



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

March 7, 2014, 12:00 p.m. – 1:20 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203

Members present: Chair David W. Stark, Vice Chair Mac Danford, Daniel Vigil, Rich Nielson, Dick Reeve, Nancy L. Cohen, Cheryl Martinez-Gloria, Barbara Miller, Brian Zall, Cynthia F. Covell, and Todd Wells (guest).

Members absent: Alexander (Alec) Rothrock, Steven Jacobson, Chris Markman, and David Little (all excused).

Liaison Justices present: Justice Nathan Coats and Justice Monica Márquez.

Office of the Presiding Disciplinary Judge: Presiding Disciplinary Judge William Lucero, and Ginette Chapman, Staff Attorney.

Staff present: James C. Coyle, Regulation Counsel; James S. Sudler, Chief Deputy Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; John Baker, Director of Colorado Attorney Mentoring Program (CAMP); Marie Nakagawa, Staff Attorney; Charles Mendez, intern (guest).

1. Approval of December 13, 2013 meeting minutes

The Chair asked for a motion to approve the December 13, 2013 meeting minutes. Mr. Zall moved, Mr. Nielson seconded, and the minutes were approved.

2. Review and vote on Admissions Rules Subcommittee report on proposed rules 204-05

The Chair asked Mr. Coyle to begin the review and voting on Admissions Rules 204 through 205.

Mr. Coyle began by introducing several guests present at the meeting. He introduced Todd Wells, an attorney practicing international law, who provided extensive international law perspective on the Admissions Rules Subcommittee. Mr. Coyle also introduced Ginette Chapman, a staff attorney from the Office of the Presiding Disciplinary Judge, who provided

great help on the Admissions Rules Subcommittee. Mr. Coyle also introduced Charles Mendez, a third-year law student from the University of Denver Law School and an intern with the Office of Attorney Regulation Counsel, who is interested in legal ethics and is observing the meeting today.

Mr. Coyle announced that hard copies of OARC's 2013 Annual Report have been provided to everyone, and that he would appreciate any suggestions or criticisms regarding the report.

Mr. Coyle also announced that the pending bill in the legislature (SB14-27, "the fingerprint bill") has a provision that makes clear that the Colorado Supreme Court has full jurisdiction over the practice of law, by licensure or other authorization. He noted that the provision updates the archaic language previously contained in C.R.S. § 12-5-101(1).

Mr. Coyle began the Admissions Rules review by informing the committee that he will not go through the rules in detail, but will emphasize new concepts. He asked that everyone feel free to comment on any of the rules as he goes through the review.

Rule 204

Mr. Coyle explained that Rule 204 consists of different types of provisional licenses available in Colorado. These provisional licenses are called certifications and provide the right to practice law in Colorado without a full law license. The goal of Rule 204 was to place all of the different certifications in one location in the rules.

Rule 204.1 (Single-Client Counsel Certification) – The first friendly amendment, found in Rule 204.1, changed the provision regarding domicile to help applicants who intended to become domiciled in Colorado get through the certification process. Everyone on the subcommittee was pleased with the regulatory aspects of existing Rule 222 so the subcommittee only made small changes in proposed Rule 204.1.

Rule 204.2 (Foreign Legal Consultant Certification) – Mr. Coyle explained that this rule is based on the ABA model rule and allows foreign licensed attorneys to come to Colorado and practice the law allowed in their foreign jurisdiction. However, the foreign legal consultants still cannot practice Colorado law. Mr. Coyle asked Mr. Wells to elaborate on how the rule would be used, and Mr. Wells added that it is a concept found all over the world. Mr. Wells gave an example of a Mexican lawyer domiciled in Colorado who can give great advice on Mexican law while in Colorado. Another example is that of a big firm working on a large international merger involving Colorado and Japanese entities, and you may need a Japanese lawyer domiciled in Colorado for a long time while the merger takes place.

Ms. Cohen asked whether foreign legal consultants who are solo practitioners or in a small law firm can get malpractice insurance. Ms. Cohen added that she is in favor of

this rule but wonders about the practical aspects. Mr. Wells replied that the subcommittee discussed this, and the consensus was that the foreign legal consultants should be required to have malpractice insurance, and Mr. Wells has talked to different brokers regarding the affordability of such insurance. He said that large insurance carriers may not want to offer insurance policies for foreign legal consultants if it is only a small amount of business. If the policies are not affordable, then we would want the Colorado Supreme Court to have some discretion over requirements for a foreign legal consultant. The Chair inquired what the malpractice insurance would cover if the consultants are not performing any legal services in Colorado. Mr. Coyle replied that the consultants are advising Colorado clients about foreign law and we want to protect those clients. Ms. Covell noted that when she and Ms. Cohen were on a committee a while ago, there were small firms practicing securities law who could not get insurance coverage anywhere. She worries that the same concerns exist here. Mr. Coyle said that 31 states now allow foreign legal consultants and a good number of them require malpractice insurance. Mr. Coyle related that in his discussions with other jurisdictions, this was not raised as an issue that had been seen in these jurisdictions. Mr. Nielson asked whether malpractice insurers cross state boundaries to provide policies. Ms. Cohen said that CNA is one of the largest insurance carriers in the United States and provides policies in many states. Ms. Covell said that perhaps there is a way to pressure the insurance companies to provide this kind of coverage. Finally, on a different note, Ms. Cohen asked what the provision regarding “sanction” meant, whether that was for disciplinary sanctions or any court-ordered sanction. Mr. Coyle said it was for disciplinary sanctions.

Rule 204.3 (Judge Advocate Certification) – Mr. Coyle explained that this rule already existed in part in current C.R.C.P. 201.3(3). Judge advocates provide great benefit with little risk to Colorado consumers, and this rule allows certified judge advocates to practice as though they have a full Colorado law license while stationed in Colorado. This rule combined with the new on-motion rule found in Rule 203.2 allows Colorado to consider the judge advocate’s active practice while stationed in Colorado towards the practice time requirement for reciprocal admission.

Rule 204.4 (Military Spouse Certification) – Mr. Coyle explained this rule provides important support to military families and gives the military spouse better availability to practice in Colorado. This rule has support from the Military Spouse JD Network and the Conference of Chief Justices’ model rule. Justice Coats said that he remembered the Chief Justice saying something earlier regarding this rule, and that the legislature may be doing something to expand this rule. Mr. Coyle said such legislative expansion did get through the committee process and that the legislature is cognizant of the Supreme Court’s exclusive authority over licensing lawyers. Mr. Coyle added that this rule provided a greater level of licensure than the existing statute for other professions, which remains at one year for authority to practice until licensed.

Rule 204.5 (Law Professor Certification) – Mr. Coyle related that there are no big changes to this rule. Ms. Cohen asked whether the professor has to be admitted anywhere. Mr. Coyle replied that yes, professors must be admitted in a U.S. jurisdiction.

Rule 204.6 (Pro Bono Counsel Certification) – This rule is similar to the previous rule, but changed to conform with Colo. RPC 6.1 and Rule 260.8. Mr. Coyle thanked Judge Dan Taubman, Connie Talmadge, and Peter Schwartz for their valuable assistance with the drafting of this rule.

Thanks to the Admissions Rules Subcommittee

Mr. Coyle paused his review at this time to introduce the Admissions Rules subcommittee: Alec Rothrock, Dan Vigil, Rich Nielson, Brian Zall, Dick Reeve, Chris Markman, Todd Wells, Ginette Chapman, Matt Samuelson, Alan Obye, Jim Coyle, and extern Erika Holmes. This subcommittee has met every other week for 3 hours at a time since January 2013. Mr. Coyle said that he and the subcommittee had a lot of fun working on these rules. Ms. Cohen said the subcommittee did a great job. Mr. Coyle added that Alan Obye did a great job taking over the reporting duties, and the sub-subcommittee on editing which consisted of Alan Obye, Ginette Chapman, Chris Markman, and Rich Nielson did a wonderful job as well. Mr. Nielson said it was hard work because of the rules' impact on all the various other areas of the admissions rules, and it was difficult to maintain consistency. Mr. Coyle thanked the subcommittee for their great work.

Rule 205

Mr. Coyle then began to discuss proposed Rule 205. Mr. Coyle stated that Rule 205 contains all of the other circumstances in which the Supreme Court may authorize the practice of law in Colorado. These authorizations are more temporary in nature and do not require the same level of regulation.

Rule 205.1 (Temporary Practice by Out-of-State Attorney) – This is based on the current C.R.C.P. 220, the “driver’s license rule” which allows out-of-state attorneys to come to Colorado and practice law here as long as the attorney is not domiciled here and has no office here. The Chair asked, assuming that a lawyer came to Colorado to participate in arbitration, whether that particular lawyer may do so without any concern. Mr. Coyle said yes. The Chair asked if it was the same for a deposition, mediation, etc. Mr. Coyle said yes, as long as the lawyer is not domiciled in Colorado or have an office in Colorado, and short of entering the lawyer’s appearance in a state court of record, the lawyer may practice law in Colorado under those circumstances. The Chair suggested that it may be helpful to list those examples. Mr. Coyle agreed, and said that as we develop the new website, we will incorporate short videos explaining the practical effects of each of these rules.

Rule 205.2 (Temporary Practice by Foreign Attorney) – This rule is based on the ABA model rule. Mr. Coyle explained that an attorney may come to Colorado to advise as to the law of the foreign jurisdiction as long as the attorney is not domiciled in Colorado. Ms. Cohen asked about the difference between temporary practice by foreign attorneys and foreign consultants. Mr. Wells replied that the difference is primarily the concept of domicile; that temporary practice by foreign attorney is for attorneys who are coming in and out of Colorado, whereas certified foreign legal consultants may stay forever. Mr. Baker inquired, from CAMP’s perspective, what happens if a young attorney claims that attorney will only practice bankruptcy law, would that limitation fit with what the federal law allows? Mr. Coyle said that attorney may only practice federal law, and that they are allowed to be domiciled here, live here, and practice here; that this particular circumstance is not temporary practice by a foreign attorney but rather what is known as “federal practice only” attorneys. Ms. Covell asked about out-of-state lawyers practicing before being admitted, which prompted discussion; however, it was concluded that there is a rule coming up (Rule 205.6, practice pending admission) that will answer that question.

Rule 205.3 (Pro Hac Vice Authority Before State Courts – Out-of-State Attorney) – This rule has not changed and is based on C.R.C.P. 221.

Rule 205.4 (Pro Hac Vice Authority Before State Agencies – Out-of-State Attorney) – This rule is identical to C.R.C.P. 221.1 except for minor changes to reference other rules.

Rule 205.5 (Pro Hac Vice Authority – Foreign Attorney) – This rule is based on the ABA Model Rule on Pro Hac Vice Admission and has worked well in other jurisdictions.

Rule 205.6 (Practice Pending Admission) – Mr. Coyle related that this rule follows the ABA model rule that would allow an out-of-state attorney to move to Colorado and start practicing while admission is pending as long as such attorney is employed by and under the direct supervision of Colorado licensed attorneys. The only significant distinction between our rule and the ABA model rule is that the attorney licensed in another U.S. jurisdiction who comes to Colorado must file the application for admission before the attorney may temporarily practice in Colorado. Mr. Coyle explained that it is usually a safe bet that these attorneys who have been practicing in another jurisdiction without adverse incident will be admitted in Colorado. He added that Office of Attorney Admission’s goal is to reduce the time to process the on-motion applications to less than 4 months, but that this rule will allow us to do a “quick check” of the facts prior to a full investigation and give a preliminary ok for those 4 months while we conduct the full investigation. Again, the protection during these 4 months is that the attorney must be associated with and directly supervised by a Colorado attorney during this time period. The Vice Chair asked how you can be quickly satisfied that this applicant does not have any discipline pending anywhere. Mr. Coyle replied that the attorney must certify good standing on the application. Mr. Samuelson added that Office of Attorney Admissions

has already been doing a quick telephone check for single-client applicants, and they hope to do the same for applicants under this rule. It is a huge disincentive to lie on the application because the office will find out and the attorney will be disciplined. Justice Coats asked whether the 3-5 years of active practice requirement is the same as for the on-motion applications. Mr. Coyle said yes, the theory is that we can check the attorney's record in the other state. Justice Coats asked whether we are currently at 5 out of the past 7 years, and Mr. Coyle confirmed yes.

Rule 205.7 (Law Student Practice) – There are no changes to this rule except to change the term “dispensaries.”

Mr. Coyle concluded the review, saying that now we have all of these rules in one place where people can easily find them. Mr. Coyle further commented that these rules allow consumers of legal services greater choice in allowing them to choose attorneys they prefer to use, rather than being restricted by state border requirements. The rules are clear and consistent, and Mr. Coyle commends the subcommittee on a job very well done.

Mr. Coyle submitted the Admissions Rules 204-205 to the committee. The Chair asked for a motion to accept. Ms. Cohen moved, Ms. Covell seconded, and all were in favor of accepting the rules.

Mr. Coyle added that the office still has to propose to the Court the fees for each of the rules.

Presiding Disciplinary Judge Lucero then asked what happens if a lawyer has problems with these rules. Mr. Coyle said those matters would be handled per the language of the rule, either by automatic termination or through the procedures that would be overseen by the Presiding Disciplinary Judge's court, the same as anyone licensed who practices here under C.R.C.P. 251.1.

3. Update on the U.S.D.O.J. activities re: ADA; and NCBE proposals re: timing and content of the bar exam application

The Chair asked Mr. Coyle for the update on the U.S. Department of Justice activities regarding the content of the bar exam application. Mr. Coyle said the U.S.D.O.J. was looking at questions on the bar exam regarding mental health issues and whether such inquires were appropriate under the Americans with Disabilities Act (ADA). Louisiana was used as an example, where that state asked its bar applicants questions regarding mental health that may be violating the ADA when the applicant's past conduct and performance demonstrates fitness to practice law. Colorado will be following the discussions, but in the interim it has eliminated two questions from the bar exam application. The Chair asked if the distinction here is between asking the question about a condition versus an act, and that if it is not about an act, we cannot ask questions because it would be a violation of the ADA. Mr. Coyle confirmed yes, that the U.S.D.O.J. is challenging Louisiana's questions about diagnosis and treatment where there was no past act that raised concern about fitness.

Another proposal by the NCBE is to move up the dates for the bar exam (to mid June and early January), and there will be a Law Committee meeting on April 1 regarding this topic. Mr. Coyle said he will respond to the NCBE on this proposal after getting feedback from the law schools here and the Board of Law Examiners.

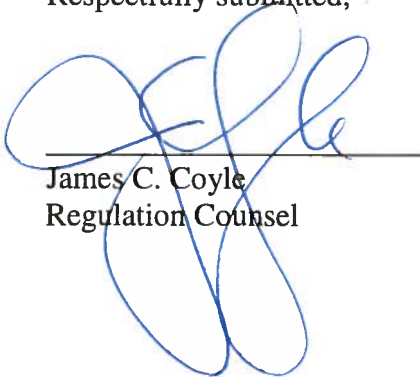
4. A Board member's review of the Trust Account Program

The Chair asked Mr. Vigil to give his review about the Trust Account School taught by OARC. Mr. Vigil explained that he attended the Trust Account School as a guest, and thought it was very helpful. He said that everything was very prepared, things were set up ahead of time, and people asked a lot of questions. Mr. Baker asked about the cost to attend, and if young lawyers can get scholarships. Mr. Coyle said yes, the cost is \$150 but the office gives scholarships. Mr. Sudler added that the office can also give copies of the Trust Account School material. Mr. Coyle stated that if anyone from the committee wants to audit a class, just let him know. Mr. Samuelson added that OARC often gives discounts to bookkeeping staff to attend the school. Mr. Coyle said OARC is thinking of adding another school for 6-15 year lawyers, and that having a program developed by more senior lawyers for those 6-15 year lawyers when most of the discipline begins to occur would probably be very helpful. The Chair said the Trust Account School also helps lawyers when they may be targeted by scams involving trust accounts.

5. Meeting adjourned

The Chair asked if there was any other business to discuss. Hearing none, the Chair adjourned the meeting at 1:18pm.

Respectfully submitted,



James C. Coyle
Regulation Counsel