

## **RULE CHANGE 2011(10)**

### **COLORADO RULES OF CIVIL PROCEDURE**

#### **Rule 201.3(3) Classification of Applicants**

**Rule 224. Provision of Legal Services Following Determination of a Major Disaster (new)**

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#### **Rule 201.3(3) Classification of Applicants**

(3) A full-time commissioned officer and judge advocate of the military services of the United States stationed in this state may be temporarily admitted to the Bar of Colorado, upon request of his or her commanding officer. Such admission shall be solely for the purpose of practice and court appearance in his or her capacity as a judge advocate and shall continue only as long as he or she is serving as a judge advocate in Colorado, except that the attorney shall also be allowed to act as a pro bono/emeritus attorney as described in C.R.C.P. 223(1) below without further application or fee.

#### **Rule 224. Provision of Legal Services Following Determination of a Major Disaster**

**(1) Determination of Major Disaster.** Solely for purposes of this rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

- (a) The state of Colorado, and whether the emergency caused by the major disaster affects the entirety or only a part of this state, or
- (b) Another jurisdiction in the United States, but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction.

**(2) Temporary Practice in Colorado Following a Major Disaster in Colorado.** Following the determination of an emergency in Colorado pursuant to paragraph (1) of this rule, an out-of-state attorney who meets the conditions of C.R.C.P. 220 (1)(a) and (b) may be allowed to establish a place for the temporary practice of law from which the attorney may provide legal services not otherwise authorized by Rule 220. The terms and conditions of such temporary practice will be set forth in the Supreme Court's emergency order, and will depend upon the nature and extent of the emergency affecting the justice system, and the needs for legal services resulting from such emergency.

**(3) Temporary Practice in Colorado Following A Major Disaster in Another Jurisdiction.** Following the determination of a major disaster in another jurisdiction in the United States, pursuant to paragraph (1) of this rule, an out-of-state attorney who meets the conditions of C.R.C.P. 220(1) (a) and (b) may establish a place for the temporary practice of law in Colorado not otherwise authorized by C.R.C.P. 220, from which such attorney may provide legal services related to that attorney's practice of law in the licensing jurisdiction or the area of such licensing jurisdiction where the major disaster occurred.

**(4) Duration of Authority for Temporary Practice.** The authority for an out-of-state attorney to maintain a place for the practice of law in Colorado as described in paragraphs (2) and (3) shall end when the Supreme Court determines that the conditions caused by the major disaster have ended. The Supreme Court may allow a winding down period for such temporary practice offices.

**(5) Court Appearances.** The authority granted by this rule does not include appearances in Colorado state courts of record or administrative tribunals, except:

(a) When the out-of-state attorney files a motion for *pro hac vice* admission pursuant to C.R.C.P. 221 and 221.1, and obtains permission from the trial court for such appearance (the Supreme Court may waive *pro hac vice* admission fees at the time of the determination of the major disaster as described in paragraph (1) or at any time thereafter while the determination remains in effect); or

(b) When the Supreme Court, in any determination made under paragraph (1), grants blanket permission to attorneys providing legal services pursuant to paragraph (2) to appear in all or designated Colorado courts or administrative tribunals, thereby suspending the *pro hac vice* application and fee requirements set forth in C.R.C.P. 221 and 221.1.

**(6) Disciplinary Authority and Registration Requirement.** Out-of-state attorneys who establish a place for the temporary practice of law in Colorado pursuant to paragraphs (2) or (3) are subject to this Supreme Court's disciplinary authority and the Colorado Rules of Professional Conduct as provided in C.R.C.P. 220(3) and Colo. RPC 8.5. Prior to opening such place for the temporary practice of law in Colorado, these out-of-state attorneys shall file a registration statement with the Colorado Supreme Court Office of Attorney Registration. The registration statement shall be in a form prescribed by the Supreme Court. Any out-of-state attorney who provides legal services pursuant to this rule shall not be considered to be engaged in the unauthorized practice of law in Colorado, and shall be deemed, for the purposes of Colorado Revised Statutes, Title 12, Article 5, Sections 101, 112 and 115, to have obtained a license for the limited scope of practice specified in this rule.

**(7) Notification to Clients.** Out-of-state attorneys who establish a place for the temporary practice of law in Colorado pursuant to paragraph (2) shall inform Colorado clients in writing, at the time the relationship commences, of the jurisdiction(s) in which the attorney is licensed or otherwise authorized to practice law, any limits on that authorization, and that the attorney is not authorized to practice law in Colorado except as permitted by this rule and the Court's emergency order.

## **Rule 226.5. Legal Aid Dispensaries and Law Student Externs**

### **(1) Legal Aid Dispensaries.**

Students of any law school that maintains a legal-aid dispensary where poor or legally underserved persons receive legal advice and services shall, when representing the dispensary and its clients, be authorized to advise clients on legal matters and appear in any court or before any administrative tribunals or arbitration panel in this state as if licensed to practice law.

### **(2) Law Student Externs.**

#### **A. Practice by law student extern (formerly section 12-5-116.1)**

(1) An eligible law student extern, as specified in section 2B, may appear and participate in any civil proceeding in any municipal, county, or district court (including domestic relations proceedings) or before any administrative tribunal in this state, or in any county or municipal

court criminal proceeding, except when the defendant has been charged with a felony, or in any juvenile proceeding in any municipal, county or district court, or before any magistrate in any juvenile or other proceeding or any parole revocation under the following circumstances:

(a) If the person on whose behalf the extern is appearing has provided written consent to that appearance and the law student extern is under the supervision of a supervising lawyer, as specified in section 2D.

(b) When representing the office of the state public defender and its clients, if the person on whose behalf the extern is appearing has provided written consent to that appearance and the law student extern is under the supervision of the public defender or one of his deputies.

(c) On behalf of the state or any of its departments, agencies, or institutions, a county, a city, or a municipality, with the written approval and under the supervision of the attorney general, attorney for the state, county attorney, district attorney, city attorney, or municipal attorney. A general approval for the law student extern to appear, executed by the appropriate supervising attorney pursuant to this paragraph (c), shall be filed with the clerk of the applicable court/administrative tribunal and brought to the attention of the judge/presiding officer thereof.

(d) On behalf of a nonprofit legal services organization where poor or legally underserved persons receive legal advice and services if the person on whose behalf the student is appearing has provided written consent to that appearance and the law student extern is under the supervision of a supervising lawyer, as specified in Section 2D.

(2) The consent or approval referred to in subsection (1) of this section, except a general approval, shall be made in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

(3) In addition to the activities authorized in subsection (1) of this section, an eligible law student extern may engage in other activities under the general supervision of a supervising lawyer, including but not limited to the preparation of pleadings, briefs, and other legal documents which must be approved and signed by the supervising lawyer and assistance to indigent inmates of correctional institutions who have no attorney of record and who request such assistance in preparing applications and supporting documents for post conviction relief.

**B. Eligibility requirements for law student extern practice** (formerly section 12-5-116.2)

(1) In order to be eligible to make an appearance and participate pursuant to section 2A, a law student must:

(a) Be duly enrolled in an ABA accredited law school, or a recent graduate of such a law school who has applied for admission to the Colorado Bar. For purposes of this rule, the “law student’s” eligibility continues after graduation from law school and until the announcement of the results of the first bar examination following the student’s graduation, provided for anyone who passes that examination, eligibility shall continue in effect through the date of the first swearing in ceremony following the examination.

(b) Have completed a minimum of two years of legal studies;

(c) Have the certification of the dean of such law school that the dean has no personal knowledge of or knows of nothing of record that indicates that the student is not of good moral character and, in addition, that the law student has completed the requirements specified in paragraph (b) of this subsection (1) and is a student in good standing, or recently graduated. The dean of such law school has no continuing duty to certify the student’s good moral character after the student has graduated from law school [at that point, the law student/applicant to the Colorado Bar has obligations to maintain the integrity of the profession pursuant to Colo. RPC 8.1].

- (d) Be introduced to the court or administrative tribunal in which the extern is appearing as a law student extern by a lawyer authorized to practice law in this state;
- (e) Neither ask nor receive any compensation or remuneration of any kind for the extern's services from the person on whose behalf the extern renders services; but such limitation shall not prevent the law student extern from receiving credit for participation in the law school externship program upon prior approval of the law school, nor shall it prevent the law school, the state, a county, a city, a municipality, or the office of the district attorney or the public defender from paying compensation to the law school extern, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require; and
- (f) State that the extern has read, is familiar with, and will be governed in the conduct of the extern's activities under section 2A by the Colorado Rules of Professional Conduct.

**C. Certification of law student extern by law school dean—filing—effective period—withdrawal by dean or termination** (formerly section 12-5-116.3)

- (1) The certification by the law school dean, pursuant to section 2B(1)(c), required in order for a law student extern to appear and participate in proceedings:
  - (a) Shall be filed with the clerk of the Colorado Supreme Court Office of Attorney Registration, and unless it is sooner withdrawn, shall remain in effect until the student's graduation.
  - (b) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of the Colorado Supreme Court Office of Attorney Registration, and such withdrawal may be without notice or hearing and without any showing of cause; and
  - (c) May be terminated by the supreme court at any time without notice or hearing and without any showing of cause.

**D. Qualifications and requirements of supervising lawyer** (formerly section 12-5-116.4)

- (1) A supervising lawyer, under whose supervision an eligible law student extern appears and participates pursuant to section 2A, shall be authorized to practice law in this state and:
  - (a) Shall be a lawyer working for or on behalf of an organization identified in sections 2A(1)(b)–(d);
  - (b) Shall assume personal professional responsibility for the conduct of the law student extern; and
  - (c) Shall assist the law student extern in the extern's preparation to the extent the supervising lawyer considers it necessary.

### **Rule 251.5. Grounds for Discipline**

Misconduct by an attorney, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:

- (a) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct;
- (b) Any criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action;
- (c) Any act or omission which violates these Rules or which violates an order of discipline or disability; or
- (d) Failure to respond without good cause shown to a request by the committee, the Regulation

Counsel, or the Board of Trustees of the Colorado Attorneys' Fund for Client Protection or obstruction of the committee, the Regulation Counsel, or the Board or any part thereof in the performance of their duties. Good cause includes, but is not limited to, an assertion that a response would violate the respondent's constitutional privilege against self-incrimination.

This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

#### **Rule 254. Colorado Lawyer Assistance Program.**

**(1) Colorado Lawyer Assistance Program.** The Colorado Supreme Court hereby establishes an independent Colorado Lawyer Assistance Program ("COLAP"). The goal of such program is:

- (a) To protect the interests of clients, litigants and the general public from harm caused by impaired attorneys or judges;

- (b) To assist impaired members of the legal profession to begin and continue recovery; and

- (c) To educate the bench, bar and law schools to the causes of and remedies for impairments affecting members of the legal profession.

Such program and its director shall be under the supervision of the Supreme Court Advisory Committee ("Advisory Committee") as set forth in C.R.C.P. 251.34(b)(3).

**(2) COLAP Services.** The Attorney Assistance Program shall provide the following services:

- (a) Immediate and continuing assistance to members of the legal profession who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice;

- (b) Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;

- (c) Investigation, planning and participation in interventions with members of the legal profession in need of assistance;

- (d) Aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and

- (e) Monitoring services that may include the following: alcohol and/or drug screening programs; tracking aftercare, peer support and twelve step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

**(3) Director.** The Advisory Committee shall recruit, retain, and supervise a COLAP Director. The Director shall serve at the pleasure of the Advisory Committee as an at-will employee. The Advisory Committee shall set the Director's annual salary subject to periodic review. The Director shall have the same employee benefits as the employees of the Colorado Judicial Department. The Director shall coordinate the annual budget of COLAP with the Advisory Committee. A portion of the annual attorney registration fee shall be used to establish and administer COLAP.

**(4) Qualifications.** The director shall have sufficient experience and training to enable the director to identify and assist impaired members of the legal profession.

**(5) Powers and Duties.** The COLAP Director shall act in accordance with these Rules and shall:

- (a) Provide initial response to help line calls.
- (b) Help Attorneys, judges, law firms, courts and others to identify and intervene with impaired members of the legal profession.
- (c) Help members of the legal profession to secure expert counseling and treatment for chemical dependency and other illnesses, maintaining current information on available treatment services, both those that are available without charge as well as paid services.
- (d) Establish and maintain regular contact with other bar associations, agencies and committees that serve either as sources of referral or resources in providing help.
- (e) Establish and oversee monitoring services with respect to recovery of members of the legal profession for whom monitoring is appropriate.
- (f) Plan and deliver educational programs for the legal community with respect to all sources of potential impairment as well as treatment and preventative measures.
- (h) Perform such other duties as the Supreme Court or Advisory Committee may direct.

**(6) Confidentiality.**

- (a) Information and actions taken by COLAP shall be privileged and held in strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of COLAP, unless such disclosure is authorized by the member of the legal profession to whom it relates. Such information and actions shall be excluded as evidence in any complaint, investigation or proceeding before the Supreme Court Attorney Regulation Committee, the Presiding Disciplinary Judge of the Supreme Court, or the Colorado Supreme Court.
- (b) COLAP employees, and volunteers recruited under this rule shall be deemed to be participating in a lawyer's peer assistance program approved by the Colorado Supreme Court as provided in Colo. RPC 8.3(c).

**(7) Immunity.**

- (a) Any person reporting information to COLAP employees or agents including volunteers recruited under rule 254 shall be entitled to the immunities and presumptions under C.R.C.P. 251.32(e).
- (b) COLAP members, employees and agents including volunteers recruited under rule 254 shall be entitled to the immunities and presumptions under C.R.C.P. 251.32(e).
- (c) COLAP members, employees and agents including volunteers recruited under rule are relieved of the duty of disclosure of information to authorities as imposed by Rule 8.3(a).

**Amended and Adopted by the Court, En Banc June 16, 2011, effective immediately.**

**By the Court:**

**Nathan B. Coats**  
**Justice, Colorado Supreme Court**

**Monica M. Márquez**  
**Justice, Colorado Supreme Court**