



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES
September 6, 2013, 12:00 – 1:15 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203

Members present: Chair David W. Stark, Daniel Vigil, Rich Nielson, Dick Reeve, David Little, Alexander (Alec) Rothrock, Brian Zall, Nancy L. Cohen, Cheryl Martinez-Gloria, Cynthia F. Covell, Steven Jacobson, Barbara Miller, Chris Markman.

Members absent: Vice Chair Mac Danford, who had an excused absence.

Liaison Justice present: Honorable Nathan (Ben) Coats.

Office of the Presiding Disciplinary Judge: Presiding Disciplinary Judge William Lucero.

Staff present: James C. Coyle, Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; John Baker, Director of Colorado Attorney Mentoring Program; Barb Ezyk, Executive Director of Colorado Lawyer Assistance Program; Marie Nakagawa Staff Attorney, and Alan Obye, Staff Attorney.

1. Approval of June 14, 2013 meeting minutes

Mr. Reeve moved to approve the minutes from the June 14, 2013 meeting. Mr. Nielson seconded, and the minutes were approved.

2. Status report on admissions rules subcommittee

Mr. Coyle thanked the members of the subcommittee working on drafting admissions rules – including Advisory Committee members and staff Alec, Ginette, Chris, Rich, Dan, Matt, Dick, Alan, and Brian, plus non-advisory committee attorney Todd Wells for their hard work for several hours every other Wednesday for the past eight months, and their drafting and editing efforts between subcommittee meetings.

Mr. Rothrock raised an issue with C.R.C.P. 203.2(1)(c) (admission on motion), regarding the word “other” in the provision requiring applicants to have practiced for three of the past five years in any “one or more other jurisdictions in the United States.” The subcommittee may have overlooked this word, and would like to delete the word “other” although the rule has already been submitted to the court. This rule amendment would be consistent with the ABA model rule. The change would allow lawyers who have worked in Colorado under a limited certification, such as a military spouse or single-client counsel certification, to qualify for admission on motion. Mr. Rothrock moved to recommend to the court that the court make that change. Mr. Reeve seconded. The motion passed unanimously. Mr. Coyle will write a letter to Justice Coats to this effect and advise the court of the recommended change. (A copy of Mr. Coyle’s subsequent September 9, 2013 letter to the court on behalf of the Advisory Committee is attached as **addendum 1**.)

Mr. Coyle reported that the subcommittee is almost done working on proposed rule 204. The subcommittee is currently working on the portion of the rule regarding pro bono emeritus attorneys. The subcommittee is debating whether pro bono attorneys should be allowed to provide services to entities, in addition to providing services directly to the indigent. The subcommittee will consider this issue next week. The subcommittee has solicited input from Connie Tamalge, Executive Director of the Colorado Lawyers Committee, and Allison Altaras, law clerk to Justice Hobbs and contact person for the Access to Justice Commission and the Colorado Supreme Court Pro Bono Recognition Program, on this issue.

The subcommittee will next consider proposed rule 205, which includes practice pending admission. The subcommittee will then consider a draft proposal on conditional admission. That will include the work of the subcommittee on admissions rules.

Mr. Nielson commented on the difficulty of maintaining consistency between different rules as they are drafted and the time-consuming nature of rule drafting. Mr. Coyle thanked Justice Coats for allowing Ms. Markman to participate in the subcommittee and thanked Judge Lucero for allowing Ms. Chapman to participate.

3. Status report on CLJE rules subcommittee

Mr. Little recognized the group that attended the MCLE Regulators’ Association conference in Baltimore recently. He commented that many states have concerns about the industry that has been spawned by states’ MCLE requirements. Most lawyers receive numerous advertisements for MCLE programs. Mr. Little sometimes gets complaints about the sponsors or the programs. The subcommittee will perform an ongoing review of all CLJE programs. There is a question as to whether the CLJE board has any control over the quality and availability of CLJE programs.

Mr. Little also reported that the subcommittee will press for the repeal of the age exemption to the CLJE requirement and examine the fees charged for CLJE programs-Colorado may have close to the lowest fees in the country, and it may make sense to charge more.

Mr. Samuelson noted that the subcommittee is meeting later this afternoon. It will address accreditation of programs and sponsors. There may need to be a system of larger, “preferred” providers who won’t have to jump through as many hoops as smaller providers. Mr. Samuelson noted that the subcommittee had an opportunity to network in Baltimore and has looked at other models for overhauling the CLJE rules. Texas is a particularly interesting model as it relates to accreditation standards. The subcommittee’s work has just begun, and it will make decisions today about the right direction to head in.

Mr. Coyle noted that in some countries, such as the UK, the regulatory authorities have emphasized having lawyers create their own continuing legal education programs in order to improve their own practice. This creates a culture of learning, rather than simply “placing bums in seats.” The chair noted some CLE providers send targeted programs that they think particular lawyers might be interested in.

Mr. Little explained that the subcommittee continues to consider a previous suggestion by Mr. Coyle that there ought to be an interim requirement for lawyers that would cover transition periods in lawyers’ lives, for example a prosecutor transitioning to private practice. These transitions often happen at 6-10 years into a lawyer’s career, and coincide with Regulation Counsel statistics that lawyers start to get into disciplinary problems 6-15 years into practice. The subcommittee would like to hear comments on whether this is appropriate. This would be a continuation of the “bridge the gap” program that was considered years ago.

The chair commented that after spending five years in the DA’s office, he knew nothing about private practice and could have used education upon his transition. Mr. Baker commented that about a third of the lawyers who ask for mentors through his office have been practicing in the five-to-seven year range, which is outside CAMP’s three-year limit for mentoring. They are often transitioning from big firms or government. Mr. Baker thinks this program would be critical.

Mr. Coyle recommends that such program be required in the 6-9 years CLE cycle. Those lawyers sometimes get “cocky” and lax with their ethical responsibilities toward courts and others, for example by engaging in business transactions with clients, and could benefit from an interactive program that addresses conflicts, the handling of personal problems, more effective communication with clients and others, and the handling of trust funds.

Mr. Reeve commented that MCLE programs might become more important if law schools move to two-year programs. Mr. Little added that MCLE requirements are important because lawyers currently have no apprenticeship requirement, like most professions.

Ms. Martinez-Gloria commented that there should be an exception to the fee increase for non-profit or pro bono CLE programs. Increasing the CLE hour requirement can also be hard for non-profit attorneys because the time is expensive. There is a risk that nonprofits may consider the attorney positions overly expensive. Increasing CLE fees and requirements may be asking for nonprofits to fire attorneys, which encourages the unauthorized practice of law.

Mr. Vigil commented that attorneys over age sixty-five might be required to attend specific CLJEs that target aging lawyers. Mr. Little responded that there is great support among the bar for repealing the aging-lawyer exception and that there might be support of targeted programs as well. Ms. Cohen commented that many aging lawyers are solo and small firm attorneys and don't make a lot of money, and so cost may be a consideration.

Mr. Vigil noted that "just attending programs" doesn't mean very much, and suggested that there could be some sort of quiz at the end.

4. Report on ABA UPL School

Mr. Coyle reported that eighty-five regulatory prosecutors from around the country attended the first annual ABA Unauthorized Practice of Law School on August 16-17. There were panelists from many state and federal agencies, including USCIS, FBI, DHS, FTC, state attorneys general, the ABA, and other organizations. Ms. Cohen participated as faculty in a program called "strengthening your bar's UPL program." Mr. Rothrock participated as faculty in a program called "how far is too far: law-related service providers practicing law." A representative from the FBI talked about the sovereign citizen movement. The ABA thought the program was a success. Alan Obye wrote an article about the UPL School that may be published in the ABA/BNA Lawyers' Manual on Professional Conduct.

Mr. Vigil offered that DU would be happy to host the second annual program. He noted that several participants reported that the program was well-run and the law school was receptive and helpful.

5. Colorado Attorney Mentoring Program report

Mr. Baker described reading literature on mentoring and now having a greater understanding that there should be a mentoring resource center to educate mentors. The CAMP website will help address this. In particular, there is a need for diversity training to train mentors who will mentor diverse mentees. CAMP has put together materials that are distributed to mentors and mentees. There is a mentors' manual and a mentees' manual written by Ida O. Abbott and distributed by NALP.

Mr. Baker is currently working on the CAMP website and may film educational vignettes for the website. He has created a "landing page" for the website and is working on filling it with content. He distributed a print copy to the Committee. Lauren Eisenbach, a new part-time assistant to CAMP, has been helpful in this regard. Evan Brown from CBA is consulting on the website in order to make it easy to use for both users and CAMP staff.

Mr. Baker reported that he is currently working with a mentee on a pro bono case, and they settled the case today. The settlement happened in part because the mentee learned an important lesson – he almost sent a "scorching" email to opposing counsel, but sent it to Mr. Baker for

comment first. Mr. Baker stressed the importance of reaching the settlement on behalf of the client and reminded the mentee that the opposing counsel is human, too. The mentee thought better of sending the email, and the case settled.

6. Colorado Lawyer Assistance Program report

Ms. Ezyk reported that CoLAP has been extremely busy. She thanked the committee for its support and the supreme court for the financial support. She has hired a program manager, Ernesto Delgadillo.

CoLAP is getting more and more requests for presentations. In particular, Ms. Ezyk is getting more requests from attorneys and groups that work with victims and are looking for help with compassion fatigue and secondary trauma issues. Ms. Ezyk is putting together special presentations for those lawyers.

CoLAP is continuing to get more involved with the law schools. Associate Dean of Student Affairs Patty Powell is getting a wellness program going at DU. Ms. Ezyk stressed the importance of being present in lawyers' lives beginning in law school and continuing through their careers.

Mr. Coyle noted that Ms. Ezyk is now working with the National Organization of Bar Counsel and was instrumental in a conference involving lawyer assistance programs in the West. Mr. Coyle also noted that both Mr. Baker and Ms. Ezyk will be involved in the For This We Stand program on September 21, along with Chair Mr. Stark. The Chair noted that Ms. Ezyk is also involved in the CBA/DBA Council on Professionalism.

7. Office of Attorney Regulation Counsel report

Mr. Coyle distributed a written report on OARC's activities. The office is busy, and the staff members participating in the office's various programs are enjoying their work. Mr. Coyle recognized Mr. Obye and Ms. Nakagawa for work on rules subcommittees and website committee. Mr. Coyle also noted that Mr. Samuelson and Mr. Sudler have been working hard on various subcommittees. The office went live on Civicore, a web-based application management system, this week and the transition is going well. Everything is running smoothly in the intake and litigation divisions.

Mr. Nielson and Mr. Vigil commented that the new OARC newsletter was terrific. Mr. Coyle hopes it will help lawyers with the perception of the office. He has great article ideas for the future. Ms. Ezyk noted that she has gotten callers who heard of CoLAP through the newsletter.

8. Status report on Standing Rules Committee work on Colo. RPC 1.15 and marijuana issues

Mr. Coyle explained that Mr. Sudler, who would normally report on the Standing Rules Committee's progress, was in Arizona. Mr. Little commented that the draft rule 1.15, regarding handling client funds, is pretty well polished. The subcommittee is meeting Tuesday. Mr. Little emphasized how extremely hard Mr. Sudler worked on the rule. Mr. Sudler took comments from all quarters.

Mr. Little explained that the rule is now broken into 5 parts. The subcommittee tried to simplify the rule and give lawyers a working model of what to do with trust accounts. Some subcommittee members have concern with the final part of the rule, regulating which banks qualify for COLTAF designation. There is a question whether that should be part of the rule, or a matter of contract between banks and the supreme court. The subcommittee wants to ensure that the choice of bank is not a concern for the lawyer; the lawyer's concern should be his or her own conduct. Also, the subcommittee was concerned that the previous rule was too long.

The rule was sent back to the committee at the last standing committee meeting for small changes. After the subcommittee considers the changes next week, the rule will go back to the standing committee and then the court.

The standing committee has recommended that the "marijuana rule" go to the supreme court. Proposed Colo. RPC 8.6 would address the issue of lawyers advising clients in the marijuana industry. The comment to rule 8.4(c) would address a lawyer's marijuana usage, to the effect that engaging in conduct that is illegal under federal law but authorized by the Colorado constitution is not a per se violation of the Rules of Professional Conduct.

Mr. Rothrock and Ms. Cohen are giving a CLE about marijuana issues in October.

Mr. Coyle noted that there may be consideration of a comprehensive review of C.R.C.P. 251.1 et seq., the Rules of Procedure Regarding Attorney Discipline and Disability, next year. Mr. Coyle is collecting suggestions from within and outside the office.

9. Other business

Mr. Coyle recognized retiring Advisory Committee member John Mosby and the appointment of Mac Danford. Mr. Danford will join the committee at the next meeting.

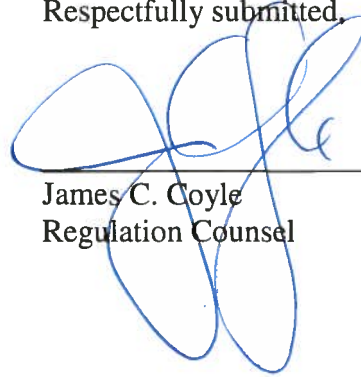
10. Next Meeting

The next committee meeting will be Friday, December 13 at noon. Mr. Coyle reminded the committee that there will be a dinner that night, honoring the members of the seven permanent supreme court committees that help regulate the practice of law in Colorado.

11. Adjournment

Mr. Jacobson moved, and Mr. Nielson seconded, that the meeting be adjourned. The meeting was adjourned at 1:15 p.m.

Respectfully submitted,



James C. Coyle
Regulation Counsel

ADDENDUM 1

**COLORADO SUPREME COURT
ATTORNEY REGULATION COUNSEL**



Attorneys' Fund for Client Protection
Unauthorized Practice of Law

Regulation Counsel
James C. Coyle

Chief Deputy Regulation Counsel
James S. Sudler

Chief Deputy Regulation Counsel
Matthew A. Samuelson

Deputy Regulation Counsel
Charles E. Mortimer, Jr.

Deputy Regulation Counsel
Margaret B. Funk

Assistant Regulation Counsel

Louise Culberson-Smith
Amy C. DeVan
Adam J. Espinosa
Stephen R. Fatzinger
Jill Perry Fernandez
Lisa E. Frankel
Kim E. Ikeler
Erin Robson Kristofco
Brooke H. Meyer
Geanne R. Moroye
Timothy J. O'Neill
Katrin Miller Rothgery
Catherine Shea

Staff Attorneys

Marie E. Nakagawa
Alan C. Obye

September 9, 2013

Justice Nathan B. Coats
2 East 14th Avenue
Denver, CO 80203

Justice Monica M. Márquez
2 East 14th Avenue
Denver, CO 80203

RE: Amendment to proposed Rule 203.2(1)(c)

Dear Justice Coats and Justice Márquez:

On June 21, 2013, the Court's Advisory Committee submitted proposed new rules governing the admission to the practice of law in Colorado. Included in those rules was proposed rule 203.2 (applications for admission on motion by qualified out-of-state attorneys).

Proposed rule 203.2(1)(c) as written and submitted to the Court requires that an applicant:

Have been primarily engaged in the practice of law in one or more other jurisdictions in the United States three of the five years immediately preceding the date upon which the application is filed;

Justice Nathan B. Coats
Justice Monica M. Márquez
September 9, 2013
Page 2

Such language is different than the ABA Model Rule, which provides:

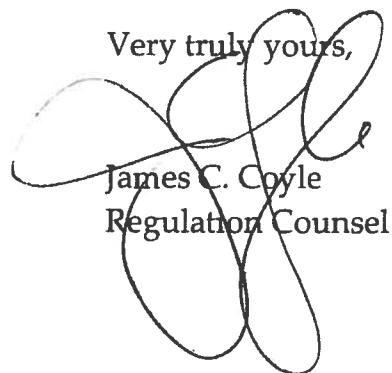
Have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for three of the five years immediately preceding the date upon which the application is filed;

The ABA Model Rule would allow credit for time served practicing law in Colorado under single client certification, judge advocate certification, and law professor certification for three of the past five years. The draft rule submitted by the subcommittee and approved by the Advisory Committee in June would not.

Upon revisiting the issue, all members of the subcommittee believed that inclusion of the word "other" in proposed rule 203.2(1)(c) was an oversight. Therefore, at the last subcommittee meeting on Wednesday, August 28, 2013, the members voted unanimously to propose to the Advisory Committee and the Court that the word "other" be stricken from proposed rule 203.2(1)(c). The matter was addressed at the most recent Advisory Committee meeting on Friday, September 6, 2013 and, similarly, the Advisory Committee voted unanimously to strike the word "other" from proposed rule 203.2(1)(c). I attach a copy of proposed rule 203.2 with the word "other" stricken in subsection (1)(c) on the first line.

Please let me know if you have any questions.

Very truly yours,



James C. Coyle
Regulation Counsel

JCC/cl

Enclosure

cc: David Stark, Esq.
Alec Rothrock, Esq.

**Rule 203.2 Applications for Admission on Motion
by Qualified Out-of-State Attorneys**

(NOTE: The following is based substantially on the ABA model rule for on-motion application, adopted by the ABA House of Delegates in August 2012, Report 105)

(1) An applicant who meets the following requirements may, upon motion, be admitted by the Supreme Court to the practice of law in Colorado. An applicant under this rule shall:

(a) Have been admitted to practice law in another jurisdiction of the United States¹ that allows admission to licensed Colorado attorneys on motion without the requirement of taking that jurisdiction's bar examination;

(b) Hold a J.D. or LL.B. degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the applicant matriculated or graduated;

(c) Have been primarily engaged in the active practice of law in one or more ~~other~~ jurisdictions in the United States for three of the five years immediately preceding the date upon which the application is filed;

¹ For purposes of these rules, a "jurisdiction of the United States" is defined as another state or territory of the United States, or the District of Columbia.

(d) Establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

(e) Establish that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction, and is current with all continuing legal education requirements;

(f) Establish that the applicant possesses the character and fitness required of all applicants for admission to the practice of law in Colorado as set forth in C.R.C.P. 208; and

(g) Pay the required application fee.

(2) For purposes of this rule, the “active practice of law” shall include the following activities, if performed in a jurisdiction in which the applicant is admitted and authorized to practice law, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted in that jurisdiction; however, in no event shall any activities performed pursuant to any rule regarding the practice of law pending admission or in advance of bar admission in another jurisdiction be accepted toward the durational requirement:

(a) Representation of one or more clients in the private practice of law;

(b) Service as a lawyer with a local, state, territorial or federal agency, or governmental branch, including military service;

(c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;

(d) Service as a judicial officer in a federal, state, territorial or local court of record;

(e) Service as a judicial law clerk; or

(f) Service as legal counsel to the lawyer's employer or its organizational affiliates.

(3) For purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

(4) Reserved – There is no subsection (4) .

(5) For purposes of this rule, all applicants must pass the Multi-State Professional Responsibility Examination (MPRE) prior to admission. A passing score will be valid if it was achieved at an examination taken not more than two years before acceptance of the application

for admission in Colorado. The Supreme Court shall review and determine the passing score for the MPRE.

(6) **Professionalism Course.** All applicants under this rule shall complete the required course on professionalism presented by the Office of Attorney Regulation Counsel in cooperation with the Colorado Bar Association. The course shall satisfy six units of the forty-five unit general continuing legal education requirement during the attorneys first compliance period pursuant to C.R.C.P. 260.2(1). Any fees received for the course shall be divided equally between the Colorado Bar Association CLE in Colorado, Inc., and the Office of Attorney Regulation Counsel to pay for administering the course and to fund the attorney regulation system. Credit for completion of the professionalism course shall be valid for one full calendar year following completion of the course. On-motion applicants for admission under this rule shall have six months following admission to take the required course on professionalism.