



**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE PRACTICE OF LAW**

MEETING MINUTES

December 10, 2021, 12:10 p.m. – 2:36 p.m.

Conducted via Zoom

Members present: Chair David W. Stark, Charles Goldberg, Steve Jacobson, Hon. Andrew McCallin, Henry (Dick) Reeve, Alexander (Alec) Rothrock, Daniel Vigil, Cynthia Covell, Nancy Cohen, Sunita Sharma

Members absent: Barbara Miller, Alison Zinn, Brian Zall

Liaison Justices present: Justice Monica Márquez, Justice Maria Berkenkotter

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

Colorado Attorney Mentoring Program (CAMP): Courtney Sommer, Education and Outreach Staff Attorney

Office of Attorney Regulation Counsel (OARC): Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Alan Obye, Assistant Regulation Counsel

Office of the Presiding Disciplinary Judge: Presiding Disciplinary Judge William Lucero

1. Approval of the September 17, 2021 Meeting Minutes

The Chair welcomed the attendees. He asked if there were suggested changes to the draft September meeting minutes provided in advance to Committee members. There were no recommended changes. Dick Reeve moved to approve the minutes. Dan Vigil seconded. The committee approved the September 17 minutes unanimously.

2. Resolution to honor Committee member Daniel A. Vigil

The chair introduced a resolution to honor Dan Vigil, who has decided to retire. Jessica Yates summarized the resolution, which was provided to the Committee in advance. Mr. Vigil has served on the Committee for a number of years and has served on countless subcommittees. He recently received CU Law's highest award for alumni, the William Lee Knous award. The Chair commended Mr. Vigil for his service on subcommittees, including as chair, and for his teaching at both DU and CU law schools. The Chair wished Mr. Vigil well in retirement.

Mr. Vigil expressed his gratitude to the Committee.

Jessica Yates acknowledged Chuck Goldberg's last Advisory Committee meeting, as well as his 22 years of service as Chair of the Client Protection Fund. Mr. Goldberg thanked the Committee and the Court for the opportunity to serve.

3. Discussion of the formation of a hiring subcommittee for the position of Presiding Disciplinary Judge

The Chair announced the formation of a subcommittee to fill the position of Presiding Disciplinary Judge William Lucero, who has decided to retire in the middle of next year. The subcommittee will act somewhat like a judicial nominating commission and will interview applicants and make a recommendation of three names to the Court. Dick Reeve and Steve Jacobson will be on the selection committee. The Chair suggested having at least one respondents' counsel on the committee. Ms. Cohen and Mr. Rothrock volunteered. Sarah Myers expressed interest in being involved, and Justice Marquez expressed interest in having COLAP's input.

The Chair explained that the Court is creating the job description. Judge Lucero will have input on the job description. Judge McCallin and Judge Lucero suggested including a nonlawyer on the selection committee. The Chair confirmed there will be room on the selection committee for a nonlawyer. Committee members suggested names, including Melinda Harper, for the subcommittee to consider for inclusion. The subcommittee may develop an application form for the PDJ position based in part on an application form used when Judge Lucero was selected and on the current judicial application form.

Mr. Goldberg suggested the possibility of reaching out to encourage previous applications for judgeships to apply.

The Chair will set up a meeting of the subcommittee soon.

4. Discussion of proposed changes to Rule 255 – Colorado Attorney Mentoring Program

Ms. Yates explained that the proposed rule change would allow lawyers to charge and receive fees in connection with the Legal Entrepreneurs for Justice (LEJ) program by adding a subsection (j) under section (2). Ryann Peyton has developed a new section (6). The application process itself can be put online, separate from the rule itself.

The Chair noted that attachment 15, appendix A, includes a redline version of the rule and a report on LEJ. LEJ's existing board of directors will transfer the LEJ funds to CAMP, totaling around \$20,000. The transition is underway, as far as assumption of assets and liabilities and transfer of intellectual property and related issues. A new cohort of lawyers is slated to start in January with a "boot camp," including five people from around the state. CAMP is ready to move forward with the LEJ program.

The LEJ board of directors will cease to exist because LEJ is dissolving. But most of the members would like to participate as an Advisory Committee LEJ subcommittee to give input to Ryann Peyton.

The Chair invited Advisory Committee members to participate in the process.

Ms. Yates invited a motion to recommend that the Court accept the proposed changes to Rule 255. Mr. Jacobson moved, and Dick Reeve seconded. The motion passed unanimously.

5. Discussion of NCBE's plans for administering the "next generation" of bar exams

Ms. Yates explained that the National Conference of Bar Examiners (NCBE), which creates the Uniform Bar Exam, wants to centralize the administration of the exam. NCBE is requesting a number of changes to create a more uniform exam in every participating state. Under NCBE's proposal, applicants would register to take the exam through NCBE, which is a nonprofit organization based in Wisconsin. Currently, our Supreme Court has plenary authority over the admissions process. Under NCBE's proposal, NCBE would take over registration and the venue for the exam, using commercial testing centers, spread out over a month-long period. Testing centers would hire proctors. It is unclear if OARC would continue to be on site. When there are problems involving misconduct, OARC prefers the Office of Attorney Admissions or Ms. Yates to make those decisions, not a private contractor over which we have no control, since OARC reports to the Supreme Court. OARC would lose the ability to set budget constraints. It is not clear if OARC could enforce its eligibility to sit for the exam because applications would go through NCBE. This also has grading implications. NCBE wants to move grading to a centralized web-based platform. Currently, we ensure grading is calibrated. NCBE wants to make accommodation decisions under ADA, whereas currently we have a process for an expert evaluation to ensure appropriate accommodations.

Ms. Sharma echoed Yates's concerns. NCBE would be taking the entire exam administration, including decisions about the score received (and thus who passes the exam), away from our supreme court, although each state could have its own cut score. Ms. Sharma expressed concern over the testing location. If there is not a big enough location, the exam would be rolled out over multiple weeks. NCBE plans on providing different questions for each date to address cheating concerns, but is that a "uniform" bar exam? The question of registration eligibility is also problematic. There may not be a choice to opt out of NCBE's requirements if we wish to remain a UBE jurisdiction. It may be beneficial for our Supreme Court to send a letter or resolution expressing the Committee's concerns.

Regarding NCBE's timeline, by the second quarter of 2022, the plan is to determine a plan for in-person computer delivery, and by 2023, NCBE will be developing testing policies and procedures.

There was discussion of coordinating with other jurisdictions to express concerns to NCBE. Ms. Yates noted that administrators in New York, Texas, and North Carolina have also expressed concerns. There is some correlation to the concern over transferring authority over the practice of law to our legislature.

There was discussion of state Chief Justices coordinating a response. Concern was expressed over Colorado applicants not being able to transfer scores if Colorado withdrew from the UBE. There is an opportunity to appear at a conference next month and make our case.

Mr. Vigil asked whether there is an upside to NCBE's plans. Ms. Sharma noted that NCBE may consider it a favor to take administration off our plate. It is unclear if there will be a difference in cost, but Ms. Yates noted that we would lose complete control over cost.

Ms. Funk noted that NCBE's proposal doesn't cut off applicant mobility completely. There is still on-motion application in most if not all states, usually after an attorney has been practicing 3 of the past 5 years. We earn fees from on-motion applications that may allow us to avoid raising fees for bar applicants.

Mr. Reeve opined that proposed substantive changes to the bar exam are concerning. NCBE is discussing reducing the number of test subjects. Mr. Reeve expressed concern that there is too much going on at the same time. In the next two to four years, losing control over the exam and its administration is a lot of moving parts.

The Chair asked whether we should form an alliance with other states.

Ms. Sharma asked whether the Advisory Committee should submit a draft letter to the Court. Justice Marquez, speaking only for herself, agreed that it would make sense to link arms with some of the larger jurisdictions. If putting something in writing, we would need to put it before the full Court.

The Chair proposed a motion to request Ms. Yates, Ms. Funk, and Ms. Sharma to create a document to transmit to NCBE.

Mr. Goldberg so moved, and Mr. Vigil seconded. Mr. Rothrock commented that he shared the sentiment, but questioned whether we should create a joint letter with other states. The Chair commented that the draft could be not a letter to NCBE, but an outline of talking points for the Court to consider. Discussion ensued.

The Chair summarized that the Committee could send a recommendation to the Court describing its concerns, and listing options for how to proceed, including sending a letter to NCBE or combining with other states. The Chair considered that a friendly amendment to the motion. Ms. Yates and Ms. Sharma will work together to draft a letter, without input from the entire Committee.

The motion passed unanimously.

6. Discussion of the annual holiday party being held on May 20, 2022

Ms. Yates explained that the annual holiday party would have been tonight, but we are currently in the middle of COVID-19 surges. We are proposing May 20, 2022, possibly at an outdoor location.

Ms. Yates will schedule the event, subject to change.

7. Approval of committee appointments

- a. Advisory Committee

Dan Vigil is retiring from the Advisory Committee effective December 31, 2021. Dr. Carolyn Love is being nominated to fill the opening created by Dan Vigil's retirement. The Chair asks for Dr. Carolyn Love to be appointed and serve on the Advisory Committee effective January 1, 2022, term expiring on December 21, 2028.

The Chair commented that Committee members have interviewed Dr. Carolyn Love, and she seems like a wonderful addition to the Committee.

b. Attorneys' Fund for Client Protection

Charles Goldberg has served on the Attorneys' Fund for Client Protection since 1999, and as the only Chair of the Attorneys' Fund for Client Protection. Mr. Goldberg will be retiring from the Attorneys' Fund for Client Protection effective December 31, 2021.

The Honorable Adam Espinosa, who currently serves as Vice-Chair of the Attorneys' Fund for Client Protection, is being nominated to fill the opening as Chair. David Stark asks for Judge Espinosa to serve as Chair of the Attorneys' Fund for Clients Protection effective January 1, 2022, for a term expiring on December 31, 2027. By operation of C.R.C.P. 242.3(b)(1)(a), Judge Espinosa would become a member of the Advisory Committee.

Allison Gambill currently serves as a Trustee on the Attorneys' Fund for Client Protection. Allison Gambill is being nominated to fill the Vice-Chair opening. David Stark asks for Allison Gambill to serve as Vice-Chair effective January 1, 2022, with a term expiring on December 31, 2025.

Corelle Spettigue is being nominated to fill the opening created by the retirement of Charles Goldberg. David Stark asks for Corelle Spettigue to be appointed and serve a term of seven years effective January 1, 2022, term expiring on December 31, 2028.

There were no questions or comments with regard to the above recommendations.

Dick Reeve moved to approve the above appointments. Dan Vigil seconded. The appointments were approved unanimously and will be recommended to the Court.

c. Character and Fitness Committee

The terms of current committee members Dr. Carolyn D. Love, Linda Midcap and Corelle Spettigue will end December 31, 2021, and these members have fulfilled their appointment as members of the Character and Fitness Committee.

Dr. Lilith Zoe Cole, Habib Nasrullah, Nicole Bartos and Daniel Graham are being nominated to fill the openings created by the term expiration of three members, and under Rule 202.3, ensure that the committee continues to have a minimum of seventeen volunteer members. Brian Zall, Chair of the Character and Fitness Committee, asks for Dr. Lilith Zoe Cole, Habib Nasrullah, Nicole Bartos and Daniel Graham to be appointed and serve a term of seven years effective January 1, 2022, term expiring on December 31, 2028.

The Chair commented that Ms. Yates, Ms. Funk, and the Chair interviewed each candidate, find them to be outstanding candidates, and ask that the Committee recommend that the Court appoint them to the Character and Fitness Committee.

Dan Vigil moved to approve the appointments. Mr. Goldberg and Judge McCallin seconded. The motion passed unanimously. Dick Reeve did not participate in the vote with respect to all Character and Fitness Committee candidates.

d. Continuing Legal and Judicial Education Committee

Genet Johnson is resigning from the Continuing Legal and Judicial Education Committee effective December 31, 2021.

The Honorable Andrew McCallin, Chair of the Continuing Legal and Judicial Education Committee, asks for Colleen McManamon to be appointed and serve a term of seven years effective January 1, 2022, and expiring on December 31, 2028.

Mr. Rothrock moved to approve the above candidates. Mr. Goldberg seconded. The motion passed unanimously.

e. Law Committee

Michael Kirtland is resigning from the Law Committee effective December 31, 2021. The terms of John Greer, the Honorable Barry Schwartz, and the Honorable Holly Strablizky will expire on December 31, 2021, as they have fulfilled their appointment as members of the Law Committee.

Keith Bradley, Robert “Bob” Spagnola, Magistrate Linda Connors and Djenita Svinjar are being nominated to fill the openings created by the term expiration of three members and the resignation of Mr. Kirtland. Sunita Sharma, Chair of the Law Committee, asks for Keith Bradley, Robert “Bob” Spagnola, Magistrate Linda Connors and Djenita Svinjar to be appointed and serve a term of seven years effective January 1, 2022, and expiring on December 31, 2028.

There were no comments or questions. Mr. Reeve and Mr. Goldberg moved to approve the appointments. Mr. Rothrock and Judge McCallin seconded. The motion passed unanimously.

8. Other updates

a. Colorado Attorney Mentoring Program

Courtney Sommer is the Education and Outreach Staff Attorney for CAMP. She reported that CAMP has had a successful year. A lot of mentees entered the program in October and November following bar exam results. CAMP will match outstanding mentees by the end of the year.

CAMP had over 100 attendees at a recent Continuing Legal Education (CLE) course.

Ms. Sommer highlighted some upcoming events. A CLE on hybrid practice in April will focus on the post-COVID way of practicing and splitting time between virtual and office practice. In October, there will be a CLE on “legal deserts.” There is a lot of interest in the Attorney General’s fellowship program. In November, CAMP will hold a CLE on parenting and the practice of law. CAMP started a program called “POPS” as a mentoring circle for parents—a safe space to talk about what it’s like to parent, for all parents, comparable to Denver Mamas. That group has had two meetings so far.

Ms. Sommer mentioned the Succession to Service program, a pro bono program where lawyers log in through Paladin to access pro bono opportunities and connect with providers.

In 2022 CAMP will continue with its scorecard and community engagement program. CAMP continues getting involved with law schools, legal deserts, and law firms, in order to continue to engage with the community during COVID.

The Chair thanked Ms. Sommer for her report.

Judge McCallin left the meeting at 1:22 p.m.

b. Colorado Lawyer Assistance Program

COLAP Director Sarah Myers reported that globally, mental health has gone from bad to worse. There are distressing statistics about diminished mental health, increasing exhaustion, stress, and burnout. Since April, 20 million Americans have left their jobs, due in part to a “burnout epidemic.” People who remain in the work force end up shouldering the extra work. In our legal community, calls to COLAP are more urgent, nuanced, and layered. The next year is expected to be challenging. In the meantime, COLAP continues to recruit qualified resources and referrals to keep up with changing practices of behavioral health professionals. Call volume and numbers continue to go up. That is not expected to change soon.

The new website will coincide with COLAP’s ten-year anniversary in January. COLAP has a new database that will streamline internal procedures. Ms. Myers thanked Amy Phillips, who was promoted to Assistant Director this past year, for her diligence during the difficulties posed by the pandemic.

The Chair noted that this is now the “Supreme Court Advisory Committee on the Practice of Law,” so agenda headings will need to be updated accordingly.

Justice Marquez left the meeting at 1:26 p.m.

c. Office of Attorney Regulation Counsel

Ms. Yates reported that OARC employees Trish Swanson and Susie Lang are retiring. Jane Cox is leaving the office to join the firm Burns Figa & Will.

The July bar exam did not go as well as hoped due to technical problems with the IT vendor. The Court provided remedies for those affected by adding 5 points to the score of affected test-takers.

The CLE compliance deadline is approaching. There is a large number of noncompliant attorneys this year due to the higher age cutoff (72 rather than 65) implemented in 2018. Those affected attorneys are now approaching the end of the three-year compliance period.

In May 2020, the Committee approved a 0% salary increase. This year, it was a 3% salary increase. Everyone is operating at a reduced salary due to the recent 6% inflation. Ms. Yates will express these concerns in the coming months and hopes the legislature and judicial department will work on raising salaries in order not to lose talent.

The Chair provided an update on PALS (Paraprofessionals and Legal Services), although it was not on the agenda. The subcommittee is continuing to work hard after the Court's request for an implementation plan to license legal paraprofessionals for work in family law matters. It has divided into 4 working groups, including education and outreach; rules; the "computer and technology committee," and a licensure and qualifications committee. The Chair is on the Rules working group. Ms. Yates is on all working groups. The subcommittee is working its way through creating rules of professional conduct for limited-license paraprofessionals and hopes to have something to the Court in June. LLPs may begin practicing in 2023 or later, considering the education and exam requirements.

d. Well-Being Task Force and Recognition Program

The Chair referenced the link on the OARC website for information on these programs. There was a final report issued recently on well-being. There is now a recognition program for lawyers, which was the result of a pilot project from July 2020 through May 2021. The pilot program is now a full-blown recognition program, much like the pro bono recognition program.

Ms. Myers noted that COLAP will be working closely with Ryann Peyton to get employers on board to help this burnout epidemic.

Ms. Myers noted that calls to COLAP are up from law schools as well. Many of the calls come from professors on behalf of students. The law schools have reported to COLAP increased utilization of on-campus resources for behavioral health issues.

Justice Berkenkotter left the meeting at 1:42 p.m.

9. Meeting Dates for 2022 are proposed as follows:

March 18, 2022

May 20, 2022 & proposed date for celebration in 2022

September 16, 2022

December 9, 2022

There was no discussion.

10. Executive Session – Budget Issue

The Committee entered executive session.

The meeting adjourned at 2:36 p.m.

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