

COLORADO SUPREME COURT

STANDING COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT

Approved Minutes of Meeting of the Full Committee
On June 25, 2021
Sixtieth Meeting of the Full Committee
Virtual meeting in Response to Covid-19 Restrictions

The sixtieth meeting of the Colorado Supreme Court Standing Committee on the Rules of Professional Conduct was convened at 9:00 AM on Friday, June 25, 2021, by Chair Marcy G. Glenn. The meeting was conducted virtually in response to Covid-19 restrictions.

Present in person at the meeting, in addition to Marcy G. Glenn and liaison justice, Justice Maria Berkenkotter, and Justice Monica Márquez. Also present were Nancy L. Cohen, Cynthia F. Covell, Thomas E. Downey, Jr., April Jones, Judge Lino S. Lipinsky de Orlov, Marianne Luu-Chen, Julia Martinez, Cecil E. Morris, Jr., Noah C. Patterson, Judge Ruthanne N. Polidori, Henry Richard Reeve, Marcus L. Squarrell, David W. Stark, Eli Wald, Jennifer J. Wallace, Lisa M. Wayne, Judge John R. Webb, Frederick R. Yarger, Jessica E. Yates, and Tuck Young. Judge Adam J. Espinosa, Margaret Funk, William R. Lucero, Alexander R. Rothrock, and Jamie S. Sudler, III were excused from attendance. Absent from attendance was Boston H. Stanton, Jr. Erika Holmes attended the meeting as a guest.

1. Meeting Materials: Approval of Minutes of March 5, 2021 Meeting.

The Chair had provided the submitted minutes of the 59th meeting of the committee held on March 5, 2021 to the members prior to the meeting. The minutes were approved.

2. Membership and Leadership Update.

The membership and leadership update was provided by the Chair and The Hon. Lino Lipinsky.

The Chair advised the committee that member Boston H. Stanton, Jr. had advised that the demands of his practice precluded his continued membership and that he had regrettably resigned. The Chair noted that member Stanton had been an original member of the committee, thanked him for his service, and wished him well in his future personal and professional endeavors.

The Chair reviewed the June 17, 2021 Order of the Supreme Court, State of Colorado reappointing the following members of the Colorado Supreme Court Standing Committee on the Colorado Rules of Professional Conduct for a 3-year term effective July 21, 2021 and expiring on June 30, 2024:

Nancy L. Cohen

The Hon. Adam Espinosa
Marcy G. Glenn
The Hon. Lino Lipinsky
The Hon. William R. Lucero
Noah Patterson
David W. Stark
Jamie S. Sudler
Eli Wald
Lisa M. Wayne
The Hon. John R. Webb
Jessica Yates

The Chair advised the committee that she was stepping down from her role as Chair effective June 30, 2021 and reviewed the additional portion of the June 17, 2021 Order of the Supreme Court, State of Colorado appointing The Hon. Lino Lipinsky as Chair of the Colorado Supreme Court Standing Committee on the Colorado Rules of Professional Conduct for a three- year term effective July 1, 2021 and expiring on June 30, 2024.

The Chair also reviewed the June 18, 2021 Order of the Supreme Court, State of Colorado appointing the following individuals as members of the Colorado Supreme Court Standing Committee on the Colorado Rules of Professional Conduct for a 3-year term effective July 1, 2021 and expiring on June 30, 2024:

Erika L. Holmes
Matthew Kirsch
Troy Rackham
Robert W. Steinmetz

Justice Márquez provided extended comments thanking the Chair for her service as Chair since the inception of the committee in 2003. Justice Márquez commended the Chair for her incredible work, leadership, and significant contributions to the committee and the bar in the fields of ethics and the rules governing professional conduct. Justice Márquez congratulated Judge Lipinsky noting that he had “big shoes to fill” in his new role as Chair.

The Chair thanked Justice Márquez for her kind remarks and thanked all the members of the committee, past and present, for their work on the rules of professional conduct. She paid brief special tribute to former members the late Anthony “Tony” Van Westrum and Jim Wallace for their significant contributions to the committee. The Chair described her service on the committee as the highlight of her legal career and expressed her happiness at being able to continue to serve as a member of the committee.

Judge Lipinsky noted that he was shocked to learn the Chair was stepping down and even more surprised to learn that the Court wanted to him to assume the position as Chair. He acknowledged that he had “big shoes to fill” and likened his new role as being similar to past Presidents of the United States who had followed legendary Presidents such as George Washington and Franklin Delano Roosevelt. Judge Lipinsky pledged his

commitment to the committee and its members to continue the high standards established by the outgoing Chair. He concluded his remarks suggesting that the committee further recognize the Chair's contributions at its next meeting.

3. Old Business:

A. Status Report on Rule 1.5 (b) "Scope of Representation."

Justice Berkenkotter provided a brief report on the status of the recommended amendments to Rule 1.5 (b) "Scope of Representation." She noted that the proposed amendments had been posted for public comment, and that the comment period was open until August 16, 2021. She noted that no comments had been made as of the date of the meeting.

B. Status Report on Proposed Housekeeping Amendments to Rule 1.1, Comment 6, and Rule 5.5 (a)(1) and Comment 1.

The Chair reported on the proposed housekeeping amendments to Rule 1.1., Comment 6, and Rule 5.5 (a) (1) and Comment 1 noting that the Court had adopted the proposed amendments on May 20, 2021.

C. Rule 3.8 (d) Subcommittee Report.

Member Yates provided a report relating to the Rule 3.8 (d) Subcommittee. She reviewed the history surrounding the formation of the subcommittee and highlighted the diverse practice backgrounds of the subcommittee members. She reported that the committee had met several times, thanked the committee for their diligent work and thanked Judge Webb for his assistance in drafting language addressing concerns raised by the decision in *In re Attorney C*, 47 P.3d 1167 (Colo. 2002). Member Yates advised that the subcommittee expects to have draft language for the full committee's consideration at its September, 2021 meeting. She noted that during the subcommittee's work, concerns had been raised with respect to Rule 3.8 (f) and new legislation requiring district attorneys to publish certain reports relating to allegations of excessive force. Member Yates indicated that her subcommittee will also examine whether additional amendments to Rule 3.8 (f) are required because of this recent legislation. The Chair thanked member Yates and the members of her committee for their quick and thorough action on the issues presented.

D. Rule 1.5 (e) Subcommittee.

The Chair provided a brief report on behalf of the Rule 1.5 (e) subcommittee. The Chair noted that the committee was not ready to provide a full report, that its discussions to date had suggested some sentiment for the elimination of Rule 1.5 (e) provided there was some potential language added to Rule 7.2 regarding the prohibition on referral fees. The Chair noted that the subcommittee would provide a full report at the September meeting.

E. Discussion of Rule 6.1 Voluntary Pro Bono activities.

Member Covell noted that a subcommittee had been formed to examine the language of Rule 6.1 following publication of a law review article written by Judge Daniel Taubman, which suggested that the language of the rule was vague, overbroad, and in need of revision. Member Covell identified the members of her subcommittee (Co-Chair Troy Rackham, Judge Dan Taubman, Judge Randie Polidori, Aaron Goldman, Jerry Pratt, Dave Simmons, Ed Gassman, Bob Keatinge, Jared McCluskey, Loren Brown, Judge Gale Miller, Bill Tanis, and Dave Stark), noting that many of the subcommittee members were also members of the Ethics Committee of the Colorado Bar Association and/or the Access to Justice Committee. She emphasized that the subcommittee's charge was limited to addressing the overbreadth and vagueness identified in Judge Taubman's article. The subcommittee spent considerable time developing proposed revisions to address the vagueness and overbreadth concerns. Covell stated that Rule 6.1 focuses on provision of legal services to the poor; it is not intended to address provision of other important types of pro bono legal services, such as services to nonprofit organizations with other missions, or impact litigation intended to protect the rights of other groups. The subcommittee worked to craft language that would continue to support and encourage lawyers to provide legal services on a pro bono basis to "low income individuals." The Colorado Lawyers Committee provided input to the subcommittee, expressing concern that revisions to the language of Rule 6.1 could potentially adversely impact the willingness of attorneys to provide pro bono services to nonprofit organizations. Member Covell reported that, after much discussion and deliberation, the subcommittee was not able to reach a consensus on all of the proposed revisions to Rule 6.1, and determined that the changes on which they had reached agreement were quite limited and did not warrant the time-consuming and potentially challenging process of seeking Supreme Court approval. Several members of the committee, who also served on the subcommittee, expressed their willingness to make changes to the rule, but also noted their concerns that such changes might reduce the overall pro bono participation by members of the bar.

4. New Business.

There was no new business presented for the committee's consideration.

5. Administrative Matters. Dates for the next meeting were discussed. The Chair advised that members would be informed of the next meeting dates via email.

6. Adjournment. The meeting was adjourned at 9:41 AM.

Respectfully submitted,
Thomas E. Downey, Jr., Secretary