



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

June 14, 2013, 11:30 a.m. – 1:15 p.m.
Sam Cary 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: None.

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; James S. Sudler, Chief Deputy Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; John Baker, Director of Colorado Attorney Mentoring Program; Alan Obye, Staff Attorney.

1. Introductions

The Chair asked everyone who did not attend the previous meeting to introduce themselves.

2. Approval of May 10, 2013 meeting minutes

Mr. Little moved to accept the May 10, 2013 meeting minutes. Mr. Reeve seconded. The meeting minutes were approved.

3. Review, discussion, and vote on proposed new C.R.C.P. 202-203, 208-212, and amendments to C.R.C.P. 251.3, 251.16, 251.34, and 251.35.

Mr. Coyle explained the background of the rule changes. The Advisory Committee formed a subcommittee, consisting of James Coyle, Alec Rothrock, Dan Vigil, Rich Nielson, Brian Zall, Chris Markman, Dick Reeve, Todd Wells, Matt Samuelson, Ginette Chapman, and Alan Obye,

to review the existing rules and consider rule changes to make them more user-friendly, easily accessible, and easily comprehensible. The rules had not been revised since 1998, so the subcommittee considered rules from every state in the process of revising the Colorado rules. Mr. Coyle thanked the subcommittee members for their hard work and significant time commitment over the past five months.

Mr. Coyle introduced the new proposed rules, C.R.C.P. 202-203, 208-212 and amendments to C.R.C.P. 251.3, 251.16, 251.34, and 251.35. Mr. Coyle then asked that the Advisory Committee approve these rule changes for submission to the Court.

Mr. Rothrock asked Mr. Coyle to highlight the significant changes in the rules to facilitate discussion.

Rule 202

Mr. Coyle began with a brief explanation of the new C.R.C.P. 202 which had the most significant change, including that the Advisory Committee be expanded to include the Chairs of the Law Committee and the now-named Character and Fitness Committee. Rule 202 also changes the composition of the Board of Law Examiners, providing for a 7 year term for members other than the chair and vice-chair, renaming the Bar Committee to Character and Fitness Committee, and including more citizens in the committee. Diversity will also be a priority in the composition of the board, as well as additional public participation in the process. With the new changes, the Office of the Board of Law Examiners will also fall under the Office of Attorney Regulation, making permanent the Court's December 1, 2011 Order which named Regulation Counsel as interim Executive Director of Board of Law Examiners.

Rule 203

Mr. Coyle continued to C.R.C.P. 203, which covers the application process for a Colorado license to practice law, including general procedures, on-motion application, uniform bar examination ("UBE") score transfer, and admission by examination. During their review, the subcommittee learned that some states publish the names of applicants, and decided that would be a good way for Colorado to get more public participation in the application process. Mr. Coyle explained some other changes to Rule 203, including specific duties of applicants who were suspended or disbarred in another state, who would now be required to go back to the state of origin to be reinstated or readmitted before they may be admitted in Colorado.

Ms. Cohen asked whether the subcommittee considered that some states have permanent disbarment, and how that would affect the new Rule 203 requirements for attorneys. Mr. Coyle replied that they had not discussed that issue. Mr. Vigil stated that the purpose of the changes to Rule 203 was to defer to that attorney's original state, but he also explained that he did not know some states had discipline of permanent disbarment, and was not sure that it changed his perspective on the changes to the rule.

Ms. Cohen asked, regarding Rule 203.1(3)(a) and (b) duty to supplement, whether there was a definition for “immediately” and “timely”, respectively. Mr. Coyle replied that the subcommittee had a discussion regarding the timeframe, but decided to leave the burden on the applicant to move quickly.

Mr. Coyle moved to the explanation of C.R.C.P. 203.2, the rule for applications for admission on motion by qualified out-of-state attorneys. The subcommittee largely adopted the ABA model rule for on-motion application, which was adopted by the ABA House of Delegates in August 2012.

Mr. Rothrock made the specific observation that under proposed Rule 203.2(1)(e), attorneys may not apply for on-motion admission if they are currently subject to attorney discipline, including probation. Mr. Coyle confirmed that was correct, and that attorneys must complete any discipline in other states before applying for on-motion admission in Colorado.

Ms. Covell asked whether the on-motion requirements apply on-motion if the attorney attended school in England. Mr. Coyle replied that the subcommittee discussed it, but decided that foreign attorneys must be admitted by passing the bar exam. Ms. Covell expressed approval of the rule change.

Mr. Coyle explained that C.R.C.P. 203.3, applications for admission on motion based upon UBE score transfer, currently contains two versions: Alternative #1 which is the current Colorado rule with minor corrections; and Alternative #2 which is the new version reflecting the trend in other states. The subcommittee is recommending Alternative #2 be presented to the Court, but is asking for feedback from the Advisory Committee.

Justice Coats inquired whether the UBE has such timeline requirements for participants. Mr. Coyle answered that each jurisdiction has flexibility on the length of time the UBE score transfer remains valid. The range is between 20 months and five years. Mr. Coyle stated that Alternative #2 is a simpler approach that the NCBE suggested, believing that both approaches will protect the public. Mr. Nielson confirmed that existing UBE states are all over the place on the timeframes of UBE score transfers.

Ms. Cohen asked whether the subcommittee will provide a written report about the rule changes, and Mr. Coyle replied that it will.

The Chair suggested that the Advisory Committee take a vote to see which version of the rule it preferred. Vote taken; none for Alternative #1, the majority voted for Alternative #2.

Mr. Coyle then began discussion of changes to C.R.C.P. 203.4, applications for admission by Colorado bar examination. Mr. Coyle explained that the goal was to make the rule more clear to applicants. The deadlines for bar examination applications have been moved up to April 1 for July examination and November 1 for February examination. This allows more time to fully investigate, particularly special accommodation requests which require expert review.

There was discussion regarding requirements for foreign applicants applying for bar examination.

Ms. Cohen asked what happens in a scenario in which an applicant who graduated with a law degree from England, but did not get a law license in England, was then admitted to the bar in New York, then applied to the Colorado bar to take the bar examination. Ms. Covell read aloud Rule 203.4(3)(c) and there was consensus that the changes in the rule allowed that applicant to take the Colorado bar examination.

Mr. Coyle then briefly explained other changes to Rule 203.4. The Chair asked Mr. Coyle whether he was going to include summaries of upcoming changes to other rules that will help the Court understand these rule changes as a whole. Mr. Coyle replied that yes, he will supply a summary to the Court.

Justice Coats asked what the ABA was doing with foreign treaties in regard to attorney regulation in the United States. Mr. Coyle replied that the ABA has been discussing the impact of the foreign treaties on practice of law issues and that Colorado's rule changes are still in compliance with requirements flowing from such treaties, such as the WTO, GATS agreement, APEC, and NAFTA.

Rule 208

Mr. Coyle moved on to the discussion of C.R.C.P. 208 through 212. He explained that the subcommittee worked very hard to improve this section of the rules. Prior to the new changes, there was no definitiveness in the language of the rules. The subcommittee's goal was to emphasize a roadmap for good character and the process of becoming a licensed professional in Colorado.

Ms. Cohen asked why the subcommittee included Rule 208.1(3), discussing a lawyer's responsibilities, in the character and fitness investigation section. She did not think it tied in with the purpose of this rule, and wondered what connection it had with the applicant. Mr. Zall explained that Inquiry Panels ask about incidents that occurred to the applicant and how the standards for lawyers apply to those incidents. Mr. Baker added that the lawyer's responsibilities are similar to what is included in the preamble to the rules. Discussion followed regarding how a lawyer's responsibilities impact the applicant.

Mr. Coyle explained that additional changes to Rule 208 include changes to the formal hearings, where the Presiding Disciplinary Judge will now be participating on the Hearing Board. The rule now includes more specific procedures to institutionalize the hearing process. The burden on the applicant for the formal hearing has been changed to clear and convincing evidence. The Supreme Court's review process has also been changed to better fit with appellate and other Supreme Court rules.

Mr. Rothrock asked about confidentiality of the process. Mr. Coyle replied under the proposed rule, matters are confidential until the filing of written exceptions. If a party wishes to maintain confidentiality at the Supreme Court level, the party would file for a protective order. Mr. Zall stated that CoLAP has some part in the hearing process, so he has highlighted confidentiality issues with Barb Ezyk. Mr. Zall also mentioned that there are opportunities to get a protective order if confidentiality becomes a concern.

Rule 210

During discussion of C.R.C.P. 210, regarding revocation of licenses, Mr. Sudler noted that a revocation proceeding has only occurred once, and there were no procedures set up for such a proceeding. These changes now establish a procedure.

Ms. Cohen asked whether there was a time period for revocation. Mr. Coyle answered that the subcommittee contemplated a 3 year limitation of revocation period, and after that such matters may proceed in the disciplinary setting. A friendly amendment was made to add that 3 year limitation provision to the rule. The Chair asked for clarification on the authority for the revocation hearing. Mr. Coyle explained that under the new changes, the petition for review is submitted to the Court. The Court reviews the petition and decides whether the matter shall go to the hearing board. The hearing board will consist of the Presiding Disciplinary Judge and 2 members of the Character and Fitness Committee. If the petition shows that the applicant would not have been admitted had the committee known of the facts at the time, then the hearing board finds a basis for revocation. Mr. Nielson asked why we should even have a time limit for revocation. Discussion regarding this issue followed, with the majority favoring a 3 year time limit with discipline as an alternative method after the time period expires. The Chair announced that there was an agreement to include the 3 year provision in the rule.

Rule 211

Mr. Coyle explained that the new provisions contained in this rule provides for publication of all applicant names and cities of residence, giving an opportunity to comment on the applicant's character and fitness.

Rule 212

Mr. Coyle explained that this rule puts in writing the plenary power of the Supreme Court, similar to C.R.C.P. 251.1(d).

Conclusion

The Chair asked for a motion to recommend the rule changes. Ms. Miller moved. Mr. Little seconded. The Advisory Committee passed the motion to recommend the rule changes to the Court, with friendly amendments to Rule 208.1(3) that an applicant should understand the expectations of a lawyer's responsibilities under the Rules of Professional Conduct; and to Rule

210.2(1), putting a three year limitation from the date of admission to file a petition for revocation.

4. Request for Advisory Committee approval of the recommendation to the Court of proposed appointments of Lance P. Timbreza and Carey Taylor Markel for the Attorney Regulation Committee

The Chair opened the discussion for the recommendation of two proposed appointments to the Attorney Regulation Committee. Ms. Covell asked why Mr. Timbreza resigned from the Washington bar. Mr. Jacobson explained that Mr. Timbreza resigned because he wanted to come back to Colorado, his home, and there was no other reason for the resignation.

Ms. Cohen moved to accept the recommendation for Mr. Timbreza, and Mr. Reeve seconded. Mr. Jacobson moved to accept the recommendation for Ms. Markel, and Mr. Reeve seconded. The recommendations to the Court were so accepted by the Advisory Committee.

5. Request for Advisory Committee approval of the recommendation to the Court of proposed appointment of Mac Danford as Attorney Regulation Committee vice-chair, and for an order creating an exception to C.R.C.P. 251.2(a)(3) requirement that the vice-chair be a member of the Colorado Bar

The Chair stated that Mr. Danford has been a great contributor to the Attorney Regulation Committee. The Chair asked if anyone wanted to discuss this request. Mr. Jacobson stated that the Advisory Committee will write a letter to the Court to ask for an exception to C.R.C.P. 251.2(a)(3).

Mr. Reeve moved to approve, and Mr. Nielson seconded. The Advisory Committee approved the request.

6. Recognition of Colorado Supreme Court Chief Justice-designate Nancy E. Rice and Chief Judge-designate Alan Loeb

The Chair congratulated the new Colorado Supreme Court Chief Justice-designate Nancy E. Rice and the new Chief Judge-designate Alan Loeb, and expressed how much everyone was looking forward to working with them.

7. Next meeting

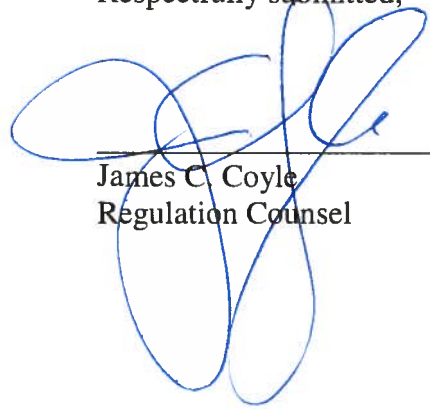
The Chair announced the proposed dates for the next meetings. The Advisory Committee accepted the following dates for the next meetings:

September 6, 2013
December 13, 2013

8. Adjournment

The meeting adjourned at 1:15 p.m.

Respectfully submitted,



James C. Coyle
Regulation Counsel