

2001 PERMANENT RECORD

Rule Change #2001(19)

THE COLORADO RULES OF CIVIL PROCEDURE

CHAPTER 19. UNAUTHORIZED PRACTICE OF LAW RULES

C.R.C.P. 231(a)(1)-(3); (3)(d). Regulation Counsel; Duties and Powers

C.R.C.P. 232(a)-(e). Investigation; General; Subpoenas **[REPEALED]**

C.R.C.P. 233(a)-(g). Investigation; Procedure **[REPEALED]**

C.R.C.P. 232.5(a)-(i). Investigation; Procedure; Subpoenas

C.R.C.P. 240(c), (d.5). General Provisions; Qualifications of Hearing Master; Access to Information Concerning Proceedings Under these Rules

Amended and adopted by the Court, En Banc, October 29, 2001, effective immediately.

Rule 228. Jurisdiction

[No change.]

**Rule 229. Appointment and Organization
of Unauthorized Practice of Law Committee**

[No change.]

Rule 230. Committee Jurisdiction

[No change.]

Rule 231. Regulation Counsel; Duties and Powers

Regulation Counsel, appointed by the Supreme Court pursuant to ~~Rule~~C.R.C.P. 251.3, shall have the following duties and powers, in addition to those set forth in ~~said Rule~~C.R.C.P. 251.3:

(a)(1) To investigate and to assist with the investigation of all matters within the jurisdiction of the Committee, upon the request and at the direction of members of the Committee; to dismiss allegations as provided in C.R.C.P. 232.5(c); and to report to the Committee as provided in C.R.C.P. 232.5(d).

(2) To prepare and prosecute, or assist in the preparation and prosecution of, civil-injunction proceedings as provided in C.R.C.P. 234 to 237.

(3) To prepare and prosecute, or assist in the preparation and prosecution of, contempt proceedings as provided in C.R.C.P. 238 and 239.

(b) To maintain records in the office of the Committee, in an appropriately cataloged manner, of all matters coming within the jurisdiction of the Committee.

(c) To provide facilities for the administration of proceedings under these rules and for receiving and filing all requests of investigation and all complaints concerning matters within the jurisdiction of the Committee.

(d) To employ such staff, including investigative and clerical personnel, subject to approval of the Committee, as may be necessary to carry out ~~his~~the duties under these rules.

(e) To perform such other duties as the Chair or the Supreme Court may require.

Rule 232 (REPEALED)

~~Rule 232. Investigations; General, Subpoenas~~

~~—— (a) All matters within the jurisdiction of the Committee shall be referred to the Regulation Counsel who shall either conduct an investigation or, with the concurrence of the Chair, refer the matter to a member of the Committee pursuant to this rule or to an enlisted member of the bar pursuant to Rule 229(d) for investigation. Upon completion of such investigation, the person who investigated the matter shall submit a written report of the investigation, findings, and recommendations to the Committee.~~

~~—— (b) The Committee, or a panel thereof consisting of no fewer than three Committee members, shall act upon said reports, findings and recommendations, and determine whether the matter shall be dismissed or disposed of informally as provided in C.R.C.P. 233, or whether civil injunction proceedings or contempt proceedings, as provided by these rules, shall be instituted against a respondent.~~

~~—— (c) In connection with an investigation of the unauthorized practice of law, the Chair of the Committee or the Regulation Counsel may issue subpoenas to compel the attendance of respondents and other witnesses and the production of pertinent books, papers document, or other evidence. All such subpoenas shall be subject to provisions of C.R.C.P. 45.~~

~~—— (d) Any person subpoenaed to appear and give testimony or to produce books and records, or any person having been sworn to testify and who refuses to answer any proper questions, may be cited for contempt as provided by Rule 107, C.R.C.P.~~

~~—— (e) Each person who investigates a matter, acting pursuant to and in conformity with these rules, shall have the power to administer oaths and affirmations and to take and have transcribed the testimony and evidence of witnesses.~~

Rule 233 (REPEALED)

Rule 233. Investigation; Procedure

~~—— (a) When a matter comes to the attention of the Committee by way of a complaint, the complainant shall be required, unless excused by the Regulation Counsel, to state the complaint in writing and subscribe the same.~~

~~—— (b) Promptly after receipt of a written request for investigation or complaint, the Regulation Counsel shall determine whether to proceed with an investigation. In making a determination whether to proceed, the Regulation Counsel may make such inquiry regarding the underlying facts as the Regulation Counsel deems appropriate.~~

~~—— (c) If the Regulation Counsel determines to proceed with an investigation or refers the matter to a member of the~~

~~Committee or to an enlistee for investigation pursuant to Rule 232(a), the respondent shall be notified that the investigation is being conducted, shall be provided with a copy of the complaint and of the rules governing the investigation, and shall be asked to file with the Regulation Counsel or the person conducting the investigation a written answer to the complaint within 20 days after notice of the investigation is given.~~

~~—— (d) If the Committee, acting upon a report pursuant to Rule 232 (b), determines that it believes that the conduct in question does not constitute the unauthorized practice of law, the Committee shall dismiss the case and notify the complainant, if any, and the respondent.~~

~~—— (e) If the Committee, acting pursuant to Rule 232(b), determines that it believes that the conduct constitutes the unauthorized practice of law, the Committee, prior to determining whether further proceedings shall be instituted against the respondent, may offer the respondent an opportunity to enter into a written agreement to refrain from the conduct in question, to refund any fees collected, and to make restitution.~~

~~—— (f) Informal disposition of matters, as provided by this rule, is to be encouraged. All proceedings pursuant to these rules shall be expeditiously conducted.~~

~~—— (g) When a matter comes to the attention of the Committee by way of a request for investigation or a complaint, which is later dismissed, the complainant may pursue the matter further by filing a petition, as provided in either Rule 234 or Rule 238, in the complainant's own name. If such a petition is filed, the Regulation Counsel shall not be required to prepare the petition or prosecute the matter. If the complainant files a petition in the complainant's own name pursuant to this provision, the complainant shall post with the Committee a \$500 deposit against which the costs of the proceedings may be assessed if at the conclusion of the proceedings it is determined that there was no reasonable cause to believe that the unauthorized practice of law occurred.~~

Rule 232.5. Investigation; Procedure; Subpoenas

(a) All matters within the jurisdiction of the Committee shall be referred to the Regulation Counsel who shall either conduct an investigation or, if the Chair concurs, refer the matter to a member of the Committee pursuant to this rule or to an enlisted member of the Bar pursuant to C.R.C.P. 229(d) for investigation. Unless excused by the Regulation Counsel, the complainant shall be required to submit the complaint in writing and subscribe the same.

(b)(1) Promptly after receiving a written request for investigation or complaint, the Regulation Counsel shall determine whether to proceed with an investigation. In making such determination, the Regulation Counsel may make such inquiry regarding the underlying facts as the Regulation Counsel deems appropriate.

(2) If the Regulation Counsel determines to proceed with an investigation or refers the matter to a member of the Committee or an enlistee for investigation pursuant to C.R.C.P. 232.5(a), the respondent shall be: notified that the investigation is underway; provided with a copy of the complaint and of the rules governing the investigation; and asked to file with the Regulation Counsel or the person conducting the investigation a written answer to the complaint within 20 days after notice of the investigation is given.

(c) When the investigation is concluded, the Regulation Counsel shall either dismiss the allegations or report to the Committee for a determination as provided in paragraph (d) of this rule. If the Regulation Counsel dismisses the allegations, the person making the allegations may request review of the Regulation Counsel's decision by the Committee. If such review is requested, the Committee shall review the matter and make a determination as provided in paragraph (d). The Committee shall sustain the dismissal unless it finds that the Regulation Counsel's action constituted an abuse of discretion. If the Committee sustains a dismissal, it shall furnish the person making the allegations with a written explanation of its decision.

(d) If, after conducting an investigation, the Regulation Counsel believes that the Committee should authorize an informal disposition, civil-injunction proceedings, or contempt proceedings, the Regulation Counsel shall submit a report of the investigation and a recommendation to the Committee. The Committee shall then decide whether to:

(1) dismiss the matter; provided that the dismissal may be either with or without a finding of the unauthorized practice of law, and the letter of dismissal may contain cautionary language if appropriate; and provided that the person making the allegation shall be furnished a written explanation of the Committee's decision;

(2) conduct further investigation;

(3) enter into an informal disposition with the respondent consisting of a written agreement by the respondent to refrain from the conduct in question, to refund any fees collected, and to make restitution; such informal dispositions are to be encouraged;

(4) commence civil-injunction proceedings as provided in C.R.C.P. 234 to 237; or

(5) commence contempt proceedings as provided in C.R.C.P. 238 and 239.

(e) At least three Committee members must be present for the Committee to act upon said reports, findings, and recommendations.

(f) In connection with an investigation of the unauthorized practice of law, the Chair or the Regulation Counsel may issue subpoenas to compel the attendance of respondents and other witnesses or to compel the production of books, papers, documents, or other evidence. All such subpoenas are subject to the provisions of C.R.C.P. 45.

(g) Any person subpoenaed to appear and give testimony, or to produce books or records, who refuses to appear and give testimony, or to produce the books or records; and any person having been sworn to testify and who refuses to answer any proper questions, may be cited for contempt of the Supreme Court, as provided in C.R.C.P. 107.

(h) Any person investigating a matter pursuant to these rules shall have the power to administer oaths and affirmations, and to take and have transcribed the testimony and evidence of witnesses.

(i) Any person who knowingly obstructs the Regulation Counsel or the Committee, or any part thereof, in the performance of their duties may be cited for contempt of the Supreme Court, as provided in C.R.C.P. 107.

Rule 234. Civil Injunction Proceedings; General

[No change.]

**Rule 235. Civil Injunction Proceedings;
Hearing Master, Powers, Procedure**

[No change.]

**Rule 236. Civil Injunction Proceedings;
Report of Hearing Master; Objections**

[No change.]

**Rule 237. Civil Injunction Proceedings;
Determination by Court**

[No change.]

Rule 238. Contempt Proceedings; General

[No change.]

**Rule 239. Contempt Determination by Court Proceedings;
Report of Hearing Master; Objections**

[No change.]

**Rule 240. General Provisions; Qualifications of Hearing Master;
Access to Information Concerning Proceedings Under these Rules**

(a)-(b) [No change.]

(c) Except as otherwise provided by these rules or by order of the Supreme Court, all proceedings conducted pursuant to these rules shall be confidential, and the files and records of the Committee shall be confidential and shall not be made public.

Except as otherwise provided by these rules, any person who wishes to disclose or to make public the pendency, subject matter, or status of proceedings which are otherwise confidential or to disclose or to make public the files and records of the Committee which are otherwise confidential or to gain access to the files and records of the Committee which are otherwise confidential shall file a petition with the Supreme Court setting forth the specific reasons why the existence of the particular proceedings should not remain confidential or the specific reasons why the disclosure of particular files and records or access to them should be permitted.

Upon final determination of any proceedings conducted pursuant to these rules, notice of the disposition of the matter shall be given by Regulation Counsel or the Clerk of the Supreme Court to the respondent, the complainant, and their counsel of record. Any person having received notice that a written agreement has been entered pursuant to ~~Rule 233(d)~~ C.R.C.P. 232.5(d)(3) shall treat such information as confidential and shall not disclose such information to anyone, except by order of the Supreme Court. Any person who makes a disclosure other than as permitted by these rules or by order of the Supreme Court may be subject to punishment for contempt of the Supreme Court.

(d)(1)-(7) [No change.]

(d.5) Access to the files and records of the Committee may be granted by the Committee or the Regulation Counsel, provided a request for disclosure or access is made in writing by:

(1) An entity authorized to investigate the qualifications of persons for admission to practice law;

(2) An entity authorized to investigate the qualifications of persons for government employment;

(3) An agency authorized to investigate allegations of unauthorized practice of law;

(4) An entity authorized to investigate the qualifications of judicial candidates;

(5) A lawyer discipline enforcement agency; ~~or~~

(6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States; or

(7) A state or federal judicial or administrative court or agency with which the respondent has had previous contact.

If the Regulation Counsel discloses confidential information to a judicial nominating commission of the State of Colorado or grants a judicial nominating commission access thereto, the Regulation Counsel shall give written notice to the respondent that specified confidential information has been so disclosed or that access has been granted.

(e) [No change.]

Rule 240.1. Immunity [No change.]

Amended and adopted by the Court, En Banc, October 29, 2001, effective immediately.

BY THE COURT:

Rebecca Love Kourlis
Justice, Colorado Supreme Court

Michael L. Bender
Justice, Colorado Supreme Court