERS

The following guidelines are intended to provide Rhode Island's judicial officers with direction for and assistance with employing generative artificial intelligence ("GAI") tools consistent with their duties and responsibilities under Article VI of the Supreme Court Rules, the Rhode Island Code of Judicial Conduct (the "Code"). For the purposes of these guidelines, GAI is defined to mean a technological system, whether hardware or software-based, incorporating any technology (including but not limited to machine learning) purporting to approximate human cognition, perform tasks and generate outputs without significant human oversight, and/or learn from data sets and experience/repetition to augment the technological system's performance. GAI-based tools may be used, among other ways, to conduct legal research, review and summarize evidence and testimony, and draft documents. While such tools may offer judicial officers opportunities to better and more efficiently serve their litigants, it is essential to consider and address potential ethical concerns related to the misuse of such technologies, expressly but without limitation including GAI.

Accordingly, these guidelines highlight and comment on those Code provisions most relevant to judicial GAI use, in order to establish a reasonable, non-exhaustive framework of parameters buttressed by illustrative examples ensuring that judicial officers' use of artificial intelligence technologies does not undermine or replace their independent decision-making processes and remains wholly consistent with their duties and ethical obligations set forth in the Code. Judicial officers should therefore read these guidelines in conjunction with, not in place of, preexisting ethical guidance regulating judicial conduct in general. Those seeking additional specific guidance or ethical advice regarding their use of GAI in any particular instance or circumstance may seek further advice from the Supreme Court's Judicial Advisory Committee.

Rule 1.2. Promoting Confidence in the Judiciary.

Rule 1.2 of the Code requires judicial officers to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the Judiciary, and to avoid impropriety and the appearance of impropriety. The term independence means freedom from influence or control other than those established by law. Integrity means probity, fairness, honesty, uprightness, and soundness of character. Impartiality means the absence of bias or prejudice and the maintenance of an open mind. Impropriety is defined, by contrast, to denote conduct violating the law, court rules, or the Code, or which otherwise undermines a judicial officer's independence, integrity, or impartiality.

GAI may provide judicial officers new and innovative technologies to assist with the competent and efficient resolution of cases and controversies. However, in employing such capabilities, judicial officers must be cautious not to engage in any conduct, or to permit others under the judicial officer's direction or control to engage in any conduct which could call the independence, integrity, and impartiality of the judicial officer or court proceedings into question. As Comment [5] to Rule 1.2 explains, even the appearance of impropriety may reflect adversely on a judicial officer's "honesty, impartiality, temperament, or fitness to serve as a judge," or otherwise undermine trust in the judicial system. These themes will be elucidated with more particularity within the context of the other Rules discussed below.

Rule 2.2. Impartiality and Fairness.

Under Rule 2.2, judicial officers are obligated to uphold and apply the law objectively and impartially, including by making reasonable efforts consistent with court rules to facilitate the ability of all litigants to be fairly heard, whether represented or otherwise. See also Rule 2.6. This duty may be impacted by GAI in at least two (2) ways.

First, GAI tools are prone to so-called "hallucinations," or the production of false or fictitious information or output. Examples include citations to nonexistent or inapposite cases, inaccurate or misleading analysis of authority, or the inclusion or advocation of inapposite or unreliable arguments or positions. Thus, while Comment [3] to Rule 2.2 clarifies that "good-faith errors of fact or law" made "[w]hen applying and interpreting the law" do not violate Rule 2.2, such errors occurring as the result of a judicial officer's use of faulty GAI output or from a lack of appropriate training in the use of GAI technologies may not fall within this safe harbor. Similarly, GAI use which compromises a judicial officer's impartiality in dealing with case parties or undermines the fairness or proper administration of court proceedings may also violate his or her duties under this Rule.

Second, as GAI use continues to grow, the judicial officer's duty to help facilitate the ability of all parties appearing before the court to be fairly heard may encompass permitting parties to use GAI tools in and out of the courtroom. In doing so, however, judicial officers must avoid permitting a party's use of GAI to impermissibly interfere with the proceedings, waste judicial resources, or infringe on another party's rights. Care must be taken to strike an appropriate balance between permissiveness and regulation in this context to ensure the fair treatment of all parties appearing before the court.

Rule 2.3. Bias, Prejudice, and Harassment.

Rule 2.3 directs judicial officers to perform their duties absent any bias, prejudice, or harassment, or the appearance thereof, and to ensure that neither court staff nor case parties engage in any such conduct, either. Comment [2] to Rule 2.3 clarifies that prohibited manifestations of bias, prejudice, and harassment include, but are not limited to, the promotion of stereotypes, irrelevant references to personal characteristics, and suggestions of a connection between race, ethnicity, and nationality and criminal conduct.

GAI tools have been proven to manifest biases in some instances, both in the manner in which they generate content and in the substance of the content generated, with such biases caused by any one or more potential issues, including without limitation the data used to train the tools and/or inherent bias of the programmers. In employing GAI tools in furtherance of their official duties and permitting court staff and litigants to do the same, judicial officers should remain aware of manifestations of bias, prejudice, and harassment in GAI-generated content and in the ways in which it may be employed. This includes understanding not only that GAI content relied upon by the judicial officer may include bias or prejudice, but also ensuring that such content does not unduly affect the judicial officer's conduct or ultimate decision-making in a given case by, among other techniques, filtering all GAI-produced content though the judicial officer's own training, knowledge, and experience. As with Rule 2.2, these responsibilities apply with equal force to all parties appearing before the court, represented or otherwise.

Rule 2.4. External Influences on Judicial Conduct.

Rule 2.4 prohibits judicial officers from allowing their judgment or conduct to be influenced by any public or private interests. It also prohibits judicial officers from conveying or allowing others to convey that any external force is in a position to influence them.

Classic examples of external influences on judicial conduct include such disparate sources as public pressure, media criticism, personal intimidation, private financial ventures, and romantic entanglements. What ties these forces together is their potential ability to sway a judicial officer's reasoning or shape his or her treatment of the parties in a given case, thereby eroding confidence in the judicial officer's ability to fairly and impartially administer justice and, by extension, undermining trust in the Judiciary as well.

GAI tools present an additional source of potential undue influence. This risk is particularly acute with regard to written judicial decisions, given the ease with which GAI tools may produce dense, authoritative-seeming written content on demand. Accordingly, judicial officers considering using GAI tools for drafting purposes should proceed with extreme caution to ensure that GAI-generated content never influences or appears to influence any conclusion or final decision in a case. They may consult or review but should never rely on GAI-produced content when drafting official documents such as orders and decisions. See also Rule 2.7 (establishing a judicial officer's duty to decide the cases assigned to him or her).

Rule 2.5. Competence, Diligence, and Cooperation.

Rule 2.5 imposes twin duties of competence and diligence on judicial officers. Competence is defined in Comment [1] to Rule 2.5 to mean "the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office." Although the duty of diligence is not so directly defined, the remaining Comments clarify that it includes such responsibilities as devoting sufficient time to judicial duties, arriving for proceedings promptly and encouraging attorneys, parties, and court staff to do the same, disposing of matters promptly and efficiently, and endeavoring to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Nothing in this language affirmatively requires judicial officers to adopt or employ GAI tools in the exercise of their judicial duties. Nonetheless, given the fast pace at which such technology is developing and the concomitant elevated rate of GAI adoption throughout many sectors of society including the practice of law, a judicial officer's duty of competence does obligate him or her to remain aware of the nature, capabilities, applications, and limitations of

GAI tools. This duty may be satisfied by undertaking ongoing training on relevant topics such as GAI developments, capabilities, safety and security, and appropriate use cases.

Similarly, a judicial officer's duty of diligence does not presently compel the use of GAI tools to properly discharge his or her judicial responsibilities. For those judicial officers choosing to employ GAI tools, they should never outsource so much of their work to the tools that their dedication and attention to cases, attorneys, parties, and subordinates is diluted to a level incommensurate with their responsibilities under Rule 2.5.

<u>Rule 2.9. Ex Parte Communications.</u>

Rule 2.9 generally prohibits judicial officers from initiating, permitting, or considering ex parte communications concerning a pending or impending case outside the presence of the parties or their attorneys. Of particular relevance here is the specific proscription in Rule 2.9(C) barring judicial officers from "investigat[ing] facts in a matter independently" and requiring them to "consider only the evidence presented and any facts that may properly be judicially noticed." Comment [5] to Rule 2.9 explains that the prohibition against independent factual investigation "extends to information available in all mediums, including electronic."

Most—if not all—GAI tools develop capabilities by training on reams of input data derived from diverse sources. While this method allows GAI tools to serve many useful functions, such as efficiently conducting legal research and quickly organizing discovery documents, it also presents the danger that outside information may bleed into search results and GAI-produced content. For example, an internet search for images of the site of real property in dispute may be accompanied by GAI-generated information about the site not appearing in the case record. Thus, even innocuous-seeming GAI use may run afoul of a judicial officer's responsibilities under Rule 2.9. Therefore, judicial officers should carefully review all GAI-produced content for fidelity to the judicial officer's initial query, and in instances where outside information appears, take appropriate remedial steps.

<u>Rule 2.12. Supervisory Duties.</u>

Rule 2.12(A) requires judicial officers to encourage those under their direction and control, such as clerks and court staff, to conduct their official activities in a manner consistent with the judicial officer's own obligations under the Code. This duty includes a prohibition against asking or expecting subordinates to engage in conduct on the judicial officer's behalf that the judicial officer could not undertake on his or her own.

In furtherance of these obligations, judicial officers should enact policies designed to ensure their subordinates' GAI use conforms with the judicial officer's own ethical obligations under the Code. This may be accomplished via a global order entered by the chief or administrative judicial officer of a particular court or, in the absence of such an order, at the individual discretion of each judicial officer. In either case, such policies should include guidance outlining the scope of permissible staff GAI use and ensuring their proper training on such relevant topics as the basics of GAI technology and operation, confidentiality, privacy, data security best practices, professional ethics, and acceptable use cases. Failure to conform to established GAI use policies may subject a judicial officer's subordinates to potential employment discipline.

Rule 2.15. Responding to Judicial and Lawyer Misconduct.

Rule 2.15 obligates judicial officers to take appropriate action whenever they come to know that there is a substantial likelihood that an attorney or fellow judicial officer has violated the professional ethics code appliable to that person. Appropriate action may include speaking with or counseling the person, referring him or her to a superior, or, in the most serious cases raising a substantial question as to the person's honesty, trustworthiness, or fitness, referring the person directly to the applicable disciplinary authority.

As these guidelines endeavor to demonstrate, the emerging frontier of GAI technology is fraught with potential ethical landmines for judicial officers. Its successful navigation requires not only adherence to one's personal ethical responsibilities but, also, vigilance in identifying, addressing, and when required policing the conduct of one's fellows when that conduct falls below the acceptable minimum thresholds laid out in these guidelines. Attorneys, as officers of the court over whom judicial officers exercise authority, also fall within the ambit of judicial officers' duties under Rule 2.15. Accordingly, judicial officers should at all times seek to foster the highest ethical standards for GAI use between and among themselves and the attorneys with whom they interact in the courtroom.

Attachment 7

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
COMMISSION ON DISABILITY RIGHTS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association amends Comment [4] to Model Rule of Professional Conduct 1.2, to comport with the February 2026 adoption of new Model Rule 1.14 (Client With Decision-Making Limitations), as follows (additions underlined; deletions struck through):

Rule 1.2: (Scope of Representation & Allocation of Authority Between Client & Lawyer)

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

….

Comment [4] ~~In a case in which the client appears to be suffering diminished capacity~~ When a client has decision-making limitations, the lawyer's duty to abide by the client's decisions concerning the objectives of representation is to be guided by reference to Rule 1.14.

FURTHER RESOLVED, That the American Bar Association amends Comment [6] to Model Rule of Professional Conduct 1.4, to comport with the February 2026 adoption of new Model Rule 1.14 (Client With Decision-Making Limitations), as follows (additions underlined; deletions struck through):

Rule 1.4 (Communications)

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

….

Comment [6] Ordinarily, the information to be provided is that appropriate for a client who is ~~a comprehending and responsible adult~~ an adult capable of making and communicating reasoned, informed choices. ~~However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14.~~ When the client has decision-making limitations, the lawyer should look to Rule 1.14 Comment [11] for guidance on communicating with the client. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

FURTHER RESOLVED, That the American Bar Association amends Comment [6] to Model Rule of Professional Conduct 1.16, to comport with the February 2026 adoption of new Model Rule 1.14 (Client With Decision-Making Limitations), as follows (additions underlined; deletions struck through):

Rule 1.16 (Declining or Terminating Representation)

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

….

Comment [6] If the client has ~~severely diminished capacity~~ decision-making limitations, and those decision-making limitations cannot be adequately alleviated or eliminated by using supports or accommodations, the client may lack the legal capacity to discharge the lawyer~~, and in any event the discharge may be seriously adverse to the client's interests~~. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action if consistent with ~~as provided in~~ Rule 1.14.

EXECUTIVE SUMMARY

1. Summary of the Resolution

In February 2026, the ABA adopted new Model Rule of Professional Conduct 1.14 (Client With Decision-Making Limitations). New Rule 1.14 reflects current law and modern understanding of the rights and abilities of people with decision-making limitations and provides enhanced guidance and clarity to lawyers when working with these clients, including in situations relating to representing minors and clients with surrogate decision-makers.

The Ethics and Regulation Committees determined that the Comments to three Model Rules referencing former Rule 1.14 require amendment to align with new Rule 1.14.

First, this Resolution seeks to amend Comment [4] of Model Rule 1.2 (Scope of Representation and Allocation of Authority Between Lawyer and Client). That Comment directs lawyers to Rule 1.14. The first proposed amendment reflects a change in terminology from the former “client with diminished capacity” to “decision-making limitations” as set forth in new Rule 1.14. The proposal to add “concerning the objectives of the representation” following reference to the lawyer’s duty to abide by the client’s decisions more accurately mirrors the language of black letter Model Rule 1.2(a).

Next, the Resolution seeks to amend Comment [6] to Model Rule 1.4 (Communication). Deletion of reference to a client who is a “comprehending and responsible adult” and replacing that phrase with “an adult capable of making and communicating reasoned, informed choices”, mirrors the language in black letter paragraph (a) of new Model Rule 1.14. The Committees also recommend adding language to Comment [6] specifically directing lawyers to Comment [11] of new Rule 1.14 to better alert them where they may find provide enhanced guidance they can use to fulfill their communication obligations under Model Rule 1.4 when the client has some form of decision-making limitations.

Finally, this Resolution proposes amending Comment [6] to Model Rule 1.16 (Declining or Terminating Representation). The proposed replacement of the phrase “severely diminished capacity” with “decision-making limitations, and those decision-making limitations cannot be adequately alleviated or eliminated by using supports or accommodations,” aligns the terminology of this Comment with that of new Model Rule 1.14 and is consistent with the new Rule’s guidance about the use of supports or accommodations in Comments [3] and [11]. The proposed addition of “is consistent with” new Model Rule 1.14 instead of “as provided in” the Rule is more precise in that the new language does not, as the current language does, assume the conditions for protective action have been met. The lawyer should look to new Model Rule 1.14 to determine if that is the case.

2. Summary of the Issue that the Resolution Addresses

The Resolution proposes necessary updates the three Model Rule Comments to ensure that they are consistent with new Model Rule 1.14 (Client With Decision-Making Limitations), adopted in February 2026.

3. Please Explain How the Proposed Policy Position will address the issue

The proposed policy, if adopted, will ensure that terminology aligns throughout the Model Rules so that "client with diminished capacity" will be replaced with the new "client with decision-making limitations" and the Comments will direct lawyers to specific paragraphs in the Comments to new Rule 1.14 to ensure optimal guidance as they evaluate their ethical obligations when working with clients who have decision-making limitations.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association adopts new Comment [8] to Model Rule of Professional Conduct 1.4 as follows (additions underlined; deletions struck through):

Rule 1.4 (Communications)

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

….

<u>Comment [8] A lawyer should promptly inform a current client if the lawyer discovers that the lawyer made a material error in the client's representation. A lawyer's judgment regarding whether an error is material depends on the lawyer's assessment of the particular facts and circumstances. An error is likely to be material if a disinterested lawyer</u>

would conclude that: the error will result in financial loss to the client, substantial delay in achieving the client's objectives for the representation, or material disadvantage to the client's legal position, or disclosure of the error is necessary for the client to make an informed decision about the representation (including whether to terminate the representation) or for the lawyer to advise the client of significant changes in strategy, timing, or direction of the representation. Depending on the facts, the lawyer's material error may create a conflict of interest between the lawyer and the client requiring the lawyer's withdrawal or the client's informed consent, confirmed in writing. See Rules 1.7 and 1.16. A lawyer's effort to avoid embarrassment, discipline or financial liability for the lawyer's material error in the course of a representation is not a sufficient basis for failing to communicate as required by this Rule. This Rule does not require the lawyer to inform a former client where the lawyer discovers only after the client-lawyer relationship has ended that the lawyer made a material error in the former client's representation.

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution proposes new Comment [8] to Model Rule of Professional Conduct 1.4 (Communication) to incorporate guidance from 2018 ABA Formal Ethics Opinion 481 titled, "A Lawyer's Duty to Inform a Current or Former Client of the Lawyer's Material Error."

New Comment 8 addresses a recurring problem, which is determining whether and when a lawyer must disclose, pursuant to their communication obligations, that an error occurred during the course of the representation. Making this determination can be difficult because errors exist along a continuum.

Proposed new Comment [8] reflects the guidance in Opinion 481 that "a lawyer must inform a current client of a material error committed by the lawyer in the representation." Proposed new Comment [8] also aligns with state bar association ethics opinions and court decisions on the subject. It makes clear the duty to disclose does not apply to former clients.

The proposed new Comment helps lawyers determine what constitutes a material error, stating that an "error is likely to be material if a disinterested lawyer would conclude that: the error will result in financial loss to the client, substantial delay in achieving the client's objectives for the representation, or material disadvantage to the client's legal position, or disclosure of the error is necessary for the client to make an informed decision about the representation (including whether to terminate the representation) or for the lawyer to advise the client of significant changes in strategy, timing, or direction of the representation."

2. Summary of the Issue that the Resolution Addresses

The Resolution proposes an important new Comment to Model Rule 1.4 (Communication) to help lawyers address the recurring and thorny problem of when to disclose to a current client that they have committed an error during the course of the representation. The guidance proposed in new Comment [8] incorporates directly into the Model Rule that provided in ABA Formal Ethics Opinion 481.

3. Please Explain How the Proposed Policy Position will address the issue

The proposed policy, if adopted, will help lawyers comply with the communication obligations by providing clarity and guidance as to when they must disclose to a current client that a material error has occurred during the representation. Proposed new Comment [8] helps lawyers identify what constitutes a material error and makes clear that the obligation to disclose such error applies to current, not former clients.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

   None.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association amends Comment [1] to Model Rule of Professional Conduct 1.5 as follows (additions underlined; deletions struck through):

Rule 1.5 (Fees)

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Comment [1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer. Modification of an existing fee agreement, whether written or not, is permissible under this Rule, but any modification should be reasonable under the circumstances at the time of the modification as well as communicated to and accepted by the client. Periodic, incremental increases in a lawyer's regular hourly billing rates are generally reasonable if such practice is communicated clearly to and accepted by the client at the commencement of the client-lawyer relationship. Modifications sought by a lawyer that change the basic nature of a fee arrangement or significantly increase the lawyer's compensation, absent an unanticipated change in circumstances, are less likely to be reasonable.

FURTHER RESOLVED, That the American Bar Association amends Comment [7] to Model Rule of Professional Conduct 1.5 as follows (additions underlined; deletions struck through):

….

Comment [7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. Therefore, lawyers who divide fees under Paragraph (e) must comply with applicable rules, including Rule 1.7. A lawyer who has a conflict of interest that would preclude the representation may not receive a portion of the fee generated in the matter. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution proposes to amend Comments [1] and [7] to Model Rule of Professional Conduct 1.5 (Fees).

The proposed amendments to Comment [1] provide guidance to lawyers about how to address modifications to a fee agreement while the representation is in progress. They incorporate guidance from 2011 ABA Formal Opinion 11-458 titled “Changing Fee Arrangements During Representation,” and are consistent with other state bar association ethics opinions. The proposed amendments clarify for lawyers that an existing fee agreement, written or not, can be modified, but a lawyer must demonstrate any such modification is reasonable under the circumstances existing at the time of the modification. The lawyer must communicate such modifications to the client, and the client must accept them. Further, if the lawyer seeks to change the underlying nature of a fee arrangement or significantly increase the lawyer’s fee absent an unanticipated change in circumstances, such change will ordinarily be considered unreasonable.

These proposed amendments also clarify that periodic and incremental increases in a lawyer’s hourly billing rates are generally considered reasonable, but the application of such increases need to be communicated clearly to and accepted by the client at the beginning of the client-lawyer relationship.

Proposed amendments to Comment [7] apply to lawyers not in the same firm dividing fees pursuant to Model Rule 1.5(e). The proposed amendments make clear that, under Rule 1.5(e), lawyers who divide fees must comply with all applicable Rules, including Model Rule 1.7 on concurrent conflicts of interest. Further, a lawyer who has a conflict of interest that precludes participation in the representation may not receive a share of a legal fee from a lawyer in another firm who is representing the client in the matter. This guidance derives from 2016 ABA Formal Opinion 474 titled “Referral Fees and Conflict of Interest. This proposed Comment amendment is consistent with state bar association ethics opinions.

2. Summary of the Issue that the Resolution Addresses

If adopted, this Resolution would ensure that Comments [1] and [7] to Model Rule 1.5 provide needed guidance to lawyers regarding what is permissible in terms of modifying fee arrangements during the course of a representation, and the handling of fee divisions when a lawyer has conflict of interest.

3. Please Explain How the Proposed Policy Position will address the issue

The proposed amendments to Comments [1] would do so by adding language stating that an existing fee agreement, written or not, can be modified, but a lawyer must demonstrate any such modification is reasonable under the circumstances existing at the time of the modification. It would make clear the lawyer must communicate such modifications to the client, and the client must accept them. The proposed language also makes clear to lawyers that if they seek changes to the underlying nature of a fee arrangement or seek to significantly increase the lawyer's fee absent an unanticipated change in circumstances, such change will ordinarily be considered unreasonable. Finally, the proposed amendments would address the issue by clarifying that periodic and incremental increases in a lawyer's hourly billing rates are generally considered reasonable, but such increases need to be communicated clearly to and accepted by the client at the beginning of the client-lawyer relationship.

The proposed amendments to Comment [7], if adopted, would help lawyers better understand their obligations when dividing fees with a lawyer in a different firm. It would incorporate the guidance that lawyers who divide fees must comply with all applicable Rules, including Model Rule 1.7 on concurrent conflicts of interest, and that a lawyer who has a conflict of interest that precludes participation in the representation may not receive a share of a legal fee from a lawyer in another firm who is representing the client in the matter.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association amends Comment [10] to Model Rule of Professional Conduct 1.6 as follows (additions underlined; deletions struck through):

Rule 1.6 (Confidentiality of Information)

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

….

Comment [10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client’s conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer’s right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced. Public criticism, such as a negative online review of the lawyer or the lawyer’s services, is not in itself a “controversy between that lawyer and the client” that permits disclosure of information relating to the representation pursuant to paragraph (b)(5).

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution proposes to amend Comment [10] to Model Rule of Professional Conduct 1.6 (Confidentiality of Information).

Model Rule 1.6 requires lawyers to keep confidential all information relating to the representation of a current client, absent informed client consent or implied authorization. Paragraph (b) of the Rule provides seven permissive exceptions including the following in paragraph (b)(5): “A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.”

With the continued proliferation of social media and online reviews of goods and services, the proposed amendments to Comment [10] to Model Rule 1.6 make clear that the “public criticism, such as a negative online review of the lawyer or the lawyer’s services, is not in itself a ‘controversy between that lawyer and the client’ that permits disclosure of information relating to the representation pursuant to paragraph (b)(5).” This is because, alone, a negative online review is informal in nature and therefore is not a “controversy between the lawyer and the client” within the meaning of paragraph (b)(5).

The proposed amendment derives from 2021 ABA Formal Opinion 496 titled “Responding to Online Criticism.” It is consistent with many other bar association ethics opinions and court rulings.

2. Summary of the Issue that the Resolution Addresses

Lawyers, like other service providers, are frequent recipients of online criticism, whether on social media or other sites. Lawyers often feel they must respond to such criticism by replying directly to the poster, who is most frequently a client. In doing so, they risk violating their confidentiality obligations under Rule 1.6, because they mistakenly believe the permissive exception in paragraph (b)(5) applies and allows a robust response. This is not the case and the proposed amendment to Comment [10] addresses this issue.

3. Please Explain How the Proposed Policy Position will address the issue.

If adopted, this Resolution will better alert lawyers, via Comment [10] of Rule 1.6, that they must exercise caution when considering a response to an online negative review. That is because “public criticism, such as a negative online review of the lawyer or the lawyer's services, is not in itself a 'controversy between that lawyer and the client' that permits disclosure of information relating to the representation pursuant to paragraph (b)(5)."

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.

101D

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association amends Comment [8] to Model Rule of Professional Conduct 1.9 as follows (additions underlined; deletions struck through):

Rule 1.9 (Duties to Former Clients)

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and
(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

….

Comment [8]: Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Information is “generally known” if it is widely recognized by members of the public in the relevant geographic area, or it is widely recognized in the former client's industry, profession or trade. Information is not generally known simply because it is publicly available, even if accessing the publicly available information is not difficult. The fact that the information may have been discussed in open court, or may be available in court records, in public libraries or in other repositories does not, in itself, mean that the information is generally known. Even when information is "generally known," paragraph (c)(1) permits only adverse use, not disclosure.

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution proposes to amend Comment [8] to Model Rule of Professional Conduct 1.9 (Duties to Former Clients). Rule 1.9(c) sets forth lawyers' ethical obligations regarding confidentiality of information relating to former clients. It provides that a "lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

> (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known;"

The term "generally known" is not defined in Model Rule 1.0 (Terminology) or discussed further in the existing Comments to Rule 1.9. The Ethics Committee determined that, consistent with 2017 ABA Formal Opinion 479 (The "Generally Known" Exception to Former-Client Confidentiality), lawyers would benefit from incorporating language into Comment [8] to better define this term.

Consistent with Opinion 479, other state bar association ethics opinions, and precedent, these proposed amendments will make clear to lawyers that information is "generally known" when it is "widely recognized by members of the public in the relevant geographic area, or it is widely recognized in the former client's industry, profession or trade. Information is not generally known simply because it is publicly available, even if accessing the publicly available information is not difficult. The fact that the information may have been discussed in open court, or may be available in court records, in public libraries or in other repositories does not, in itself, mean that the information is generally known. Even when information is 'generally known,' paragraph (c)(1) permits only adverse use, not disclosure."

2. Summary of the Issue that the Resolution Addresses

The term "generally known" is not defined in Model Rule 1.0 or discussed further in the existing Comments to Rule 1.9. This Resolution addresses this gap by incorporating language into Comment [8], consistent with 2017 ABA Formal Opinion 479 (The "Generally Known" Exception to Former-Client Confidentiality), that better defines this term.

3. Please Explain How the Proposed Policy Position will address the issue.

If adopted, this Resolution will help lawyers determine what, under the Rule, constitutes information that is generally known and what is not generally known information, so they may determine whether they are permitted to use such information to the disadvantage of a former client. The amendments also make clear that Rule 1.9(c) only permits use of such information and not its disclosure.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

   None.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION
SECTION OF CRIMINAL JUSTICE
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association amends Comment [3] to Model Rule of Professional Conduct 3.8 as follows (additions underlined; deletions struck through):

Rule 3.8 (Special Responsibilities of a Prosecutor)

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

- (1) promptly disclose that evidence to an appropriate court or authority, and
- (2) if the conviction was obtained in the prosecutor's jurisdiction,
  - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
  - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

….

Comment [3] Paragraph (d) requires a prosecutor who knows of evidence and information favorable to the defense to disclose it as soon as reasonably practicable so that the defense can make meaningful use of it in making such decisions as whether to plead guilty and how to conduct its investigation. This ethical duty overlaps with, but is not identical to, disclosure obligations imposed under the Constitution, statutes, procedural rules, or court rules, orders, opinions, or decisions, with which a prosecutor also must comply. See Rule 3.4(a). The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution proposes to amend Comment [3] to Model Rule of Professional Conduct 3.8 (Special Responsibilities of a Prosecutor). The proposed amendment to Comment [3] derives from 2009 ABA Formal Opinion 09-454 (Prosecutor's Duty to Disclose Evidence and Information Favorable to the Defense), and if adopted would resolve an ambiguity in the Model Rules regarding the extent of prosecutors' obligations under Rule 3.8(d). Rule 3.8(d) relates to the prosecutor's duty to make "timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense. . ."

The proposed amendments to Comment [3] make clear that Model Rule 3.8(d) was not intended simply to incorporate other law regarding the disclosure of evidence and information favorable to the defense, but rather establishes an independent standard that is "more demanding" in certain respects than that required by the Due Process Clause and applicable caselaw. For example, the Rule requires disclosure of favorable evidence and information sooner than required by caselaw. The Rule does not include the requirement that the evidence or information be material. Rather, the information to be disclosed must be "favorable" to the defense without regard to materiality. See Opinion 09-454 (footnotes omitted).

The proposed amendments resolve the ambiguity by stating:

> Comment [3]
> Paragraph (d) requires a prosecutor who knows of evidence and information favorable to the defense to disclose it as soon as reasonably practicable so that the defense can make meaningful use of it in making such decisions as whether to plead guilty and how to conduct its investigation. This ethical duty overlaps with, but is not identical to, disclosure obligations imposed under the Constitution, statutes, procedural rules, or court rules, orders, opinions, or decisions, with which a prosecutor also must comply. See Rule 3.4(a).

The proposed amendments are also consistent with the ABA Criminal Justice Standards. Standard 3-3.11(a) of the current Prosecution Function Standards (4th ed. 2017).

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses an ambiguity in the Model Rules regarding the extent to which prosecutors' obligations under Rule 3.8(d) differ from disclosure requirements pursuant to caselaw and the Due Process Clause. The Model Rules create an independent and broader standard for disclosure of favorable evidence and information to the defense in a criminal matter.

3. Please Explain How the Proposed Policy Position will address the issue.

   If adopted, the proposed amendments to Comment [3] would make clear, consistent with ABA Formal Opinion 09-454, that Model Rule 3.8(d) was not intended simply to incorporate other law and obligations regarding the disclosure of evidence and information favorable to the defense in a criminal matter. Rather the Rule establishes an independent and, in some respects, more rigorous ethical standard, for example, requiring disclosure of favorable evidence and information sooner and omitting the caselaw requirement that the evidence or information be material.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

   None.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association amends Comment [9] to Model Rule of Professional Conduct 4.2 as follows (additions underlined; deletions struck through):

Rule 4.2 (Communication with Person Represented by Counsel)

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

….

Comment [9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3. In circumstances involving what appears to be an unrepresented person, but in fact may be a person represented by a lawyer under a limited-scope agreement, a lawyer’s knowledge that the person has obtained some degree of legal representation may be inferred from the circumstances. When these circumstances exist, the lawyer should first inquire whether the person is represented by counsel for any portion of the matter so that the lawyer knows whether to proceed under Rule 4.2 or 4.3; and

FURTHER RESOLVED, That the American Bar Association adopts new Comment [10] to Model Rule of Professional Conduct 4.2 as follows (additions underlined; deletions struck through):

….

Comment [10] This Rule applies only when a lawyer is “representing a client.” A lawyer who is a pro se party in a matter is representing themselves and is therefore “representing a client.” The constraints of this Rule apply to that lawyer’s communications with persons the lawyer knows to be represented in the matter.

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution proposes to amend Comment [9] and add new Comment [10] to Model Rule of Professional Conduct 4.2 (Communication with Person Represented by Counsel).

The proposed amendments to Comment [9] seek to incorporate the guidance in 2015 ABA Formal Opinion 472 about how lawyers should seek to resolve uncertainty about whether a person with whom they are communicating in a matter is unrepresented or is represented by a lawyer under a limited-scope representation agreement. The proposed additional language in Comment [9] alerts lawyers that their knowledge that such person may have some degree of legal representation may be inferred from the circumstances and that when such circumstances exist, the lawyer should inquire of the person whether they are represented in any capacity in the matter. This guidance, reflected in the proposed amendments, recognizes it is impractical and unreasonable to require lawyers in all circumstances to ask whether those with whom they interact are represented by counsel, but that it is advisable to do so when, under the circumstances, it appears that the person may have received some, albeit limited, legal assistance.

Proposed new Comment [10] which derives from 2022 ABA Formal Opinion 502 is intended to provide clarity about the application of Model Rule 4.2 when a lawyer is acting pro se in a matter. The proposed new Comment makes clear, consistent with Opinion 502, that in this circumstance the lawyer is considered to be “representing a client” for purposes of the no-contact Rule. Therefore, the constraints of Rule 4.2 regarding contacts with represented persons applies. Importantly, because Rule 4.2 applies only to communications “about the subject of the representation,” the Rule would not restrict a pro se lawyer’s communications with a represented person when such communications are unrelated to the subject of the representation.

2. Summary of the Issue that the Resolution Addresses

This Resolution proposes amendments to Comment [9] to Rule 4.2 to provide guidance to a lawyer who seeks to communicate with a person when it is uncertain whether that person is unrepresented or is represented by counsel pursuant to a limited-scope representation agreement. Proposed new Comment [10] seeks to resolve ambiguity as to whether, for purposes of Rule 4.2, a lawyer acting pro se in a matter is considered to be representing a client.

3. Please Explain How the Proposed Policy Position will address the issue.

If adopted, the proposed amendments to Comment [9] will provide guidance on the steps to take when it is uncertain whether a person with whom they seek to communicate in a matter is represented pursuant to a limited-scope arrangement. Proposed new Comment [10] provides that a lawyer acting pro se in a matter is considered to be “representing a client” for purposes of Rule 4.2. It makes clear that the Rule would not restrict a pro se lawyer's communications with a represented person when those communications are unrelated to the subject of the representation.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.