



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

**MEETING MINUTES**

May 3, 2024, 12:00 p.m. – 1:07 p.m.

Hybrid meeting conducted in-person at the Colorado Bar Association offices and via Zoom

**Members present (in-person):** David W. Stark, Chair; Cynthia Covell; Angela R. Arkin; Hon. Andrew McCallin; Henry (Dick) Reeve; Amy Kingery

**Members present (Zoom):** Steven K. Jacobson, Vice-Chair; David Beller; Sunita Sharma; Alison Zinn; Carolyn Love, Ph.D.

**Members absent:** Brian Zall; Nancy Cohen; Hon. Adam J. Espinosa

**Liaison Justices present:** Justice William W. Hood, III

**Office of the Presiding Disciplinary Judge:** Hon. Bryon Large

**Colorado Lawyer Assistance Program (COLAP):** Sarah Myers, Executive Director; Amy Kingery, Assistant Director

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

**Office of Attorney Regulation Counsel (OARC):** Jessica Yates, Attorney Regulation Counsel; Alan C. Obye, Senior Assistant Regulation Counsel; Kim Pask

**1. Approval of the March 1, 2024 meeting minutes**

Dick Reeve moved to approve the minutes. Cindy Covell seconded. The minutes were approved.

**2. Discussion of proposed legislation affecting bar exam accommodations (HB24-1342) (Yates)**

Jessica Yates discussed bill HB24-1342, which requires state agencies administering professional licensure exams to grant requests for disability accommodations in certain circumstances that are different than existing requirements under the Americans with Disabilities Act (“ADA”). In summary, the bill requires state agencies administering professional licensure exams to grant a requested disability accommodation if the applicant had received the same accommodation in a prior “standardized exam” or “high stakes test” and if the applicant supplies a recommendation letter from a treating medical professional.

Ms. Yates was unable to get a copy of the bill before it was introduced. The latest draft of the bill is available online. Ms. Yates is informed that it is a foregone conclusion that the bill will pass. There will likely be no substantive changes this session.

The text of the bill applies to professional licensure exams and does not specifically reference the bar exam, but it was revealed in house and senate hearings that the prime sponsors are principally focused on the bar exam. It was a difficult environment for OARC to have informed discussions or stake-holding about the bill. The bill has undefined terms, such as “standardized exam” and “high-stakes test,” and while it cross-references the ADA, it also doesn’t expressly include many of the nuances from the ADA and its implementing regulations. The ambiguities in the bill could be fodder for future litigation.

The expectation of granting accommodations simply because another entity had previously granted accommodations is not consistent with the ADA’s requirement to evaluate each accommodation request individually based on a current disability, and applicants could misuse the provisions of HB24-1342. For example, if a person were accommodated on an elementary school state test, that person could try to claim he or she was entitled to the same accommodation on the bar exam, even though the applicant might not need the same accommodation 15-20 years later. Also, other entities granting accommodations in other settings may use different criteria in evaluating requests. For example, DU law school is granting accommodations to 20% of the student body, whereas roughly 8% of undergraduates nationwide receive accommodations. There are fairness issues when a bar exam applicant’s request for extra time to take the exam is largely dependent on who previously evaluated a similar request in their past. There also are concerns that Colorado could lose its Uniform Bar Exam (“UBE”) status if it begins to administer the UBE in a way that is very dissimilar to other jurisdictions.

Because the ADA requires entities like OARC to ensure that approved accommodations are provided correctly during the exam, OARC incurs additional costs to provide accommodations to disabled applicants. Such applicants may need to test in a different venue with additional proctors covering additional time, and sometimes require different test materials, assistive technology, or additional rooms. These impose costs that under the ADA cannot be charged individually to requesting applicants, so bar exam application fees likely will need to increase for all applicants. For example, if OARC provides accommodations to 20% of bar exam applicants, it could cost an estimated additional \$425,000 per year to administer the bar exam. That equates roughly to \$425 per bar exam application that would need to be charged above and beyond the current \$710 per application.

The bill takes effect January 1, 2025. OARC is already seeing an uptick in accommodation requests for the July pool of test-takers, although the bill does not apply to that exam.

Ms. Yates is hoping to form a positive working relationship for strategic legislative fixes next year.

The Chair stated he and Ms. Yates talked with folks in the Disability Law Center about the potential effect of the bill on an applicant’s ability to transfer a UBE score to another state. There could be a situation where scores don’t transfer because of the accommodation statute if

other states have the perception that anyone can receive extra test time in Colorado, meaning that Colorado's scores are not comparable to the administration of the same bar exam in other UBE jurisdictions.

Judge Large suggested that OARC may be able to get in front of this issue by asking the Supreme Court for a rule that implements the statute. Justice Hood agreed that might be worth exploring.

In response to questions from Ms. Zinn, Ms. Yates said she believes schools are complying with the ADA but also have developed their own criteria to determine accommodations. Ms. Yates has not seen anything on the schools' websites defining precisely how they review requests for accommodations. The Chair said the accommodation policies are shared with the faculty every year, and faculty have to take a class where the process is described.

In response to a question from Ms. Arkin, Ms. Yates said the bill would apply to LLP applicants as well as attorney applicants. As a practical matter, the individuals currently applying to become LLPs generally have not been in school any time recently and are not as likely to have received accommodations on previous exams compared to the bar exam population.

The Chair noted that the legislation gives the Attorney General authority to investigate and bring an action to enforce the statute, and allows attorney's fees to be requested. Ms. Yates added that the initial version of the bill required the AG to investigate a complaint, while the final version made that power discretionary. Ms. Yates is more worried about private litigation, with the potential for attorney's fees, than an AG investigation.

Ms. Yates said initially there was no fiscal note recognizing the impact of the bill on OARC. After realizing that, Ms. Yates reached out to legislative staff and put together a spreadsheet with a range of estimates. He picked the most conservative estimate (\$125,000 in additional funds) and included that figure. OARC does not have a legislative appropriation, but the estimated impact counts toward government expenditures for purposes of the TABOR cap.

HB24-1342 would be the most liberal accommodation policy in any UBE jurisdiction and could create a magnet for applicants. Ms. Arkin asked whether there is a way to minimize the number of people who can take the exam due to a lack of staffing. Ms. Yates suggested that number of people who take the exam in Colorado could be capped for each administration, perhaps on a first-come-first-served basis. Another possibility is to reduce the number of times people can take the UBE in Colorado.

### **3. Update from the LLP Oversight Committee on Implementation (Arkin/Yates)**

Ms. Arkin discussed the first LLP exam. It was a six-hour exam, and 70 applicants sat for it. Generally this group was motivated and prepared. Everyone showed up on time for the exam. Ms. Yates noted that this contrasts sharply with our experience at the bar exam.

There were 45 multiple choice legal ethics questions with 1.5 hour to complete. Applicants generally finished this portion with time to spare. Because the LLP rules require all applicants to

already have taken a course specific to either lawyer or LLP legal ethics, applicants performed well on the ethics questions.

There were 90 multiple choice family law questions (3 hours) and two family law essay questions (1.5 hour). The questions included scenarios and asked how to advise a client. Most applicants finished the essay questions a little bit early.

The committee has heard feedback from some applicants that they thought they were required to memorize the law, rather than take contextual scenarios and apply the law, including questions about hypothetical legal advice. The committee spent hours (many more hours than other states who have done this) retrofitting the exam to what the committee felt was important, because these applicants will be engaging in the practice of law.

Ms. Arkin explained that the committee will be meeting over next few weeks to determine what the final cut score will be, along with recommendations to the Supreme Court for approval as LLPs. The swearing-in ceremony will be on June 20 in the Supreme Court courtroom. There will be an ability for applicant's family and friends to watch remotely. There will be a reception at the CBA afterward. The CBA is organizing the reception and getting sponsors to welcome these new professionals to the bar.

The day after the swearing-in, the committee and others have organized a day-long LLP practicum, with three professionals from Utah, Arizona, and Washington. All are independent paraprofessionals who practice law. The topic is "what I wish I knew before I started." There will also be lawyers and judicial officers to help the LLPs learn about things they've never done before, like appearing in court alone, appearing at mediation, working with clients at intake, drafting contracts for services, etc. Then the committee will start working on the November 12 exam.

Ms. Yates noted that LLPs are required to attend OARC's professionalism school before being sworn in.

Ms. Myers pointed out that COLAP's services are available to LLPs.

Ms. Arkin thanked Jessica Yates and Dawn McKnight for their work on the LLP program. Ms. Yates thanked all the volunteers who have spent a ton of time on the program. She is actively recruiting people who want to help create multiple choice questions for the exam.

Ms. Covell congratulated all involved in making the first LLP exam a success. Ms. Arkin noted that family law judges are really wanting these people to be available to assist through the domestic relations process.

#### **4. Update from the Rule 242 Subcommittee (Stark/Yates)**

The Chair said the Rule 242 subcommittee continues to meet. They last met on April 9, where they discussed Rule 242.13 (Requests for Investigation) and where notices might go, and 242.41 (access to information), and how to reconcile the rule with PAIRR 2. Cori Peterson from the PDJ's office has been very helpful.

## **5. Update on Family Law Specialist Designation proposal (Attachment 2)**

The Chair explained that last time the Committee met, the Committee decided to ask the Supreme Court whether the Court had an interest in the Committee looking at whether there should be a family law specialist designation for lawyers.

The Committee received a letter from Justice Berkenkotter, for all members of the court, saying the Court did not want the Committee to pursue such a designation for a number of reasons. The Court does not want to create a situation where it looks like the Court is endorsing certain practitioners over others. Also, it would create a great deal of additional work for OARC in the form of staff, exams, etc. Third, it would be tough to draw a line between a family law specialist designation and other areas of law, for example criminal law. Finally, such a designation may not be a solution to the problem that there are a fair number of family law practitioners that are struggling and need help. The Court concluded it would not ask the Committee to explore the creation of a family law specialist designation.

## **6. Office of Attorney Regulation Counsel Annual Report (Attachment 3)**

Ms. Yates referred Committee members to OARC's 2023 annual report in the Committee's packet and posted on OARC's website. Ms. Yates said they continue to see higher numbers of complaints coming into intake. There were 3400 requests for investigation in 2018, compared to 4500 in 2023, and OARC is on track to duplicate that number this year. OARC will have more information in next year's report about the LLP program.

Ms. Yates asked Committee members to let her know if they have feedback on the report or if there is something they would like to see in the report in the future.

## **7. Colorado Attorney Mentoring Program Annual Report (Attachment 4)**

Ms. Peyton reported that CAMP is very busy. CAMP has had a 14% gain in new participants over last year, and an increase in partners who are looking for internal mentoring programs.

Survey feedback has been consistently high across the board. Ms. Peyton gave a shoutout to the new wellbeing recognition program in its first year. She has had great participation and feedback averaging 4.8 out of 5 stars.

Legal Entrepreneurs for Justice grew in its first year. As a tuition-based program, it covers its own costs. The program brought in \$25,000 in tuition last year, which covers its overhead.

The Chair observed that civil litigation is the top practice area in which attorneys request mentoring and asked whether that is because more people practice general civil litigation as opposed to, say, family law. Ms. Peyton said yes, participants often check the "civil litigation" box and also its subcategories. The Chair said it would be helpful to have more family law lawyers as mentees.

Ms. Yates noted that when she presents at ethics classes at CU and DU law schools, she uses charts showing that family law gets the most complaints. But in a class of 40 or 50 people, often only one person raises their hand indicating they want to practice family law. Ms. Peyton said

people may fall into family law unintentionally; they are not interested in learning the practice area, but see it as a stepping stone. Ms. Arkin said family law is very sticky, very human, and very hard to do if you don't like it. Ms. Peyton discussed challenges of recruiting family law practitioners to be mentors, and she often hears "I don't want to train my competition."

Ms. Arkin said a mentoring program just started for new judges and magistrates in family law. There are seven judges or retired judges mentoring sitting judges informally. There are 11 people on the list who are interested in helping out.

#### **8. Office of the Presiding Disciplinary Judge Annual Report (Attachment 5)**

Judge Large said his office is on track for 100 cases. There were 80 last year. He just had case number 33 or 34 come in this week.

Justice Hood asked why the numbers might be up. Judge Large said he doesn't know, but a lot of complaints were filed right at the end of the year. They had also been down a little bit before that. Before 2020, cases were in the low 100s.

The PDJ is still at the Lindsey Flanagan Courthouse in courtroom 2A. There is a bench big enough for three hearing board members. He did one trial at the Colorado Bar Association and one at the court of appeals. He had trouble with those spaces due to issues seating witnesses and a court reporter. Court reporters work by line of sight and are frustrated if they cannot see the witness clearly.

#### **9. Colorado Lawyer Assistance Program (COLAP) (Myers):**

Ms. Myers reported that COLAP has seen a 15% increase from last year in total requests for assistance. Current numbers are above even the acute phase of the pandemic.

The biggest increases in requests are from judicial officers and law students.

Mental health concerns still surpass substance use disorders. Alcohol is the primary substance use concern.

Empathic strain (formerly compassion fatigue) and secondary trauma surpassed anxiety as the most-cited concern.

Ms. Myers reported she received a thank-you email from an out-of-state attorney who appreciated the commitment to well-being in Colorado and was happy to have landed in a state that embraces those values.

#### **10. Highlights of significant proposed FY2025 budget items (Judge Large; Yates; Peyton; Myers)**

Ms. Yates will discuss the proposed budget in more detail at the next meeting, but wanted to provide the Committee with highlights now in the event there are substantive questions or issues that need additional work to submit a final budget proposal.

New budget items may account for OARC trying to get cyber insurance. OARC has tracked what happened to the public defender's office. Through lags due to losing our IT director, OARC

had to take steps before applying for insurance, for example enabling two-factor authentication. This summer, OARC will file an application with a broker and they will try to get us a good deal.

The CLE system moved to a new database last summer. That was one phase of a multi-phase system. Another phase is to build a bridge between the on-line CLE forms (e.g requesting credit for teaching a class) and our CLE system so that the data individuals enter through the forms will automatically populate the same data fields within the CLE system. Currently OARC Staff have to retype information into the system. Eventually the bridge will apply to registration forms too, for example change of address forms.

OARC is planning to replace its admissions database. OARC has been working with a database called Civicore, which is a legacy database at this point. The company that started it sold it to another company that services it. Admissions has experienced a drop in service quality, more hiccups, and some disruption on the applicant-facing side. OARC is looking to use ILG's database. They have provided it to Texas licensing authorities, who have had a good experience.

OARC is in the process of replacing JustWare, our case management system, which is also a legacy database. The company that started JustWare is providing access to test a replacement this fall. OARC will have a working group for its implementation.

Judge Large reported that the Office of the Presiding Disciplinary Judge is coming in \$60,000 under budget this year. Jody Penney will be going from 80% to full time. The office's workload has increased. Isidro Luna will be on parental leave this summer.

The PDJ's office is working on putting its database online to make cases searchable. There will be a \$25,000 budget request for that. The office will be able to post regular orders and opinions, but also summary judgment orders and other content that is not easily accessible now.

The PDJ's office is also looking at doing construction in the office suite, including a clerk's window and safe place for the public to interact with the office. The last estimate was \$70,000, so Judge Large did not ask the Committee at that time. There is a new quote for \$46,000, so there is a \$50,000 budget request for that.

Ms. Peyton reported that CAMP has done a lot of growing in the last few years, so there were no significant programmatic budget increases planned for this year.

Ms. Myers reported her budget is also about even and there are no big plans this year. She may need an app for cybersecurity but does not foresee any expenses.

The Chair noted he heard on a podcast that there are only two kinds of organizations when it comes to cyberattacks: those who have been attacked, and those who haven't reported it. Ms. Yates confirmed that OARC gets attacks every day, per the former IT director, but fortunately they have not yet resulted in harm to the organization.

The Chair said there is a new subcommittee on artificial intelligence, which includes Otto Hanson, Jess Bednarz from IAALS, Jason Lynch, Lois Lupica, Anne Lee, Ms. Arkin, Mr. Stark, Mr. Beller, Judge Espinosa, Judge McCallin, and Ms. Yates. The subcommittee wants to have a

demonstration of AI products since they keep changing every week, to find out where things stand.

**11. 2024 meeting dates:**

June 7, 2024 (added meeting)

September 6, 2024

December 6, 2024

The meeting adjourned at 1:07 p.m.

**12. Executive session (Personnel Committee matter and Myers matter)**

/s/ Jessica E. Yates

Jessica E. Yates

Attorney Regulation Counsel