



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

September 5, 2014, 12:00 p.m. – 1:05 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203

Members present: Chair David W. Stark, Vice Chair Mac Danford, Daniel Vigil, Rich Nielson, Dick Reeve, David Little, Alexander (Alec) Rothrock, Nancy L. Cohen, Steven Jacobson, Chris Markman.

Members absent: Brian Zall, Cheryl Martinez-Gloria, Cynthia F. Covell, Barbara Miller.

Liaison Justice present: Justice Nathan (Ben) Coats, Justice Monica Márquez.

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

Staff present: James S. Sudler, Chief Deputy Regulation Counsel; John Baker, Director of Colorado Attorney Mentoring Program (CAMP); Barbara Ezyk, Director of Colorado Lawyer Assistance Program (COLAP); Marie Nakagawa, Staff Attorney.

1. Introductions

The Chair introduced guests Colorado Supreme Court Staff Attorney Melissa Meirink, and Scott Meiklejohn and Paul Quinn from Colorado Lawyers Helping Lawyers, Inc. Also, John S. Gleason will be joining later in the meeting.

2. Approval of June 6, 2014 meeting minutes

The Chair asked for a motion to approve the June 6, 2014 meeting minutes. Mr. Vigil moved to approve the minutes, and Mr. Nielson seconded. The meeting minutes were approved.

3. Approval of the nomination of Diana David Brown and Luis Terrazas to the Attorney Regulation Committee, as required by C.R.C.P. 251.2(a)(2)

The Chair asked Mr. Jacobson to address the nominations to the Attorney Regulation Committee. Mr. Jacobson explained that the resumes of the two nominees were distributed to the committee prior to the meeting. Mr. Jacobson noted that Diana Brown's parents were on the Grievance Committee which preceded the Attorney Regulation Committee, so she is already knowledgeable about attorney regulation issues. The Attorney Regulation Committee has traditionally had a social studies teacher, and Luis Terrazas will be able to provide those perspectives to the committee as a teacher of history and the social sciences. The Chair asked if there were any questions, and hearing none, Mr. Sudler moved to approve the nominations for recommendation to the Court. Mr. Danford seconded that motion. The committee unanimously approved to recommend the nominations to the Court.

4. Updates of nominations of other Committees (UPL, CLJE, Law, Character and Fitness)

The Chair turned to the other nominations that are not required to be approved by the Advisory Committee under the Colorado Rules of Civil Procedure. The Chair asked Mr. Sudler to address these nominations. Mr. Sudler explained that Charles Spence is nominated to the UPL Committee. Mr. Sudler personally interviewed him on the phone and thinks he would be a good addition to the committee. The Honorable Andrew McCallin, well-known amongst the Advisory Committee members, is nominated for the CLJE Committee, which is required to have a judge as a member and currently does not have one. Mr. Sudler said the search is still ongoing for nominations to the Law Committee and the Character and Fitness Committee, and he hopes the nominations will be presented at the next Advisory Committee meeting. Mr. Nielson added that he and Mr. Coyle have already scheduled lunches with prospective nominees. The Chair asked if there were any questions, and hearing none, asked for a motion to approve these nominations for recommendation to the Court. Ms. Cohen so moved, Mr. Nielson seconded, and the recommendation was unanimously approved by the Advisory Committee.

5. Colorado Lawyers Helping Lawyers, Inc. ("CLHL") proposed rule change to C.R.C.P. 251.34(b)(9.5)

The Chair began the discussion by asking guests Mr. Meiklejohn and Mr. Quinn to talk about CLHL's proposed rule changes. Mr. Quinn thanked the Chair and the Advisory Committee, and briefly explained that CLHL is a lawyer's peer assistance program approved by the Colorado Supreme Court under C.R.C.P. 251.34(b)(9.5). CLHL offers free, confidential peer assistance to any Colorado lawyer, law student, or judge seeking help with alcohol abuse, substance abuse, or mental health issues. It is similar to COLAP in providing assistance to lawyers; however, unlike COLAP, CLHL is comprised of volunteer attorneys who respond to requests for assistance by other lawyers. Mr. Quinn distributed an informational flyer explaining CLHL's purpose and listing upcoming CLHL meetings.

Mr. Quinn explained that CLHL is proposing a rule change because he and Mr. Meiklejohn have had confidentiality concerns with CLHL's current rules. Confidentiality is central to the assistance CLHL provides. Mr. Meiklejohn said there are often law enforcement personnel and district attorneys present at the CLHL peer support meetings, who often have obligations that are different from other attorneys. To protect confidentiality of the meetings, CLHL is proposing changes to the rules to prevent members of law enforcement from disclosing information obtained at the peer assistance meetings. The Chair asked whether CLHL was seeking something similar to a privilege, so that law enforcement can refuse to answer based on this confidentiality rule. Mr. Meiklejohn believes the new language does that, as well as make information from the meetings inadmissible in court. The inadmissibility would be in any court, not just in attorney discipline proceedings like under COLAP's confidentiality rule. The Chair asked for clarification on where the language is located in the proposed rules. Mr. Meiklejohn pointed to pages 4 and 5 of the proposal.

Mr. Sudler expressed concern over the language of the proposed rule change and whether there are any other states that enforce confidentiality rules similar to this rule. This change in the rule would affect not only CLHL but other organizations as well, and Mr. Sudler wondered whether this kind of confidentiality rule has been approved by another supreme court. Mr. Meiklejohn responded that they had not looked at other states, only COLAP's confidentiality rule. Ms. Cohen inquired whether the Advisory Committee could even suggest a rule to preempt a law enforcement member's statutory obligation in these circumstances. Mr. Reeve agreed and said he has serious concerns over how the rule could preempt law enforcement's statutory duties. The Chair asked Mr. Reeve to elaborate. Mr. Reeve explained there are certain cases in which law enforcement is statutorily bound to make a report, such as when there is sexual assault involving children. The Chair asked whether the rule change would impact that statutory duty. Mr. Reeve could not say with certainty without knowing what scenarios appear before CLHL, but he believes this conflict in confidentiality will eventually come up.

The Chair asked what kinds of meetings the rule changes would affect. Mr. Meiklejohn explained that the CLHL meetings are similar to a 12-step recovery program, at which people share problems and get support and advice from the group. The problems discussed will encompass things outside of the practice of law. Mr. Meiklejohn agreed that the Court would have to balance the confidentiality concerns and that perhaps CLHL could reword the proposed rule change. Ms. Ezyk expressed COLAP's efforts in structuring their rules in order to protect confidentiality. Mr. Quinn asked whether Ms. Ezyk supported CLHL's proposed rule change. Ms. Ezyk said she does, but explained that CLHL must be mindful of consequences of any rule changes.

Mr. Sudler suggested that this issue be reviewed by a subcommittee. The Chair agreed. Mr. Rothrock also agreed and believed the ethics committee, as a peer assistance program, would benefit from this review as well. The Chair asked for volunteers to form this subcommittee. Mr. Sudler, Ms. Ezyk, Mr. Meiklejohn, Mr. Quinn, the Chair, Mr. Rothrock, Mr. Vigil, and Mr. Reeve volunteered to be on the subcommittee. Mr. Sudler will be the chair of the subcommittee.

The Chair thanked the volunteers and suggested that the subcommittee make a report at the December meeting.

6. Other updates

The Chair next asked Mr. Baker to give an update about CAMP. Mr. Baker announced that, along with the CAMP report that was circulated to the committee, he wanted to give an update regarding three things that have been pending and were just resolved yesterday. First, Mr. Baker will be working with the Office of the Child's Representative in setting up a mentoring program to train new Guardian Ad Litem (GALs). Much of the contact will be by phone or computers by using skype because the GALs live all over the state. Mr. Baker will webcast the first orientation and training will be in two weeks. Second, CAMP has started to expand mentoring programs to in-house programs within law firms. He currently has Fairfield & Woods, P.C. and Hall & Evans, L.L.C. participating, and a third law firm that is considering the program. The mentoring program will consist of partners mentoring associates. There were some concerns regarding associates feeling unsafe in the mentoring relationship if they feel as though they are being evaluated for partnership at the same time, so Mr. Baker is considering those issues. Third, the National Legal Mentoring Consortium conference will hold the next conference in Denver in 2016. Mr. Baker wanted to bring to the Advisory Committee's attention that there is a concern with expense. CAMP must come up with \$10,000 to cover the expense of hosting this conference, and Mr. Baker has been discussing this with the Office of the Supreme Court Administrator and Chief Justice Rice. Finally, Mr. Baker noted that CAMP is now approaching the time period in which many programs that started up at the beginning of CAMP must now make the decision and effort to sustain the program for another year. This may be difficult, and Mr. Baker would appreciate any ideas on how to encourage the maintenance of these programs by the various institutions. He then asked if anyone had questions.

The Chair asked about the partner-associate mentoring concerns in the in-house programs. He believes those concerns are not an issue. Mr. Baker said it is an issue that is a part of navigating the law firm structure. He will report back on the in-house programs. The Chair asked Mr. Baker whether participants in this in-house program will receive CLE credits, and Mr. Baker confirmed that they do, but he will double-check with Mr. Little, who is chair of the CLJE subcommittee.

The Chair then asked Ms. Ezyk to give an update on COLAP. Ms. Ezyk said COLAP has been busy due to the law schools being back in session. She said there were a number of students at this year's law school orientations at DU and CU that expressed they need help due to stress. She also discussed statistics of COLAP contacts, and that Sarah Meyer's article in the OARC newsletter was very popular in the last issue. The Chair asked if anyone had any questions, and hearing none, thanked Ms. Ezyk for the update.

The Chair asked Mr. Sudler to give an update from the Office of Attorney Regulation Counsel (OARC). Mr. Sudler first explained that Mr. Coyle was sick and could not attend today's meeting. The new admissions rules took effect last week and there have been no problems so

far. The July bar exam, which had 848 examinees, went smoothly except for a small problem with the uploading of exam answers through the exam software. Apparently this was a nationwide problem with the software provider, but it was resolved after causing some stress to the exam takers. Mr. Sudler also announced that one of OARC's intake attorneys, Amy DeVan, has accepted the position of Executive Director of the Independent Ethics Commission. Also, trial attorney Adam Espinosa is one of the six nominees for three positions open at Denver County Court. Finally, John Gleason is leaving to join Burns, Figa and Will, P.C. to work as Special Counsel.

7. A few words from John S. Gleason

The Chair introduced John S. Gleason, former Attorney Regulation Counsel, and explained that Mr. Gleason was asked to attend today's meeting to give a few words to the Advisory Committee. Mr. Gleason thanked the Chair and the Advisory Committee, and said that he wanted to speak to the many accomplishments that the Advisory Committee has made over the years. Throughout his years working at OARC, Mr. Gleason has always had other states always tell him that they want to be like Colorado in regulating attorneys. He said Colorado has been the first state in the U.S. to establish the following: alternatives to discipline, central intake, telephone intake, the Office of the Presiding Disciplinary Judge, community outreach, consolidation of the office of admissions with regulation, a lawyer assistance program, and monitoring program. Colorado was also selected to investigate and prosecute the most significant prosecutorial misconduct from another state. He thanked the Advisory Committee for their efforts in making those accomplishments possible.

The Chair and the Advisory Committee thanked Mr. Gleason for everything he has done. The Chair expressed that it has been a pleasure to witness everything Mr. Gleason built in Colorado's attorney regulation system.

8. Dates for remaining 2014 meetings

The Chair announced the dates for the remaining 2014 meetings:

- Annual Dinner on Friday, December 5, 2014 at 5:30 p.m. - 9:00 p.m.
- Friday, December 12, 2014 at noon.

Justice Márquez said there may be a conflict for the Annual Dinner date, but she will refer that matter to the Chief Justice and Mr. Coyle.

9. Adjournment

The meeting was adjourned at 1:05 p.m.

Respectfully submitted,



James S. Sudler
Chief Deputy Regulation Counsel

James C. Coyle
Regulation Counsel