



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

March 18, 2022, 12:02 p.m. – 2:04 p.m.

Conducted via Zoom

Members present: Chair David W. Stark, Nancy Cohen, Cynthia Covell, Hon. Adam Espinosa, Steve Jacobson, Dr. Carolyn Love, Hon. Andrew McCallin, Barbara Miller, Henry (Dick) Reeve, Alexander (Alec) Rothrock, Sunita Sharma, Brian Zall, Alison Zinn

Members absent: None

Liaison Justices present: Justice Maria Berkenkotter, Justice Monica Márquez

Colorado Lawyer Assistance Program (COLAP): Sarah Myers, Executive Director; Amy Phillips, Assistant Director

Colorado Attorney Mentoring Program (CAMP): Ryann Peyton, Executive Director

Office of Attorney Regulation Counsel (OARC): Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Dawn McKnight, Deputy Regulation Counsel; Jonathan White, Assistant Regulation Counsel

Office of the Presiding Disciplinary Judge: Presiding Disciplinary Judge William Lucero; Cori Peterson, Senior Staff Attorney

Guests: Justice Melissa Hart; Hon. Angela Arkin (Ret.); Hon. Daniel Taubman (Ret.); Michelle Brien; Kristin Marburg, Colorado Court of Appeals Staff Attorney

1. Approval of the December 10, 2021 Meeting Minutes

The Chair welcomed members and guests. He asked if members had reviewed minutes from the December meeting and whether they had any recommended changes. There were no suggested changes. Mr. Reeve moved to approve the minutes. Mr. Jacobson seconded. The committee unanimously approved the December 2021 meeting minutes.

2. Decision on proposed changes to Rule 232 - UPL and Contempt Proceedings

Ms. Yates and Ms. Peterson summarized additional proposed changes to C.R.C.P. 232, which concerns the unauthorized practice of law (UPL) in Colorado. The proposals presented for the committee's consideration pertain to contempt proceedings against individuals already enjoined from engaging in UPL. C.R.C.P. 238 served as a template for these recommendations, as did procedures in C.R.C.P. 107 in order to provide consistency with procedures in trial courts. Ms.

Yates noted that prior proposed changes to C.R.C.P. 232 contemplated lateralizing contempt matters directly to district courts. Further review showed that proposed procedure to not be feasible.

The proposals presented to the committee involve Attorney Regulation Counsel filing a petition for contempt with the Colorado Supreme Court after receiving authorization to do so by the Legal Regulation Committee. The Court would then determine whether to refer the matter to a special master for contempt proceedings. The special master would be an active or senior judge in a district court or other court of record convenient to the participants. The special master would then follow C.R.C.P. 107 procedures in overseeing the matter. At the conclusion of the matter, he or she would issue a report to the Supreme Court setting forth findings of law, conclusions of law, and recommendations. The Court could then adopt, modify, or reject the special master's report.

In response to member questions, Ms. Yates said that the proposed rule changes seek to provide greater efficiency and efficacy in UPL matters. The present rule unduly limits the ability of Attorney Regulation Counsel to pursue contempt when a respondent re-engages in the unauthorized practice of law despite previously being enjoined, because courts of record are needed to handle warrants and bonds. Involving the Colorado Supreme Court in contempt matters is consistent with the court having the ultimate authority on the practice of law in Colorado.

At the conclusion of the discussion, Mr. Reeve moved to approve the changes and send them to the Supreme Court for its review. Ms. Cohen seconded. The motion passed unanimously.

3. Discussion of Access to Justice Commission Proposal of Mandatory Pro Bono Reporting as Part of Attorney Registration

The Delivery Committee of the Colorado Access to Justice Commission researched and developed a proposal for mandatory reporting of pro bono service hours as part of attorney registration. The Commission approved the proposal and referred it to this committee for consideration. The Chair included the full report describing the proposal from the Delivery Committee with the materials committee members received for this meeting. Implementation of this proposal would require changes to C.R.C.P. 227. The proposal would require Colorado lawyers to report the number of pro bono service hours worked in the past year as part of annual attorney registration. They would also report financial contributions to organizations that provide legal assistance to low-income Coloradans.

The proposal envisions reporting in the aggregate. It would not be public information how many pro bono hours a single lawyer worked or how much money he or she contributed to legal aid organizations. The proposal seeks to promote access to justice and increase financial contributions to those organizations offering legal services to low-income individuals and families.

Judge Taubman chaired the working group that developed the proposal. The group contacted states with required and voluntary pro bono reporting provisions. Ten states require reporting. Judge Taubman said that one state, Florida, has had a rule for many years and statistics show that reporting hours and financial contributions has led to an increase in the number of lawyers providing such services.

The Chair said amending C.R.C.P. 227 is preferable to amending Colo. RPC 6.1 since C.R.C.P. 227 already requires lawyers report their status on certain matters, such as whether they have malpractice insurance and are compliant with any child support orders.

Private attorneys surveyed about this concept have been supportive. The Chair explained that he and others involved in the development of the proposal will present it to the Colorado Bar Association (CBA) soon. He noted that Metro Volunteer Lawyers has data suggesting that the number of Colorado lawyers engaging in pro bono legal service has declined in recent years.

The Chair asked the committee to appoint a subcommittee to review the report of the Delivery Committee and make a recommendation for this committee, which if adopted, would then be sent to the Colorado Supreme Court.

During the discussion, the Chair said that those assembling the proposal did not believe that reporting of hours or contributions should occur on a firm-wide basis, but rather occur on an individual lawyer basis. Discussion also included whether a list of organizations that qualify under Colo. RPC 6.1 should be made available with any formal implementation of this proposal. Several members also believed that a subcommittee should address confidentiality surrounding the reporting requirement.

Ms. Yates said that the subcommittee would need to take into account the timing of when any pro bono reporting requirement goes into effect. This will allow for education about any new requirement. She also said that the Office of Attorney Regulation Counsel would need time to build the capacity to track and gather this information through attorney registration.

At the conclusion of the discussion, Mr. Reeve moved to appoint a subcommittee to study the proposal. Ms. Covell seconded the motion, which carried unanimously.

4. Approval of Appointment to The Character and Fitness Committee

Mr. Zall, Chair of the Character and Fitness Committee, asks that Dr. Jordan Laroe be nominated to fill an opening on this committee. Mr. Zall said that Dr. Laroe's medical background will be beneficial. Dr. Laroe would serve a seven-year term. Members received Dr. Laroe's resume in the packet of materials provided in advance of the meeting. Mr. Reeve moved to recommend Dr. Laroe's appointment to Character and Fitness Committee to the Colorado Supreme Court. Ms. Covell seconded, and the motion passed unanimously.

5. Presiding Disciplinary Judge Selection Subcommittee Update

The Chair informed members that on March 17, 2022, the subcommittee announced names of three finalists recommended to the Colorado Supreme Court for appointment as the next Presiding Disciplinary Judge. The finalists are Magistrate Bryon Large (Adams County District Court), Carey Markel (South Carolina Office of Disciplinary Counsel), and Joseph Michaels (Office of the Colorado Attorney General). The Court will make its final selection by April 15.

6. Discussion of PALS Core Competencies Subcommittee Report: Learning and Competency Outcomes for Colorado Licensed Legal Paraprofessionals

Judge Arkin discussed a draft report of the Providers of Alternative Legal Services (PALS) subcommittee concerning proposed learning and competency outcomes for Licensed Legal Paraprofessionals (LLPs) in Colorado. This report is a product of the “licensure” subcommittee of the PALS subcommittee, a group which includes two paralegals, four judges, one magistrate, two former and one current family court facilitators, and three family law practitioners. The draft report lists experiential expectations for LLPs and outlines the knowledge base these individuals should possess. Judge Arkin reviewed highlights of these expectations. They include 1500 practice hours as a legal paraprofessional and successfully passing a family law examination and an ethics examination (both of which will need to be created). Judge Arkin emphasized that the LLP vision fills a critical access to justice gap in domestic relations matters where 75% of parties do not have legal representation. She explained that many states are looking at licensing paraprofessionals for assistance in legal matters. The subcommittee has looked closely at models from Utah, Arizona, and Washington. She said the subcommittee will bring a final report to the committee for review and approval at the May meeting.

Judge Espinosa informed the committee that an additional subcommittee has undertaken development of rules of professional conduct, as well as registration and discipline for LLPs.

7. Discussion of Suggested Changes to Pro Hac Vice Rules to Allow Counsel for An Indian Tribe to Make Appearances Without Paying the Required Fee or Associating with Local Counsel When Exercising the Tribe’s Federal Right of Intervention Under ICWA

Ms. Yates introduced Kristin Marburg. Ms. Marburg informed the committee about the Indian Child Welfare Act (ICWA), a federal law pertaining to Native American children in state child welfare proceedings. The law gives tribes an absolute right to intervene in child custody proceedings in state courts. Tribes can have many proceedings in many states, and the pro hac vice procedural requirement of associating with local counsel and paying fees can interfere with this right. Ms. Marburg said a number of states, including Arizona, Michigan, and Oregon, have created processes to help federally-recognized tribes with pro hac vice requirements that are specific to child custody proceedings under ICWA. Ms. Yates suggested a subcommittee form to explore this issue. Mr. Reeve moved to create a subcommittee. Judge McCallin seconded the motion. The motion passed unanimously.

8. Discussion of Fiscal Year 2023 Budget Issues

Ms. Yates said that the Office of Attorney Regulation Counsel faces increased costs in light of current inflation pressures, which are projected to continue through this year and next. She noted, too, that to continue to attract qualified candidates for openings, the Office may need to adjust salaries that have otherwise been flat-lined. She said that there will not be a request to increase the registration fee in the 2023 fiscal year. She also noted that the Commission on Judicial Discipline seeks independent funding, which factors in to the upcoming fiscal year budget.

9. Rescheduling of Volunteer Celebration Event

The event celebrating volunteer members of this and other attorney regulation committees scheduled to take place May 20 cannot proceed due to a scheduling conflict in the Ralph Carr

building. Ms. Yates asked if members had suggestions on how to proceed. Several members voiced support for an outdoor event to take place at some point in the summer months or early fall.

10. Other Updates:

CAMP

Ms. Peyton provided a written report with the packet of materials distributed to members in advance of the meeting apprising members of CAMP's recent activities. Among the highlights are that the new January 2022 Legal Entrepreneurs for Justice class is settling in well. Further, while CAMP's overall mentor and mentee numbers declined in 2021 from 2020, the 2021 numbers are consistent with those seen before the pandemic.

COLAP

Ms. Myers said that COLAP continues to receive a high number of calls, with the volume being on pace with the height of the pandemic. COLAP's annual report will be released soon.

Providers of Alternative Legal Services (PALS)

The Chair reviewed the various subcommittees of the PALS subcommittee. He hopes that a report from the PALS subcommittee will be ready for the court's review soon.

OARC

The Office just released its bi-monthly newsletter. Ms. Yates reviewed statistics from 2021 suggesting that serious misconduct may be increasing. The office saw an 11% increase in complaints and a 10% increase in the number of cases processed to the trial division. The total number of attorneys suspended in 2021 was 45, whereas the historic average falls in the mid-30s.

The February in-person bar examination went smoothly. Ms. Yates praised OARC staff who ensured the examination was a success, particularly given the difficult winter weather conditions during the exam administration.

Well-Being Task Force and Recognition Program

Ms. Peyton said that the implementation phase continues to progress forward and she plans to present recommendations to the committee at the May meeting.

Office of the Presiding Disciplinary Judge

Judge Lucero commented that his office has seen an increase in the number of case filings, though the office does not plan to seek additional staffing because it emphasizes efficiency. He echoed Ms. Yates' comments about the need to remain competitive in the legal market place by looking closely at salaries. Judge Lucero's final meeting with this committee will be the May meeting. He told members his service as Presiding Disciplinary Judge has been an honor.

11. Remaining 2022 Meeting Dates

- May 20, 2022
- September 16, 2022
- December 9, 2022

The meeting adjourned at 2:04 p.m.

/s/ Jessica E. Yates
Jessica E. Yates
Attorney Regulation Counsel