COLORADO MUNICIPAL LEAGUE
ANNUAL SEMINAR ON MUNICIPAL LAW

OPEN MEETINGS/EXECUTIVE SESSIONS

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CML COLORADO MUNICIPAL LEAGUE

OPEN MEETINGS/EXECUTIVE SESSIONS

- **Three Topics**
  - Open Meetings generally (and briefly);
  - Cure; and
  - *The Sentinel Colorado v. Kadee Rodriguez in her Official Capacity as Records Custodian for the City of Aurora*, 2024 SC 51 and executive session best practices.

OPEN MEETINGS GENERALLY

- **Posting/Agendas**
  - *Town of Marble v. Darien*, 181 P.3d 1148 (Colo. 2008) and C.R.S. § 24-6-402(2)(c);
  - "The posting shall include specific information where possible;" and
  - What is the meaning of full or specific information?

OPEN MEETINGS GENERALLY (cont.)

- What types of meetings need to be noticed?
- *Bd. of Cnty. Comm'rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004) – Notice required for any "meeting" at which there is "… a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting."
- Why ask for forgiveness?

OPEN MEETINGS GENERALLY (cont.)

- **Standing to bring an OML claim**
- *Roane v. Elizabeth School District*, 555 P.3d 69 (Colo. App. 2024):
  - The OML defines the legally protected interest for purposes of standing as the interest in the open functioning of government; and
  - Thus, a plaintiff need not identify a reason or be a constituent to have standing to contest an Open Meetings Violation; instead, the violation is when the right of access to the decision-making process is impacted.

CURE

- *O'Connell v. Woodland Park School District, et al.*, 2025 WL 2717522 (September 15, 2025):
  - C.R.S. § 24-6-402(8): "No resolution, rule, regulation, ordinance, or formal action of a state or public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section;" and
  - Cure doctrine is a court-created doctrine that provides that a public body may "cure" a violation of the Open Meetings Law by holding a subsequent meeting that does not merely rubberstamp the previous decision.

CURE (cont.)

- Ability to cure OML violation previously recognized by the Court of Appeals in *Colorado Off-Highway Vehicle Coalition v. Colorado Board of Parks & Outdoor Recreation*, 292 P.3d 1132 (Colo. App. 2012) (the "COHVC case").

CURE (cont.)

- Supreme Court held that a public body can cure an Open Meetings Law Violation.
- Why?
  - No language in the Open Meetings Law suggested a violation can ***never*** [emphasis in original opinion] be cured; and
  - "Requiring a governmental body to start all over (i.e., not allowing the "cure") would be inconsistent with the proper functioning of the government and consequently the COML. This is, because the focus of the COML "is on the ***process*** of governmental decision making, not on the ***substance*** of the decisions themselves." [Emphasis original, quoting the COHVC case.]

CURE (cont.)

- No distinction between intentional and unintentional violations – "COML is concerned with the fact of the violation, not with whether an alleged violation was intentional or unintentional."

CURE (cont.)

- Timing of the cure matters for purposes of attorney fees.
- Prevailing party only if cure occurs after the filing of the lawsuit alleging the COML violation.

Executive Session (Recent Development in the Law and Best? Practices) The Law

- *The Sentinel Colorado v. Kadee Rodriguez in her Official Capacity as Records Custodian for the City of Aurora*, 2024 SC 51 – Decided October 7, 2025

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- **Certiorari Granted on Two Issues**
  - Whether The Sentinel Colorado ("the Sentinel"), which is owned by Aurora Media Group, LLC, and operated by the Aurora Sentinel Community Media, a Colorado 501(c)(3) corporation, is a "citizen" for the purposes of section 24-6-402(9)(b), C.R.S. (2023), of the Colorado Open Meetings Law ("COML" or "OML"); and
  - Whether the court of appeals erred in finding that a general description of the discussion of an executive session in a later public City Council agenda packet constituted a waiver of the entire attorney-client privilege and the executive-session privilege by the public body.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- **History of Case:**
  - *Sentinel* sought recording of the executive session on March 14, 2022, because it was undisputed that the executive session notice did not identify with any specificity the topic;
  - Aurora at the time chose to record executive sessions convened for the purpose of obtaining legal advice, so recording existed. (*cf Guy v. Whitsitt*, 469 P.3d 546 (Colo. App. 2020)); and
  - District court found in favor of the City after listening to the recording and held broadly that even assuming a defective notice of the executive session, that any notice issue was cured by a subsequent discussion in an open meeting at the March 28, 2022 meeting.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- **Issues on Appeal to the Court of Appeals:**
  - Whether the district court correctly determined that the City was not obligated to release a recording of the Aurora City Council's March 14, 2022, Executive Session on the grounds that the Colorado Open Meetings Law violation was cured by publicly discussing the topic at the Council's subsequent March 28, 2022 public meeting;
  - Whether the district court correctly determined after its *in camera* review that the Aurora City Council did not take formal action during the Executive Session; and
  - Whether the trial court correctly determined not to release a recording of the Aurora City Council's March 14, 2022 Executive Session under the Colorado Open Meetings Law, because the privilege claimed by Defendant-Appellee pursuant to § 24-6-402(d.5)(II)(B), C.R.S. was not waived or destroyed.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- **Court of Appeals Holding:**
  - [Probably properly] rejected the "cure" argument.
  - BUT – Court of Appeals decision reversing the district court pivoted entirely and held executive session privilege was waived by a general description of how Council gave direction in executive session to special counsel. General description in document put in Council packet for consideration at the next City Council meeting.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)

The Law

March 24, 2022

City of Aurora City Council
c/o Aurora City Attorney Daniel L. Brotzman
15151 E. Alameda Pkwy., 5th Floor
Aurora, Colorado 80012

Re: Stipulation to Resolve Charges Brought Against Council Member Jurinsky

Esteemed Council Members,

On January 28, 2022, Council Member Marcano brought charges against Council Member Jurinsky, alleging violations of Section 3-10 of the City of Aurora City Charter and Appendix G (Conduct Guidelines), Section A of the City Council Rules. Upon notice of the charges to Council Member Jurinsky and the City Attorney's Office, City Attorney Daniel L. Brotzman followed the procedures prescribed by Appendix G, Section I, paragraph 2 of the Council Rules in providing notice to the Mayor and City Council. Subsequently, under the same authority and procedures, the City Attorney's Office retained the firm of Burns Figa & Will, P.C. as special legal counsel for the purposes of preparing and presenting the specification of charges.

Appendix G, Section I, paragraph 5 of the Council Rules authorizes the appointed special legal counsel to negotiate stipulated facts, procedural matters concerning a public hearing (if one is requested), appropriateness of attorney fees, and to accept any stipulation of a violation. Under this authority, on March 14, 2022, the city Council directed and instructed special legal counsel to end the investigation prior to any public hearing and enter into a stipulation with Council Member Jurinsky to dismiss the charges brought against her.

Accordingly, special legal counsel from Burns Figa & Will, P.C. terminated the investigation without making any findings regarding the alleged violations, and without advising the City Council or preparing any report on the merits of the charges.

Council Member Jurinsky, through her counsel, and the City of Aurora agree that the investigation into the charges brought against Council Member Jurinsky is terminated and the matter is dismissed effective March 15, 2022. Council Member Jurinsky waives her right to a public hearing on the matter, as afforded to her in Appendix G, Section I, paragraph 3 of the Council Rules, as a condition of the investigation ending and dismissal of the charges.

As a condition of this Stipulation legal counsel for Council Member Jurinsky will be paid $16,162.50 in legal fees for their representation of her in this matter.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)

The Law

Council Member Jurinsky enters into this Stipulation freely and voluntarily. Council Member Jurinsky additionally confirms that she has had the opportunity to review this document with counsel of her own choosing prior to signing this Stipulation.

Danielle Jurinsky Date

Suzanne Taheri, #23411 Date
Counsel for Council Member Jurinsky

John S. Gleason, #15011 Date
Special Legal Counsel

David Lane, #16422 Date
Counsel for Council Member Jurinsky

Jane Bonham Cox, #45770 Date
Special Legal Counsel

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- The Holding
- Bad News first:
  - *The Sentinel Colorado* newspaper as a corporation is a "citizen" within the meaning of the OML and, thus, may recover attorney fees it is ultimately the prevailing party.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- And the good news!!
  - No waiver of the attorney-client privilege by virtue of the disclosure of facts in a City Council packet regarding the action to be taken at a subsequent open meeting following the City Council providing direction to its legal counsel in executive session.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- **Current Summary of Case Law (All Court of Appeals Cases):**
  - *Guy v. Whitsitt*, 469 P.3d 546 – Executive session recordings ordered disclosed to the extent they exist, but attorney client communications were not recorded – case discussed extensively in the *Sentinel* holding;
  - *Gumina v. Sterling*, 119 P.3d 527 (Colo. App. 2005) – Executive session recording and minutes of a personnel matter open to the public, because executive session not convened properly, because employee not given notice that she was the topic of the executive session;

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- *Bjornsen v. Board of County Commissioners of Boulder County*, 487 P.3d 1015 (Colo. App. 2019) – Cannot retroactively cure a violation of not giving notice of an executive session at the next public meeting;
- *Arkansas Valley Publishing Co. v. Lake County Board of County Commissioners*, 369 P.3d 725 (Colo. App. 2015) – Somewhat County specific case regarding day-to-day supervision of County employees, but good policy language, recognizing that not all governmental functions necessitate public participation, in that case involving the discipline of public employees; and
- No published case exists where attorney-client privileged communications were actually released .

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- **Authorization to Hold an Executive Session**
- Seven separate bases for a municipality to hold an executive session.
  1. Matters related to the purchase, acquisition, lease, transfer or sale of property pursuant to C.R.S. § 24-6-402(4)(a);
  2. Matters subject to the attorney-client privilege pursuant to C.R.S. § 24-6-402(4)(b).
  3. To consider matters required to be kept confidential by federal or state law or rules and regulations, pursuant to C.R.S. § 24-6-402(4)(c);

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

4. To discuss specialized details of security arrangements or investigations, pursuant to C.R.S. § 24-6-402(4)(d);
5. To determine positions relative to matters that may be subject to negotiations pursuant to C.R.S. § 24-6-402(4)(e);
6. To consider personnel matters, pursuant to C.R.S. § 24-6-402(4)(f); and
7. To consider documents protected from disclosure by the Colorado Open Records Act, pursuant to C.R.S. § 24-6-402(4)(g).

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- Each of these bases authorize the City Council to hold a meeting closed to the public for purposes of maintaining confidentiality for the benefit of the City and its constituents, ***but only the attorney-client privilege is rooted in the common law.***
    - *See e.g.*, *Losavio v. District Court*, 533 P.2d 32, 34-35 (Colo. 1975); and *Law Office of Bernard D. Morley v. MacFarlane*, 647 P.2d 1215, 1220-1221 (Colo. 1982).

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- The special status of the attorney-client privilege is recognized in the language of C.R.S. § 24-6-402, because the statutory language creates an exception to recording the executive session for attorney-client privileged communications as follows on the next slide:

Executive Session (Recent Development in the Law and Best? Practices) (cont.)
The Law

- If in the opinion of the attorney who is representing the local public body and who is in attendance at the executive session that has been properly announced pursuant to subsection (4) of this section, all or a portion of the discussion during the executive session constitute a privileged attorney-client communication, ***no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication.*** The electronic recording of said executive session discussion shall reflect that no further record or electronic recording of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the local public body may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney. [Emphasis added.]

  C.R.S. § 24-6-402(2)(d.5)(II)(B).

Executive Session (Recent Development in the Law and Best? Practices) (cont.)

- Issue #1: To record or not to record attorney-client privileged communications.

Executive Session (Recent Development in the Law and Best? Practices) (cont.)

- Issue #2: Multiple bases for executive session regarding the same topic.
  - How and why?
  - Does it get recorded?

Executive Session (Recent Development in the Law and Best? Practices) (cont.)

- Issue #3: Specific agenda information where possible – *Town of Marble* revisited.

Executive Session (Recent Development in the Law and Best? Practices) (cont.) The Law?

- Application of "To consider personnel matters, pursuant to C.R.S. § 24-6-402(4)(f)."

Thank You!

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