COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE

MEETING MINUTES
September 7, 2018, 12:05 p.m. – 1:20 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, Colorado 80203

Members present: Chair David W. Stark, Barbara Miller, Brian Zall (via teleconference), Cheryl Martinez-Gloria (via teleconference), Cynthia Covell, David Little, Dick Reeve, Mac Danford, Nancy Cohen, Richard Nielsen, and Steven Jacobson.

Members absent: Alexander (Alec) Rothrock, Daniel Vigil.

Liaison Justices present: Justice Monica Márquez and Justice William Hood.

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

Guests: Christopher Ryan, State Court Administrator.

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

Chair David Stark convened the meeting. He welcomed Justice William Hood as a new liaison justice to the committee. He also welcomed new Attorney Regulation Counsel Jessica Yates.

1. Approval of May 11, 2018 meeting minutes.

The Chair asked if everyone had read the minutes of the committee's May 11 meeting. The committee approved the minutes with no edits.

2. Rule 251 subcommittee update.

Mr. Stark provided an update on the work of the subcommittee formed to consider changes to C.R.C.P. 251. The subcommittee meets every two weeks. Its work could not be done without the excellent support of staff attorneys from the Presiding Disciplinary Judge's office. The subcommittee has looked at provisions of Rule 251 related to diversion, alternatives to

discipline, and stipulations to discipline. The subcommittee is approximately halfway through the rule revision process.

3. Request for Approval C.R.C.P. 251.34 from the CBA Ethics Committee

Matthew Wolf, chair of the Colorado Bar Association Ethics Committee, submitted a request to Mr. Stark to designate the Ethics Committee as a lawyers' peer assistance program pursuant to C.R.C.P. 251.34. This would exempt members of the Ethics Committee who respond to inquiries from lawyers from the misconduct reporting requirements of Colorado Rule of Professional Conduct 8.3(a). Ethics Committee members sometimes receive inquiries that reveal potential ethics violations. Mr. Wolf's letter to Mr. Stark explains that when such inquiries come in, often the lawyer reaching out wants information on how to mitigate any potential violations. These lawyers tend to request their identity remain confidential. Mr. Wolf's letter explains that the unique and valuable service the Ethics Committee offers merits its classification as a lawyers' peer assistance program. The committee approved the request. It will be submitted to the Colorado Supreme Court for review through Attorney Regulation Counsel.

4. Discussion of proposed CLE Regulation or Rule changes

a. Comity to recognize compliance with other jurisdictions

Ms. Yates previewed a request to amend the Regulations of the Colorado Supreme Court Continuing Legal and Judicial Education Committee. The proposal would provide comity for out-of-state lawyers also licensed in Colorado to comply with this state's continuing legal education (CLE) requirements based on compliance with another state's mandatory CLE. This would be based on certain criteria including that the lawyer is licensed in a state with mandatory CLE requirements and that the lawyer certifies that he or she has complied with that state's mandatory CLE requirements.

b. Allowing compliance through attorney self-submissions

Ms. Yates discussed additional proposed amendments to the CLE regulations that would allow lawyers to obtain accreditation for a live, out-of-state CLE program by submitting a Form 1B to the Continuing Legal and Judicial Education Office along with a $5 processing fee. This would allow the lawyer to obtain individual accreditation for that program.

Ms. Yates said the new CLE rules allow this committee to approve changes to the CLE regulations. If this committee believes that these two proposed changes can be accomplished through amendments to the CLE regulations, it can proceed with voting on these proposed amendments. If the committee does not believe these changes can be accomplished through regulation and require a new rule, it can make a proposal to the Colorado Supreme Court for review. Ms. Yates mentioned these two proposals at this meeting so that the committee can consider them along with the procedure for amendment over the coming months. The requests will be revisited at the December meeting.

Ms. Yates and Ms. McKnight will consult with the Continuing Legal and Judicial Education Committee on the language of the proposed amendments.

5. Discussion of proposed rule change on administrative suspensions

C.R.C.P. 211.2(2), as it stands, requires any Colorado lawyer administratively suspended for a period of five or more years to re-take the bar exam as a precondition of reinstatement. C.R.C.P. 251.30(a) creates a similar requirement for lawyers on disability inactive status for a period of five or more years. New C.R.C.P. 250.7(8) also has a similar bar examination requirement for lawyers administratively suspended for noncompliance with CLE requirements for five years or more. Ms. Yates asked whether the bar exam requirement is the right mechanism for ensuring competence of lawyers returning to practice. For example, a lawyer struggling financially may elect to stay administratively suspended as opposed to transferring to inactive status.

Ms. Yates conducted an informal survey of other jurisdictions' requirements through the National Organization of Bar Counsel (NOBC). Colorado is the only state among those that responded that requires lawyers to re-take the bar exam after five years of administrative suspension. Other jurisdictions scale the re-entry process to other benchmarks of competence, such as certain CLE requirements depending on the length of the lawyer's administrative suspension. In addition, most jurisdictions require lawyers under administrative suspension due to non-payment to make the payments in full before reinstatement.

Ms. Yates will ask this committee to reconsider this procedure in a two-step process beginning at the December meeting. First, she will ask the committee to strike the requirement of taking the bar exam for lawyers on administrative suspension. The second step will then be a discussion of what competency measures Colorado should require these lawyers to undertake for reinstatement. There may also be financial requirements for reinstatement. Ms. Yates said that any potential changes for reinstatement following administrative suspension will not affect disciplinary suspension and subsequent reinstatement. Reinstatement in that context follows C.R.C.P. 251.29. The rule provides a process through the Presiding Disciplinary Judge following a period of suspension greater than one year or disbarment.

A member asked if the Office of Attorney Regulation Counsel considers fee waivers for lawyers experiencing financial difficulties but who do not wish to be administratively suspended. Ms. Yates responded that the Office does consider such requests and may permit a waiver with certain conditions, such as completion of Ethics School. The committee discussed whether the requirement to retake the bar exam following an administrative suspension of five years or more adequately protects the public or is more of a punishment. The committee tabled additional discussion of this matter to the December meeting.

6. Committee Appointments

a. <u>Maha Kamal, Esq. to a first term on the Continuing Legal and Judicial Education Committee</u>

Mr. Little, chair of the Continuing Legal and Judicial Education Committee, along with Mr. Stark, met with Maha Kamal, a family and immigration law attorney. She is also a writer, and she is a young lawyer. There is a vacancy on the Continuing Legal and Judicial Education Committee. Mr. Little requested that the committee approve the nomination of Ms. Kamal. Ms. Miller seconded Mr. Little's motion, which the committee approved without opposition. Ms.

Kamal's nomination will proceed to the Colorado Supreme Court with a recommendation that the Court approve the nomination.

b. Martha Kent, Esq. to a first term on the Attorney Regulation Committee

Mr. Jacobson, chair of the Attorney Regulation Committee, moved to nominate Martha Kent, a lawyer from Grand Junction and former district attorney, to fill a vacancy on the Attorney Regulation Committee. Ms. Kent is also certified as a Child Family Investigator. Mr. Reeve seconded the nomination, which the committee approved. Ms. Kent's nomination will proceed to the Colorado Supreme Court with the recommendation that the Court approve the nomination.

7. Other updates

a. Colorado Attorney Mentoring Program (CAMP) report

Ms. Peyton reported that CAMP received the ABA's 2018 Gambrell Professionalism Award. Ms. Peyton accepted the award on behalf of CAMP at the ABA's annual meeting in Chicago in August. She said that several other states are interested in beginning mentoring programs and have contacted CAMP as a model.

Ms. Peyton circulated a report for the committee's review. It shows an increase in new mentees of 11 percent from 2017. New mentors are up by 73 percent, and mentees matched with mentors increased 36 percent from last year. The report detailed CAMP's extensive outreach since May, as well as new partner programs, including a partnership with the State Court Administrator's Office to provide mentoring for lawyers employed in the problem-solving courts.

CAMP hired Kelly Rosenberg, a 14-year lawyer with a civil litigation background who has also worked as a bar exam grader, to be its Deputy Director. She will help during the busy October and November recruitment months.

b. Colorado Lawyer Assistance Program (COLAP) report

Mr. Stark informed the committee that Ron Wilcoxson, COLAP's Clinical Director, provided his notice and will be leaving COLAP. Due to his departure, Sarah Myers, Executive Director, is now in search of a new clinical director and could not attend this meeting. Mr. Stark said that he spoke with Ms. Myers this morning. She reported the post-Labor Day time period is often quite busy, and the number of calls to COLAP continues to increase. Ms. Myers looks forward to updating the committee in December.

c. Office of Attorney Regulation Counsel report

Ms. Yates reported that 753 people sat for the July bar exam. The results will go to the Law Committee on October 3 and will be released October 4. Monday, November 5 is the swearing-in ceremony. The Office of Attorney Admissions began accepting applications for the February bar exam on September 1.

Ms. Yates mentioned that a condenser pan for the air conditioning system at the Denver Merchandise Mart overflowed during the July exam administration. People taking the bar exam were able to move before their computers were destroyed. This caused a 40-minute pause in the exam. The Office of Attorney Admissions complied with National Conference of Bar Examiners requirements for bar exam irregularities. Exam takers received an additional six minutes to complete that portion of the exam.

The Office of Attorney Admissions is undergoing reorganization. Sue Gleeson retired from her position as Director of Admissions at the end of August. Deborah Ortiz also retired as a Character and Fitness Investigator on June 30. Sharon Orlowski is now Exam Administrator, and JoAnne Dionese is Assistant Exam Administrator. Jessica Crawley has been named Senior Character & Fitness Investigator.

Jane Cox will join the Office of Attorney Regulation Counsel on October 1 in the trial division. She has a family law practice background, which will be valuable in disciplinary matters that involve family law issues.

Kim Pask is the Office of Attorney Regulation Counsel's new Executive Assistant.

New C.R.C.P. 250 went into effect on July 1 for CLE procedures.

The Colorado Supreme Court issued C.R.C.P. 256 effective June 28 for the Colorado Lawyer Self-Assessment Program. Among other things, it provides that a lawyer's work associated with the lawyer self-assessment program is confidential and may not be used by the Office of Attorney Regulation Counsel. With the issuance of C.R.C.P. 256, the work of the Proactive Management-Based (PMBP) Subcommittee is complete. Ms. Yates sent an email to the subcommittee in early July informing them of the new rule and that the subcommittee would no longer meet. She let subcommittee members know that the Office may reach out to them for assistance in marketing the program. The Office will continue to focus on outreach and marketing surrounding this program. As of September 6, 182 Colorado lawyers had completed the program and claimed CLE credit for doing so. Over 400 have completed at least a section of the program.

The Office of Attorney Regulation Counsel is supporting the new Colorado Task Force on Lawyer Well-Being. Justice Márquez chairs the Task Force. Its first meeting is September 12.

Colorado lawyers will see adjustments to the newsletter from the Office of Attorney Regulation Counsel as well as changes to the Office's website. The newsletter will feature shorter articles and more frequent publication. The Office is reviewing the website to determine what can be done to reduce the volume of calls received. This may involve re-packaging of the FAQs. The Office is also looking at adding a section regarding inventory counsel with a list of active inventory counsel files.

The IT Department is combining databases for CLE and attorney registration. This will not be complete until the end of the year, but it will provide a more useful and comprehensive database.

Kim Ikeler, who oversees unauthorized practice of law (UPL) matters for the Office, will undertake a preliminary review of the UPL rules. Eventually a review and re-write process similar to that currently underway with C.R.C.P. 251 will begin for the UPL rules.

d. Providers of Alternative Legal Services (PALS) subcommittee report

Mr. Stark provided an update on the PALS Subcommittee's work. The subcommittee decided that Mr. Rothrock, subcommittee chair, should draft an interim progress report. Mr. Rothrock has prepared an initial draft and sought suggestions. He is still working on the report.

Mr. Stark noted that Washington state has a limited-license legal technician (LLLT) program. Utah also recently adopted a program.

Mr. Rothrock's report will look at a number of major issues that development of a program providing limited licensing in Colorado must address. Those issues include:

- Who will limited license providers in Colorado serve? Will they be indigent people? What about people who are 150 to 400 percent above the poverty line?
- Will members of the program be paid? Will they be volunteers?
- Should limited license providers have paralegal certification? Who will provide such certification?
- Must limited license providers work under the supervision of a lawyer?

When Mr. Rothrock concludes his report, he will present it to the PALS Subcommittee for discussion. Once that occurs and any changes are made, the report will be presented to this committee. The committee can discuss whether to make a recommendation to the Colorado Supreme Court.

8. Other business

The committee will meet again December 14, 2018. That evening is the annual dinner. The following are proposed 2019 committee meeting dates:

- March 8, 2019
- May 10, 2019
- September 13, 2019
- December 13, 2019

9. Executive Session

The meeting adjourned at 1:20 p.m. The Advisory Committee then met in Executive Session to consider a confidential matter per Supreme Court rules.

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