

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

**SUPPLEMENTAL REPORT AND RECOMMENDATIONS
CONCERNING THE
AMERICAN BAR ASSOCIATION
ETHICS 2000 MODEL RULES OF PROFESSIONAL CONDUCT**

April 27, 2006

The Standing Committee on the Colorado Rules of Professional Conduct (“Standing Committee”) submitted its Report and Recommendations (“Report”) to the Court on December 30, 2005. On November 23, 2005, the Court entered an Order adding a “Recommended Model Pro Bono Policy for Colorado Attorneys and Law Firms” (“Pro Bono Policy”) to the Comment to Colo.RPC 6.1. The Court had not requested the Standing Committee’s views or comments on the Pro Bono Policy, and the Standing Committee was unaware of the Pro Bono Policy when it completed its deliberations on the ABA Ethics 2000 Model Rules of Professional Conduct. See Report and Recommendations at 101, n. 8.

Following the submission to the Court of its Report, the Standing Committee decided to perform a limited review of the Pro Bono Policy. Many members of the Standing Committee voiced concerns regarding the philosophy underlying and substance of the Pro Bono Policy, as well as about the procedures followed in adopting the Pro Bono Policy—specifically, the Court’s decision not to seek the

views of the Standing Committee before adopting the Pro Bono Policy. However, the Standing Committee determined not to address the wisdom of the Pro Bono Policy, but to review only the form and format of the Pro Bono Policy, primarily with a view toward resolving any inconsistencies with the recommendations previously made by the Standing Committee in its Report.

The Standing Committee recommends that the Preface and text of the Pro Bono Policy (with the changes shown on Appendix A to this Supplemental Report) be placed in an appendix to the Rules of Professional Conduct, rather than in the Comment to Rule 6.1.¹ The Standing Committee further proposes that a brief reference to the Pro Bono Policy be placed in a new Comment [12] to Rule 6.1.² These proposed changes accomplish two salutary goals. First, the format of the Model Rules and Comments is thereby preserved. Second, the new Comment directs the reader to the Pro Bono Policy without including a very lengthy policy statement in the Comment itself.

The Pro Bono Policy defines the recipients of the pro bono services in several different, and conflicting, ways. The Preface speaks of “indigent persons”. The Pro Bono Policy itself describes the recipients alternately as “persons of limited means,” “indigent members of the community,” “near-indigent members of the community,” and “low income persons”. None of these terms is defined. The text of Rule 6.1, as promulgated by the ABA, and as recommended to the Court by

¹ Appendix A to this Supplemental Report is marked to show the changes recommended by the Standing Committee to the present form of the Pro Bono Policy, as it now appears in the Comment to Colo.RPC 6.1.

² Appendix B to this Supplemental Report contains the text of Rule 6.1 and its Comment, as previously proposed by the Standing Committee, with the addition of the new proposed Comment [12].

the Standing Committee, speaks of “persons of limited means.” The Standing Committee believes that the terms “indigent” and “near indigent” are underinclusive of the universe of persons that may need pro bono legal services. Accordingly, the Standing Committee recommends that the term “persons of limited means” be used uniformly throughout the Comment to Rule 6.1 and the Pro Bono Policy.

The Introduction portion of the Pro Bono Policy incorrectly quotes the current version of the Preamble to the Rules of Professional Conduct. On the assumption that the Court will adopt the revised Preamble previously recommended by the Standing Committee, the Introduction has been rewritten to correctly quote the proposed Preamble.

The Standing Committee also recommends that Section V. H. of the Pro Bono Policy be revised to reflect the changes recommended in Proposed Rule 1.8(e). Under Current Rule 1.8(e) a lawyer may not relieve the client of the responsibility to pay the costs of litigation unless “it is or becomes apparent that the client is unable to pay such expenses without suffering substantial financial hardship.” Proposed Rule 1.8(e) relaxes this restriction and permits a lawyer to agree in advance to forego reimbursement of the expenses of the litigation regardless of the client’s financial situation. On the assumption that the Court will adopt Proposed Rule 1.8(e), Section V.H. has been redrafted.

Finally, the Standing Committee notes that the categories of pro bono services defined in Section III of the Pro Bono Policy are inconsistent with the definition of pro bono activities contained in both Current and Proposed Rule 6.1. The Standing Committee suggests that the Court expand the categories listed in the

Pro Bono Policy to include all of those listed in the Rule. This proposed change has not been made in Appendix A to this Supplemental Report.