



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

December 11, 2020, 12:05 p.m. – 1:38 p.m.

Conducted via Zoom

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

Members absent: Brian Zall

Liaison Justices present: Justice Monica Márquez, Justice William Hood

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

Staff present: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Dawn McKnight, Deputy Regulation Counsel; Ryann Peyton, Executive Director, Colorado Attorney Mentoring Program (CAMP); Sarah Myers, Executive Director, Colorado Lawyer Assistance Program (COLAP); Jonathan White, Professional Development Counsel, Office of Attorney Regulation Counsel

Guests: Several members of a committee formed to propose revisions to C.R.C.P. 250 concerning mandatory continuing legal and judicial education, as well as to the Regulations Governing Mandatory Continuing Legal and Judicial Education, joined the meeting. Guests included Nathifa Miller, who serves as Vice Chair of the Continuing Legal and Judicial Education (CLJE) Committee and who chaired the committee that developed the proposed rule and regulation revisions; Christine Hernández, Immediate Past President of the Colorado Hispanic Bar Association; attorney Ruth Moore, also a member of the committee making the proposal; and Kevin McReynolds, Denver Bar Association President.

1. Approval of the September 18, 2020, Meeting Minutes

The Chair asked members if they had any changes to the draft of the September 18, 2020, meeting minutes distributed prior to the meeting. No members suggested changes. Mr. Reeve moved to approve the minutes. Mr. Jacobson seconded. All members voted in favor of the motion. The September meeting minutes were approved.

2. Consideration of Proposed Rule and Regulation Change to Require Equity, Diversity, and Inclusivity Continuing Legal Education

A subcommittee had been formed more than a year ago at the request of Judge McCallin, Chair of the CLJE Committee, and Vice Chair Nathifa Miller, to develop a proposal that would

require Colorado attorneys to complete continuing legal education (CLE) training on issues of equity, diversity, and inclusivity (EDI). Vice Chair Miller led the subcommittee that studied and prepared the proposal to be considered by the committee today. After outreach from the bar associations' Presidents Diversity Council, the subcommittee gained additional participants and attendees in late summer 2020. The Presidents Diversity Council consists of leadership from the Asian Pacific American Bar Association of Colorado, the Colorado Hispanic Bar Association, the Colorado LGBT Bar Association, the Sam Cary Bar Association, the South Asian Bar Association of Colorado, the Colorado Women's Bar Association, the Colorado Bar Association (CBA), and the Denver Bar Association (DBA). The CLJE Committee then considered and approved the proposal before it was submitted to this committee.

In discussing the proposal on behalf of the Presidents Diversity Council, Ms. Hernández noted EDI impacts all aspects of attorneys' roles. This includes their interactions with clients, staff, opposing counsels, and members of the bar and bench. She said that after this summer's protests surrounding the killing of George Floyd and other African Americans by law enforcement and the focus those protests brought to racial inequities, Colorado courts took actions to bolster confidence in the legal system. She said that it is time for members of the legal profession beyond the bench to demonstrate their commitment to creating systemic change.

The proposal changes the mandatory seven-credit hour "ethics" CLE requirement in C.R.C.P. 250.2 to a seven-credit hour "professional responsibility" requirement. It mandates that these seven credits include at least two credit hours pertaining to EDI. The five other credits to fulfill this requirement must be obtained through programming in legal ethics or legal professionalism.

The proposal also amends the Regulations Governing Mandatory Continuing Legal and Judicial Education for the State of Colorado to specifically address what issues may be covered in programs dedicated to legal professionalism and EDI. The legal professionalism amendments draw from the Principles of Professionalism developed by the CBA/DBA Professionalism Coordinating Council.

The proposal recommends the amendments to C.R.C.P. 250.2 and to the CLE regulations be effective January 1, 2023. This allows the Office of Attorney Regulation Counsel to update its CLE database and system to track CLE compliance. It also allows Colorado lawyers time to familiarize themselves with the requirements. Ms. Hernández said that those preparing the proposal considered concerns about the availability and cost of CLE programming in the area of EDI. She said that there will ample opportunities for lawyer to obtain these credits. There are national providers offering such programming. Members of the Presidents Diversity Council are also committed to providing seminars on EDI issues. The expansive definition of what programs may be accredited for EDI purposes under the proposed regulation revisions should also help address these concerns.

Ms. Hernández recognized the efforts of Mr. McReynolds and DBA President-Elect Tyrone Glover to ensure their organization supported the proposal. She noted CBA President Jessica Brown worked to obtain that organization's support. An article published in *The Colorado Lawyer* this month co-authored by Ms. Hernández and attorney Annie Martínez has garnered positive feedback.

In advance of the meeting, the committee received copies of proposed revised C.R.C.P. 250.2 and the revised CLE regulations, as well as the CLJE Committee's Report and Recommendation concerning the proposal. That Report and Recommendation noted Illinois's mandatory CLE requirements served as a partial model for this Colorado proposal.

The Report and Recommendation discussed that these proposed changes advance the objectives set by the Colorado Supreme Court in instituting mandatory CLE requirements, as well as for attorney regulation. Further, the Preamble to the Colorado Rules of Professional Conduct provides at Section 6 that lawyers should promote the public's "understanding of and confidence in the rule of law," that they should "seek improvement of the law, access to the legal system" and "the administration of justice," and they should "be mindful of deficiencies in the administration of justice." The same Report and Recommendation documented requirements in seven states that have implemented mandatory EDI CLE. Those states are California, Illinois, Maine, Minnesota, Missouri, New York, and Oregon.

A member asked if the proposed changes would allow Colorado lawyers to begin completing EDI training before January 1, 2023. Ms. McKnight explained that if the Colorado Supreme Court adopts the rule and regulation changes, the Office of Attorney Regulation Counsel will begin accrediting programs immediately based on the new definitions of legal professionalism and EDI. She noted that the mandatory aspect of the proposed revisions would not take effect until January 1, 2023.

Another member asked about the decision to use "EDI" rather than the common "DEI" (diversity, equity, inclusivity) acronym. Vice Chair Miller explained that "equity" is the umbrella concept of which diversity and inclusivity are touchpoints.

Justice Hood drew the committee's attention to whether the proposed new "professional responsibility" definition would allow a lawyer to complete coursework that would currently be considered for "general" CLE credit but not ethics credit. A lawyer could choose to complete course work only in the new "legal professionalism" and "EDI" categories but not the "legal ethics" category. Judge McCallin observed that the legal professionalism curriculum will likely incorporate coursework pertaining to the Colorado Rules of Professional Conduct. Legal professionalism also includes professionalism skills, a critical topic that goes beyond the Colorado Rules of Professional Conduct. Mr. McReynolds commented that nationally there is a movement to teach legal ethics and professionalism together. Ms. Yates also said that in Illinois, which adopted its changes to CLE requirements in 2017, her counterpart shared that lawyers are still completing rules-based ethics CLE. A member commented that lawyers who are conscientious will want to keep-up their rules-based education and the amendments permit this.

After discussion, the Chair asked if there was a motion to approve the proposed changes to C.R.C.P. 250.2 and the Regulations Governing Mandatory Continuing Legal and Judicial Education for the State of Colorado and recommend them to the Court. Mr. Reeve so moved, and Mr. Jacobson seconded. The motion carried with members noting two minor typographical errors in the proposed revised rule and regulations that should be corrected for the final proposal to be sent to the Court for consideration.

3. Consideration of Composition Change of the Continuing Legal and Judicial Education Committee, C.R.C.P. 250.3

The committee considered a change to C.R.C.P. 250.3 regarding the lawyer and non-lawyer composition of the CLJE Committee. Currently, the Rule provides at subsection (1)(a) that six members shall be attorneys and three shall be non-lawyers. Ms. Yates commented that it is important to have non-lawyer volunteers serve on the CLJE Committee. However, since the CLJE Committee looks at issues of lawyer competence, having three non-lawyers may not be essential. The Chair added he thought it would be appropriate if the lawyer / non-lawyer composition changed to seven lawyers and two non-lawyers. A proposed rule revision submitted to members in advance of the meeting contemplates such a change.

Members discussed the proposal. They concluded a rule revision allowing a range of lawyer and non-lawyer representation was most desirable, specifically that at least two members of the CLJE Committee must be non-lawyers, and at least six must be volunteer lawyers. The remaining ninth seat could be a lawyer or non-lawyer. Mr. Reeve moved to recommend the Court amend C.R.C.P. 250.3(a)(1) to provide that the composition of the CLJE Committee include at least two non-lawyers and at least six lawyers. Ms. Sharma seconded the motion. The motion carried without opposition.

4. Request by Colorado Lawyers Helping Lawyers for Continued Designation as a Peer Assistance Organization under C.R.C.P. 251.34(b)(9.5) and Rule 8.3(c), and Request for Approval of CBA Ethics Committee for Continued Designation as a Peer Assistance Program Pursuant to C.R.C.P. 251.34

Colorado Lawyers Helping Lawyers applied on September 18, 2020, for continued designation as an approved lawyer peer assistance program under C.R.C.P. 251.34(b)(9.5) and for protection of communications made to it by lawyers pursuant to Colo. RPC 8.3(c). Similarly, the CBA's Ethics Committee requested continued approval as a lawyers' peer assistance program pursuant to C.R.C.P. 251.34(9.5) on July 31, 2020. Mr. Reeve moved to approve both requests *nunc pro tunc* to the date of each request. Mr. Jacobson seconded. The motion carried without opposition. Mr. Reeve noted that under the proposed revisions to the Rules of Procedure Regarding Attorney Discipline and Disability Proceedings, such applications for renewal would be considered every five years.

5. Approval of Committee Appointments and Reappointments

Colorado Attorneys' Fund for Client Protection

The Chair requested the committee reappoint Charles Goldberg, Chair of the Board of Trustees of the Colorado Attorneys' Fund for Client Protection, to an additional year as chair effective January 1, 2021, expiring December 31, 2021. Ms. Yates informed the committee that Charles Turner, vice-chair of the Board of Trustees for the fund, is retiring. He will end his service to the fund and its board on December 31, 2020. Ms. Yates thanked Mr. Turner for his service.

The Chair informed the committee that Mr. Goldberg asks that the Honorable Adam Espinosa, Denver County Court Judge and a former assistant regulation counsel, be appointed vice-chair of the Board of Trustees for a term beginning January 1, 2021, continuing through

December 31, 2027. Members received a copy of Judge Espinosa’s resume in advance of the meeting. Ms. Yates noted that it will be helpful to have a judge on the Board of Trustees because claims to the fund require a balance of rule requirements and equities.

The Chair said that Mr. Goldberg also requests the committee reappoint the following members of the Board of Trustees for terms specified as follows:

- Existing member Katayoun Donnelly to serve an additional two-year term effective January 1, 2021, expiring December 31, 2022.
- Existing member Lisa Dailey to serve an additional three-year term effective January 1, 2021, expiring December 31, 2023.
- Existing member Susan Coykendall to serve an additional four-year term effective January 1, 2021, expiring December 31, 2024.
- Existing member Allison Gambill to serve an additional five-year term effective January 1, 2021, expiring December 31, 2025.

The reason for the large slate of reappointments is due to changes to the length of board terms in C.R.C.P. 252.5 promulgated by the Colorado Supreme Court in January 2019. The proposed terms here would help ensure that the terms of trustees be staggered, so that in the future only one person finishes a term each year.

Ms. Covell moved to approve Judge Espinosa’s appointment and the reappointments and recommend them to the Colorado Supreme Court. Ms. Miller seconded the motion. The motion carried unanimously.

Continuing Legal and Judicial Education Committee

Ms. Yates reported that Karen Hester resigned her membership on the CLJE Committee. Ms. Yates thanked Ms. Hester for her service. Judge McCallin, CLJE Committee Chair, recommends the appointment of Ms. Hernández for a seven-year term beginning January 1, 2021, and continuing through December 31, 2027. Ms. Hernández was very active in developing the proposal changing CLE requirements to implement EDI training.

Mr. Reeve moved to recommend the Court appoint Ms. Hernández to the CLJE Committee. Ms. Cohen seconded. The motion carried unanimously.

6. Other Updates

a. Colorado Attorney Mentoring Program (CAMP)

Ms. Peyton provided a report to members in advance of the meeting. She summarized the report. In 2020, CAMP has seen a decline in the number of new mentors and mentees for traditional CAMP 1:1 mentoring. The program, however, has increased its matched mentee ratio by encouraging past mentors to become repeat mentors. Also, with growth in numbers in the third quarter and early fourth quarter of the year, the overall number of mentors utilizing the program has returned to levels seen before the pandemic. Further, participation in CAMP’s virtual

professional development events increased more than 55 percent over 2019 levels. CAMP has already scheduled its 2021 professional development series, with events taking place through November 2021.

b. Colorado Lawyer Assistance Program (COLAP)

Ms. Myers said COLAP had a very busy year, fielding a large number of calls related to issues including anxiety, depression, substance use, financial difficulties, lay-offs, furloughs, medical concerns, grief, among others. COLAP will finish the year with an increase in the number of presentations given by its staff as well as in the number of first-time contacts. She noted, too, that an updated website for the organization is in development.

c. Office of Attorney Regulation Counsel (OARC)

Ms. Yates reported attorney registration for 2021 opened on December 1. The registration process asks attorneys to complete a demographic survey, though that survey is voluntary.

The Office of Attorney Admissions will administer a remote bar examination in February 2021. This change occurred after the National Conference of Bar Examiners (NCBE) announced it will make a remote uniform bar examination available for February 2021. This will be the first time Colorado administers a remote examination, and OARC staff are educating themselves on procedures. ExamSoft will supply the software and technical support for the February 2021 test; it is the only vendor authorized by NCBE. This vendor has experience conducting remote examinations based on the decision by some states to administer remote examinations this fall. The examination will not be open book, and a strict no-cheating policy remains in effect. Examinees will be on their laptop computer cameras to verify compliance with the no-cheating policy. Ms. Yates expects that there will be more examinees for the February 2021 bar examination than in prior February administrations. Certain applicants delayed taking the July 2020 bar examination due to the pandemic.

OARC has been approached by researchers on “mindset” classes for bar examinees. A multi-year study among California bar examinees who were either first in their family to attend law school or bar applicants of color found that a “mindset” class taken in advance of the examination tended to improve performance. OARC has agreed to participate in such a study for July 2021 with volunteer Colorado bar examinees.

Ms. Yates distributed a fee assessment analysis to members before the meeting showing fees currently charged by OARC for certain documentation. OARC will begin charging more for copies of admissions applications, certificates of good standing, certificates of compliance, affidavits of suspension or withdrawal, and disciplinary history certificates. These increases are on the order of \$5.00 per request and come after OARC conducted cost comparisons for similar documents in 15 other jurisdictions and found that Colorado’s fees were lower for these services, some of which are moderately to very labor-intensive.

The Colorado Supreme Court will hold an online hearing on February 10, 2021, at 3:30 p.m. on the proposed rule changes to the Colorado Rules of Procedure Regarding Attorney Discipline and Disability Proceedings, changes recommended to the Court by this committee following the committee’s May 2020 meeting. Ms. Yates noted that the Court received public

comments to proposed changes to the Rules Governing Admission to the Practice of Law in a comment period ending December 7.

d. Subcommittee Concerning Paraprofessionals and Other Non-Lawyers Providing Legal Services

Mr. Stark reported that this subcommittee is working on a draft proposal to be distributed to stakeholders for input. After receiving that input and considering it, the subcommittee intends to come to this committee with a formal proposal. The subcommittee meets monthly via Zoom.

e. Legal Malpractice Subcommittee

Mr. Vigil volunteered to serve as chair of this new subcommittee, which will have its initial meeting after the first of the year.

7. Proposed 2021 Meeting Dates

Proposed 2021 meeting dates are as follows:

- March 12, 2021
- May 14, 2021
- September 10, 2021
- December 10, 2021

8. Adjournment

Mr. Vigil moved to adjourn the meeting and Mr. Jacobson seconded. The motion carried without opposition, and the meeting adjourned at 1:38 p.m.

9. Proposed Additional Change to the Continuing Legal and Judicial Education Regulations

Ms. Yates circulated a proposed additional change to the Regulations Governing Mandatory Continuing Legal and Judicial Education to committee members on December 21, 2020. The change responds to feedback at the December 11 meeting that the definition of “legal professionalism” in the proposed revisions to the Regulations might be too general. The Chair, Judge McCallin, and Vice Chair Miller developed this proposed additional change in consultation with Ms. Yates and Ms. McKnight to focus on what a course needs to cover for accreditation as legal professionalism rather than using aspirational language to describe the topic. The change amends the definition of “legal professionalism” to provide that such an activity is devoted to values “embodied in the Colorado Attorney Oath of Admission and the Colorado Rules of Professional Conduct” Ms. Yates noted that both the Oath and the Rules incorporate values at the foundation of professionalism in the practice of law. She asked members to vote via email on this proposed additional change to the Regulations. All members responded in favor of this proposal, which will be submitted to the Colorado Supreme Court.

10. Revised Proposed 2021 Meeting Dates

Ms. Yates informed members by email on December 23, 2020, that the proposed March, May, and September 2021 committee meeting dates need to be rescheduled to March 19, May 21, and September 17, respectively.

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