



Dora
Department of Regulatory Agencies

2013 Review: Proposal for Mandatory Continuing Education for Private Investigators

August 9, 2013



Executive Director's Office

Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

August 9, 2013

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

As a part of the Executive Director's Office within the Department of Regulatory Agencies (DORA), the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct reviews of proposals to require mandatory continuing education with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluation of the proposal to impose continuing education requirements on private investigators and is pleased to submit this written report. The report is submitted pursuant to section 24-34-901, Colorado Revised Statutes, which provides that DORA shall conduct an analysis and evaluation of the proposal to determine whether mandatory continuing education would likely protect the public served by the practitioners.

Sincerely,

Barbara J. Kelley
Executive Director



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Background

Prior to introduction of legislation designed to impose a mandatory continuing education requirement on a regulated occupation or profession, the proponents of the legislation must submit information concerning the need for such a requirement to the office of the Executive Director of the Department of Regulatory Agencies. The Executive Director is required to review, analyze, and evaluate the proposal and report in writing to the General Assembly whether mandatory continuing education would likely protect the public. Section 24-34-901, Colorado Revised Statutes, states:

Proposed continuing education requirements for regulated occupations and professions - review by office of executive director.

(1) Before any bill is introduced in the general assembly that contains, or any bill is amended to contain, a mandatory continuing education requirement for any occupation or profession, the practice of which requires a state of Colorado license, certificate, or registration, the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office of the executive director of the department of regulatory agencies. The executive director shall impartially review such evidence, analyze and evaluate the proposal, and report in writing to the general assembly whether mandatory continuing education would likely protect the public served by the practitioners. Proposals may include, but need not be limited to: Information that shows that the knowledge base for the profession or occupation is changing; that mandatory continuing education of this profession or occupation is required in other states; if applicable, that any independent studies have shown that mandatory continuing education is effective in assuring the competency of practitioners. The proposal may also include any assessment tool that shows the effectiveness of mandatory continuing education and recommendations about sanctions that should be included for noncompliance with the requirement of mandatory continuing education. The provisions of this section shall not be applicable to:

(a) Any profession or occupation that, as of July 1, 1991, has mandatory continuing education requirements in place;

(b) Any bill that is introduced as a result of a legislative interim committee and that as introduced in the general assembly includes a mandatory continuing education requirement.

Before beginning the review, the Executive Director evaluated the application to determine if the review was necessary under the requirements of the statute. The evaluation revealed that a mandatory continuing education program for private investigators did not meet any of the exemptions from the statute and, therefore, was subject to review by the Executive Director.

Proposal for Continuing Education

The Professional Private Investigators Association of Colorado (PPIAC) submitted required information to the Colorado Department of Regulatory Agencies (DORA) proposing mandatory continuing education for private investigators.

Colorado law directs that the proposal to create mandatory continuing education requirements provide information that shows the knowledge base for the profession or occupation is changing. The PPIAC submitted the following information:

- Private investigators must be knowledgeable of the rules of ethics in their profession and of those who retain them (i.e. attorneys);
- Private investigators must be knowledgeable of the process of litigation as it applies to their work process and product, i.e., rules of evidence, and civil and criminal rules of procedure;
- Private investigators must be knowledgeable of the methodologies available to them to effectively find the information and facts relevant to their cases. As the process of litigation and technology change, so too do the processes of investigation (i.e. case law, forensic sciences, methods of surveillance, etc.); and
- Private investigators must be knowledgeable of the legal issues applicable to their cases from local ordinances to state and Federal laws, and including agency rules and directives involving privacy, consumer protection and other related issues.

The PPIAC application does not include independent studies that show that mandatory continuing education is effective in assuring the competency of practitioners of this profession or occupation. Similarly, the PPIAC proposal does not contain an assessment tool that shows the effectiveness of mandatory continuing education.

Although not included in the application, contact with the applicant revealed that the applicant proposes the completion of eight hours of mandatory continuing education per year by a licensee. The applicant recommends suspension of a private investigator's license until the licensee completes any required mandatory continuing education.

The application documents that seven states (Alabama, Georgia, Iowa, Kansas, Kentucky, Louisiana, and Minnesota) require mandatory continuing education of licensed private investigators. State requirements for mandatory continuing education as reported by the PPIAC are diverse. As examples, Georgia's requirements include specific training in homeland security, ethics and firearms-related training. Other states' requirements are quite liberal ranging from accounting and auditing course work to communication arts and employee theft.

DORA's Division of Professions and Occupations (DPO) administers a voluntary licensing program for private investigators. Colorado statute defines the activities of a private investigation as an activity conducted for the purpose of obtaining information pertaining to:

- A crime, wrongful act, or threat against the United States or any state or territory of the United States;
- The identity, reputation, character, habits, conduct, business occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movements, whereabouts, affiliations, associations, or transactions of a person or group of persons;
- The credibility of witnesses or other persons;
- The whereabouts of missing persons;
- The determination of the owners of abandoned property;
- The causes and origin of, or responsibility for, a fire, libel, slander, a loss, an accident, damage, or an injury to a person or to real or personal property;
- The business of securing evidence to be used before an investigatory committee or board of award or arbitration or in the preparation for, or in a civil or criminal trial;
- The business of locating persons who have become delinquent in their lawful debts, either when hired by an individual or collection agency or through direct purchase of the debt from a financial institution or entity owning the debt or judgment.¹

A private investigator, as defined by the Private Investigators Voluntary Licensure Act, is a person who, for consideration, engages in business or accepts employment to conduct private investigations.²

¹ §12-58.5-103(5), C.R.S.

² §12-58.5-103(6)(a), C.R.S.

A number of statutory exemptions exist to further refine the definition of private investigator. Excluded from the definition of private investigator are:³

- collection agencies, as defined in Colorado statute;⁴
- a person conducting an investigation on the person's own behalf, or an employee conducting an investigation on behalf of the employer;
- an employee or independent contractor of an attorney licensed to practice law in Colorado;
- a certified peace officer of a law enforcement agency operating in his or her official capacity;
- a consumer reporting agency, as defined in Colorado law;
- a certified public accountant certified or authorized to provide accounting services in this state pursuant to Colorado law and any employee or affiliate of an accounting firm registered pursuant to section 12-2-117, Colorado Revised Statutes (C.R.S.);
- an investigator employed by a public or governmental agency;
- a journalist;
- a genealogist; or
- a person serving process.

Colorado statute requires that applicants for a private investigator voluntary license possess either 4,000 hours of verifiable, applicable experience obtained within the five years immediately preceding the date of the application. Alternatively, an applicant may possess at least 2,000 hours of verifiable, applicable experience plus an amount of postsecondary education determined by the Director of DPO (Director).⁵

The Director has promulgated rule 2.1 regarding verifiable applicable experience. Rule 2.1 refers to section 12-58.5-103(5), C.R.S., regarding experience. This section is the statutory definition of private investigation. Thus, in order to acquire a voluntary private investigator license in Colorado, an applicant must prove that he or she possesses the requisite number of hours of experience as a private investigator.

³ §12-58.5-103(6)(b), C.R.S.

⁴ §12-14-103, C.R.S.

⁵ §12-58.5-105, C.R.S.

The Director has promulgated rule 2.2 regarding verifiable applicable experience and education. In this scenario, an applicant must prove that he or she possesses at least an associate degree from an accredited college or university in addition to 2,000 hours of experience in investigative work as described in rule 2.1. Private investigator licensing rule 2.2B requires the applicant provide the name and address of the accredited college or university and the date the degree was obtained. In addition, the Director may require additional information regarding the degree, including an official transcript or grade card.

Analysis

The Colorado Revised Statutes (C.R.S.) section that governs the consideration of mandatory continuing education requirements posits that,

the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement.⁶

The applicant asserts that private investigators must maintain current knowledge in a number of areas including: rules of ethics for private investigators as well as the rules of ethics of the profession of those who retain private investigators such as attorneys; knowledge of the process of litigation including rules of evidence, and civil and criminal rules and procedures; knowledge of the various methodologies used to identify information and facts relevant to a case under investigation including case law, forensic sciences, and methods of surveillance among others; knowledge of legal issues applicable to investigations such as local ordinances, state and federal laws, agency rules and directives and issues of privacy, consumer protection and other related issues.

It seems reasonable that a skilled private investigator would possess a knowledge base at least similar to the knowledge base described by the applicant. Several points, however, argue against the use of state mandated continuing education as an avenue for the maintenance of this knowledge base.

First, this review notes that one may obtain a private investigator license in Colorado based solely on experience, with no prescribed educational requirements, not even a high school diploma. If a licensee legitimately may obtain a license without meeting any requisite educational requirements, it is not appropriate for the state government to then require education in order to maintain the license.

Second, the theoretical importance of mandatory continuing education rests on an assertion that the basic, foundational knowledge necessary to practice the profession or occupation safely is changing to such a degree that a licensee's failure to successfully acquire current knowledge would result in harm to the public.

⁶ § 24-34-901, C.R.S.

It is not clear from the applicant's proposal how the public could be harmed absent mandatory continuing education of private investigators especially considering Colorado's voluntary license scheme. If the knowledge base for private investigators were changing so rapidly that failure to keep abreast of the knowledge base would harm consumers, then surely Colorado would not allow unlicensed private investigators to conduct business at all. These individuals possibly have met no standards to practice and labor under no requirement to keep their skills and education current. If these unlicensed private investigators do not offer significant harm to the public, it is difficult to discern the level of harm presented by the licensed private investigator who has met the state's licensing standards.

As mentioned earlier in this review, Colorado's mandatory continuing education review process contemplates that proposals may include copies of any independent studies that show that mandatory continuing education is effective in assuring the competency of practitioners of the profession or occupation. Copies of assessment tools that show the effectiveness of mandatory continuing education may also be provided. The application under review does not contain either studies or assessment tools regarding mandatory continuing education.

Conclusion

The Executive Director of the Department of Regulatory Agencies (DORA) is statutorily charged with determining whether mandatory continuing education would likely protect the public served by licensed private investigators. With respect to the application submitted by the Professional Private Investigators Association of Colorado (PPIAC), an affirmative conclusion is not warranted based upon the information provided in the application, and DORA's review and analysis of that information. The PPIAC did not establish that the public consuming the services in question would likely be better protected through the imposition of mandatory continuing education.

DORA made the following determinations, among others:

- Not all private investigators in Colorado are licensed by the state. Colorado is the only state that administers a private investigator voluntary license. Thus, a requirement that private investigators who voluntarily choose to be licensed are forced to obtain mandatory continuing education while private investigators who choose not to be licensed are not required to complete mandatory continuing education provides little protection to the public;
- Colorado offers two pathways for licensure. One of those pathways is completely experiential. The second pathway contains an educational component but also requires experience as a private investigator. For Colorado to grant a license based only on experience and then to require mandatory education to maintain the license seems to create a self-contradictory regulatory scheme;
- The PPIAC failed to demonstrate that the knowledge base for the professions across the board is changing such that mandatory continuing education is necessary to maintain the required minimum, yet appropriate, level of competency contemplated under the Colorado regulatory scheme; and
- The PPIAC failed to demonstrate the efficacy of mandatory continuing education with respect to maintaining or assuring competency of practitioners.

For these reasons, DORA concludes that increasing the regulatory burden on licensees as proposed under the subject application is unjustified. The General Assembly should not impose a mandatory continuing education requirement on private investigators.