



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

MEETING MINUTES

December 9, 2022, 12:06 p.m. – 2:11 p.m.

Hybrid meeting conducted in person and via Zoom

Members present in person: Chair David W. Stark, David Beller, Nancy Cohen, Hon. Adam Espinosa, Hon. Andrew McCallin

Members present via Zoom: Cynthia Covell, Steve Jacobson, Dr. Carolyn Love, Henry (Dick) Reeve, Sunita Sharma

Members absent: Brian Zall, Alison Zinn

Liaison Justice present via Zoom: Justice Monica Márquez

Office of the Presiding Disciplinary Judge: Presiding Disciplinary Judge Bryon Large

OARC staff present: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Jonathan White, Assistant Regulation Counsel, Office of Attorney Regulation Counsel

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

COLAP staff present: Sarah Myers, Executive Director, Colorado Lawyer Assistance Program (COLAP) (via Zoom); Amy Kingery, Assistant Director, COLAP (via Zoom)

Guests: Hon. David Furman, Colorado Court of Appeals

The Chair welcomed members. This is the first meeting of the Advisory Committee to have in-person attendance since March 13, 2020.

1. Approval of the September 16, 2022 Meeting Minutes

The Chair asked if members had any suggested revisions to the draft minutes of the September meeting. Hearing none, he requested a motion to approve the minutes. Judge McCallin so moved. Mr. Beller seconded the motion. The minutes were approved unanimously.

2. Discussion of the Child Welfare Appeals Workgroup Recommended Change to C.R.C.P. 205.7(2)(a)(i)

A working group has been studying whether to recommend changes to C.R.C.P. 205.7(2)(a)(i) to allow law student externs to appear and participate in civil proceedings before the Colorado Court of Appeals and Colorado Supreme Court. The goal of a proposed rule change is to train a new generation of appellate lawyers ready to handle child welfare cases and provide representation to vulnerable clients. The current rule authorizing law student practice under a supervising lawyer does not contemplate appellate practice.

Judge Furman reported the reception by judges in the Court of Appeals to such an amendment has been positive.

The committee discussed whether additional language should accompany any proposed amendment that further addresses supervision of law student externs. Several members suggested forming a subcommittee to consider language regarding supervision of law student externs. Ms. Cohen moved to establish a subcommittee. Judge Espinosa seconded. The motion passed unanimously.

3. Discussion of Proposed Changes to C.R.C.P. 255 – CAMP

Members received proposed amendments to C.R.C.P. 255 in the packet of materials distributed before the meeting.

Ms. Peyton informed members that the Colorado Supreme Court approved creation of the Well-Being Recognition Program for Legal Employers in October. CAMP organized and led a successful pilot program integral to the proposal for the Well-Being Recognition Program for Legal Employers that the Court considered. The proposed amendments to C.R.C.P. 255 place this new program under the administration and oversight of CAMP.

The other proposed rule amendments bring C.R.C.P. 255 up-to-date with the breadth of CAMP's offerings, which extend beyond mentoring. Members discussed whether the rule should recognize that CAMP works closely with COLAP. They determined such a reference is not necessary.

Mr. Reeve moved to approve the proposed amendments to C.R.C.P. 255 and recommend the Colorado Supreme Court adopt the amendments. Mr. Beller seconded. The motion carried unanimously and the recommendation will be made to the Court.

4. Consideration for Approval of the Colorado Judicial Peer-to-Peer Coaching Program for Designation as a Peer Assistance Program

Colorado Court of Appeals Chief Judge Gilbert Román led the creation of the Colorado Judicial Peer-to-Peer Coaching Program with assistance from now retired Judge Nancy Lichtenstein. The program seeks approval under C.R.C.P. 253 for designation as a “peer assistance program” so that participants are not required to report potential instances of misconduct pursuant to Colo. RPC 8.3(b).

Judge Espinosa explained the coaching program. He said it pairs new judges with experienced judges to assist in professional development issues unique to judicial officers. Designation as a “peer assistance program” would facilitate candid conversations.

A member noted that there is a parallel obligation for judges to report misconduct by other judges and lawyers in Rule 2.15 of the Colorado Code of Judicial Conduct. The committee discussed whether designation of the Judicial Peer-to-Peer Coaching Program as a peer assistance program should encompass the reporting requirement under both Colo. RPC 8.3(b) and Rule 2.15. Doing so may require amendment of C.R.C.P. 253, which covers lawyer peer assistance programs.

Several members suggested contacting the Commission on Judicial Discipline for input. The Colorado Supreme Court may also wish to consult with stakeholders about the designation.

Judge McCallin moved to table this request. Mr. Reeve seconded. The motion passed unanimously. Judge Espinosa volunteered to study the issue further and consult with Justice Márquez.

5. Approval of Committee Appointments

a. Advisory Committee on the Practice of Law

Barbara Miller resigned from the Advisory Committee effective July 26, 2022. Ms. Miller was an original member from 1999. The Chair and Ms. Yates have been interviewing candidates to fill the vacant position but have not decided yet on a recommendation. The position to be filled is a non-attorney position. Non-attorney leadership may be needed for a similar advisory committee proposed to oversee the Licensed Legal Paraprofessional program. The Chair and Ms. Yates will continue efforts to identify a volunteer to fill the vacancy.

b. Attorneys' Fund for Client Protection

Katayoun Donnelly has served on the Attorneys' Fund for Client Protection since January 2, 2015. She finishes her eight-year term on December 31, 2022. The Chair and Judge Espinosa, Chair of the Board of the Attorneys' Fund for Client Protection, thanked Ms. Donnelly for her service.

Judge Espinosa nominated attorney Wesley "Wes" Hassler to fill the opening created by the expiration of Ms. Donnelly's term. Judge Espinosa provided members with a copy of Mr. Hassler's résumé in the packet of materials distributed prior to the meeting. He noted Mr. Hassler practices in Pueblo primarily in the area of family law. Mr. Hassler has served on the Access to Justice Commission's Delivery Committee. Mr. Hassler would serve a seven-year term beginning January 1, 2023, ending December 31, 2029.

Mr. Beller moved to approve Mr. Hassler's nomination and recommend the Colorado Supreme Court appoint Mr. Hassler to the Board of the Attorneys' Fund for Client Protection. Mr. Reeve seconded. The motion passed unanimously.

c. Character and Fitness Committee

The terms of current committee members Dr. Kimberly Nordstrom and Dr. Doris C. Gundersen end December 31, 2022. The Chair said that Mr. Zall, Chair of the Character and Fitness Committee, recommends the committee approve appointment of Dr. Patricia Westmoreland to fill one of the two vacancies. Mr. Zall provided members with a copy of Dr. Westmoreland's résumé in the packet of materials distributed prior to the meeting. Dr.

Westmoreland would bring valuable mental health expertise to the Character and Fitness Committee. She is a forensic psychiatrist. Dr. Westmoreland would serve a seven-year term from January 1, 2023, to December 31, 2029. The Chair said Mr. Zall is searching for an additional non-attorney volunteer to serve on the committee.

Ms. Cohen moved to approve Dr. Westmoreland's nomination to serve on the Character and Fitness Committee and recommend her appointment to the Colorado Supreme Court. Mr. Reeve seconded. The motion carried unanimously.

d. Continuing Legal and Judicial Education Committee

Sam Starritt resigned from the Continuing Legal and Judicial Education Committee effective September 15, 2022. Judge McCallin, Chair of the Continuing Legal and Judicial Education Committee, recommends attorney Appalena Udell be appointed to the committee. She would serve a term of seven years from January 1, 2023, to December 31, 2029. Judge McCallin provided Ms. Udell's résumé with the materials distributed in advance of the meeting. She practices healthcare law and is enthusiastic about this potential appointment.

Judge Espinosa moved to approve Ms. Udell's appointment and recommend the Colorado Supreme Court appoint her to the Continuing Legal and Judicial Education Committee. Mr. Beller seconded the motion. The motion carried unanimously.

6. Discussion of the Bar Exam Passing Score ("Cut Score") Being Reduced

The Colorado Supreme Court, following the recommendation of the Law Committee, announced on November 4, 2022, that it will lower the minimum passing score on the Uniform Bar Examination (UBE) for admission in Colorado to 270 from 276 effective with the February 2023 examination. Colorado's cut score of 276 was the second-highest among the 41 jurisdictions utilizing the UBE. After receiving input from a number of stakeholders, including students and law professors, the Law Committee examined whether to recommend a lower cut score. This included review of the history of the cut score, which was set at 276 in 1985. Neighboring states of Nebraska, Utah, and Wyoming have cut scores of 270, as do other regional states of Oregon, Texas, and Washington. Moreover, the largest cluster of jurisdictions that use the UBE have a cut score of 270. Other large jurisdictions, including Illinois and New York, have lower scores.

The Law Committee referred the court to a psychometric study of the bar exam out of Oregon, which was influential in that state's reduction of its cut score to 270. The study emphasized the written portion of the UBE and the critical skills that portion of the test requires.

The Colorado Supreme Court adopted the cut score change beginning in February 2023. Justice Márquez commented the Court did so to be forward-looking. The Court made the announcement prior to the deadline for applications to sit for the February 2023 bar examination. Justice Márquez said that the Court was also aware of the impact a high cut score had on applicants from underrepresented communities.

7. Other Updates

a. Office of the Presiding Disciplinary Judge

Judge Large reported that a new court administrator, Isidro Luna, started October 1, 2022. Mr. Luna's start date permitted a month-long overlap with outgoing court administrator Tammy Bailey, who retired October 31, 2022.

The court will host a second bench-bar meeting on January 13, 2023.

Judge Large has been seeking bids from companies to perform necessary courtroom upgrades. There are numerous limitations on the courtroom's current capacity, including the ability to have testimony from remote witnesses. The courtroom is not equipped for audio recordings of proceedings, unlike other courtrooms in Colorado district and county courts. Judge Large has settled on a company that exclusively updates courtrooms. He requested an additional budget appropriation of \$35,000 to accommodate this upgrade.

After discussion among members, including input from Ms. Yates on anticipated fiscal year 2024 budget requests, the committee moved to recommend the Colorado Supreme Court authorize the appropriation sought by Judge Large from budget reserves. Ms. Cohen made the motion, which Mr. Beller seconded. The motion passed unanimously.

Beginning at 1:20 p.m., Zoom stopped functioning. Ms. Yates was able to restart Zoom and allow members appearing remotely to rejoin the meeting at 1:24 p.m.

Zoom went down again at 1:28 p.m. At 1:30 p.m., a phone connection was established to allow members appearing remotely to participate in the meeting.

b. CAMP

Ms. Peyton distributed an update to members in advance of the meeting. In January, CAMP will welcome the second cohort for Legal Entrepreneurs for Justice (LEJ) since CAMP absorbed this program. With six participants, this will be LEJ's largest cohort yet. There are five women in the cohort and two people of color.

CAMP will be piloting the "Modern Law University," a new program for LEJ alumni seeking to take their socially-conscious law practices to the next level. Modern Law University will focus on core concepts like scalability and sustainability for solo/small firm practices serving clients in the justice gap. The pilot program launches in January and goes through August 2023.

CAMP is very excited to be leading the Colorado Well-Being Recognition Program for Legal Employers that the Colorado Supreme Court approved in October. Ms. Peyton reported legal employers have already started making pledges to their staff's well-being based on the principles of the recognition program. The program received media attention from *The Daily Camera*. CAMP plans outreach regarding this program through webinars and information sessions, as well as presentations to organizations such as inns of court.

CAMP has an active events calendar scheduled through November 2023.

c. Colorado Lawyer Assistance Program

COLAP continues to see a significant number of calls for assistance, and notably a large number of calls related to elevated stress levels. The program has also seen an increase in calls of

a critical nature. COLAP responded to the Club Q shooting by reaching out to stakeholder organizations whose members may be experiencing trauma, including secondary trauma, stemming from that event in November.

Ms. Myers said she and her staff have been busy increasing their database of resources for the legal community. They are also working on increasing resources in general and for bar applicants. COLAP had a busy schedule throughout the fall with presentations.

Ms. Myers reported COLAP continues to bolster its collaboration with other state lawyer assistance programs. COLAP remains a leader in the lawyer assistance community.

d. Office of Attorney Regulation Counsel (OARC)

Ms. Yates updated members on several budgetary matters in advance of more detailed discussions in future meetings. She said OARC has had to hire back-up, contract IT support staff. Meanwhile, the Board of Trustees of the Attorneys' Fund for Client Protection recently voted to reduce the set-aside for the Fund that is a part of each Colorado lawyer's annual registration fee to \$20 from \$25. This will allow OARC to have a bit of additional revenue this registration season to help offset spending into its reserves.

OARC has also been working in recent months to update its continuing legal education and attorney registration database.

e. Licensed Legal Paraprofessional Program Proposal Update

On November 16, 2022, the Colorado Supreme Court held a hearing on the proposal to create a licensed legal paraprofessional program. The Chair reported there were no speakers at the hearing who opposed the program. A number of issues remain for the Court to decide including asset "caps" for clients who can utilize licensed legal paraprofessionals as well as the level of attorney supervision. The implementation plan for the program is pending with the Court.

f. Mandatory Pro Bono Reporting Update

The Chair informed members that a subcommittee continues to study a mandatory pro bono legal service reporting requirement for Colorado lawyers.

8. Other Discussion – Attorney Regulation Counsel Disqualification

Members discussed proposed language that would guide Attorney Regulation Counsel in deciding whether to disqualify from an investigation. Ms. Yates said that historically Attorney Regulation Counsel have disqualified themselves from certain investigations based on guidance similar to that for prosecutors. Creating a formal standard may be beneficial.

Potential rule language that members discussed at the meeting reads: "Regulation Counsel shall disqualify themselves or other staff from conducting an investigation in which a similarly situated prosecutor would be required to disqualify and should employ appropriate screening devices in such circumstances." This suggested language could be added to C.R.C.P. 242.4(e).

Members debated this language and determined to continue this discussion of this issue at the March meeting.

9. 2023 Meeting Dates

- March 17, 2023
- May 19, 2023
- September 22, 2023
- December 8, 2023

10. Executive Session

The meeting concluded at 2:11 p.m. after which members met in Executive Session to discuss a confidential matter.

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