



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

MEETING MINUTES

March 1, 2024, 12:05 p.m. – 2:05 p.m.

Hybrid meeting conducted in person and via Zoom

Members present in person: Chair David W. Stark, David Beller, Hon. Andrew McCallin

Members present via Zoom: Ret. Hon. Angela Arkin, Nancy Cohen, Cynthia Covell, Hon. Adam Espinosa, Steve Jacobson, Dr. Carolyn Love, Henry (Dick) Reeve, Sunita Sharma, Brian Zall, Alison Zinn

Liaison Justice in attendance: Justice Maria Berkenkotter (via Zoom)

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

Staff in attendance: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Ryann Peyton, Executive Director, Colorado Attorney Mentoring Program (CAMP); Sarah Myers, Executive Director, Colorado Lawyer Assistance Program; Amy Phillips, Assistant Director, Colorado Lawyer Assistance Program (COLAP); Anna George, Director of Technology (OARC); Jonathan White, Assistant Regulation Counsel, Office of Attorney Regulation Counsel (OARC) (via Zoom); Kim Pask, Executive Assistant, OARC

Guests: Steven Vasconcellos, State Court Administrator; Jason Lynch; David Johnson and Trish Cooper (via Zoom)

1. Approval of the December 8, 2023 Meeting Minutes

The Chair asked if members had suggested revisions to the draft minutes of the committee's December 2023 meeting. Mr. Reeve moved to approve the minutes without revisions. Judge Arkin seconded. The committee unanimously approved the minutes.

2. Update Regarding Ralph Carr Building

Steven Vasconcellos, State Court Administrator, attended the first part of the meeting to provide a report on the Ralph Carr Building. Floors five through seven of the building sustained very significant damage on January 2, 2024, when an intruder gained access to the building and set a fire, which caused the sprinkler system to run for several hours. Those floors will have to be rebuilt. OARC occupies floor five. Other floors sustained damage, including the second floor where the Presiding Disciplinary Judge's courtroom and offices are located. At present, most of the necessary demolition has been completed and furniture moved out. He is awaiting finalization of an industrial hygienist report, which will provide a roadmap for cleaning. Mr.

Vasconcellos explained that smoke infiltrated the building's central HVAC unit, causing smoke-related damage. A general contractor will be selected eventually for the rebuild. He estimates it will take 12 months to rebuild the floors once the construction begins. He does not anticipate impacts to the state judicial department's budget. Most costs should be covered by insurance.

Justice Berkenkotter thanked Mr. Vasconcellos and Ms. Yates for their work under challenging and extraordinary circumstances related to the incident at the Carr Building.

3. Discussion of Revisiting Definition of Unauthorized Practice of Law

The Chair introduced Jason Lynch. Mr. Lynch is General Counsel of the Foundry Group. He is also a member of the Access to Justice Commission and a chair of that commission's Technology Committee. Mr. Lynch explained to members that the Technology Committee has looked at the rules regarding the unauthorized practice of law (UPL) in Colorado in light of the growing use of artificial intelligence (AI) for legal services. Mr. Lynch explained how AI technological agents can act without a lawyer's supervision and provide legal analysis. He commented that AI technology may be used by self-represented litigants, and he said it is possible a user does not know that the AI agent they are interfacing with is not a human or is unsupervised.

Mr. Lynch suggested the committee convene a subcommittee to look at the UPL rules and regulations and consider whether new technologies require a review or modification of those rules and do so without a conclusion as to what those changes should be.

Justice Berkenkotter apprised members that the Court asked the Rules of Professional Conduct Standing Committee to look at the issue of AI. She mentioned there is an intersection with AI capabilities and access to justice. Members commented that this is an important topic in the legal field today, with several members observing that the fundamental systems are still evolving. There are implications for the attorney-client privilege with AI technology.

On a motion from the Chair, the committee unanimously voted to create a subcommittee to study the issue. Several members volunteered to be on the subcommittee, and members discussed other attorneys who may be able to contribute to the subcommittee's work.

4. Discussion of Creation of a "Family Law Specialist" Designation in Colorado

David Johnson and Trish Cooper led a conversation regarding the possibility of creating a "family law specialist" designation in Colorado. Mr. Johnson told members that the Family Law Section of the Colorado Bar Association has been interested in the conduct of lawyers who practice in this area. The section is aware of a letter sent to the Chief Justice by a judge regarding a lack of professionalism among family law practitioners, an issue the section takes seriously. The section wants to improve how family law cases are handled in Colorado. Doing so requires additional training, education, and mentoring.

The packet of materials distributed to members prior to the meeting included a proposal that an ad hoc committee of the Family Law Section approved related to a specialist certification. Mr. Johnson informed members that other jurisdictions have these specializations. Such specializations require taking an exam after demonstrating a certain number of years in family

law practice and a certain percentage of the lawyer's practice involving domestic relations law. The difficulty of the examination varies by jurisdiction. Mr. Johnson has spoken to individuals in Arizona, New Jersey, North Carolina, and Ohio involved with the certification programs in those jurisdictions. He said state bar associations administer most specializations, though in New Jersey, an arm of the court does so. In the process, they rely heavily on volunteers. He and the Family Law Section envision a Colorado program that could be self-funded. Mr. Johnson noted that one benefit to the public from such a program is it would allow consumers to have an additional means by which to assess a lawyer's basic competence.

Mr. Johnson and Ms. Cooper fielded questions from members. Among the questions was whether such a specialization would result in increased costs to access legal services in domestic relations cases. Mr. Johnson said that since such a specialization would be tied to a minimum number of years of family law practice, it would not necessarily result in higher fees because lawyers' fees tend to increase based on years in practice. The group discussed whether such a specialization could require some pro bono hour requirement. Ms. Cooper also commented that a consumer protection aspect of a specialization is that the family law arena has seen an increase in the number of complex issues such as trusts and business valuations, and a specialization may allow prospective clients to discern whether a lawyer has sufficient experience handling such matters.

The committee discussed that a specialization would require a support infrastructure. One member expressed concern that setting elevated competency standards, while commendable, will also have an exclusionary effect in the practice area. The committee also determined it would be appropriate to learn whether the Court would entertain the concept of a specialization.

Mr. Reeve moved to create a subcommittee tasked with making recommendations about such a specialization and to assess offering specializations in other fields. Mr. Beller seconded the motion with an amendment that the committee first invite the Court to weigh-in on whether it would support specialization. The motion passed with all members voting in favor of the motion and amendment except Judge McCallin, who opposed the motion.

5. Discussion of Metrics for CAMP

Members received a proposal for evaluation methodology for CAMP in the packet of materials distributed prior to the meeting. CAMP's proposal stems from the work of a subcommittee investigating how to measure the efficacy of the various court-supported offices.

Ms. Peyton explained that C.R.C.P. 255 serves as CAMP's charging rule. She informed members that CAMP engages in regular strategic planning. Beginning in April 2024, CAMP will begin utilizing a new strategic planning and reporting paradigm prevalent in the non-profit sector, the "OKR Method." This methodology relies on certain evaluation metrics including actual organizational results based on data as well as evaluating what an organization wants its results to be and to show. CAMP currently uses surveys to evaluate participants' overall sense of success and whether they had positive experiences. Current surveys also document the program's overall growth and utilization. The evaluation methodology seeks to expand on those data sets to see whether the program is creating value for the profession based on money spent, which is a critical part of CAMP's proposed assessment metrics.

The committee discussed the proposal and found it to be excellent. Members are interested in having the evaluation address the value added aspect of CAMP's work.

6. Discussion of ADA Accessibility Compliance Required for Public Entities by July 1, 2024

Ms. Yates explained that OARC is spending time and resources to comply with a new Colorado statutory requirement regarding the Americans with Disabilities Act (ADA) as it relates to websites. This follows passage of HB21-1110. Organizations must comply by July 1. The statute requires changes to OARC's website, which also helpfully provides an opportunity to update the website. The website has thousands of pages associated with it. The work is an unbudgeted expense that will cost over \$100,000, but the current budget allows OARC to pay the expense. Ms. Yates noted that the other court-supported offices have the same statutory obligation.

7. Update from the LLP Oversight Committee on Implementation

Judge Arkin reported things are going well looking towards the first family law exam administration and following that, the first swearing in ceremony for LLPs on June 20, 2024. Among the projects the implementation committee has undertaken is to develop a practicum for LLPs who may go in to the courtroom. Judge Arkin thanked Dawn McKnight, Deputy Regulation Counsel, for her assistance with the program's implementation and roll-out. Approximately 70 people will sit for the first family law examination.

8. Update from the Rule 242 Subcommittee

Ms. Yates reported that the subcommittee evaluating updates to C.R.C.P. 242 is still working on a comprehensive proposal.

9. Update from the Advisory Subcommittee on Attorney Regulation System

The Chair reported this work continues. He anticipates the subcommittee will begin working with COLAP on its evaluation metrics in September.

10. Update on Committee's Request to Form Subcommittees to Modify Student Practice and Single Client Certification Rules

Ms. Yates reported that this project has not yet moved forward and may need to wait until later in the year due to other pressing issues.

11. Other Updates

a. Office of the Presiding Disciplinary Judge

Judge Large reported he has returned to work nearly full-time. His office is very busy with 17 cases at issue and 16 set for trial. He informed members that judges have been generous in offering space while his courtroom is not available due to the incident at the Ralph Carr

Building. He continues to look for appropriate locations to conduct hearings until his courtroom is usable.

b. CAMP

Ms. Peyton provided members with a written report in the materials distributed in advance of the meeting. Of note, 2023 ended with an increase in the number of new mentee applications from 2022. January through March is always a busy time for CAMP. A new Legal Entrepreneurs for Justice cohort recently launched. Ms. Peyton is also planning events in 2024 for the Colorado Well-Being Recognition Program for Legal Employers. The first annual recognition program for 2023 well-being program participants will take place April 15, 2024.

c. COLAP

Ms. Myers reported that COLAP currently is working on its 2023 annual report. COLAP continues to see an increase in calls for assistance. Calls involving critical incidents, secondary trauma, and empathic strain have increased. COLAP will be updating its website in the next several months.

d. OARC

Ms. Yates informed members that OARC is adapting to its new, temporary office space. She thanked staff members' considerable efforts to make the move into the temporary space possible and accomplished in a timely way. The February bar examination also went smoothly.

At the conclusion of the meeting, Ms. Yates asked members to consider and provide feedback on whether the committee should convene more often.

The meeting concluded at 2:05 p.m.

12. 2024 Meeting Dates

- May 3, 2024
- September 6, 2024
- December 6, 2024

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