

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

October 7, 2011

TO: Trenton Parker and Earl Brauch

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #42 concerning right to legal representation

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purpose

The major purpose of the proposed initiative appears to be:

To grant all individuals and corporate entities the absolute right to pay and retain any qualified registered Colorado voter to represent or assist them as legal counsel in any legal matter and before any Colorado court of law, regardless of the amounts in controversy.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and

comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to include an amending clause telling the reader what is being added to or amended in the state constitution or Colorado Revised Statutes. For example, if your intention is to add a new article 23 to title 26 of the Colorado Revised Statutes, you would include an amending clause that reads as follows: "In Colorado Revised Statutes, **add** article 23 to title 26 as follows:". Please consider adding an appropriate amending clause(s).

2. The first sentence of the proposed initiative includes the language: "NO. 2: COLORADO'S FREEDOM FROM LAWYERS INITIATIVE". Keeping in mind that every word in a ballot initiative must appear in the section of the state constitution or statute that it amends, please consider removing "NO. 2" from the language of the proposed initiative or ballot title.

3. To reflect standard drafting practice, please do not capitalize any word other than the first word in the headnote of the proposed new section or article. E.g., using the language provided, the headnote would read "**xx-xx-xxx. Colorado's freedom from lawyers initiative.**".

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Subsection (5.5) of section 1 of article V of the state constitution requires each proposed initiative to have a single subject. What is the single subject of the proponents' initiative proposal?

2. The proposed initiative appears to be just a ballot title and does not include an amending clause or any indication as to what part of the state constitution or Colorado Revised Statutes is to be amended. Please determine what part(s) of the state constitution or statutes you intend to amend and add an appropriate amending clause(s) and language to reflect that determination.

3. Article 5 of title 12, Colorado Revised Statutes, concerns the regulation of attorneys-at-law, including prohibited actions and several sections concerning who may and may not practice law. Is it the proponents' intent that article 5 of title 12, C.R.S., shall apply to every person acting as an attorney, including regulation by the Supreme Court of Colorado? Is it further the proponents' intent to amend or repeal the sections dealing with prohibitions on persons not allowed to practice law (e.g., sections 12-5-101, 12-5-109, and 12-5-110) so as not to be in conflict?

4. The proposed initiative allows an individual or corporation to pay and retain any registered Colorado voter as legal counsel in any Colorado court of law, regardless of the amount in controversy. Part 4 of article 6 of title 13, C.R.S., concerns the small claims divisions in county courts. Section 13-6-407, C.R.S., in particular requires a party to represent himself or herself and that no attorney, except as pro se, shall take any part in an action before a small claims court. Is it the proponents' intent to amend applicable provisions of part 4 of article 6 of title 13, C.R.S., so as not to be in conflict?

5. What would be the effective date of the proposed initiative?

6. The Colorado Supreme Court has held that "granting a person permission to practice law is the sole prerogative of the Supreme Court." How would the proponents respond to a charge that the proposed initiative violates this holding?

7. What do the proponents mean by "qualified registered Colorado voter"? Is the voter qualified to register to vote in Colorado or is the voter registered and qualified to serve as legal counsel? If the latter, how will this determination be made?