

**Council of the Trust and Estate Section
of the Colorado Bar Association
Notice of and Agenda for the August 17, 2017 Meeting**

To: Council Members
Trust and Estate Section of the Colorado Bar Association

From: Josie M. Faix
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Notice of Meeting

The first meeting of the 2017-2018 Council of the Trust and Estate Section of the Colorado Bar Association will be held:

Date and time: ***Thursday, August 17, 2017, 3:00 p.m.****
Place: Colorado Bar Association
1900 Grant Street, Suite 900
Denver, Colorado 80203

* or as close as possible to 15 minutes after the end of the Statutory Revisions Committee meeting, if that meeting runs past 3:00 p.m.

Call-In Instructions

Call-in instructions are as follows: 1.855.392.2520
Access Code: 2627690#

Minutes of Previous Meeting, Financial Reports & Attachments

1. Minutes of the May 18, 2017 meeting of the Council
2. Trust and Estate Section Financial Reports as of July 2017

Matters Likely to be Voted Upon

Please review the Statutory Revisions Committee website at <http://www.cobar.org/For-Members/CBA-Sections/Trust-and-Estate/Statutory-Revisions-Subcommittee-Homepage> for proposals that may be brought the Statutory Revisions Committee and Council.

Trust and Estate Section Council Agenda
August 17, 2017

In an attempt to adhere to the allotted meeting duration of one (1) hour and thirty (30) minutes, the Chair will exercise its prerogative to limit the time for any report or discussion on a topic to ten (10) minutes. This conforms to Robert's Rules of Order.

1. Review/approval of Minutes of the May 18, 2017 meeting of the Council
2. Chair's Report and Administrative Matters (Kelly Dickson Cooper)
3. Secretary/Treasurer's report (Josie M. Faix)
4. Tax Section Liaison (Georgine M. Kryda)
5. Elder Law Section Liaison (Patrick R. Thiessen)
6. Real Estate Section Liaison (David W. Kirch)
7. Statutory Revisions Committee (Leia G. Ursery/Tim Bounds)
8. Legislative Liaison (Stephen M. Brainerd)
9. Council Notes (Julia G. McVey/Josie M. Faix)
10. CLE/Estate Planning Retreat (Leia G. Ursery)
11. Orange Book Forms Committee (Elizabeth T. Meck/Kim Raemdonck)
12. Rules and Forms Committee (Casey L. Williams)
13. Civic and Community Affairs Joint Committee of the Elder Law Section (Sandra Sigler)
14. Diversity Committee (Melissa R. Schwartz)
15. Probate Trial and Procedure Committee (Aaron Evans)
16. Colorado Estate Planning Handbook (David K. Johns/Constance B. Wood/Julia G. McVey)
17. Green Book (David K. Johns)
18. New T&E Lawyers Committee (Mark D. Masters/John M. Estes)

19. The Colorado Lawyer (David W. Kirch/Constance D. Smith)
20. Media Liaison (Mark D. Masters)
21. Board of Governors Representative (Melissa R. Schwartz)
22. GAL Subcommittee (David W. Kirch)
23. Miscellaneous/FYI
24. Adjournment

Council of the Trust and Estate Section of the Colorado Bar Association

Minutes of the May 18, 2017 Meeting

Council met on Thursday, May 18, 2017, at the Colorado Bar Association offices, 1900 Grant Street, Denver, Colorado. The meeting was called to order at approximately 3:30 p.m.

The following members of Council were present or participated by phone and constituted a quorum:

Darla L. Daniel, Chair
Kelly Dickson Cooper, Vice-Chair (phone)
Leia G. Ursery, Secretary/Treasurer
Melissa R. Schwartz, Immediate Past Chair
Josie M. Faix, Second Year Member
Patrick Thiessen, Second Year Member
Nicole Brown, First Year Member

Also in attendance were: Georgine M. Kryda (Tax Section Liaison); David W. Kirch (Real Estate Section Liaison, The Colorado Lawyer and GAL Subcommittee); Sandra Sigler (Civic and Community Affairs Joint Committee of the Elder Law and T&E Sections); Timothy Bounds; Jeremy Schupbach (CBA); Susan Hoyt (CBA); and Elizabeth Akalin (CBA).

1. Approval of Minutes of Prior Meeting

The Minutes of the April 20, 2017 Council meeting were approved unanimously.

2. Chair's Report, Administrative Matters (Darla L. Daniel)

A new committee has been formed to review the "Mediation Best Practices Guide." Darla will ask the ADR Subcommittee from the Statutory Revisions Committee to serve as a liaison on behalf of our Section.

The Solo Small Firm Section authored a letter to Colorado Attorney Regulation Counsel about its plan to disclose the identity of an attorney's malpractice carrier on the CARC website. The website already affirms whether or not an attorney has malpractice coverage and the name of the carrier is disclosed if someone follows up with a call to CARC. The belief is that coverage by all attorneys will be encouraged if such further disclosure is made. Each Section has been asked to sign off in support of the letter, which was provided as an attachment for today's meeting materials and outlines several reasons in support of the opposition. Georgine Kryda indicated that the Tax Section offered a few revisions but otherwise voted to sign and support the letter. The CBA Executive Council will likely review the letter at its June 2017 and it would like to present a single position on behalf of the CBA. A motion to support the letter was passed unanimously.

With respect to the Estate Planning Retreat, Marc Darling and Jeremy Schupbach will be attending based on the planned special session on the proposed Colorado Trust Code. Marc will be staying one night and Jeremy will be staying two nights. A motion to reimburse Marc and Jeremy for the cost of their rooms was passed unanimously.

3. Secretary/Treasurer's Report (Leia G. Ursery)

Nothing specific to report but Leia will work with Josie Faix next year as incoming Secretary/Treasurer to ensure that we reevaluate budget adjustments based on the lower amount of reserves in the Section account.

4. Tax Section Liaison (Georgine M. Kryda)

No report.

5. Statutory Revisions Committee (Josie M. Faix/Leia G. Ursery)

This month's meeting was focused on an overview of the Uniform Trust Code Subcommittee's work on the Colorado Trust Code and the presentation seemed to go well.

6. Legislative Liaison (Stephen M. Brainerd/Jeremy Schupbach - CBA)

Jeremy reported on the following:

- HB17-1087, "Office of Public Guardianship Pilot Program," passed and is awaiting signature by the Governor.
- HB17-1213, "Transfer on Death of Vehicles," passed and was signed by the Governor on May 3, 2017.
- SB17-227, "Relocate Title 12 Attorneys-at-law," passed and was signed by the Governor on May 3, 2017.
- HB17-1303, "Judicial Performance Evaluation System and Commissions," passed and is awaiting signature by the Governor.

Overall, we had a successful legislative session this year.

7. Council Notes (Julia G. McVey/Josie M. Faix)

Josie report that they are working on the June 2017 edition. Darla is working on a piece. Melissa would like a list of next year's Diversity Committee events included and she will contact Josie and Julia with more information.

8. CLE/Estate Planning Retreat (Kelly Dickson Cooper/Vincent O'Brien)

Kelly reported that everything looks good for the Estate Planning Retreat next month. So far, 120 people have registered but there was an increase in room block reservations, which suggests more registrations will be coming. Melissa would like a ribbon or star placed on each

new attendee's name tag; this would allow us to recognize and welcome them where possible. She also wants the various Ambassadors to use the Welcome Reception as an opportunity to introduce his or her paired new lawyer to other attendees.

Leia asked that anyone with ideas for next year's CLE topics to email her as she is starting to put together a list to review with Heidi Ray.

9. Orange Book Forms Committee (Peggy K. Gardner/Elizabeth T. Meck)

Peggy reported to Darla that the Committee is continuing its work on the Marital Agreement form.

10. Rules & Forms Committee (Casey L. Williams)

Kelly, Casey, Aaron Evans and Susan Hoyt met to discuss the purpose and future of the Committee and identified three types of projects for the Committee going forward. Casey is working on a handbook to help guide future projects, including the process for approval, which they hope will improve the Committee's relationships with other Sections. Casey will work on the handbook over the summer in hopes that it will be ready for submission to Council for approval in the fall.

11. Diversity Committee (Melissa R. Schwartz)

Next year, the Committee is planning four events:

- coffee session in the spring;
- winter event at the University of Colorado;
- participant at Derby Days at the University of Denver in August; and
- sponsorship of the Elder Law Society Bingo Night at the University of Denver.

12. Elder Law Section Liaison (Patrick R. Thiessen)

There is joint committee between the Sections to review and deal with future efforts towards remote notary and electronic wills. Letty Maxfield and Herbert Tucker, among others, will be participating. Jeremy indicated that, based on our experience this year, it is very probably that remote notary will be passed legislation in the next year or two. Since the Secretary of State's Office does not know where to start its review, he believes this would be a great opportunity for us to get ahead and try to put together measures that make sense for Colorado. We can work with all the Sections and hopefully submit a single proposal to the Secretary of State's Office for consideration.

Patrick indicated that the Uniform Law Commission is working on a new "Uniform Guardianship and Protective Proceeding Act." The Section is forming a committee to review and it will start its work after the second reading of the proposed legislation.

13. Real Estate Section Liaison (David W. Kirch)

The Supplemental Affidavit form was sent to the Real Estate Section for review at its next meeting. Title companies will also need to be consulted to ensure that it will be recognized and supported for title purposes.

14. Probate Trial and Procedure Committee (Aaron Evans)

Timothy Bounds reported on Aaron's behalf.

Kelly presented on the Uniform Trust Code Subcommittee's work on the proposed Colorado Trust Code; there was much discussion about the proposed provisions on arbitration.

Marcie McMinimee reported that the new Rule 8.8 will be circulated for public comment in hopes that it will be ready for review and approval at the first of next year.

Legislative updates, as noted herein, were discussed.

Jamie Roth is seeking volunteers to review the Probate Bench Book over the summer; most work will be done virtually.

15. *Colorado Estate Planning Handbook* (David K. Johns/Constance B. Wood/Julia G. McVey)

No report.

16. *Green Book* (David K. Johns)

No report.

17. New T & E Lawyers Committee (John M. Estes/Mark D. Masters)

No report.

18. *Colorado Lawyer* (David W. Kirch/Constance D. Smith)

Bette Heller is working on an article regarding the small estate affidavit. Jessica Broderick is working on an article concerning the intersection of trust and estate issues with family law. David is working on an article concerning IRAs and trusts.

19. Media Liaison (Mark D. Masters)

No report.

20. Civic and Community Affairs Joint Committee of the Elder Law and T&E Sections (Sandra Sigler)

Senior Law Days have been scheduled statewide between May 2017 and October 2017; the specific dates and locations will be published in the next edition of Council Notes. The handbooks have been delivered.

21. Board of Governors Representative (Melissa R. Schwartz)

The last meeting took place on May 6, 2017. Melissa reported that the meetings are becoming much more interactive and focused. A revision to the CBA By-Laws was approved; more information is available on the CBA website. Also, the new CBA logo and Colorado Lawyer design was introduced.

A “Best Practice Handbook for Sections” is in the works and will provide mandatory guidance on various administration matters, which will be very helpful to CBA staff. The major change will impact the election process. The request for nominations and the proposed slate must be published in certain months and each Section will vote on next year’s Council in May. Additionally, there will be guidelines as to how at-large Council members are chosen. While there will be some adjustments for our Section, they will not be substantial since our Section was used as one of the models for the handbook. The handbook will be presented at the Section Summit next week and they hope to publish on or about July 1, 2017.

There was also a significant discussion about micro-volunteerism as an effort to increase the CBA’s membership overall.

22. GAL Subcommittee (David W. Kirch)

The Subcommittee approved revisions to the proposed Rule 17. The Rule incorporates the Sorensen test and identifies the allowed and prohibited roles of a GAL. The Rule will be presented to the other Section for comments, revisions, additions, etc., as well as to Judicial. Upon approval by the CBA, it will be presented to the Colorado Supreme Court Civil Rules Committee.

23. Miscellaneous/FYI

Kelly and Darla will be attending the Section Summit next week. If anyone else wants to attend, they need to RSVP by May 19, 2017.

24. Adjournment

The meeting was adjourned at or about 4:20 p.m.

Respectfully submitted,
/s/ Leia G. Ursery
Leia G. Ursery

		June	YTD	Budget	Variance	%
Beginning balance	01-3160-31600		\$5,658.89		\$5,658.89	
Trust & Estate Section- General						
Revenue	01-4???-31600		27,287.50		27,287.50	
Expenses	01-5???-31600	(3,521.10)	(20,431.61)	(18,780.00)	(1,651.61)	109%
Statutory Revisions Committee						
Expenses	015???3160...		(281.15)	(300.00)	18.85	94%
CLE						
Expenses	015???3161...		(7,500.00)	(5,000.00)	(2,500.00)	150%
Council Notes						
Community & Civic Affairs						
Rules & Forms Committee						
Orange Book Forms						
Expenses	01-5???-31607		(200.00)	(500.00)	300.00	40%
Local Liaison						
Uniform Trust Code						
Admin. Chair						
Estate Planning Handbook						
Admin Council Dinner						
Revenue	01-4???-31612		1,400.00	1,500.00	(100.00)	93%
Expenses	01-5???-31612		(5,979.55)	(5,500.00)	(479.55)	109%
Legislative Liaison						
Internet Editor						
Technology Committee						
Real Estate Liaison						
Green Book						
The Colorado Lawyer						
Diversity Committee						
Expenses	01-5???-31628		(368.80)	(500.00)	131.20	74%
Judicial Liaison						
Member Vouchers						
Uniform Trust Code						
Expenses	01-5???-31625		(19.87)		(19.87)	
Transfer Deposit						
Young Lawyer Society						
Expenses	01-5???-31629		(27.24)	(500.00)	472.76	5%
Beginning Balance	01-3160-31600		5,658.89		5,658.89	
Total Revenue All Sources	01-4???-316??		28,687.50	1,500.00	27,187.50	1913%
Total Expenses All Sources	01-5???-316??	(3,521.10)	(34,788.35)	(31,080.00)	(3,708.35)	112%
Ending Balance		(3,521.10)	(441.96)	(29,580.00)	29,138.04	1%

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AGENDA

Colorado Commission on Uniform State Laws

September 22, 2017, 1:30 p.m.

Committee Room: SCR 352

1. Public comment regarding items not on the agenda
2. Acts considered at the 2017 annual Uniform Law Commission conference but not adopted this year:
 - Amendments to Uniform Commercial Code Articles 1, 3, and 9
 - Civil Remedies for Unauthorized Disclosure of Intimate Images Act
 - Criminal Records Accuracy Act
 - Fiduciary Principal and Income Act
 - Non-Parental Child Custody and Visitation Act
3. Updates on Colorado Bar Association discussions regarding:
 - a. Uniform Commercial Real Estate Receivership Act
 - b. Uniform Trust Code
 - c. Revised Uniform Residential Landlord and Tenant Act
4. Preliminary discussion items for proposed 2018 legislative agenda:
 - a. Acts newly adopted by the Uniform Law Commission
 - i. Directed Trust Act
 - ii. Guardianship, Conservatorship, and Other Protective Arrangements Act
 - iii. Protected Series Act
 - iv. Regulation of Virtual Currency Businesses Act
 - v. Uniform Parentage Act
 - vi. Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules*
**Of possible interest to the Colorado Commission on Criminal and Juvenile Justice.*
 - b. Acts previously adopted by the Uniform Law Commission:
 - i. Revised Uniform Unclaimed Property Act
 - ii. Uniform Wage Garnishment Act
 - iii. 2016 amendment to RULONA regarding electronic notarization
5. Additional Commission business:
 - a. Publication of official and Colorado comments
 - b. Potential addition of a “pre-conference” meeting to CCUSL’s regular meeting schedule
 - c. Potential Statutory Revision Committee consideration of ULC-approved technical correction to the Uniform Trust Decanting Act, SB 16-085
6. Other business

(f) Upon the Committee's own motion.

2.3. *Directing Requests to the Committee.*

(a) Each internal request shall be made by delivery to the Executive Director.

(b) Each external request that is received by any officer of the CBA or by any Section, Committee, or other constituent of the CBA shall be forwarded to the Executive Director.

(c) Upon receipt of a request, the Executive Director shall forward the request to all of the members of the Committee. The Executive Director may include with the request information that the Executive Director may have obtained regarding the request or its context.

2.4. *Content of Internal Requests.* Internal requests for *amicus* briefs shall conform to the requirements set forth in § 7.

2.5. *Content of External Requests.* It is recognized that the Committee cannot control the nature or content of external requests; but the Committee may determine, in its discretion, whether the nature and content of any external request is appropriate for its consideration; and the Committee may communicate with any person with respect to an external request with a view toward clarifying, reformulating, restating, or supplementing the external request as the Committee deems appropriate for its consideration.

3. SOLICITATION OF INPUT FROM SECTIONS, COMMITTEES, AND OTHER CONSTITUENTS

3.1. *Solicitation of Input from Constituents.* At any time in its consideration of an *amicus* brief, the Committee may solicit the input of any Section, Committee, or other constituent of the CBA. At some time prior to recommending to the Executive Council that an *amicus* brief be filed, the Committee, through the Executive Director, shall inform each Section and Committee of the CBA of the possibility of such filing, providing the Sections and Committees with appropriate information about the *amicus* brief to enable them to give consideration to it, and shall solicit their input on the propriety of such filing; provided, however, that, if a determination by the Executive Council of whether to file an *amicus* brief must be made quickly, the solicitation of input from Sections and Committees may be in parallel with submission of the Committee's recommendation to the Executive Council. The Committee need not solicit input with respect to requests for *amicus* briefs that it denies.

3.2. *Solicitation of Input from Other Persons.* At any time in its consideration of an *amicus* brief, the Committee may solicit input from any other bar association, trade organization, or interest group, or from any other person.

4. APPROPRIATE CASES FOR *AMICUS* BRIEFS

4.1. *In General.* It is the general policy of the CBA to file *amicus* briefs sparingly and only when the imprimatur of the CBA or of the Section, Committee, or other constituent of the CBA on behalf of which the *amicus* brief would be filed would be of value to the advancement of the position taken by the *amicus* brief and when the filing of the *amicus* brief would not be detrimental to the interests of the CBA.

4.2. *Particular Standards.* It is the general policy of the CBA to authorize an *amicus* brief only when the brief would constitute a significant contribution to the consideration of the issue or issues to be briefed and only when the position sought to be advanced is—

- (a) Consistent with the core values and the policies and positions known to have been previously adopted or promoted by the CBA;
- (b) A matter of public interest;
- (c) A matter of interest to lawyers or the legal profession; or
- (d) A matter of interest to the lawyers participating in, or represented by, the Section, Committee, or other constituent of the CBA on behalf of which the *amicus* brief is to be filed.

4.3. *Restatements of Party Arguments; Factual Issues.* An *amicus* brief should add perspective and depth to its subject and not merely restate arguments advanced by participating parties. Factual issues are not to be argued in an *amicus* brief, although the brief may take into account the existence of factual issues.

4.4. *Discussion of CBA Values, Policies, or Positions.* As appropriate, the *amicus* brief may cite and discuss prior adoption or promotion by the CBA of core values or policies or positions applicable to the subject of the *amicus* brief.

4.5. *Consideration of Appropriate Level for Briefing.*

(a) *Amicus* briefs may be filed in any court, including a trial court, but the Committee shall take care to direct each brief to the level of court at which it is likely to have maximum effect in establishing the position that is to be advanced by the *amicus* brief; ordinarily it is to be expected that such maximum effect would be attained at the highest level of court at which the issue is to be finally determined.

(b) *Amicus* briefs may be filed urging the court to grant certiorari or to note probable jurisdiction.

5. MATTERS INVOLVING CONFLICT AMONG SECTIONS, COMMITTEES, OR OTHER CONSTITUENTS

The Committee may recommend the filing of two or more opposing *amicus* briefs on behalf of Sections, Committees, or other constituents of the CBA when (a) the subject is not of general interest to the CBA but is of interest to those constituents; (b) those constituents have opposing positions about the subject; (c) the filing of opposing *amicus* briefs will enhance the development of the issues and will assist the court in which the briefs are to be filed in understanding and resolving the issues; and (d) the filing of opposing briefs will not be detrimental to the interests of the CBA. It is likely that such filings will rarely be recommended by the Committee or approved by the Executive Council.

6. RECOMMENDATION FOR, OR DENIAL OF, BRIEFING

6.1. *Committee Recommendation for Briefing.* If the Committee determines that an *amicus* brief should be filed on behalf of the CBA or any of its Sections, Committees, or other constituents, the Committee shall prepare a writing making such recommendation and shall deliver the writing to the Executive Director. The Executive Director shall put the recommendation before the

Executive Council in the appropriate manner for its timely approval or disapproval. The Committee may request the opportunity to make a presentation to the Executive Council regarding its recommendation, and the Committee shall participate in the Executive Council's consideration of the recommendation as the Executive Council may direct.

6.2. *Consideration by the Board of Governors.* Pursuant to the Bylaws, consideration of whether the CBA or any of its Sections, Committees, or other Constituents should file an *amicus* brief may be referred to the Board of Governors. In the event of such a referral, the Committee may request the opportunity to make a presentation to the Board of Governors regarding its recommendation, and the Committee shall participate in the consideration of the request by the Board of Governors as the Executive Council or the Board of Governors may direct.

6.3. *Committee Denial of Briefing.* If the Committee determines that a request for an *amicus* brief should not be filed on behalf of the CBA or any of its Sections, Committees, or other constituents, that denial need not be submitted to the Executive Council for approval or disapproval. If the Chair deems it appropriate, the Chair may communicate the fact of the denial, with such explanation as the Chair may choose to provide, to any person or persons associated with the request.

6.4. *Reports of Denials of Briefing.* The Committee shall report upon its denial of requests for *amicus* briefs in its annual reports to the Executive Director made pursuant to § 1.3(e).

7. CONTENT OF INTERNAL REQUESTS FOR *AMICUS* BRIEFS

7.1. *Requests in Writing, Including by Electronic Means.* Each internal request shall be in writing, which may be in hardcopy or electronic form. Each internal request that is made in electronic form shall be delivered to the Executive Director by email or by such other means as the Executive Director may permit. Internal requests that are in electronic form shall be in files that are in "portable document format." To the extent feasible, the content of such files shall be text-searchable.

7.2. *Content of Internal Request.* Each internal request for an *amicus* brief shall contain the following items, as appropriate:

- (a) The identities of all of the parties to the controversy;
- (b) A full statement of the relevant facts of the controversy or instruction directing the Committee to the places within the submitted materials where a statement or statements of those facts can be found;
- (c) A statement of the position or positions the *amicus* brief will support;
- (d) An outline of the argument or arguments to be made in the *amicus* brief, or a draft of the brief;
- (e) If the *amicus* brief would further one or more core values or policies or positions known to have been previously adopted or promoted by the CBA, a statement identifying those values, policies, or positions, citing to known, prior expressions thereof by or on behalf of the CBA, and indicating how the brief would further them;
- (f) If the *amicus* brief would further a value, policy, or principle of law which is not known to have been previously adopted or promoted by the CBA, a statement of that value, policy, or principle of law and of reasons why it should be adopted or promoted by the CBA;

WADE ASH

WADE ♦ ASH ♦ WOODS ♦ HILL & FARLEY, P.C.

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July 18, 2017

Aaron L. Evans Esq.
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Re: Amicus Brief - Brookoff Case

Dear Aaron:

I have been contacted by Kyle Brenton, who is an attorney at Davis Graham, and Jeffrey Ruebel, who is Chair of the Amicus Committee, to approach Council regarding the Probate and Trust Section preparing its own Amicus Brief or joining with the Amicus Committee related the Brookoff case (see attached). The Colorado Supreme Court has granted cert. This is the case involving a medical malpractice claim whereby the Trial Court applied the Dead Man's statute to prohibit testimony from Plaintiff regarding conversations with Dr. Brookoff who was deceased. However, the Court of Appeals reversed the Trial Court's application of the Dead Man's statute and recognized an "insurance" exception to the Dead Man's Statute.

Jeffrey Ruebel advised me that the Amicus Committee had already agreed to submit a brief recognizing that the Colorado Court of Appeals' ruling might have broad public policy ramifications and create an "Insurance" exception to the application of the Dead Man's Statute that the legislature never intended.

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I advised Kyle and Jeff that I would reach out to the Trial and Procedure Sub-Committee and Council to see if there was any interest in participation from our Section. I would like to put this on the agenda for the Probate Trial and Procedure Committee for our August meeting and get a vote as to whether the Trust and Estate Section should either file their own Amicus Brief or join in the Amicus Committee's Brief.

Below is a brief summary of the case:

Dr. Brookoff died in 2011. The Plaintiff, Alexander Clark, brought two claims against Dr. Brookoff's estate; first claim – medical negligence, second – failure of Dr. Brookoff to obtain Clark's informed consent. The Trial Court granted the Motion in Limine filed by the Defendant Brookoff. The Motion stated:

“Dr. Brookoff, whose estate is the party defendant in this matter, died in 2011. Alexander Clark and his family should be precluded from testifying at trial regarding conversations they had with Dr. Brookoff. Alexander Clark and his family have direct and indirect financial incentive in this litigation and the outcome in this litigation, such that any testimony by them, standing alone regarding alleged conversations with the now deceased Dr. Brookoff, should be considered untrustworthy and biased. Accordingly, pursuant to C.R.S. § 13-90-102, any such testimony should be barred.”

As a result of the Trial Court's ruling on the Defendant's Motion in Limine, the Plaintiff Clark filed her own Motion in Limine seeking to exclude from trial any notations in Dr. Brookoff's medical records concerning informed consent discussions. The Plaintiff also argued, citing *Estate of Crenshaw*, 100 P.3d 568, 569 (Colo.App. 2004), that there is an insurance exception to the Dead Man's Statute relying on pre-2002 case law which provided that where an estate cannot be diminished, the Dead Man's Statute has no applicability. Thus, because Dr. Brookoff had professional liability insurance, his estate would not be diminished by the Plaintiff's claim and, therefore, the Dead Man's Statute did not apply.

The Colorado Court of Appeals agreed with the Plaintiff and reversed the Trial Court. The issue before the Colorado Court of Appeals was whether the Trial Court erred in applying the Dead Man's Statute to bar Clark and his family's testimony regarding their conversations with Dr. Brookoff regarding the lack of informed consent for treatment.

The Supreme Court granted Certiorari. The question before the Supreme Court is whether in a medical malpractice case against the deceased physician, where the physician has professional

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liability coverage which would presumably pay any verdict in favor of the Plaintiff, the Dead Man Statute would not apply. One must assume this exception might be applied to a deceased estate planning attorney or other professionals with professional liability policies.

Thanks.

Yours truly,



Herbert E. Tucker

HET:jla

cc:

Darla Daniels

Kelly Cooper

Leia Ursery

Melissa Schwartz

Josie Faix

Steve Brainerd

Q:\Users\HTucker\Trial&ProcedureCommittee\Aaron Evans 2017-07-18.wpd

14CA1131 Clark v Estate of Brookoff 04-07-2016

COLORADO COURT OF APPEALS

Court of Appeals No. 14CA1131
City and County of Denver District Court No. 11CV3987
Honorable R. Michael Mullins, Judge

Alexander Clark,

Plaintiff-Appellant,

v.

Estate of Daniel Brookoff, M.D.,

Defendant-Appellee.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE BERNARD
Furman and Plank*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced April 7, 2016

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2015.

Plaintiff, Alexander Clark (the patient), appeals the trial court's judgment entered on a jury verdict in favor of defendant, the Estate of Daniel Brookoff, M.D. (the estate). We reverse, and we remand the case for a new trial.

I. Background

Daniel Brookoff (the doctor) treated the patient for chronic pain. The patient claimed that the doctor had negligently prescribed the drug ketamine for him in large doses for an extended period of time. He alleged that the ketamine had disabled him because it had caused neurological and urological damage.

The doctor died before the patient filed his complaint. The patient, who was a minor when the doctor began treating him, asked the court to allow his mother to testify that the doctor had not adequately informed them of the risks associated with ketamine use. The trial court excluded the mother's testimony under the dead man's statute, section 13-90-102, C.R.S. 2015.

II. Analysis

A. The Dead Man's Statute Does Not Apply

The patient contends that the trial court erred when it applied section 13-90-102 to exclude his mother's testimony about her

discussion with the doctor. He asserts that the dead man's statute does not apply because the doctor's malpractice insurance is adequate to pay any judgment against the estate. We agree.

The court's decision that the dead man's statute barred the mother's testimony raises a legal issue that we review de novo. *In re Estate of Crenshaw*, 100 P.3d 568, 569 (Colo. App. 2004).

1. Preliminary Issues

As an initial matter, we reject the estate's contention that the patient did not preserve this issue for appellate review. The estate contends that the patient did not make a sufficient offer of proof describing the mother's proposed testimony. But we do not require parties to use "talismanic language" to preserve arguments for appeal; rather, parties must give the trial court an adequate opportunity to make findings of fact and conclusions of law. *People v. Melendez*, 102 P.3d 315, 322 (Colo. 2004).

In this case, the substance of the mother's testimony was sufficiently described by the parties' arguments. So the patient preserved this issue for appeal. CRE 103. And the patient did not have to make an offer of proof because the trial court had made it clear that it would not admit the mother's testimony without regard

to its specific content. *See People v. Jones*, 907 P.2d 667, 669 (Colo. App. 1995).

We likewise reject the estate's assertion that any error is harmless because the patient did not raise the issue of informed consent at trial. The trial court's ruling excluded evidence that was essential to establish the patient's claim that his mother's consent to the doctor's recommendation that her son be given ketamine was not informed. Without that evidence, the patient had no basis to submit the issue to the jury.

2. The Dead Man's Statute

The dead man's statute generally bars testimony from a party or from a person in interest with a party about oral statements that were made by a person who is no longer capable of testifying. § 13-90-102. But "[t]he dead man's statute has been construed as providing protection for the benefit of an estate; consequently, where the result of a proceeding can neither increase nor diminish the estate, the statute is inapplicable." *Crenshaw*, 100 P.3d at 570; *see also Nat'l State Bank of Boulder, Colo. v. Brayman*, 30 Colo. App. 554, 559, 497 P.2d 710, 713 (1972), *rev'd on other grounds sub nom. Brayman v. Nat'l State Bank of Boulder*, 180 Colo. 304,

505 P.2d 11 (1973); *cf. In re Estate of Abbott*, 39 Colo. App. 536, 539, 571 P.2d 311, 313 (1977)(dead man’s statute barred petitioner from testifying to establish her common law marriage to decedent because judgment granting petition would adversely affect the interest of distributees under decedent’s will).

The estate contends that decisions such as *Crenshaw* no longer apply. It asserts that the legislature amended the dead man’s statute in 2002 to remove the language on which *Crenshaw* relied for the proposition that the statute does not apply if the result of the case will not increase or diminish an estate. We disagree with the estate’s assertion for the following eight reasons.

First, we describe what the legislature did. Before 2002, the statute stated, as is pertinent here, that “[n]o party . . . shall be allowed to testify therein of such person’s own motion or in such person’s own behalf . . . when any adverse party . . . defends as . . . the executor . . . of any deceased person[.]” Ch. 178, sec. 19, § 13-90-102(1), 1994 Colo. Sess. Laws 1040. The legislature removed this language in 2002. Ch. 13, sec. 1, § 13-90-102, 2002 Colo. Sess. Laws 31-32.

But, second, the 2002 amendments did not change the underlying focus of the dead man's statute. It still concerns "person[s]" who are "incapable of testifying," which includes "any *decedent[s]*." § 13-90-102(3)(b) (emphasis added).

Third, the language that the legislature removed had no relationship to the statute's purpose that is relevant here, which is to protect estates. (Assuming, for the purposes of argument, that the legislature decided to change the purposes for the dead man's statute in 2002, there is no indication in the language of the change that the legislature rejected protecting estates as one of those purposes.)

Fourth, the purpose of protecting estates is, as *Crenshaw* pointed out, a product of judicial construction. *Crenshaw*, 100 P.3d at 570. This construction goes back to at least 1930 in Colorado. *Klein v. Munz*, 87 Colo. 223, 225, 286 P. 112, 113 (1930). (And, as two commentators pointed out in 2013, Colorado has had a dead man's statute since 1870. Herb E. Tucker & Marc Darling, *The 2013 Revised Colorado Dead Man's Statute*, 42 Colo. Law. 45, 47 (Sept. 2013).)

exceptions made the statute difficult to interpret and apply and resulted in more than eighty reported decisions construing it.” *Id.*

A commentator listed other criticisms in 2000. Herbert E. Tucker, *Colorado Dead Man’s Statute: Time for Repeal or Reform?*, 29 Colo. Law. 45, 46-48 (Jan. 2000). *None* of those criticisms had anything to do with the goal of protecting estates.

Seventh, the legislature rejected an effort in 1999 to repeal the dead man’s statute, “recognizing, as a matter of public policy, the need for the statute to reduce the risks of false claims against decedents . . . at trial.” Tucker, Swank & Hill, 32 Colo. Law. at 56.

Eighth, decisions from other states hold that their dead man’s statutes do not bar a witness’s testimony if the case would not increase or diminish an estate. *Kemp v. Kroutter*, 531 So. 2d 854, 856 (Ala. 1988)(Dead man’s statute did not apply in case that “would not serve to increase or diminish the estate of [decedent].”); *In re Estate of Holt*, 870 N.E.2d 511, 516 (Ind. Ct. App. 2007)(dead man’s statute did not bar testimony of witness when the case would not diminish the estate’s assets); *Reddy v. Mody*, 388 A.2d 555, 559 (Md. Ct. Spec. App. 1978)(“The testimony meant to be excluded by [the dead man’s statute] is only testimony of a party to a cause

which would tend to increase or diminish the estate of the decedent”); *Baker v. Baker*, 142 S.W.2d 737, 744 (Tenn. Ct. App. 1940)(“[W]e think it a reasonable view that the [dead man’s] statute does not contemplate a proceeding, the result of which can neither increase nor diminish the assets of the estate but concerns only the manner in which the assets will be distributed.”).

Turning to this case, the doctor carried two professional liability insurance policies with combined coverage of \$15 million per occurrence. This figure greatly exceeded the amount of damages that the patient claimed. The doctor’s estate would therefore not have been diminished if the patient obtained a judgment in his favor. *See Crenshaw*, 100 P.3d at 570.

And the estate had no interest in, or entitlement to, the insurance proceeds. Rather, only a successful malpractice claimant could receive funds under the doctor’s liability insurance policies. So the result of the proceeding could not affect the interest of any of the estate’s beneficiaries. *See Abbott*, 39 Colo. App. at 539, 571 P.2d at 313.

We therefore conclude that the dead man's statute did not bar the mother's testimony in this case. The trial court therefore erred when it relied on the dead man's statute to exclude her testimony.

Based on our disposition of this issue, we need not address the patient's remaining substantive contentions.

B. Attorney Fees on Appeal

The patient asks us to award him appellate attorney fees under section 13-17-102(2), C.R.S. 2015. Although we have resolved the appeal in his favor, we conclude that the estate's arguments did not lack substantial justification. We therefore decline his request.

The judgment is reversed, and the case is remanded for a new trial.

JUDGE FURMAN and JUDGE PLANK concur.

Rule 260. Mandatory Continuing Legal and Judicial Education

Preamble: Statement of Purpose

As society becomes more complex, the delivery of legal services likewise becomes more complex. The public rightly expects that ~~practicing attorneys~~ lawyers, in their practice of law, and judges, in the performance of their duties, will continue their ~~legal and judicial education professional development~~ throughout ~~the period of their service to society~~ their legal careers. ~~It is the purpose of these rules to make mandatory a minimum amount of continuing legal and judicial education requirements for practicing attorneys and judges in order to foster and is to promote and sustain competence and professionalism and to remain current on the law, law practice management and technology in our rapidly changing society. in the practice of law and the administration of justice.~~

Rule 260.1. Definitions

- (1) The “~~Board~~Committee” is the ~~Board of~~ Colorado Supreme Court’s Continuing Legal and Judicial Education Committee.
- (2) “Continuing legal education” is any legal, judicial or other educational activity ~~accredited by the Board~~ that meets the criteria of the Rules and Regulations Governing Mandatory Continuing Legal and Judicial Education and, therefore, satisfies the requirements of C.R.C.P. 250.2.
- (3) ~~An attorney in “inactive status” is one who has elected such status pursuant to Rule 227A.~~ Repealed.
- (4) “Registered ~~attorney~~lawyer” is an ~~attorney~~ lawyer who has paid the registration fee required by ~~Rule C.R.C.P. 227A~~ for the current year and who is not on inactive status, or suspended, ~~disbarred, or placed on disability~~ inactive status by the Colorado Supreme Court ~~from the practice of law~~.
- (5) “Judge” is a ~~judge~~ judicial officer who is subject to the jurisdiction of the Commission on Judicial ~~Qualifications~~ Discipline or the Denver County Court Judicial ~~Qualifications~~ Discipline Commission.
- (6) “These rules” refer to rules numbered 260.1 through 260.~~78~~.
- (7) A “unit” of continuing legal education is a measurement factor combining time and quality assigned by the Board to all or part of a particular continuing legal educational activity.

Rule 260.2. CLE Requirements

- (1) Every registered attorney and every judge shall complete 45 units of continuing legal education during each applicable three-year compliance period as provided in these rules and C.R.C.P 250.

(2) At least 7 of the 45 units will be devoted to continuing legal education specifically addressed to legal or judicial ethics. This requirement shall be effective for all ~~three-year~~ compliance periods beginning on or after January 1, ~~1992,~~ 2017 but before January 1, 2019. All registered attorneys and judges admitted on or after January 1, 2019, and all registered attorneys and judges whose compliance periods begin on or after January 1, 2019, are subject to the minimal continuing legal education requirements set forth in C.R.C.P. 250.

(3) All registered attorneys admitted after January 1, 1979, shall become subject to the minimal educational requirements set forth in these rules and C.R.C.P. 250 on the date of their initial admission to the bar of the State of Colorado. Their first compliance period shall begin on that date and end on December 31 of the third full calendar year following the year of admission.

(4) This subsection 4 is repealed and replaced by C.R.C.P. 203.2(6), 203.3(4), and 203.4(6).

~~(5) Upon being reinstated pursuant to Paragraphs (3) or (8) of Rule 227A, any registered attorney who has been suspended under Paragraph (2) of Rule 227A, shall become subject to the minimum educational requirements set forth in these rules on the date of reinstatement. The first compliance period shall begin on that date and end on December 31 of the third full calendar year following the year of reinstatement, provided the date of reinstatement is more than one year after the date of suspension or transfer to inactive status. Otherwise, the compliance period shall be the same as it would have been absent the suspension or transfer. This subsection 5 is repealed and replaced by C.R.C.P. 250.2(4) and 250.8(9).~~

~~(6) Units of continuing legal education completed after the adoption of this rule by the Supreme Court and prior to January 1, 1979, may be used to meet the minimum educational requirement for the first applicable compliance period.~~ Units of continuing legal education completed in excess of the required units of continuing legal education in any applicable compliance period may not be used to meet the minimum educational requirements in any succeeding compliance period.

Rule 260.3. Board of Continuing Legal and Judicial Education

~~(1) There is established a Board of Continuing Legal and Judicial Education which shall consist of nine members appointed by the Supreme Court. Six of the members shall be registered attorneys, at least one of whom shall also be a judge, and three of the members shall be nonattorneys. At least one of the registered attorneys shall be under the age of 35 when he or she is appointed. Members shall serve three-year terms; except that of the members initially appointed, three shall serve for one year, three shall serve for two years, and three shall serve for three years. The Supreme Court shall appoint one of the members to serve as chairperson at its pleasure. In the event of a vacancy, a successor shall be appointed for the unexpired term of the member whose office is vacated. Membership on the Board may be terminated as to any member by the Supreme Court at its pleasure. The members shall be entitled to reimbursement for reasonable travel, lodging and other expenses incurred in the performance of official duties. This subsection 1 is repealed and replaced by C.R.C.P. 250.3(2).~~

~~(2) The Board shall employ an Executive Director and such other staff as may be necessary to assist it in performing its functions and shall pay all expenses reasonably and necessarily incurred by it under a budget approved by the Supreme Court. Repealed.~~

~~(3) The Board shall administer the program of mandatory continuing legal education established by these rules. It may formulate rules and regulations and prepare forms not inconsistent with these rules pertaining to its functions and modify or amend the same from time to time. All such rules, regulations and forms and any modifications or amendments thereto shall be submitted to the Supreme Court and shall be made known to all registered attorneys and judges. Those rules, regulations and forms shall automatically become effective on the 28th day following submission unless they shall be suspended by the Supreme Court prior to that date. This subsection 3 is repealed and replaced by C.R.C.P. 250.3(2) and 250.4.~~

Rule 260.4. Accreditation

~~(1) Continuing legal education must be educational activity which has as its primary objective the increase of professional competence of registered attorneys and judges. The activity must be an organized activity dealing with subject matter directly related to the practice of law or the performance of judicial duties. The Board shall accredit a broad variety of educational activities which meet these requirements. This subsection 1 is repealed and replaced by C.R.C.P. 250.6(1).~~

~~(2) Formal classroom instruction or educational seminars which meet the requirements of Paragraph (1) above lend themselves very well to the fulfillment of the educational requirement imposed by these rules and will be readily accredited by the Board. However, it is not intended that compliance with these rules will impose any undue hardship upon any registered attorney or judge by virtue of the fact that he or she may find it difficult because of age or other reasons to attend such activities. Consequently, in addition to accrediting classroom activities and seminars at centralized locations, the Board shall attempt to promote and accredit such educational activities as video tape and audio tape presentations; preparation of articles, papers, books and other such written materials; self-administered courses and testing; and other meritorious learning experiences. The Board shall to the extent possible make all educational activities reasonably available throughout Colorado. In case of incapacity because of poor health, the Board may defer the requirements set forth in these rules for individual attorneys. Deferral does not constitute a waiver. This subsection 2 is repealed and replaced by C.R.C.P. 250.6(2) and 250.7(2).~~

~~(3) The educational activity required by these rules will be in addition to teaching on a regular basis in which particular registered attorneys or judges may engage. Pursuant to paragraph (6) below, the Board will determine whether a registered attorney's or judge's teaching qualifies for accreditation. This subsection 3 is repealed and replaced by C.R.C.P. 250.6(4).~~

~~(4) The Board shall assign an appropriate number of units of credit to each educational activity it shall accredit. Generally, a unit of credit shall be the equivalent of attending 50 minutes of a formal classroom lecture with accompanying textual material. This subsection 4 is repealed and replaced by C.R.C.P. 250.6(5).~~

~~(5) The Board may accredit as a sponsoring agency any organization which offers continuing legal education activities. All of the activities sponsored by such agency which conform to the requirements of these rules and such additional rules and regulations as the Board may adopt from time to time shall be accredited. Accreditation extended by the Board to any sponsoring agency shall be reviewed by the Board at least annually. This subsection 5 is repealed and replaced by C.R.C.P. 250.6(6).~~

~~(6) The Board shall develop criteria for the accreditation of individual educational activities and shall in appropriate cases accredit qualifying activities of such nature. Although such accreditation will generally be given before the occurrence of the educational activity, the Board may in appropriate cases extend accreditation to qualified activities which have already occurred. This subsection 6 is repealed and replaced by C.R.C.P. 250.6(2) – (3) and 250.3(2)(c).~~

~~(7) The Board shall make available a list of all educational activities accredited by it, together with the units of credit assigned to each activity, which may be undertaken by registered attorneys or judges. This subsection 7 is repealed and replaced by C.R.C.P. 250.6(7).~~

~~(8) In furtherance of the purposes and objectives of this Rule to promote competence and professionalism in the practice of law and the administration of justice, the Board shall consider, in accrediting programs and educational activities, the contribution the program will make to the competent and professional practice of law by lawyers in this state or to the competent and professional administration of justice. To this end, the Board may review course content, presentation, advertising, and promotion to ascertain that the highest standards of competence and professionalism are being promoted. The Board may withhold accreditation for any program that does not meet these standards, or the contents or promotion of which would be scandalous or unprofessional. This subsection 8 is repealed and replaced by C.R.C.P. 250.6(2).~~

Rule 260.5. Exemptions

~~Any registered attorney shall be exempt from the minimum educational requirements set forth in these rules for the years following the year of the attorney's 65th birthday. Repealed and replaced by C.R.C.P. 260.7.~~

Rule 260.6. Compliance

~~(1) The mandatory continuing legal educational requirement imposed by these rules shall take effect on January 1, 1979. To aid administrative implementation of the requirement, the Board shall divide all registered attorneys into three groups of approximately equal numbers. The first group shall be required to complete 15 units of continuing legal education during the first year, and thereafter all registered attorneys in the first group shall complete 45 units of continuing legal education during each subsequent three year compliance period. The second group shall be required to complete 30 units of continuing legal education during the first two years, and thereafter all registered attorneys in the second group shall complete 45 units of continuing legal education during each subsequent three year compliance period. The third group shall be required to complete 45 units of continuing legal education during the first three years, and thereafter all registered attorneys and judges in the third group shall complete 45 units of~~

~~continuing legal education during each subsequent three-year compliance period. All registered attorneys admitted to the bar within the two calendar years preceding January 1, 1979 and all judges shall be placed in the third group. Repealed.~~

~~(2) Commencing with the date set forth in Paragraph (1) above, the Board shall send to each registered attorney and judge an Affidavit for the reporting of compliance with these rules. It shall be in such form as will allow the reporting of progress towards fulfilling the units required during each applicable compliance period, as such units are earned. This subsection 2 is repealed and replaced by C.R.C.P. 250.8(1) and (2).~~

~~(3) At the time of payment of the registration fee required by Rule 227A or Rule 227B, each registered attorney and each judge shall submit an Affidavit showing the units of continuing legal education completed since the date such registered attorney or judge became subject to these rules or the date an Affidavit was last filed, whichever shall be later. This subsection 3 is repealed and replaced by C.R.C.P. 250.8(1) and (2).~~

~~(4) No later than January 31st following the end of each applicable compliance period, each registered attorney and each judge shall submit a final Affidavit showing the total units of continuing legal education completed during such period, if the Board's records do not show that the attorney or judge has completed the requirements for that compliance period. This subsection 4 is repealed and replaced by C.R.C.P. 250.8(2).~~

~~(5) In the event a registered attorney or judge shall fail to complete the required units at the end of each applicable compliance period, the final Affidavit may be accompanied by a specific plan for making up the deficiency of units necessary within 119 days (17 weeks) after the date of final Affidavit. When filed, the plan shall be accompanied by a make-up plan filing fee, the amount of which shall be determined by the Board annually and which shall be used to cover the costs of processing the plan. Such plan shall be deemed accepted by the Board unless within 14 days after the receipt of such final affidavit the Board notifies the affiant to the contrary. Full completion of the affiant's plan shall be reported by Affidavit to the Board not later than 14 days following such 119-day period. Failure of the affiant to complete the plan within such 119-day period shall invoke the sanctions set forth in Paragraph (6).~~

~~(a) Section 5 does not apply to the required course on professionalism mandated by C.R.C.P. 203.2(6), 203.3(4), and 203.4(6).~~

~~This subsection 5 is repealed and replaced by C.R.C.P. 250.8(3) and (4).~~

~~(6) In the event that any registered attorney or judge shall fail to comply with these rules or Rules 203.2(6), 203.3(4), or 203.4(6) in any respect, the Board shall promptly notify such registered attorney or judge of the nature of the noncompliance by a statement of noncompliance. The statement shall advise the registered attorney or judge that within 14 days either the noncompliance must be corrected or a request for a hearing before the Board must be made, and that upon failure to do either, the statement of noncompliance shall be filed with the Supreme Court. This subsection 6 is repealed and replaced by C.R.C.P. 250.8(4).~~

~~(7) If the noncompliance is not corrected within 14 days, or if a hearing is not requested within 14 days, the Board shall promptly forward the statement of noncompliance to the Supreme Court which may impose the sanctions set forth in Paragraph (10). This subsection 7 is repealed and replaced by C.R.C.P. 250.8(5).~~

~~(8) If a hearing before the Board is requested, such hearing shall be held within 35 days after the request by the full Board or one or more of the members of the Board as it shall designate, provided that the presiding member at the hearing must be a registered attorney or judge. Notice of the time and place of the hearing shall be given to the registered attorney or judge at least 14 days prior thereto. The registered attorney or judge may be represented by counsel. Witnesses shall be sworn; and, if requested by the registered attorney or judge, a complete electronic record shall be made of all proceedings had and testimony taken. The presiding member shall have authority to rule on all motions, objections and other matters presented in connection with the hearing. The hearing shall be conducted in conformity with the Colorado Rules of Civil Procedure, and the practice in the trial of civil cases, except the registered attorney or judge involved may not be required to testify over his or her objection. The chairman of the Board shall have the power to compel, by subpoena issued out of the Supreme Court, the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in the hearing. This subsection 8 is repealed and replaced by C.R.C.P. 250.8(6).~~

~~(9) At the conclusion of the hearing, the member or members of the Board who conducted the hearing shall make findings of fact and shall determine whether the registered attorney or judge involved has complied with the requirements of these rules and, if it determines there was noncompliance, whether there was reasonable cause for noncompliance. A copy of such findings and determination shall be sent to the registered attorney or judge involved. If it is determined that compliance has occurred, the matter shall be dismissed; and the Board's records shall be made to reflect such compliance. If it is determined that compliance has not occurred, the Board shall proceed as follows:~~

~~(a) If the Board determines that there was reasonable cause for noncompliance, the registered attorney or judge shall be allowed 14 days within which to file with the Board a specific plan for correcting the noncompliance within 119 days (17 weeks). Such plan shall be deemed accepted by the Board unless within 14 days after its receipt the Board notifies the registered attorney or judge to the contrary. Full completion of the plan shall be reported by Affidavit to the Board not later than 14 days following such 119 day period. If the registered attorney or judge shall fail to file an acceptable plan, or shall fail to complete and certify completion of the plan within such 119 day period, the Board shall proceed as set forth in Paragraph (b) as though it had determined that there was not reasonable cause for noncompliance.~~

~~(b) If the Board determines that there was not reasonable cause for noncompliance, a record of the matter, which must include a copy of the findings and determination, shall be promptly filed with the Supreme Court. If requested by the Board, registered attorney or judge, the record shall include a transcript of the hearing prepared at the expense of the requesting party.~~

~~This subsection 9 is repealed and replaced by C.R.C.P. 250.8(7) and (8).~~

~~(10) Upon receipt of a statement of noncompliance upon which a hearing was not requested or upon receipt of the record of a Board hearing, the Supreme Court shall enter such order as it shall deem appropriate, which may include an order of summary suspension from the practice of law until the further order of the Court in the case of registered attorneys or referral of the matter to the Commission on Judicial Qualifications or the Denver County Court Judicial Qualifications Commission in the case of judges. This subsection 10 is repealed and replaced by C.R.C.P. 250.8(8).~~

~~(11) Any registered attorney who has been suspended pursuant to Paragraph (2) of Rule 227A, or who has elected to transfer to inactive status pursuant to Paragraph (7) of Rule 227A, shall be relieved thereby from the requirements of these rules. Upon being reinstated pursuant to Paragraphs (3) or (7) of Rule 227A, the compliance period for such registered attorney shall commence on the date of reinstatement and end on December 31 of the third full calendar year following the year of reinstatement, provided the date of reinstatement is more than one year after the date of suspension or transfer to inactive status, or such lesser period as the Board may determine. Otherwise, the compliance period shall be the same as it would have been absent the suspension or transfer. No registered attorney or judge shall be permitted to transfer from active status to inactive status and vice versa or to become suspended and then reinstated to circumvent the requirements of these rules. This subsection 11 is repealed and replaced by C.R.C.P. 250.8(9).~~

~~(12) All notices given pursuant to these rules shall be sent by certified mail, return receipt requested, to the registered address of the registered attorney or judge maintained by the Clerk of the Supreme Court pursuant to Rule 227A or Rule 227B. This subsection 12 is repealed and replaced by C.R.C.P. 250.8(6).~~

~~(13) Any attorney who has been suspended for noncompliance pursuant to Rule 260.6(10) may be reinstated by order of the Court upon a showing that the attorney's current continuing legal education deficiency has been made up. The attorney shall file with the Board three (3) copies of a petition seeking reinstatement, addressed to the Supreme Court. The petition shall state with particularity the accredited programs of continuing legal education which the attorney has already completed, including dates of their completion, by which activity the attorney earned sufficient units of credit to make up the deficiency which was the cause of the attorney's suspension. The petition shall be accompanied by a reinstatement filing fee, the amount of which shall be determined by the Board annually and which shall be used to cover the costs associated with noncompliance. The Board shall file a properly completed petition, accompanied by the Board's recommendation, with the Clerk of the Supreme Court within 14 days after receipt. This subsection 13 is repealed and replaced by C.R.C.P. 250.8(11).~~

Rule 260.7. Confidentiality

~~The files, records and proceedings of the Board, as they relate to the compliance or noncompliance of any registered attorney or judge with the requirements of these rules, shall be confidential and shall not be disclosed except upon written request or consent of the registered attorney or judge affected or as directed by the Supreme Court. This rule is repealed and replaced by C.R.C.P. 250.9.~~

Rule 260.8. Direct Representation and Mentoring in Pro Bono Civil Legal Matters

~~(1) A lawyer may be awarded a maximum of nine (9) units of general credit during each three-year compliance period for providing uncompensated pro bono legal representation to an indigent or near-indigent client or clients in a civil legal matter, or mentoring another lawyer or a law student providing such representation.~~

~~(2) To be eligible for units of general credit, the civil pro bono legal matter in which a lawyer provides representation must have been assigned to the lawyer by: a court; a bar association or Access to Justice Committee sponsored program; an organized non-profit entity, such as Colorado Legal Services, Metro Volunteer Lawyers, or Colorado Lawyers Committee whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons in civil legal matters; or a law school. Prior to assigning the matter, the assigning court, program, entity, or law school shall determine that the client is financially eligible for pro bono legal representation because (a) the client qualifies for participation in programs funded by the Legal Services Corporation, or (b) the client's income and financial resources are slightly above the guidelines utilized by such programs, but the client nevertheless cannot afford counsel.~~

~~(3) Subject to the reporting and review requirements specified herein, (a) a lawyer providing uncompensated, pro bono legal representation shall receive one (1) unit of general credit for every five (5) billable equivalent hours of representation provided to the indigent client; (b) a lawyer who acts as a mentor to another lawyer as specified in this Rule shall be awarded one (1) unit of general credit per completed matter; and (c) a lawyer who acts as a mentor to a law student shall be awarded two (2) units of general credit per completed matter. A lawyer will not be eligible to receive more than nine (9) units of general credit during any three-year compliance period via any combination of pro bono representation and mentoring.~~

~~(4) A lawyer wishing to receive general credit units under this Rule shall submit to the assigning court, program, or law school a completed Form 8. As to mentoring, the lawyer shall submit Form 8 only once, when the matter is fully completed. As to pro bono representation, if the representation will be concluded during a single three-year compliance period, then the lawyer shall complete and submit Form 8 only once, when the representation is fully completed. If the representation will continue into another three-year compliance period, then the applying lawyer may submit an interim Form 8 seeking such credit as the lawyer may be eligible to receive during the three-year compliance period that is coming to an end. Upon receipt of an interim or final Form 8, the assigning court, program, entity, or law school shall in turn report to the Board the number of general CLE units that it recommends be awarded to the reporting lawyer under the provisions of this Rule. It shall recommend an award of the full number of units for which the lawyer is eligible under the provisions of this Rule, unless it determines after review that such an award is not appropriate due to the lawyer's lack of diligence or competence, in which case it shall recommend awarding less than the full number of units or no units. An outcome in the matter adverse to the client's objectives or interests shall not result in any presumption that the lawyer's representation or mentoring was not diligent or competent. The Board shall have final authority to issue or decline to issue units of credit to the lawyer providing representation or~~

~~mentoring, subject to the other provisions of these Rules and Regulations, including without limitation the hearing provisions of Regulation 108.~~

~~(5) A lawyer who acts as a mentor to another lawyer providing representation shall be available to the lawyer providing representation for information and advice on all aspects of the legal matter, but will not be required to file or otherwise enter an appearance on behalf of the indigent client in any court. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the indigent client.~~

~~(6) A lawyer who acts as a mentor to a law student who is eligible to practice law under C.R.S. §§ 12-5-116 to 116.5 shall be assigned to the law student at the time of the assignment of the legal matter with the consent of the mentor, the law student, and the law school. The matter shall be assigned to the law student by a court, a program or entity as described in Rule 260.8(2), or an organized student law office program administered by his or her law school, after such court, program, entity, or student law office determines that the client is eligible for pro bono representation in accordance Rule 260.8(2). The mentor shall be available to the law student for information and advice on all aspects of the matter, and shall directly and actively supervise the law student while allowing the law student to provide representation to the client. The mentor shall file or enter an appearance along with the law student in any legal matter pursued or defended for the client in any court. Mentors may be acting as full-time or adjunct professors at the law student's law school at the same time they serve as mentors, so long as it is not a primary, paid responsibility of that professor to administer the student law office and supervise its law student participants.~~

This rule is repealed and replaced by C.R.C.P. 250.10.

Rule 260. Mandatory Continuing Legal and Judicial Education

Preamble: Statement of Purpose

As society becomes more complex, the delivery of legal services likewise becomes more complex. The public rightly expects that lawyers, in their practice of law, and judges, in the performance of their duties, will continue their professional development throughout their legal careers. The purpose of mandatory continuing legal and judicial education requirements is to promote and sustain competence and professionalism and to remain current on the law, law practice management and technology in our rapidly changing society.

Rule 260.1. Definitions

- (1) The “Committee” is the Colorado Supreme Court’s Continuing Legal and Judicial Education Committee.
- (2) “Continuing legal education” is any legal, judicial or other educational activity that meets the criteria of the Rules and Regulations Governing Mandatory Continuing Legal and Judicial Education and, therefore, satisfies the requirements of C.R.C.P. 250.2.
- (3) Repealed.
- (4) “Registered lawyer” is a lawyer who has paid the registration fee required by C.R.C.P. 227 for the current year and who is not on inactive status, or suspended, disbarred, or placed on disability inactive status by the Colorado Supreme Court.
- (5) “Judge” is a judicial officer who is subject to the jurisdiction of the Commission on Judicial Discipline or the Denver County Court Judicial Discipline Commission.
- (6) “These rules” refer to rules numbered 260.1 through 260.8 of the Rules of Civil Procedure.
- (7) A “unit” of continuing legal education is a measurement factor combining time and quality assigned by the Board to all or part of a particular continuing legal educational activity.

Rule 260.2. CLE Requirements

- (1) Every registered attorney and every judge shall complete 45 units of continuing legal education during each applicable three-year compliance period as provided in these rules and C.R.C.P. 250.
- (2) At least 7 of the 45 units will be devoted to continuing legal education specifically addressed to legal or judicial ethics. This requirement shall be effective for all compliance periods beginning on or after January 1, 2017 but before January 1, 2019. All registered attorneys and judges admitted on or after January 1, 2019, and all registered attorneys and judges whose compliance periods begin on or after January 1, 2019, are subject to the minimal continuing legal education requirements set forth in C.R.C.P. 250.

(3) All registered attorneys admitted after January 1, 1979, shall become subject to the minimal educational requirements set forth in these rules and C.R.C.P. 250 on the date of their initial admission to the bar of the State of Colorado. Their first compliance period shall begin on that date and end on December 31 of the third full calendar year following the year of admission.

(4) This subsection 4 is repealed and replaced by C.R.C.P. 203.2(6), 203.3(4), and 203.4(6).

(5) This subsection 5 is repealed and replaced by C.R.C.P. 250.2(4) and 250.8(9).

(6) Units of continuing legal education completed in excess of the required units of continuing legal education in any applicable compliance period may not be used to meet the minimum educational requirements in any succeeding compliance period.

Rule 260.3. Board of Continuing Legal and Judicial Education

(1) This subsection 1 is repealed and replaced by C.R.C.P. 250.3(2).

(2) Repealed.

(3) This subsection 3 is repealed and replaced by C.R.C.P. 250.3(2) and 250.4.

Rule 260.4. Accreditation

(1) This subsection 1 is repealed and replaced by C.R.C.P. 250.6(1).

(2) This subsection 2 is repealed and replaced by C.R.C.P. 250.6(2) and 250.7(2).

(3) This subsection 3 is repealed and replaced by C.R.C.P. 250.6(4).

(4) This subsection 4 is repealed and replaced by C.R.C.P. 250.6(5).

(5) This subsection 5 is repealed and replaced by C.R.C.P. 250.6(6).

(6) This subsection 6 is repealed and replaced by C.R.C.P. 250.6(2) – (3) and 250.3(2)(c).

(7) This subsection 7 is repealed and replaced by C.R.C.P. 250.6(7).

(8) This subsection 8 is repealed and replaced by C.R.C.P. 250.6(2).

Rule 260.5. Exemptions

Repealed and replaced by C.R.C.P. 260.7.

Rule 260.6. Compliance

- (1) Repealed.
- (2) This subsection 2 is repealed and replaced by C.R.C.P. 250.8(1) and (2).
- (3) This subsection 3 is repealed and replaced by C.R.C.P. 250.8(1) and (2).
- (4) This subsection 4 is repealed and replaced by C.R.C.P. 250.8(2).
- (5) This subsection 5 is repealed and replaced by C.R.C.P. 250.8(3) and (4).
- (6) This subsection 6 is repealed and replaced by C.R.C.P. 250.8(4).
- (7) This subsection 7 is repealed and replaced by C.R.C.P. 250.8(5).
- (8) This subsection 8 is repealed and replaced by C.R.C.P. 250.8(6).
- (9) This subsection 9 is repealed and replaced by C.R.C.P. 250.8(7) and (8).
- (10) This subsection 10 is repealed and replaced by C.R.C.P. 250.8(8).
- (11) This subsection 11 is repealed and replaced by C.R.C.P. 250.8(9).
- (12) This subsection 12 is repealed and replaced by C.R.C.P. 250.8(6).
- (13) This subsection 13 is repealed and replaced by C.R.C.P. 250.8(11).

Rule 260.7. Confidentiality

This rule is repealed and replaced by C.R.C.P. 250.9.

Rule 260.8. Direct Representation and Mentoring in Pro Bono Civil Legal Matters

This rule is repealed and replaced by C.R.C.P. 250.10.

RULE 250. MANDATORY CONTINUING LEGAL AND JUDICIAL EDUCATION

- Rule 250.1 Definitions**
- Rule 250.2 CLE Requirements**
- Rule 250.3 Advisory Committee and the Continuing Legal and Judicial Education Committee**
- Rule 250.4 Attorney Regulation Counsel**
- Rule 250.5 Immunity**
- Rule 250.6 Accreditation**
- Rule 250.7 Exemptions and Deferrals**
- Rule 250.8 Compliance**
- Rule 250.9 Access to Information**
- Rule 250.10 Representation in Pro Bono Legal Matters**
- Rule 250.11 Participation in the Colorado Attorney Mentoring Program (CAMP)**

PREAMBLE: Statement of Purpose

As society becomes more complex, the delivery of legal services likewise becomes more complex. The public expects that lawyers, in their practice of law, and judges, in the performance of their duties, will continue their professional development throughout their legal careers. The purpose of mandatory continuing legal and judicial education requirements is to promote and sustain competence and professionalism and to ensure that lawyers and judges

remain current on the law, law practice management and technology in our rapidly changing society.

Rule 250.1. Definitions

(1) An “accredited” CLE activity is an educational endeavor that meets the criteria in these Rules and the Regulations Governing Mandatory Continuing Legal and Judicial Education and satisfies the requirements of C.R.C.P. 250.6.

(2) “CLE” stands for “Continuing Legal Education,” which is any legal, judicial or other educational activity that meets the criteria in these Rules and the Regulations Governing Mandatory Continuing Legal and Judicial Education and, therefore, satisfies the requirements of C.R.C.P. 250.2.

(3) A “CLE credit” or a “CLE credit hour” is a measurement unit combining time and quality assigned by the CLJE Office to all or part of a particular continuing legal educational activity. A CLE credit hour will be the equivalent of attending 50 minutes of an accredited program with accompanying textual material unless otherwise specified in these rules.

(4) “CLE transcript” means the official record maintained by the CLJE Office of a lawyer’s or judge’s CLE credit hours earned during a CLE compliance period and will be used to verify a lawyer’s or judge’s compliance with the CLE requirements.

(5) The “CLJE Committee” is the Colorado Supreme Court’s Continuing Legal and Judicial Education Committee.

(6) “Compliance period” means the three years during which a lawyer or judge is required to earn the minimum number of CLE credits.

(7) “Court” means the Colorado Supreme Court.

(8) “Judge” is a judicial officer who is subject to the jurisdiction of the Commission on Judicial Discipline or the Denver County Court Judicial Discipline Commission.

(9) “Live credits” means a CLE activity that falls into one of the following categories: (a) an accredited program that a lawyer or judge may attend in person or via an electronic medium, such as teleconferences, videoconferences, and live or real-time webcasts, and in which there are presenters available to all course attendees at the time the course is initially presented, and all attendees can contemporaneously hear or see other attendees’ questions as well as any responses and discussion; (b) accredited teaching activities pursuant to these rules; (c) pro bono representation as provided in C.R.C.P. 250.10; (d) mentoring as provided in C.R.C.P. 250.11; or (e) the required course on professionalism identified in C.R.C.P. 203.2(6).

(10) “Office of Continuing Legal and Judicial Education” (CLJE Office) is the central office of the Office of Attorney Regulation Counsel that administers and implements these rules and the CLJE Committee’s regulations.

(11) “Provider” means any individual or organization that offers continuing legal education activities.

(12) “Registered lawyer” is a lawyer who has paid the registration fee required by C.R.C.P. 227 for the current year and who is not on inactive status, or suspended, disbarred, or placed on disability inactive status by the Court.

(13) “Teaching” means participating as a speaker, lecturer, presenter, or moderator in any accredited CLE activity.

(14) “These rules” refer to rules 250.1 through 250.11 of the Colorado Rules of Civil Procedure.

Rule 250.2. CLE Requirements

(1) **CLE Credit Requirement.** Every registered lawyer and every judge must complete 45 credit hours of continuing legal education during each applicable CLE compliance period as provided in these rules. The 45 credit hours must include a) at least 21 live credit hours and b) at least seven credit hours devoted to ethics. At least three of the ethics credit hours must be earned as live credits. Failure to comply with these requirements in a timely manner as set forth in these rules may subject the registered lawyer or judge to a fee, a penalty, and/or administrative suspension.

(2) **Compliance Period.** All registered lawyers and judges become subject to these rules on the date of their admission or certification to the bar of the State of Colorado. The first compliance period begins on the date of admission or certification and ends on the 31st of December of the third full calendar year following the year of admission or certification to practice law in Colorado. For non-lawyer judges, the first CLE compliance period begins on the date of appointment as a judge and ends on the 31st of December of the third full calendar year following the year of appointment as a judge. Subsequent CLE compliance periods begin on the 1st of January immediately following a previous compliance period and end on the 31st of

December of the third full calendar year thereafter.

(3) Reporting. All registered lawyers and judges must report compliance as set forth in C.R.C.P. 250.8.

(4) Lawyer Status and Compliance. Any registered lawyer who has been suspended under C.R.C.P. 227A(4), or who has elected to transfer to inactive status under C.R.C.P. 227A(6)(a), will, upon being reinstated pursuant to C.R.C.P. 227A(5) or (7), become subject to the minimum continuing legal educational requirements set forth in these rules on the date of reinstatement, pursuant to C.R.C.P. 250.2 and as set forth in C.R.C.P. 25.8(9).

(5) No Roll-Over Credits. CLE credit hours completed in excess of the required 45 credit hours in any applicable compliance period may not be used to meet the minimum educational requirements in any subsequent compliance period.

COMMITTEE COMMENT

[1] These rules are effective for all compliance periods beginning on or after January 1, 2019. For registered lawyers and judges whose compliance periods begin on or after January 1, 2017, but before January 1, 2019 the requirements under C.R.C.P. 260 will apply through the completion of his or her current compliance period. All registered lawyers and judges admitted on or after January 1, 2019, and all registered lawyers and judges whose compliance periods begin on or after January 1, 2019, are subject to the minimum continuing legal education requirements set forth in these rules.

[2] Under the previous C.R.C.P. 260.5 (Exemptions), registered lawyers and judges over the age of 65 were exempt from mandatory educational requirements. On the effective date of these

rules, all registered lawyers and judges who were exempt from the educational requirements under the previous C.R.C.P. 260.5 will again become subject to the requirements in these rules. The compliance period for all previously exempt active registered lawyers and judges will begin on the effective date of these rules and end on the 31st of December of the third full calendar year following the start of the compliance period. Subsequent compliance periods will begin on the 1st of January of the year immediately following the end of the previous compliance period.

Rule 250.3. Advisory Committee and the Continuing Legal and Judicial Education Committee

(1) Advisory Committee. The Supreme Court Advisory Committee (Advisory Committee) is a permanent committee of the Court. *See* C.R.C.P. 251.34. The Advisory Committee oversees the coordination of administrative matters for all programs of the lawyer regulation process, including the continuing legal and judicial education program set forth in these rules. The Advisory Committee reviews the productivity, effectiveness and efficiency of the continuing legal and judicial education program, and recommends to the Court proposed changes or additions to these rules.

(2) The Continuing Legal and Judicial Education Committee. The Continuing Legal and Judicial Education Committee (CLJE Committee) serves as a permanent committee of the Supreme Court.

(a) Members. The CLJE Committee consists of nine members appointed by the Court, and is subject to oversight by the Advisory Committee. With the exceptions of the chair and the vice

chair, members will be appointed for one term of seven years. Diversity will be a consideration in making the appointments. The terms of the members will be staggered to provide, so far as possible, for the expiration each year of the term of one member. Six of the members must be volunteer lawyers, at least one of whom must also be a judge, and three of the members must be volunteer non-lawyers (citizen members). All members serve at the pleasure of and may be dismissed at any time by the Court. A member of the CLJE Committee may resign at any time. In the event of a vacancy, a successor will be appointed by the Court for the remainder of the unexpired term of the member whose office is vacated.

(b) **Chair and Vice Chair.** The Court will designate two members of the CLJE Committee to serve as its chair and vice-chair for unspecified terms. The chair will also be a member of the Advisory Committee.

(c) **Powers and Duties.** The CLJE Committee will formulate regulations consistent with these rules, modify or amend the same from time to time, and perform CLJE Committee duties established by these rules. The CLJE Committee's regulations will be published on the website of the Office of Attorney Regulation Counsel.

(3) **Reimbursement.** The CLJE Committee members are entitled to reimbursement for reasonable travel, lodging and other expenses incurred in the performance of official duties.

Rule 250.4 Attorney Regulation Counsel

The Attorney Regulation Counsel will maintain and supervise a permanent office, the CLJE Office, and will administer all mandatory CLE functions as part of a budget approved by the Court.

Rule 250.5 Immunity

All persons performing official duties under the provisions of these rules, including but not limited to the Advisory Committee and its members, the CLJE Committee and its members, the Attorney Regulation Counsel and staff, and other enlisted volunteers are immune from suit for all conduct performed in the course of their official duties.

Rule 250.6. Accreditation

(1) **Objective.** CLE must be educational activity which has as its primary objective the promotion of professional competence of registered lawyers and judges, and must deal with subject matter directly related to the practice of law or the performance of judicial duties. The CLJE Committee will develop criteria for the accreditation of CLE activities, and the CLJE Office will accredit a broad variety of educational activities that meet these requirements.

(2) **Criteria.** For an activity to be accredited, the following criteria must be met: 1) the subject matter must directly relate to legal subjects and the performance of judicial duties or the practice of law, including professionalism, leadership, diversity, wellness, ethics, and law

practice management, and 2) the activity must be directed to lawyers and judges. The CLJE Office will consider, in accrediting educational activities, the contribution the activity will make to the competent and professional practice of law or administration of justice.

(3) **Ethics.** For an activity or portion within an activity to be accredited as “ethics” it must deal with the Colorado Rules of Professional Conduct, the Colorado Code of Judicial Conduct, similar rules of other jurisdictions, the ABA Model Rules of Professional Conduct, the ABA Model Rules of Judicial Conduct, or legal authority related to any of the above-specified rules.

(4) **Non-accredited Activities.** The CLJE Office will not accredit activities completed in the ordinary course of the practice of law, in the performance of regular employment, or in a lawyer’s or judge’s service on a committee, section or division of any bar-related organization except as provided in these rules.

(5) **Assignment of Credit.** The CLJE Office will assign an appropriate number of CLE credit hours to each educational activity it accredits.

(6) **Provider Eligibility.** The CLJE Committee may establish provider eligibility requirements consistent with these rules.

(7) **Published List.** The CLJE Office will publish a list of all accredited programs, together with the approved CLE credit hours for each program.

Rule 250.7. Exemptions and Deferrals

(1) **Exemptions.**

(a) **Inactive or Suspended Status.** A lawyer who is on inactive status, disability inactive status, or under suspension during his or her entire CLE compliance period is excused from the CLE requirements for that compliance period.

(b) **Military Deployment.** A registered lawyer or judge serving on full-time active duty in the armed forces of the United States who is deployed to a location outside the United States is exempt from CLE requirements for that compliance period. To claim this exemption, the registered lawyer or judge must provide to the CLJE Office a copy of military orders or other official paperwork listing the date, location and duration of the deployment.

(2) **Deferral.**

(a) **Inability to Comply.** In cases of inability to comply with these rules for good cause shown, the CLJE Office may, in its discretion, defer individual compliance with the CLE requirements set forth in these rules.

(b) **No Waiver.** Deferral does not constitute a waiver of the CLE requirements.

COMMITTEE COMMENT

Under the previous C.R.C.P. 260.5, registered lawyers and judges over the age of 65 were exempt from mandatory educational requirements. On the effective date of these rules, all registered lawyers and judges who were exempt from the educational requirements under the previous C.R.C.P. 260.5 will again become subject to the requirements in these rules. The compliance period for all previously exempt active registered lawyers and judges will begin on the effective date of these rules and end on the 31st of December of the third full calendar year following the start of the compliance period. Subsequent compliance periods will begin on the

1st of January of the year immediately following the end of the previous compliance period. *See* C.R.C.P. 250.2.

Rule 250.8. Compliance

(1) Reporting Requirement. Each registered lawyer and judge must report compliance with these rules. CLE credit hours must be reported by the online affidavit on the CLJE Office's website or other form approved by the CLJE Committee within a reasonable amount of time after the credit hours are earned.

(2) Verification Requirement. It is the responsibility of each registered lawyer and judge to verify CLE credit hours completed during a compliance period, and to confirm that his or her CLE transcript is accurate and complete by no later than the 31st of January following that compliance period. Failure to comply with these requirements in a timely manner as set forth in these rules may subject the registered lawyer or judge to a fee, a penalty, and/or administrative suspension.

(3) Make-up Plan. If a registered lawyer or judge fails to complete the required CLE credit hours by the end of the CLE compliance period, the registered lawyer or judge must do the following: 1) by the 31st of January following the end of the CLE compliance period, file a specific plan to make up the deficiency; and 2) complete the planned CLE credit hours no later than the 31st of May following the end of the CLE compliance period. The plan must be accompanied by a filing fee determined by the CLJE Committee. Such plan will be deemed accepted by the CLJE Office unless within 28 days after the receipt of the make-up plan the

CLJE Office notifies the registered lawyer or judge to the contrary. Completion of the make-up plan must be reported by affidavit to the CLJE Office no later than the 14th of June following the end of the CLE compliance period. Failure of the registered lawyer or judge to complete the plan by the 31st of May or to file an affidavit demonstrating compliance constitutes grounds for imposing administrative remedies set forth in paragraph (8) of this rule.

(4) Statement of Noncompliance. If any registered lawyer or judge fails to comply with these rules, or C.R.C.P. 203.2(6) or 203.3(4) in any respect, the CLJE Office will promptly provide a statement of noncompliance to the registered lawyer or judge. The statement will advise the registered lawyer or judge that within 14 days of the date of the statement, either the noncompliance must be corrected, or the registered lawyer or judge must request a hearing before the CLJE Committee. Upon failure to do either, the CLJE Office will file the statement of noncompliance with the Court, which may impose the administrative remedies set forth in paragraph (8) of this rule.

(5) Failure to Correct Noncompliance. If the noncompliance is not corrected within 14 days, or if a hearing is not requested within 14 days, the CLJE Office will promptly forward the statement of noncompliance to the Court, which may impose the sanctions set forth in Paragraph (8).

(6) Hearing Before the CLJE Committee. If a hearing before the CLJE Committee is requested, the following apply:

- (a) Notice of the time and place of the hearing will be given to the registered lawyer or judge by the CLJE Office at least 14 days prior thereto;
- (b) The registered lawyer or judge may be represented by counsel;

(c) The hearing will be conducted in conformity with the Colorado Rules of Civil Procedure and the Colorado Rules of Evidence;

(d) The Office of Attorney Regulation Counsel will prosecute the matter and bear the burden of proof by a preponderance of the evidence;

(e) The chair will preside at the hearing, or will appoint another lawyer member of the CLJE Committee to act as presiding officer, and will appoint at least two other CLJE Committee members to the hearing panel;

(f) Upon the request of any party to the hearing, the chair or vice chair may issue subpoenas for the use of a party to compel attendance of witnesses and production of pertinent books, papers, documents, or other evidence, and any such subpoenas will be subject to the provisions of C.R.C.P. 45;

(g) The presiding officer will rule on all motions, objections, and other matters presented in connection with the hearing; and,

(h) The hearing will be recorded and a transcript may be provided to the registered lawyer or judge upon request and payment of the cost of the transcript.

(7) Determination by the CLJE Committee. Within 28 days after the conclusion of the hearing, the Panel will issue a written decision on behalf of the CLJE Committee setting forth findings of fact and the determination as to whether the registered lawyer or judge has complied with the requirements of these rules. A copy of such findings and determination will be sent to the registered lawyer or judge involved.

(a) If the Panel determines that the registered lawyer or judge complied, the lawyer's or judge's record will reflect compliance and any previously assessed fees may be rescinded.

(b) If the Panel determines the registered lawyer or judge was not in compliance, the written decision issued by the Panel, will be promptly filed with the Court.

(8) Supreme Court Review. When the Court receives either a statement of noncompliance or the written decision of a CLJE Committee hearing, the Court will enter such order as it deems appropriate, which may include an order of administrative suspension from the practice of law in the case of registered lawyers or referral of the matter to the Colorado Commission on Judicial Discipline or the Denver County Court Judicial Discipline Commission in the case of judges.

(9) Modification of Compliance Period. A registered lawyer's obligation to comply with these rules during a compliance period will be modified if the lawyer has been suspended for any reason other than noncompliance with these rules, has elected to transfer to inactive status, or has been placed on disability inactive status by Court order. However, upon reinstatement or return to active status, the compliance period will be calculated as follows:

(a) If the registered lawyer remains on suspension, inactive status or disability inactive status for one year or longer, the start of the compliance period will begin on the date of reinstatement from suspension or disability inactive status, or date of transfer to active status, and will end on the 31st of December of the third full calendar year following the start of the compliance period.

(b) If the registered lawyer is suspended, on disability inactive status, or on inactive status for less than one year, the compliance period will not be recalculated. However, upon reinstatement or return to active status, the lawyer will have 91 days from the date of reinstatement or return to active status, or the remainder of the original compliance period, whichever is longer, to complete and report all deferred CLE requirements as otherwise set forth under C.R.C.P. 250.8, and to pay any penalties or fees that accrued before the suspension or transfer to inactive status.

Failure to complete deferred CLE requirements or to pay related penalties or fees during this 91 day period will subject the lawyer to suspension pursuant to C.R.C.P. 250.8(8).

(c) No registered lawyer will be permitted to change status to circumvent these rules.

(10) **Notice.** All notices given pursuant to these rules may be sent to any address provided by the registered lawyer or judge provided pursuant to C.R.C.P. 227.

(11) **Reinstatement.** Any lawyer who has been suspended for noncompliance pursuant to C.R.C.P. 250.8(8) may be reinstated by order of the Court upon a showing that the lawyer's CLE deficiency has been corrected. The lawyer must file with the CLJE Office three copies of a petition seeking reinstatement by the Court. The petition must state with particularity the CLE activities that the lawyer has completed, including dates of completion, which correct the deficiency that caused the lawyer's suspension. The petition must be accompanied by a reinstatement filing fee as determined by the CLJE Committee. The CLJE Office will file a properly completed petition with its recommendation with the Clerk of the Court within 14 days after receipt. However, a lawyer suspended for noncompliance pursuant to C.R.C.P. 250.8(8) for five continuous years or longer must apply for and successfully complete the Colorado bar examination pursuant to C.R.C.P. 203.4, in addition to satisfying the other requirements of this rule, to be eligible for reinstatement.

(12) **Jurisdiction.** All suspended and inactive lawyers remain subject to the jurisdiction of the Court as set forth in C.R.C.P. 251.1(b).

Rule 250.9. Access to Information

(1) Compliance Information.

(a) **CLE Transcript Maintenance.** For each registered lawyer or judge, the CLJE Office will maintain CLE transcripts for the current and immediately preceding compliance periods as reported pursuant to C.R.C.P. 250.8(1).

(b) **CLE Transcript – Public.** CLE transcripts of each registered lawyer’s or judge’s current and immediately preceding compliance periods will be available to the public.

(c) **Other Compliance Records - Confidential.** All other records maintained by the CLJE Office pertaining to a registered lawyer’s or judge’s compliance are confidential and will not be disclosed except upon written request or consent of the registered lawyer or judge affected or as directed by the Court.

(2) Accreditation Information – Public. All records submitted by a Provider to obtain accreditation pursuant to C.R.C.P. 250.6 will be available to the public.

(3) Expunction of Records.

(a) **Expunction – Self-Executing.** All records maintained by the CLJE Office pursuant to these rules, in paper or electronic form, will be expunged from the files of the CLJE Office as follows:

(i) All records pertaining to accreditation of CLE activities by approved Providers pursuant to C.R.C.P. 250.6 will be expunged one year after the end of the year in which the activity request was processed by the CLJE office;

(ii) All records pertaining to requests for accreditation of activities submitted by a registered lawyer or judge will be expunged three months following the date the submission was processed by the CLJE Office, including but not limited to activities under C.R.C.P. 250.10 and 250.11, self-study, graduate study, and teaching or writing accreditation requests;

- (iii) Affidavits submitted in paper form to the CLJE Office by registered lawyers or judges relating to completion of an approved CLE activity will be expunged seven days after the claimed credits have been entered on the CLE Transcript by the CLJE Office;
- (iv) All records pertaining to proceedings under C.R.C.P. 250.8(3) – (11) will be expunged three years after the expiration of the registered attorney’s or judge’s current compliance period or after reinstatement, whichever time period is longer; and,
- (v) All records pertaining to requests pursuant to C.R.C.P. 250.7 will be expunged three years after the expiration of the registered attorney’s or judge’s current compliance period.

Rule 250.10 Representation in Pro Bono Legal Matters

- (1) **Maximum Credits.** A registered lawyer may earn a maximum of nine CLE credit hours during each three-year compliance period for providing uncompensated pro bono legal representation to persons of limited means, or supervising a law student providing such representation. Credits earned through participation in pro bono legal representation as described in this rule are live credits. Ethics credit may not be earned under this rule.
- (2) **Eligibility.** To be eligible for CLE credit hours, the pro bono legal matter in which a registered lawyer provides representation must have been assigned to the registered lawyer by: a court; a bar association or Access to Justice Committee-sponsored program; a law school; or an organized, non-profit entity, such as Legal Services Corporation, Metro Volunteer Lawyers, or Colorado Lawyers Committee, whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons. Prior to assigning the matter, the assigning

court, program, law school or entity will determine that the client is financially eligible for pro bono legal representation because (a) the client qualifies for participation in programs funded by the Legal Services Corporation, or (b) the client's income and financial resources are slightly above the guidelines utilized by such programs, but the client nevertheless cannot afford counsel.

(3) **Computation of Credits.** Subject to the reporting and review requirements specified herein, (a) a registered lawyer providing uncompensated, pro bono legal representation may receive one unit of credit for every five billable-equivalent hours of representation provided to the indigent client; and (b) a registered lawyer who acts as a supervisor to a law student may be awarded three CLE credit hours per completed matter.

(4) **Claiming Credits.** A registered lawyer wishing to receive CLE credit hours under this rule must submit to the assigning court, program, or law school a completed form as designated by the CLJE Committee. As to supervising a law student, the registered lawyer will submit the form when the matter is fully completed. As to pro bono representation, if the representation will be concluded during a single three-year compliance period, then the registered lawyer will complete and submit the form when the representation is fully completed. If the representation will continue into another three-year compliance period, then the applying registered lawyer may submit an interim form seeking such credit as the lawyer may be eligible to receive during the three-year compliance period that is coming to an end. Upon receipt of an interim or final form, the assigning court, program, law school or entity must in turn report to the CLJE Office the number of CLE credit hours that it recommends be awarded to the reporting registered lawyer under the provisions of this rule. The CLJE Committee has final authority to issue or decline to issue CLE credit hours to the registered lawyer providing representation or mentoring, subject to the other provisions of these rules.

(5) **Law Student Supervision.** A registered lawyer who acts as a supervisor to a law student who is eligible to practice law under C.R.C.P. 205.7(2)(a)(i)(o) may claim CLE credits consistent with (1) and (3) above. The matter must be assigned to the law student by a court, a program or entity as described in C.R.C.P. 250.10(2), or an organized student law office program administered by his or her law school, after such court, program, entity, or student law office determines that the client is eligible for pro bono representation in accordance with C.R.C.P. 250.10(2). The registered lawyer must be available to the law student for information and advice on all aspects of the matter and must directly and actively supervise the law student while allowing the law student to provide representation to the client. The registered lawyer must file or enter an appearance along with the law student in any legal matter pursued or defended for the client in any court. Lawyers may be acting as full-time or adjunct professors at the law student's law school at the same time they serve as supervising lawyers so long as it is not a primary, paid responsibility of that professor to administer the student law office and supervise its law-student participants.

Rule 250.11. Participation in the Colorado Attorney Mentoring Program (CAMP)

(1) **One-Year CAMP Program.** A registered lawyer or judge may earn a maximum of nine CLE credit hours, two hours of which will count toward the ethics requirement of C.R.C.P. 250.2(1), for successful completion of the one-year CAMP program curriculum (pursuant to C.R.C.P. 255) as either a mentor or as a mentee. Credits earned through participation in the mentoring program as described in this rule are live credits.

(2) **Six-Month CAMP Program.** A registered lawyer or judge may earn a maximum of four CLE credit hours, one hour of which will count toward the ethics requirement of C.R.C.P. 250.2(1), for successful completion of the six-month CAMP program curriculum (pursuant to C.R.C.P. 255) as either a mentor or a mentee. Credits earned through participation in the mentoring program as described in this rule are live credits.

(3) **CLE Credit Participation Criteria.** To receive CLE credit hours as a mentor or mentee:

(a) The mentor must be a Colorado lawyer or judge in good standing with an active license or a Colorado lawyer or judge who retired from the practice of law in good standing. The mentor must be licensed for five years and must not be currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction, and must be current with all CLE requirements. The mentor must be approved by the CAMP Director.

(b) The mentee must be a licensed, active Colorado lawyer, who is either practicing or is intending to practice law in Colorado. The CAMP Director may accept and approve petitions to participate from new lawyers not otherwise eligible to participate in CAMP programs. The mentee must be registered in a CAMP program.

(c) Mentors may participate in a CAMP program, one mentor relationship at a time, as often as they wish, but may receive a maximum of nine total CLE credit hours, including a maximum of two ethics credit hours, per compliance period.

(d) Mentees may receive CLE credits as a mentee only once in a CAMP program.

(e) The award of CLE credits will apply to the compliance period in which the CAMP program is completed.

(f) Any mentee or mentor who fails to complete the CAMP program will not receive CLE credit, partial or otherwise.

(g) Mentors and mentees who participate together in pro bono representation during or as a part of this program may not also receive CLE credit under C.R.C.P. 250.10 for the same representation.

(4) Verification by Director. All certificates and affidavits of completion of a CAMP program must be submitted to the CAMP Director for verification pursuant to C.R.C.P. 255. Following verification of substantial completion, the CAMP Director will recommend to the CLJE Office that the CLE hours be recorded as earned.