



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

**MEETING MINUTES
May 15, 2015, 12:00 – 1:25 p.m.
Extra-Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203**

Members present: Chair David W. Stark, Steve Jacobson, Mac Danford, Rich Nielson, Nancy L. Cohen, Cynthia F. Covell, Daniel Vigil, Alexander (Alec) Rothrock, Henry (Dick) Reeve, and Brian Zall (appearing by telephone).

Members absent: Cheryl Martinez-Gloria, Barbara Miller, and David Little.

Liaison Justices present: Honorable Nathan (Ben) Coats and Honorable Monica Marquez.

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

Staff present: James C. Coyle, Regulation Counsel; James S. Sudler, Chief Deputy Regulation Counsel; Margaret Funk, Deputy Regulation Counsel; Barb Ezyk, Executive Director of the Colorado Lawyer Assistance Program (COLAP); Alan Obye, OARC Staff Attorney; and Melissa Meirink, Supreme Court Staff Attorney.

1. Approval of minutes of March 6, 2015 meeting

A member pointed out that Mac Danford is not Vice Chair of the Advisory Committee, as was inadvertently stated in the minutes. With that amendment, Mr. Reeve moved, and Ms. Cohen seconded, that the minutes be approved. The minutes were so approved.

2. Colorado Lawyers Helping Lawyers subcommittee report (Sudler)

Mr. Sudler reported that Colorado Lawyers Helping Lawyers (CLHL) is tabling its request for privilege or confidentiality. At this point, the subcommittee can either go forward or be put on hold until further request.

The Chair commented that this withdrawal is a good resolution. It was unclear what exactly CLHL is requesting.

Mr. Rothrock commented that what CLHL wanted initially was some sort of privilege, which is part of the rule for COLAP. CLHL is a private organization. In some other states, those peer counseling groups come within the lawyer assistance programs of those states. Barb's office has researched that.

Mr. Rothrock stated he hopes one day we will have peer assistance groups under COLAP's umbrella. It would be good to have these groups all over the state. The Chair agreed.

3. OARC budget discussion (Coyle)

Mr. Coyle stated he was hoping to have the budget before the group today, but the office controller had a family emergency and has been out of the office. There is still a lot to do. Mr. Coyle has the info from the long bill on salaries. We will be working on payroll issues; this is most important.

There is good news: the office did better than expected with respect to 2015 attorney registrations. We had forecast downturns in the number of active and inactive attorneys, but revenues exceeded estimates by \$230,000 in that area. However, we don't know when this cycle will turn and more attorneys will retire. We are cautiously optimistic but are being as frugal as possible. We are finding ways to reduce costs wherever we can. Mr. Coyle hopes to have the budget finalized in the next week. We will figure out a way for the Committee to review and approve the budget once it is completed. The Chair recommended that the Committee do that by email and have a conference call if necessary.

4. Chapter 38, Rule 2 – Access to Administrative Records of Judicial Department (Coyle)

Mr. Coyle deferred to Justice Marquez, Chair of the Public Access Committee, to describe the rule.

Justice Marquez reported that this committee has been in existence for a while. She took over from Justice Martinez. The committee's mission is to revise Chief Justice Directive 501, which deals with access to court records.

Several years ago, Carol Haller recognized that a couple cases decided that the judicial branch is not subject to CORA. Thus, it is not clear how the judicial branch should respond to records requests.

The new rule has to do with requests for administrative records, as opposed to judicial records. A subcommittee was formed and has proposed this new rule, which would replace current Rule 2 in Chapter 38 of the Colorado Court Rules.

A hearing is set for September or October on this rule. In the meantime, this week the Chief Justice implemented CJD 15-01, which tracks the rule. CJD 15-01 uses CORA as a starting point, but recognizes that each constituent agency has unique needs and maintains unique kinds of documents.

Mr. Coyle stated that CJD 15-01 covers Attorney Regulation Counsel functions. The office website now has a link to “access to administrative records,” which includes a description of the CJD and describes what types of records are available for public access. The website has a frequently-asked-questions section for the public and provides a copy of the CJD. The website also provides an administrative records request form. There will be costs associated with this. The office is allowed to pass on the costs. We are following other state agencies’ rules on this. For requests of twenty pages or less, we won’t charge unless staff time is required. For more complex requests, staff time is \$25 per hour, plus scanning and copying time. We are following DORA procedures in that regard. We expect some of the more difficult complaining witnesses and respondents will use this rule to make life more difficult for us, but we will be prepared. We have a confidentiality rule that is still in place. Much information maintained by Attorney Regulation Counsel is confidential and will be redacted.

Mr. Coyle explained that CLE information remains confidential. The attorney regulation confidentiality rule is also still in effect—the entire disciplinary file becomes public at a certain point in the regulatory process. We still have a duty to protect medical information and will continue to do so. We don’t know the impact of this new CJD yet, but we are ready. Chip Mortimer is the attorney supervising these requests. Nadine Cignoni and Cheryl Lilburn will be handling the requests. We have been working hard to institutionalize many of our processes.

The Chair asked if the reference to the CJD on the website applies to COLAP, the PDJ, and other offices.

Ms. Ezyk stated that if COLAP receives a records request, she will call Theresa Tate, Assistant Legal Counsel for the Judicial Branch, for help deciding what must be disclosed.

Judge Lucero stated he is aware he would have help from outside his office. His office has discussed whether someone should be hired. His office will comply with the rule as required. One of his staff attorneys was on the subcommittee. If there is an issue about whether a record should be disclosed, Judge Lucero has called the Attorney General’s office in the past. Mr. Coyle stated Melody Mirbaba and Sueanna Johnson are available to help.

Mr. Coyle stated that if a member of the public challenges an office decision, he or she can seek redress in Denver District Court. Traditionally only the Colorado Supreme Court has determined what is confidential. We will work with the Attorney General as we address these issues.

Ms. Cohen asked if formal disciplinary complaints and other pleadings will be on the new Attorney Regulation Counsel website. Mr. Coyle responded that final decisions will remain on PDJ’s website, as will pending matters, and there will be access to pleadings on the PDJ website.

Ms. Covell asked if the office can keep track of who makes records requests and what they request and receive. Mr. Coyle stated that there will be records, and we are working on software requirements for that. The Chair asked if there will be records of requests from all parts of attorney regulation, not just Jim’s office. Mr. Coyle stated he has worked with Brett Corporon in our IT department on software for our office; he assumes Brett will offer that to other offices,

and we could potentially have a master compilation of data. Each office has its own confidentiality issues, however.

Ms. Covell commented that it would be interesting to have a report on who those inquiries come from. Is it the usual suspects? Is the broader public interest? Mr. Coyle agreed.

Mr. Rothrock asked if Attorney Regulation Counsel is planning to hire additional staff to deal with records requests. Mr. Coyle said there are no plans to do so yet. The CJD became effective Monday, and as of Friday, there have been no requests, but they will start to come in. Mr. Coyle is considering another line item to address an additional staff member if needed. Mr. Coyle is hoping we can handle this ourselves.

5. Rule 260 update (Little)

Deputy Regulation Counsel Margaret Funk introduced herself. She has assisted Chief Deputy Regulation Counsel Matt Samuelson on the Rule 260 subcommittee, along with Melissa Meirink. This is a major overhaul of the rule, and the subcommittee has been working very hard. These rules have not been revised since 1980. The subcommittee is meeting every week and is doing a final review of its proposed rules now. There are also regulations. The subcommittee was hoping to get the rules to the Advisory Committee today but is now hoping to get them finished in August, in time for the September meeting.

The Chair asked if lawyers over 65 will have to complete CLEs. Ms. Funk replied that the subcommittee is in favor of this, but there is no final decision yet. Mr. Coyle stated that the Court seems more willing to consider this rule change than it has in the past.

6. LLLT subcommittee report (Rothrock)

Alec Rothrock reported that at the last Committee meeting, he was appointed to chair a subcommittee to study the Washington state legal technician program, which will license nonlawyers to provide certain legal services in domestic relations cases. Those Washington rules went into effect this year. Mr. Rothrock's subcommittee plans to meet in June. A week from today, there is a special Advisory Committee meeting where two people from Washington will be here talking about their program. The idea of our subcommittee is to study whether this is something Colorado should be interested in.

There are about 25 people on the subcommittee. If anyone is interested, they can let Mr. Rothrock know.

Mr. Coyle encouraged Advisory Committee members to go to the supreme court courtroom Friday, May 22, from 2-4 p.m., to hear about this. It is important to understand what Washington is doing because Committee members will be asked questions about it. Paula Littlewood and Steve Crossland have lived this Washington program for 13 years; they can explain why Washington decided to do what it's doing. Washington started looking at this issue in 2002. Around that time, Washington tried to define the practice of law. The Department of Justice objected to that attempt.

Mr. Coyle said the first LLLT licensing exam was held this year. It was taken by nonlawyer members of law firms.

The Chair asked Mr. Coyle if he wanted to talk about recent and upcoming ABA programs. Mr. Coyle stated the ABA Unauthorized Practice of Law School was held in mid-April at Loyola University. The first edition was here in Denver last year and was a great success. This year's school addressed issues around the tension between protecting the public and access to justice. Paula Littlewood from Washington was there to discuss this tension. Corporate counsel for Legalzoom was there. Computer science experts were there to talk about the evolution of technology and how it might affect interactive websites in the future. There were also programs on first-line UPL prosecution.

The National Conference on Professional Responsibility is coming up in two weeks. 450 leading judges and lawyers from around the country are coming to the Westin hotel in Denver. The National Forum on Client Protection will be there as well.

On the third day of the conference, there will be an international regulators' workshop. This workshop is a joint venture between the Canadian bar association and the ABA. Several Canadian and Australian jurisdictions and eight United States jurisdictions will participate in workshop. The workshop will cover proactive risk-based management regulation. Justices Marquez and Hood, Mr. Stark, and Mr. Coyle will be there, along with law professors Laurel Terry and Susan Fortney and others. Participants will discuss whether entity regulation is viable in the U.S.

At all these conferences, there is discussion about the data on new lawyers. Bar applications are dropping. In 2012, there were 1500 bar examinees. That number has dropped by 100 per year since then. This year, there were 1200. Those who do take the bar are not doing as well. At this year's February exam, there was a 62% overall pass rate. That alone wouldn't be too concerning, but LSAT scores have also dropped. The top tier of LSAT takers (175-180) has shriveled up to nothing. The number of test takers scoring 140 and above is dropping, while the number of test takers scoring 140 and below is increasing. Data shows the exam and its results are reliable. As a result of these numbers, we won't have as many people passing the bar. The gifted students are going into the medical profession, math, and computer sciences. This means there will be a decreasing pool of lawyers available. These issues will be discussed at the National Forum on Client Protection and the regulators' workshop. How do we define legal services? Do we need to be more innovative? The LLLT subcommittee will have to address these issues too.

Ms. Cohen commented on the difficulty new law graduates face finding jobs and paying off student loans. She questioned whether people will find going to law school worth it. Mr. Coyle agreed that many people are finding a career in law is no longer financially viable.

Ms. Cohen also commented that there may be a generational shift, in which people no longer want to "sell their souls" by working the hours required by law firms. She wondered whether these issues will improve as the economy improves. Mr. Reeve commented that at the district

attorney's office, they have to have realistic discussions in interviews with new lawyers about debt and whether new hires can afford jobs at the DA's office. Applicants say or imply this is the only job they can find. Loan forgiveness might save some new hires, but that's a year-to-year question.

The Chair noted that in the private sector, the number of jobs is going down and will never come back. While there used to be 15 summer associates in his Denver office, there are now four. Last year there were three. The need for lawyers is shrinking. The change is driven by changes in technology and society. People are not necessarily finding jobs to pay off this debt.

Mr. Coyle commented that at the recent Unauthorized Practice of Law School, it was discussed that in 5-10 years it will be "us versus the computers." Limited licensing might be a way to counter that problem by allowing non-lawyers to perform some legal services.

Mr. Nielson commented that there has been discussion about whether we are reaching the bottom of the decrease in law school applications.

Ms. Covell wondered whether LSAT scores predict what kind of lawyer a person ends up being. Mr. Coyle agreed that is a good question; we can ask the National Conference of Bar Examiners for input on that with respect to the bar exam. Mr. Nielson commented that the LSAT is a reliable indicator of success in law school and on the bar exam, but we haven't looked beyond that. Ms. Covell wondered whether we have a problem with standardized tests in this country as it is. People who do not test as well might not necessarily be less capable. It's not clear that lower scores mean a lower-quality law school applicant.

Mr. Vigil commented that law schools have turned away from "traditional" courses in favor of clinical courses, in response to a demand for practice-ready law graduates, but the bar exam has not changed. That could be another explanation for the poor bar passage rate. Mr. Nielson pointed out that we have tried to compensate somewhat by instituting the performance-test part of bar. A judge at the most recent national conference suggested expanding that part of the exam even more.

7. Colorado Lawyer Assistance Program Report (Ezyk)

Ms. Ezyk stated the COLAP Annual Report has come out since the last meeting. Per the report, there has been a 28% increase in requests for services from individuals, and a 68% increase in requests for presentations. Ms. Ezyk has recently been talking to public defenders and district attorneys. Mr. Coyle and Ms. Ezyk drove to southern Colorado recently to visit the bar association in Durango.

Carrie Bowers, the COLAP office administrator, has been with the program for a year now. She is now in school, going for a counseling degree. She is also studying for the GRE and wants to get her masters.

The COLAP office is expanding into the empty suite next door. There will now be two separate doors, which is helpful for confidentiality purposes because the office can have more groups and clients can come in without being seen.

COLAP has a brand new website. COLAP also has a computer screen cleaner/stylus to give away at presentations. COLAP remains busy as usual.

8. Office of Attorney Regulation Counsel report (Coyle)

Mr. Coyle stated that the annual report is now available on the website, and was previously emailed to each and every Colorado lawyer.

The goal for completing the new OARC website is August. The website will have nice features and more resources. It will continue to incorporate all functions of the office to help lawyers achieve long, healthy careers and protect the public. The tagline will be “Promoting Professionalism. Protecting the Public.” The website will be accessible and easy to use. It will have features that people expect, including helpful explanations.

Mr. Coyle recommended a new book from the ABA called *The Relevant Lawyer: Reimagining the Future of the Legal Profession*. The book has good information on current issues, including LLLTs, regulatory issues, globalization, and issues in other countries.

We are rewriting the Client Protection Fund rule. We will ask the Court to fold the CPF into the Advisory Committee. The Chair of the CPF Board of Trustees would be part of Advisory Committee, and the Committee would have oversight over the CPF. All regulatory functions will then be under the Advisory Committee.

OARC is doing well and keeping very busy. There are new charts and statistics in the annual report. We can track sole practitioners. It’s often small law firms and solos who need help. We will focus on educational tools to help smalls and solos, especially six-to-fifteen-year lawyers. The statistics also break down into, for example, active government attorneys. We can use this data to help lawyers, study diversity, etc.

Ms. Cohen asked if we can study what percentage of lawyers have insurance. Mr. Coyle responded that we have that information. Ms. Cohen stated it would be helpful to break that information up into solo/small/medium/large firm lawyers. Mr. Baker has reported most of his mentees don’t have insurance.

The Chair wondered whether the percentage of government lawyers is higher in Colorado than in other states. Mr. Coyle stated that while one in six Colorado lawyers works for a government agency, he has not done research on other states and does not know if other states have those records available. Ms. Covell pointed out that we have a lot of federal agencies here. The Chair stated that the myth has always been that Colorado has more lawyers than any state but D.C., but he doesn’t know if that is true.

Ms. Ezyk noted that when she and Mr. Coyle go to places like Durango, people are very grateful that we go to these rural areas. It's important to show that things don't only happen in the I-25 corridor.

Ms. Covell pointed out that the eastern edge of the state is not represented on the Committee. Mr. Coyle and Ms. Ezyk are talking about making a trip to the eastern edge of the state.

Mr. Coyle pointed out the Michael Frank award awarded to John Gleason in 2013, displayed in the extra-large conference room, the conference room for this Advisory Committee meeting.

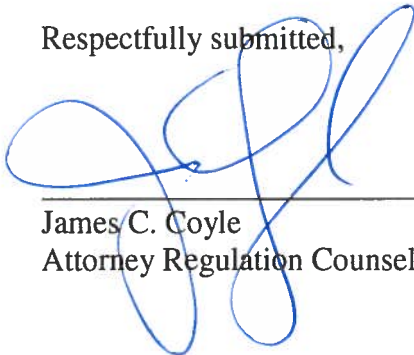
9. Remaining dates for 2015 meetings

There will be a special Advisory Committee meeting on May 22. Remaining dates this year are September 11 and December 11.

10. Adjournment

The chair adjourned the meeting at 1:25 p.m.

Respectfully submitted,



James C. Coyle
Attorney Regulation Counsel