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

AGENDA

January 26, 2024, 9:00 a.m.
The Supreme Court Conference Room and via Webex

Webex link:
https://judicial.webex.com/judicial/j.php?MTID=m5e7753c529a6e32c7776a4edfa7b3718

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1. Call to Order [Judge Lipinsky].
2. Approval of minutes for October 27, 2023, meeting [attachment 1].
3. Old business:
   a. Report from the PALS II subcommittee [Judge Lipinsky].
   b. Report on the proposed amendments to comment [14] to Rule 1.2 [Judge Lipinsky].
   c. Report on the proposed amendments to Rules 1.5 and 1.8 [Judge Lipinsky] [attachment 2].
   d. Report from the Rule 5.5 subcommittee [Cecil Morris].
   e. Report from the AI subcommittee [Julia Martinez].
   f. Report from the Rule 1.2 subcommittee [Erika Holmes] [attachment 3].
   g. Report from the 8.4 subcommittee [Matt Kirsch] [attachment 4].
   h. Report on removing gendered language from the Rules [Judge Lipinsky] [attachment 5]

i. Note: there is no report from the reproductive health subcommittee.

4. New business.

5. Adjournment.

Upcoming meeting dates: April 26, 2024; July 26, 2024; September 27, 2024; and January 24, 2025.

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

Attachment 1

COLORADO SUPREME COURT

STANDING COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT

Approved Minutes of Meeting of the Full Committee
On
October 27, 2023
Sixty-Ninth Meeting of the Full Committee

The sixty-ninth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:03 am on Friday, October 27, 2023, by Chair Judge Lino Lipinsky de Orlov.

Present at the meeting, in addition to Judge Lipinsky and liaison Justice Maria Berkenkotter, were Nancy Cohen, Cynthia Covell, Katayoun Donnelly, Thomas E. Downey, Jr., Judge Adam Espinosa, Erika Holmes, Matthew Kirsch, Madeline Leibin (guest), Marianne Luu-Chen, Stephen G. Masciocchi, Troy R. Rackham, David Stark, James S. Sudler, Jennifer Wallace, Judge John Webb, Frederick Yarger, and Jessica Yates.

Present for the meeting by virtual appearance were Julia Martinez, Cecil E. Morris, Jr., Henry R. Reeve, Alexander R. Rothrock, Marcus L. Squarrell, Robert Steinmetz, Eli Wald, and liaison Justice Monica Márquez. Committee members excused were Scott L. Evans, Margaret B. Funk, Marcy G. Glenn, April D. Jones, Judge Bryon M. Large, and Noah Patterson.

1. CALL TO ORDER. Judge Lipinsky called the meeting to order at 9:03 AM. He welcomed those attending in person or virtually. He reviewed the names of all attendees and noted those having excused absences.

2. APPROVAL OF MINUTES FOR JULY 28, 2023 MEETING. The Committee reviewed the minutes from the July 28, 2023 meeting. Judge Webb moved to approve the minutes without amendment. The motion was seconded. The Committee unanimously voted to approve the minutes.

3. OLD BUSINESS.

a. REPORT ON THE PATENT HARMONIZATION INITIATIVE [Judge Lipinsky]. Judge Lipinsky reported that a group presented this issue to the Colorado Supreme Court. The Justices indicated that the Court did not want Colorado to be the first to act in this action. The direction from the Court was to wait for the ABA to act first in this area and then Colorado can respond.

b. REPORT ON THE PROPOSED AMENDMENTS TO RULE 1.4 AND THE COMMENTS THERETO [Judge Lipinsky]. Judge Lipinsky reported that the proposed amendments were presented to the Court. The Court did not approve the amendments. Justice Berkenkotter thanked the members of the subcommittee for the significant and helpful work. She said that, although the Court ultimately decided not to adopt the proposal, the work of the subcommittee was very valuable and led to a very robust discussion amongst the justices.

c. REPORT ON THE PROPOSED AMENDMENTS TO RULES 1.5 AND 1.8 [Judge Lipinsky]. Judge Lipinsky reported that the Colorado Supreme Court put the proposed rule up for comment. The comments will be due January 10, 2024. The Court has not set a hearing on the proposed amendments to Rules 1.5 and 1.8.

d. REPORT ON THE PROPOSED AMENDMENTS TO COMMENT [14] TO RULE 1.2 [Judge Lipinsky]. Judge Lipinsky reported that the Court put the proposed amendments to comment [14] up for comments. Any comments must be submitted by December 21, 2023.

e. REPORT FROM THE RULE 5.5 SUBCOMMITTEE [Cecil Morris]. Mr. Morris explained that the subcommittee has been dutifully working. It has had two meetings and has another meeting coming up. The subcommittee discussed the framework of the proposed changes but has not yet drafted the proposed changes. The drafts will be done shortly before the next meeting of the subcommittee. Ms. Yates indicated that she was not on the email distribution list. Mr. Morris indicated that he would ensure that she is on the email chain going forward.

f. REPORT FROM THE PALS II SUBCOMMITTEE [Judge Espinosa]. Judge Espinosa presented on the proposed changes to the Rules of Professional Conduct to reflect the approval of licensed legal professionals (LLPs) in Colorado. Judge Espinosa explained that the subcommittee appreciated the feedback. The subcommittee met again and focused on Rule 5.3. The subcommittee decided to limit the edits to 5.3 and put a comment in to describe the responsibilities that a lawyer will have if the lawyer employs an LLP. The subcommittee created Rule 5.3A, which addresses the supervisory responsibilities of lawyers who employ LLPs. The subcommittee also added a provision to Rule 5.4(d)-(1), which clarifies that a lawyer or LLP shall not have the right to direct or control the professional judgment of a lawyer.

Ms. Cohen moved to adopt the proposed amendments. Ms. Covell seconded motion. Mr. Rothrock commented that he likes the proposed changes. He inquired whether something in the proposed Rules of Professional Conduct for LLPs (the LLP Rules) makes it clear that an LLP could provide paralegal services. Judge Espinosa believed that it was a good suggestion that perhaps should be put into a comment. The subcommittee has not yet got to the point of drafting the comments to the proposed LLP Rules. Ms. Yates explained that her office has been in discussion with Community College of Denver (CCD) about these issues and the students in the program will get training on the LLP Rules in addition to the substantive legal portion of the curriculum.

Mr. Stark indicated that there already are programs that provide the training required and there are already faculty signed up to teach the programs.

Mr. Sudler suggested amending comment [2A]. Mr. Sudler recommended that the sentence say "[i]n addition, lawyers may employ LLPs as assistants in their practice acting in a capacity outside the scope of the LLP's licensure." Mr. Sudler also suggested revising the sentence that begins with "[f]or example" to say "[f]or example, a lawyer may ask an LLP to perform paraprofessional services that are not within the LLPs' scope of their licensure." The third proposed change was to the sentence: "When employing an LLP outside the scope of the LLP's

licensure, a lawyer must treat the LLP as a nonlawyer and make reasonable efforts to ensure that the LLP's services are provided in a manner that is compatible with the lawyer's professional obligations." Mr. Kirsch disagreed with the third proposed revision, suggesting that we should keep these rules simple. Judge Webb agreed. Mr. Sudler withdrew his third proposed change.

The first sentence of comment [2A] uses LLPs and LLPs', but in the rest of the comment, it refers to LLP or LLP's (the singular) rather than the plural. Other portions of the rule use the plural. A member suggested that the rules should be consistent and should use the singular LLP or LLP's rather than the plural, such as LLPs or LLPs'. Colo. RPC 5.3 currently uses the plural (assistants) and then uses both plural and singular without confusion. Ms. Yates suggested that there is no need for a revision because it would cause inconsistencies between the LLP Rules and the RPCs.

There were no other comments. The motion was to approve as amended with the two approved friendly amendments above. The first was revising the first the sentence to say "[i]n addition, lawyers may employ LLPs as assistants in their practice acting in a capacity outside the scope of the LLP's licensure." The second suggested revision was to the sentence that begins with "[f]or example" to say "[f]or example, a lawyer may ask an LLP to perform paraprofessional services that are not within the LLPs' scope of their licensure." The Committee voted on the motion to approve. The motion carried unanimously.

g. REPORT FROM THE REPRODUCTIVE HEALTH SUBCOMMITTEE [Nancy Cohen]. Ms. Cohen explained the discussion the subcommittee has had relating to whether conduct may be illegal in one state but not in Colorado. The issue is whether lawyers in Colorado can advise clients who are residents of different states about conduct that may be illegal under the respective state law but would not be illegal in Colorado. The legislature passed a statute to afford medical professionals protection from discipline if they act consistent with Colorado law, but inconsistent with other state laws. As a result of the discussion, the subcommittee revised the proposed comment to make it broader. The first sentence has the breadth of the rule. The second sentence provides an example. Ms. Cohen explained the reasoning behind the last two sentences in the proposed comment. Ms. Cohen suggested that the Subcommittee needs guidance from the Committee as a whole about how to address. Ms. Cohen raised the issue of the proposed revision to RPC 1.4, which the Court ultimately rejected in part because there was not unanimity. Judge Lipinsky explained that we do not have to have unanimity to forward the issue to the Colorado Supreme Court, but if Committee members disagree, they should articulate the reasons for their disagreement and draft a dissenting opinion, so to speak. Judge Lipinsky asked whether the Committee should take a straw poll.

Judge Webb wondered whether the Committee should table the matter until the Court decides what to do about the proposed revisions to RPC 1.2 relating to mushrooms. If the Court rejects that proposed change, this proposal may be dead on arrival. Ms. Covell disagreed that the Committee should wait because lawyers are facing this issue now and time is of the essence.

Mr. Reeve asked whether OARC has ever encountered a situation with reciprocal discipline when the other state claimed extra-territorial jurisdiction and disciplined the lawyer. Ms. Yates explained that there are safety valves in the reciprocal discipline and she could not think of a

situation where reciprocal discipline imposed in Colorado for what another state did, even if Colorado's rules are different. A member asked Ms. Yates whether there would be a guidance memo regarding how to apply reciprocal discipline.

Judge Espinosa raised the question of whether comment [14] should be merged with comment [15] to simplify the matter. Ms. Cohen explained that this issue was discussed by the subcommittee, but the subcommittee elected not to have the two comments merged because the proposal to revise Rule 1.2 for the mushrooms already went the Court. The subcommittee wanted to keep the comments distinct as a result.

Ms. Covell suggested that the proposed comment [15] remove the sentence that starts "[f]or example." Ms. Cohen suggested this was friendly. If the sentence is removed, then perhaps there is a more compelling reason to merge proposed comment [14] and proposed comment [15] together. Ms. Donnelly suggested that we could make the proposed changes now, in terms of combining comment [14] and [15]. The difficulty with doing that is that comment [14] in its current form is before the Court and set for a comment period. This Committee would have to make a recommendation to the Court to withdraw the proposed revisions to comment [14], and then the Court would have to approve that suggestion. It probably is simpler just to keep the comments separate given the procedural status.

Mr. Downey wanted to steer the discussion to the larger issue, which focuses on the objective of the proposed revisions. Mr. Downey also asked, given that a year has passed, has this issue actualized for lawyers or has it calmed down. No Colorado lawyer has been disciplined for providing advice about compliance with other state laws compared to Colorado's laws.

Ms. Yates suggested keeping the divergent federal law in a distinct comment from a comment focused on divergent state laws. All Colorado lawyers are expected to have competence on federal law because the bar exam focuses on it, but state laws can be unique and are not part of the bar exam in Colorado. Ms. Cohen explained that she is not aware of any lawyer being disciplined or facing discipline in Colorado for giving advice about reproductive health services in other states, but there certainly is a valid fear by Colorado lawyers that providing some advice could expose the Colorado lawyer to discipline.

Judge Webb raised the fact that a previous director of OARC issued guidance that a lawyer who consumes marijuana would not be subject to discipline. Judge Webb wondered whether OARC could do something similar here. Ms. Yates explained that this was a possibility, but she would need to consult with the Legal Regulation Committee (LRC) before issuing the guidance. Several members on this Committee also are on the LRC.

Mr. Kirsch explained that the objective is to protect Colorado lawyers by giving clear guidance and a safe harbor. Mr. Kirsch did not believe this was the way to go. Mr. Kirsch advocated against any comment that would permit a lawyer to advise on illegal conduct or additional mischief. Mr. Kirsch explained that the comment is ambiguous too because there are differences in federal law as well. Mr. Kirsch suggested limiting the more restrictive proposal to conflicts between different state laws rather than federal law. Mr. Kirsch explained that the reference to "jurisdiction" should instead be "state."

Mr. Wald spoke in favor of the proposed comment. Mr. Wald explained that there is a precedent to provide guidance when the law is in the state of flux, as the Court did with respect to the marijuana changes. Mr. Wald explained that the previous guidance provided was interim guidance until the CBA Ethics Committee issued its opinion. Mr. Wald did not believe that there would be any similar resolution which would render guidance more permanent. If that is the case, we should put a comment in RPC 1.2 because this issue is not going to go away and Colorado lawyers are in need of guidance. Mr. Wald suggested the Committee should leave in the second sentence (beginning with "[f]or example") because the second sentence is critical to provide guidance to Colorado lawyers. The purpose of the comment is to provide guidance and the second sentence is needed for that guidance.

Judge Lipinsky put the issue up for a straw vote to determine whether to move forward with wordsmithing the proposal – meaning, do Committee members want to propose to the Court revising the comments to RPC 1.2 as they relate to reproductive services? A clear majority of the Committee voted to continue the discussion regarding the language of the proposed revisions. Regarding the proposed comment [15], Ms. Cohen disagreed with changing the word "jurisdiction" to "state" because local municipalities or counties could also have jurisdiction. Mr. Masciocchi disagreed with changing "jurisdiction" to state because we have districts (like DC), counties, municipalities, and the like. Mr. Masciocchi explained that the practical effect of this proposed comment is likely quite limited anyway. It is just designed to protect Colorado lawyers, with limited impact. The General Assembly passed some statutes that provide more robust protection for other professionals.

Ms. Donnelly echoed the proposition that this proposal is designed to protect Colorado lawyers, but has a narrow reach. Ms. Donnelly thought this language was helpful to incentivize lawyers to provide advice where lawyers otherwise would not want to take the risk of providing advice to clients in need. Mr. Kirsch explained that the DOJ has not issued a policy with respect to mushrooms or with respect to reproductive rights. Mr. Kirsch advocated against a comment that incentivizes (or protects) lawyers to provide advice about conduct that is illegal "in another territorial, state, or local jurisdiction." This would keep the federal piece separate.

Ms. Yates suggested that, if the Committee's goal is to keep federal law distinct from state or local law, then we should parrot similar language from comment [14]. The proposal would say "a lawyer may assist a client who engages in conduct the lawyer reasonably believes is legal under federal or Colorado law even if the conduct may be illegal in another territory, state, or local jurisdiction." Mr. Steinmetz raised the issue of whether the Committee would be highlighting the issue by recommending this comment because it may put a target on lawyers who provide advice in this arena to be disciplined in another jurisdiction. Ms. Cohen suggested that this proposed comment is for the benefit of clients primarily, not to protect lawyers. Rather, the comment removes a barrier to Colorado lawyers to providing advice to clients in need. Ms. Covell agreed that this is essentially an access to justice issue because there are clients who may have difficulty getting needed guidance without clear guidance to Colorado lawyers that they will not be disciplined if they provide advice to clients in these complicated areas.

Mr. Stark wondered if the Committee has any data suggesting that there are Colorado lawyers who are refusing to provide advice or guidance in this area because of a fear of violating the RPCs or being disciplined. Mr. Stark also referenced the previous guidance provided by James Coyle relating to a lawyer's consumption of marijuana. The memo was from 2006. Mr. Stark suggested removing the phrase "providing reproductive health care services" because the phrase might be provocative to other states that have very strong views on the issues.

Ms. Luu-Chen asked whether there was a deliberate decision to put this in a comment rather than changing the rule. Ms. Cohen explained the history of the discussion and the consensus was to keep the issue in the comments. Judge Lipinsky explained that when the marijuana issue came up, the initial proposal was to amend RPC 1.2(d) rather than putting it in the comment, but the Court decided to put it in the comment, essentially resolving the debate.

The Committee had a discussion about whether to review each sentence one by one or just consider what to do with the second sentence and then send the proposal back to the subcommittee for further wordsmithing and to address the "jurisdiction" versus "territory, district, or local jurisdiction." There are potentially other jurisdictions, like tribal courts. A straw vote was taken. The vote was evenly divided, so the subcommittee will take that into account when suggesting revisions in the next round.

h. REPORT FROM THE AI SUBCOMMITTEE [Julia Martinez]. Ms. Martinez had to leave the meeting early. Judge Lipinsky explained that the subcommittee met once, divided tasks amongst subcommittees, and plans on meeting in the next few months.

4. NEW BUSINESS.

a. COLORADO APPELLATE RULE 5. Judge Lipinsky provided background of proposed changes to CAR 5. A person can get guidance from a lawyer who assists in the appellate clinic. Under CAR 5, if a lawyer enters his or her appearance in the appellate courts, that lawyer is doing a full-bundled representation. The appellate rules do not have an analog to CRCP 11(b) which allows for a limited appearance. For reasons that only former Justice Hobbs knows (because he drafted the rule), CAR 5(e)(2) allows a lawyer to assist only with some specific parts of an appellate representation – essentially, a lawyer cannot assist with a brief (Opening, Answer, Reply, etc.). The Committee does not know why a lawyer assisting a pro se litigant with an appeal cannot assist in drafting the brief. The proposal would allow limited representation in assisting with briefs and then a second category where there would be a little less work performed on behalf of the pro se litigant. In that instance, the attorney would need to execute a certification like a CRCP 11 certification.

Ms. Donnelly explained that there are two appellate clinics. One helps with general questions on appeals. The other helps with arguments in the briefs. The concern is that if the lawyer is assisting a pro se litigant with a brief, does the lawyer have exposure for violating the rules. Additionally, there is a question of what information needs to be disclosed when a lawyer is "ghostwriting" or providing assistance with drafting the briefs. The committee concluded that the appellate rule should have similar language to C.R.C.P. 11 but the rule should be broadened to allow a lawyer to provide assistance in drafting briefs for pro se litigants. The proposal is in the

materials. The proposal would allow limited assistance in preparing "drafting assistance to a self-represented party involved in a civil appellate proceeding without filing a notice of limited appearance." The proposal is before the Rules Committee. Judge Lipinsky was not sure where the proposal was in the process but expects that there will be a recommendation made to the Colorado Supreme Court.

This proposal, if approved by the Court, would require amendments to RPC 1.2(c) and two of the comments to the Rule. Judge Lipinsky suggested that the Committee could form a subcommittee to look at the proposed amendments to RPC 1.2(c) and the comments thereto. A motion to adopt a subcommittee was made. It passed unanimously. Judge Lipinsky solicited members to serve on the subcommittee. Erica Holmes, Judge Espinosa, Judge Lipinsky, Robert Steinmetz, and Katayoun Donnelly volunteered for the subcommittee.

b. INTENTIONAL MISGENDERING. Judge Lipinsky explained a circumstance where there was a CLE about use of pronouns and several members at the CLE were disrespectful of attendees and would refuse to use the preferred pronouns of a person. The question is whether to consider whether an amendment to RPC 8.4 would be warranted to address a circumstance where a lawyer deliberately refuses to use a preferred pronoun of a person. Ms. Yates explained that although RPC 8.4(g) is tailored to conduct "in representing a client," RPC 8.4(h) is not as restricted.

Ms. Donnelly indicated that a federal court has struck down Pennsylvania's RPC 8.4(g). Ms. Yates explained that the federal district court's decision was reversed by the Third Circuit. She also noted that Pennsylvania's rule did not have the "in the course of representing a client" language, which Colorado has. Further, in the *Abrams* case, the Colorado Supreme Court already held that Colo. RPC 8.4(g) is constitutional.

Judge Lipinsky put up for a vote whether to form a subcommittee to investigate and make recommendations about whether RPC 8.4 needs to be revised to address intentional misgendering. Judge Webb, Mr. Stark, Ms. Yates, Mr. Kirsch, and Mr. Downey volunteered to serve on the subcommittee. Judge Lipinsky will appoint a chair for the subcommittee.

c. ABA'S AMENDMENT TO RPC 1.16 [Stephen G. Masciocchi]. Mr. Masciocchi presented on the proposed rule amendment. The proposed amendment has a three-year history or more. Congress has imposed duties on lawyers to disclose information about suspicious transactions, like money laundering, human trafficking, drug trafficking, and terrorism financing. The genesis was not with the ABA. The issue started with the Department of Treasury, which essentially advised the ABA that it would act if the ABA did not act. After significant discussion in the ABA, the proposal was to revise Rule 1.16 to require mandatory withdrawal if a client is engaged in criminal or fraudulent activity. If the client continues to persist in the activities, then the lawyer must attempt to remonstrate with the client. If the remonstration is unsuccessful, then the lawyer would be required to withdraw. After a lengthy process, the ABA made the recommendation to revise RPC 1.16, which is in the packet.

Mr. Masciocchi put together the information for the Committee. Mr. Masciocchi does not recommend the Committee adopt it. The proposal is not just a codification of current law but goes

beyond that. CBA Formal Ethics Op. 142 describes when a lawyer has a duty to inquire. Essentially, the lawyer cannot be willfully blind to the true facts but must have actual knowledge, which can be inferred from the circumstances of the representation. A lawyer cannot willfully avoid knowledge. The business section of the ABA also thought this proposal was a very bad idea. The litigation section and the science and technology section also opposed the proposal. The ABA sent a letter to Ms. Yates (and probably all jurisdictions in the US) suggesting that the states should adopt the proposal recommended by the ABA.

Judge Lipinsky suggested that there are two pathways forward: (1) create a subcommittee; or (2) adopt a wait and see approach. Mr. Sudler moved to table the issue. There was a discussion on the motion to table. Mr. Wald asked whether we are depriving the Supreme Court of our insight on this issue, even if the issue is later considered through a formal amendment to the rule. Typically, when the ABA changes the rules, this Committee considers the revisions and then makes recommendations to the Court. The motion to table carried unanimously. The Committee instead will draft a letter to the Court to determine whether the Court wants us to act on the ABA's revisions to Model Rule 1.16.

Justice Berkenkotter noted that the Chief Justice and several other justices have the letter from the ABA. The Court may not need an additional letter from this Committee, but it would be receptive of getting such a letter if the Committee wants to put one together. Judge Lipinsky and Mr. Masciocchi will work together to submit that letter to the Court.

d. GENDER NEUTRAL LANGUAGE IN THE RPCS [Judge Lipinsky]. Judge Lipinsky explained that a few rules (e.g., RPC 1.13) use pronouns like "he or she" as do several of the comments to particular rules. Judge Lipinsky explained that the Court is looking into this and may task us with evaluating the rules to determine whether to revise non-gender neutral language used in the Rules and comments.

5. ADJOURNMENT. A motion to adjourn was made at 11:25 pm and was duly seconded. The motion carried. The next meeting of the Committee will be on January 26, 2024. The following meetings are April 26, 2024; July 26, 2024; September 27, 2024; and January 24, 2025.

Respectfully submitted,

Troy R. Rackham, Secretary

Attachment 2

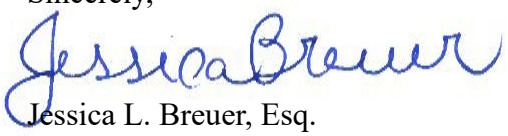
To whom it may concern:

Regarding the proposed change to Rule 1.5 of the Colorado Rules of Professional Conduct, **I oppose the proposed change.**

I have significant concerns regarding the proposed change to Rule 1.5. The proposed change will have a substantial and serious impact for those who practice personal injury law. In states where referral fees are permitted, there is a trend where lawyers who practice in other areas expand their advertising to include personal injury cases. Consequently, individuals with limited or no experience in personal injury law may advertise for such cases, leading to increased difficulty for potential clients to be able to distinguish between those genuinely skilled in personal injury law and those merely advertising to secure a referral fee. This situation will contribute to heightened consumer confusion.

I believe that the existing rule, which mandates joint responsibility for both lawyers, plays a crucial role in ensuring the best outcome for the client. This rule acts as a safeguard against prioritizing the interests of the referring attorney seeking the most lucrative referral fee over the client's welfare. Maintaining joint liability is essential for securing optimal results for the client.

Sincerely,



Jessica L. Breuer, Esq.
Reg. No. 46288

Regarding the proposed change to rule 1.5 to allow referral fees, **I oppose the proposed change.**

This will impact the practice of personal injury the most. In other states that allow referral fees you see lawyers that practice in all areas start to advertise for personal injury cases. This results in many people with little or no experience advertising for personal injury cases. It will in turn make it more difficult for people looking to hire personal injury lawyers to figure out who really does this work versus who is simply advertising to make a referral fee. This will increase consumer confusion.

I think the current rule where both lawyers must be jointly responsible helps ensure that the work for the client is the best versus who will give the referring attorney the best referral fee. It is important to have joint liability to make sure you have the best result for the client.

Stephen J. Burg, Esq.
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Sam Cannon
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December 6, 2023

Colorado Supreme Court,
2 E. 14th Avenue,
Denver, CO 80202
Via Email Only to: supremecourtrules@judicial.state.co.us

Re: Proposed Changes to Rules of Professional Conduct 1.5 and 1.8

Dear Justices of the Colorado Supreme Court:

I write in support of the proposed changes to RPC 1.5 and 1.8 regarding fee divisions between attorneys and law firms. In short, I believe the proposed rules will benefit clients with complex legal issues by encouraging members of the bar to limit their practices to those areas in which they are subject matter experts.

Currently, if an attorney receives an inquiry from a potential client in an area they do not regularly practice, they cannot receive a direct benefit from referring that client to another lawyer who is an expert in the practice area. Accordingly, the lawyer faces a choice, refer the case to an expert and enjoy the indirect benefits of establishing relationships with other members of the bar or accepting the representation and learning enough to comply with Rule 1.1's mandate to provide competent representation. And while this sometimes can result in the client receiving good representation and the lawyer developing new skills, it can also result in substandard- or at least non-optimal- representation for the client. Under the proposed rule, the lawyer will have a third option: identify a lawyer who is an expert in the area of law being sought, verify that person's credentials, and obtain a direct benefit for that service in the form of a referral fee (so long as the other requirements of Rule 1.5 are met). I believe this will likely result in more clients being represented by lawyers who are experts in their field and fewer clients receiving non-optimal outcomes for their cases.

Second, the rule change is likely to correct a current distortion in the market for legal services. Lawyers in our community are generally aware of the quality of work performed by our colleagues. The public is less aware. And in many cases, the public perception of good lawyering is at odds with that of the bench and the bar. In addition, lawyers are generally more willing to have frank conversations about the profession with other lawyers than with potential clients. This means that lawyers are in a better

position to identify the best lawyer to refer a particular case to than the public. In this way, allowing lawyers to obtain a benefit by referring cases will motivate the bar to assist clients in finding the best lawyers for their case. Thus, this rule change helps clients, especially those who are not sophisticated consumers of legal services, obtain the best representation available.

The proposed rule change is good for clients. That should be our goal as a profession. The continued prohibition against receiving fees for referring clients to non-legal services in Rule 1.8 is advisable and will continue to protect clients against predatory service providers.

I appreciate you taking to time to review my comments on the rule.

Sincerely,

CANNON LAW

/s/ Sam Cannon

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Via Email
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December 6, 2023

Colorado Supreme Court Rules Committee
supremecourtrules@judicial.state.co.us

Re: Proposed Rule Changes to Rule 1.5 and Rule 1.8

Dear Colorado Supreme Court Rules Committee:

We write in strong support of the proposed rule changes to C.R.P.C. 1.5 and 1.8 regarding referral fees. We are personal injury lawyers who also spent the beginning of our careers doing criminal defense work.

We believe that this change is in the best interest of both Colorado lawyers and the public at large for several reasons. First, we believe that this ultimately is an access to justice issue. Second, allowing referral fees will lead to more ethical and competent representation. Third, this change will bring Colorado in line with the other 49 states which – to our knowledge – allow some version of referral fees. Finally, we believe the proposed changes strike a proper balance and the negative impact of those changes, if any, will be minor and greatly outweighed by the positive impacts.

Referral fees are an access to justice issue. There are many types of law – criminal defense, family law, tenant-sided landlord/tenant law etc. – where solo and small firm owners struggle to make ends meet and to pay back student loans. We have numerous colleagues in other states practicing in low-income practice areas who routinely supplement 10-40% of their income referring PI cases to PI lawyers. In doing so, they can accept more low-pay or slow-pay clients in their main practice area. That is a win for both the lawyer and the client. It improves access to justice.

Referral fees also will lead to more competent and ethical representation. As it stands currently, we hear horror stories where non-PI lawyers have accepted a PI case without knowing the applicable law and ended up settling that case for pennies on the dollar, harming the client. While this is unethical on its face and shouldn't happen, the reality is that it does. And the reason it does is because those lawyers know they cannot get a referral fee for only referring it out, so they choose to work on it alone.While referral fees won't completely fix this issue, it will drastically reduce it.

While we are not experts in the other 49 states' ethics rules, it appears that Colorado is the only state that has a blanket prohibition on all referral fees. Some states, like CA, allow "pure" referral fees without joint and several liability for malpractice and ethical decisions. Others allow referral fees with joint and several ethical and malpractice liability. But all of them allow referral fees in some form. While the logic behind Colorado's prohibition may have made sense at the time that rule was written, practical experience and the experience of other jurisdictions has proven it is time for Colorado to join the other states.

Finally, we acknowledge there is some risk in allowing referral fees. It is possible that lawyers will send cases to those who pay the highest fee percentage without regard to the competency of that lawyer. But the proposed rule change strikes the right balance to limit that by requiring, if proportionality of the work is not to be considered, joint and several financial and ethical liability. While CA's system may be the simplest for all involved, it does have a higher risk for clients. The system proposed here would almost always include joint and several liability, which is the more consumer-friendly method of allowing referral fees and the method used by the majority of jurisdictions. When we balance the positives of the rule change, and the safeguards contained within it, the positives greatly outweigh the negatives.

Thank you for proposing this rule change in the first place. If there is anything else we can do to support it, or if you have any questions about our views, please do not hesitate to reach out to us.

Kind regards,

/s/ Kevin Cheney
Kevin Cheney
Attorney at Law
CHENEY GALLUZZI & HOWARD, LLC

/s/ Tim Galluzzi
Tim Galluzzi
Attorney at Law
CHENEY GALLUZZI & HOWARD, LLC

Dear Colorado Supreme Court,

I oppose the proposed change to Rule 1.5 of the Colorado Rules of Professional Conduct.

If this change takes place, there will be a huge increase in “advertising lawyers” who will seek only to sign up clients for the sole purpose of selling their cases to a different lawyer for the highest price. These “advertising lawyers” won’t be providing real legal services, but instead acting as middle-men for their own personal profit.

The “advertising lawyers” will spend huge sums on digital, media, and pay-per-click advertising to dupe Coloradoans into hiring them, thinking they will actually be the lawyers handing the case. Instead, the consumer has only hired someone with a bar number who then intends to sell the case to a different lawyer who is willing to pay for it. That is deceptive.

The proposed change to allow “referral fees” will substantially harm Coloradoans in need of qualified legal counsel. An “advertising lawyer” can have no expertise in the area of law that a potential clients needs help with, but can advertise for every imaginable type of case, knowing that the case can be quickly sold to a qualified lawyer. Coloradoans will wind up hiring the lawyer who is the best advertiser, not the most qualified.

I believe Rule 1.5 should be kept as-is because it requires co-counsel lawyers to remain jointly responsible for the representation. This gives clients more protection and better representation. Changing the rule to allow middle-men to simply gather clients and then sell off their cases for a referral fee, and then do nothing further, is an outcome that this Court should not allow.

Sincerely.

David Crough (CO Reg. No. 47528)

Regarding the proposed change to rule 1.5 to allow referral fees, **I oppose the proposed change.**

The current Rule works well to protect the client and provide the best representation to the client in all circumstances.

I believe the proposed change will be adverse to the best interests of our community of (particularly personal injury) clients. Injured individuals will be inundated with confusing and misleading advertising by lawyers who have no intention or ability to represent the client. Lawyers who are not intending to handle the client's case will attempt to obtain their case through advertising, and then pass the client off to an unknown lawyer to actually do the work. I believe this added layer of misinformation will decrease, rather than increase, the quality of legal representation provided to clients. While allowing referral fees will encourage lawyers to observe their obligation of competence, they have that obligation anyway, and it is not the ethical lawyers who will be most impacted by this Rule change. Allowing "naked" referral fees is likely to make it more difficult for people looking to hire (predominately personal injury) lawyers to figure out who really does this work versus who is simply advertising to make a referral fee. This will increase consumer confusion and decrease the quality of client representation.

I believe the current rule (where both lawyers must be jointly responsible in order to share the fee) helps ensure that the work for the client is the highest quality, rather than just a question of who will give the referring attorney the largest referral fee. It is important to have joint liability to make sure lawyers pursue the best result for the client. Alternatively, if a lawyer is not competent to practice in a given area, s/he is able to make a referral to a competent lawyer without taking a fee, which also benefits the client.

Over the years Colorado lawyers have utilized the current requirements of the Rule to the benefit of the clients. Changing the Rule will, in my opinion (as someone who receives and provides a number of referrals every year – some of which allow me to participate in a fee and some of which do not), decrease, rather than increase, the quality of representation clients in our community receive.

Please feel free to contact me with any questions.

<dph

David P. Hersh
Trial Lawyer
dhersh@burgsimpson.com

Attachment 3

Memorandum

To: Standing Committee on the Rules of Professional Conduct

From: Erika Holmes, Chair of the Rule 1.2(c) Subcommittee

Date: January 19, 2024

Re: Proposed Changes to Colorado Rule of Professional Conduct 1.2(c)

The Rule 1.2(c) Subcommittee met on December 6, 2023, and January 17, 2024, to discuss updating Colo. RPC 1.2(c) to accurately reflect the procedural rules that allow for limited representation.

As discussed at the October 27 meeting of the Standing Committee, a group of lawyers and judges has proposed amendments to C.A.R. 5(e) to expand the type of limited representation that lawyers can provide to self-represented parties in appeals. The Rules Committee is currently considering the proposed amendments.

Although we do not yet know whether the Supreme Court will approve any proposed amendments to C.A.R. 5(e), the subcommittee recommends that, in the meantime, the Standing Committee approve amendments to Colo. RPC 1.2(c) to reflect the current language of C.A.R. 5(e).

The second sentence of Colo. RPC 1.2(c) references two rules that currently permit lawyers to provide limited representation to self-represented parties. Perhaps through an oversight, the sentence does not mention a third such rule — C.A.R. 5(e). Since C.A.R. 5(e) permits limited representation, it is the Subcommittee's consensus to include C.A.R. 5(e) in this list (see attached). The addition of an Oxford comma in Comment [7] is also suggested.

Lawyers currently provide limited representation to clients in appeals pursuant to C.A.R. 5(e). Amending Colo. RPC 1.2(c) as soon as practicable will alleviate any ambiguity resulting from the omission of C.A.R. 5(e) from the rule, and perhaps promote lawyers to offer such representation.

If and when the Supreme Court amends C.A.R. 5(e), we anticipate that our subcommittee will revisit possible amendments to Colo. RPC 1.2(c) to ensure the language of the rule is consistent with any changes to C.A.R. 5(e).

In the meantime, the Subcommittee asks the Standing Committee to review and approve the changes to Colo. RPC 1.2(c) reflected in the attachment.

Colo. RPC 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

(c) A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b), and C.A.R. 5(e).

Cmt [6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the legal services provided may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

Cmt [7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. See Rule 1.1.

Attachment 4

Misgendering Subcommittee Status Report Outline 1/26/2024

1. Starting point for subcommittee – consideration of potentially applicable rules
    a. Rules considered but rejected because not readily applicable
        i. 3.4(e) – irrelevant matter at trial
        ii. 4.4(a) – prohibits use of means to embarrass or harass a person
        iii. 8.4(d) – conduct prejudicial to administration of justice
        iv. 8.4(i) – definition of sexual harassment in comment does not cover verbal conduct of a non-sexual nature
    b. Rules considered as potentially applicable
        i. 8.4(h) – "engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law"
            1. Broad scope – can include conduct unconnected to professional activities
            2. Requires proof of both intent and harm
        ii. 8.4(g) – "engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's … gender, … sexual orientation…."
            1. Does not include "sex," as many versions of rule 8.4(g) do
                a. Subcommittee currently surveying other version of 8.4(g)
            2. Limited applicability – connection with representation of client
            3. "Gender" currently undefined
                a. More complete terminology would be "sex, gender identity, or gender expression"

2. Alternative 1 – Take no further action, at least for now
    a. No CO complaints to ARC, limited complaints elsewhere
    b. Attempts to address this issue are subject to characterization as part of political or "woke" agenda

3. Alternative 2 – Further exploration of potential changes
    a. Change to language of rule
    b. Adding comment or changing 8.4(g), comment [3] to add definition of "gender" or engendering bias on basis of gender

Attachment 5

Standing Committee on the Colorado Rules of Professional Conduct

Memo

To: Members of the Standing Committee on the Colorado Rules of Professional Conduct

From: Judge Lipinsky

Date: January 19, 2024

Re: Removing gendered pronouns from the Colorado Rules of Professional Conduct

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As I mentioned at the October 27 meeting of the Standing Committee, our supreme court has requested a review of the gendered pronouns in the Colorado rules. My colleague Judge Jerry Jones assembled a working group, consisting of the chairs of the various rules committees, to discuss a consistent approach to replacing gendered pronouns with gender neutral terms. As you will note from the attached memo that Judge Jones circulated in July, there are two principal approaches to replacing gendered pronouns in rules: the Federal Rules Committee approach and the Washington/Minnesota Rules Committee approach.

I searched the Colorado Rules of Professional Conduct (RPC) and the accompanying comments for gendered pronouns. I found ten instances in which an RPC or comment contains gendered pronouns. As far as I can tell, the gendered pronouns appear in language unique to Colorado; the ABA Model Rules and the comments thereto employ gender-neutral language.

The Model Rules and comments follow the Washington/Minnesota approach of referring to persons by their capacities (e.g., "plaintiff" and "third-party plaintiff") rather than by gender neutral pronouns, such as "it" and "they." (The working group reached a consensus that there is no need to change current references to "they" or "their" in any rules.) I recommend that the Standing Committee continue with this approach in considering the replacement of gendered pronouns in the RPC and comments.

I have set forth below the language in the RPC and comments containing gendered pronouns, together with my recommended amendments to replace such language. I look forward to discussing my recommendations at the January 26 meeting of the Standing Committee.

Proposed Amendment to Comment [17] to Rule 1.8

Current version:

Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although

a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

Proposed amendment:

Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for ~~his or her~~the lawyer's own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance

with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

Proposed Amendment to Rule 1.13(e)

Current version:

A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Proposed amendment:

(e) A lawyer who reasonably believes that ~~he or she~~the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Proposed Amendment to Comment [8] to Rule 1.13

Current version:

A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Proposed amendment:

A lawyer who reasonably believes that ~~he or she~~the lawyer has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Proposed Amendment to Comment [10] to Rule 1.14

Current version:

A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Proposed amendment:

A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of ~~his or her~~the lawyer's relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible.

Normally, a lawyer would not seek compensation for such emergency actions taken.

Proposed Amendment to Comment [7] to Rule 4.2

Current version:

In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

Proposed amendment:

In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by ~~his or her~~the constituent's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

Proposed Amendment to Comment [7] to Rule 4.5

Current version:

Rule 4.5(b) provides a safe harbor for notifications of this type. Other factors that should be considered to differentiate threats from notifications in difficult cases include (a) an absence of any suggestion by the notifying lawyer that he or she could exert any improper influence over the criminal, administrative or disciplinary process, (b) consideration of whether any monetary recovery or other relief sought by the notifying lawyer is reasonably related to the harm suffered by the lawyer's clients. Where no such reasonable relation exists, the communication likely constitutes a proscribed threat. For example, a lawyer violates Rule 4.5 if the lawyer threatens to file a charge or complaint of tax fraud against another party where issues of tax fraud have nothing to do with the dispute. It is not a violation of Rule 4.5 for a lawyer to notify another party that the other person's writing of an insufficient funds check may have criminal as well as civil ramifications in a civil action for collection of the bad check.

Proposed amendment:

Rule 4.5(b) provides a safe harbor for notifications of this type. Other factors that should be considered to differentiate threats from notifications in difficult cases include (a) an absence of any suggestion by the notifying lawyer that ~~he or she~~the lawyer could exert any improper influence over the criminal, administrative or disciplinary process, (b) consideration of whether any monetary recovery or other relief sought by the notifying lawyer is reasonably related to the harm suffered by the lawyer's clients. Where no such reasonable relation exists, the communication likely constitutes a proscribed threat. For example, a lawyer violates Rule 4.5 if the lawyer threatens to file a charge or complaint of tax fraud against another party where issues of tax fraud have nothing to do with the dispute. It is not a violation of Rule 4.5 for a lawyer to notify another party that the other person's writing of an insufficient funds check may have criminal as well as civil ramifications in a civil action for collection of the bad check.

Proposed Amendments to Rule 6.1 and Comment [1] to the Rule

Current version of the First Paragraph of Section III(G):

Colorado Supreme Court Rule 260.8 provides that an attorney [1]who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. However, mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means.

Proposed amendment:

Colorado Supreme Court Rule 260.8 provides that an attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which ~~he/she~~the attorney mentors a law student. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which ~~he/she~~the attorney mentors another lawyer. However, mentors shall not be members

[1] I don't know why Rule 6.1 contains references to "attorney," even though the other Rules of Professional Conduct consistently refer to "lawyer." The Standing Committee may wish to examine this discrepancy.

of the same firm or in association with the lawyer providing representation to the client of limited means.

Current version of the First Paragraph of Section V(J):

When an attorney handling a pro bono case leaves the firm, he or she should work with the Pro Bono Committee/Coordinator to (1) locate another attorney in the firm to take over the representation of the pro bono client, or (2) see if the referring organization can facilitate another placement.

Proposed amendment:

When an attorney handling a pro bono case leaves the firm, ~~he or she~~the attorney should work with the Pro Bono Committee/Coordinator to (1) locate another attorney in the firm to take over the representation of the pro bono client, or (2) see if the referring organization can facilitate another placement.

Current version of Section VI(A):

Attorneys may earn one (1) CLE credit hour for every five (5) billable-equivalent hours of pro bono representation provided to the client of limited means. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means. An attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student.

Proposed amendment:

Attorneys may earn one (1) CLE credit hour for every five (5) billable-equivalent hours of pro bono representation provided to the client of limited means. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which ~~he/she~~the lawyer mentors another lawyer. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means. An attorney who acts as a mentor may earn two (2) units of general credit per

completed matter in which ~~he/she~~the lawyer mentors a law student.

Current version of Comment [1]:

Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay. Indeed, the oath that Colorado lawyers take upon admittance to the Bar requires that a lawyer will never "reject, from any consideration personal to myself, the cause of the defenseless or oppressed." In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

Proposed amendment:

Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay. Indeed, the oath that Colorado lawyers take upon admittance to the Bar requires that a lawyer will never "reject, from any consideration personal to myself, the cause of the defenseless

or oppressed." In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of ~~his or her~~the lawyer's legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.