



COLORADO TASK FORCE ON LAWYER WELL-BEING

MEETING MINUTES

September 4, 2019, 1:15-2:55 p.m.
Conference Room 1D, Ralph Carr Building
1300 Broadway
Denver, Colorado 80203

I. Welcome and Introduction

Justice Márquez welcomed members. She summarized the presentations to the Task Force since it first met in September 2018. She reviewed the meeting agenda, which will include a discussion of the Task Force report and the final meeting in April 2020.

Justice Márquez introduced Amy Kingery, who is the Colorado Lawyer Assistance Program's (COLAP) new Outreach & Volunteer Manager. Ms. Kingery spoke to the group. She has worked for 18 years with children, families, and professionals providing counseling for addiction and trauma issues. She is a licensed clinical social worker. She is also a Colorado native from southeastern Colorado. She looks forward to working with lawyers across the state.

Justice Márquez commented that working groups may want to consider highlighting the connection between well-being and performance. She also mentioned that Ryann Peyton, Director of the Colorado Attorney Mentoring Program (CAMP), and Sarah Myers, Executive Director of COLAP, have developed a proposal designed to address the issue of incivility in the profession. Incivility is an issue that many of the Task Force working groups have identified as contributing to diminished lawyer well-being.

II. Discussion Regarding Office of Civility Proposal

Ms. Peyton and Ms. Myers presented a proposal to explore creation of an "office of civility." Ms. Myers explained that COLAP looks at well-being on an individual level, but there is a broader "macro" issue related to well-being in the profession. That issue is professionalism. The proposal to explore creating an office of civility has COLAP's support.

Ms. Peyton explained that there are a number of benefits to looking at the issue of incivility in the profession. There is an economic aspect to the conversation. There are a number of risk factors in the profession related to the adversarial nature of practice, professional demands, the individual nature of a lawyer's work, and conflicts in values with clients and other lawyers. These factors can impair productivity and lead to turn-over. Studies show that addressing incivility leads to happier lawyers, less disciplinary matters, and overall improved well-being. This benefits the profession and the clients lawyers serve.

Fourteen states have state supreme court commissions on professionalism. Five states have state supreme court offices of civility, and six have a peer review system that mediates civility complaints against lawyers and judges. One state, South Carolina, has a civility oath and disciplinary rule to enforce that oath.

Ms. Peyton said that preliminary discussions regarding an office of civility have covered different iterations for what such an office in Colorado would look like. At this point, a recommendation to create an exploratory process seems most appropriate. This would engage stakeholders from across the state's legal community. It would allow consideration of the most effective systemic solutions to address incivility and associated risk factors. Colorado is prime to create a model program because of CAMP's and COLAP's recognition as national leaders for mentoring and lawyer assistance programs.

The Task Force discussed the proposal. Comments from members included that the Professionalism Coordinating Council (PCC) has worked on a civility rule and civility order. One suggestion included that lawyers who have been involved in that process be included on any committee exploring an office of civility and professionalism. Several members noted there was push-back over a proposed civility rule. The bar was concerned that the rule could be misused against a lawyer and there were concerns that judges should similarly have to conform to a civility rule. Related concerns included that such a rule could also result in more grievances. A member shared that Wyoming has a civility rule, Rule 801, which has elevated the legal system in that state overall and has been used in only one situation as a sanction.

Ms. Peyton commented that CAMP views an office of civility as a natural progression for that organization. CAMP's focus has been on creating a mentor system. With a renewed push on lawyer civility, CAMP can add to its efforts.

Other member comments included that such an office may be an ideal "home" for the recognition program that the business case working group has been preparing. A member commented that greater civility is vital but that it can be difficult to address on an individual lawyer's part without causing the situation to get worse. Additionally, a member recommended that any effort to create a formal office should have a champion in the judicial department. Further, members commented that a recommendation should include a timeline for how long the exploration process last. One member recommended that any renewed civility effort include empowering state court judges so that they feel they can reign in civility issues without worrying about the impact on retention. A standard of conduct may be beneficial for judges so that decisions are not seen as arbitrary.

Ms. Peyton sought buy-in from the Task Force to adopt exploration of creating an office of civility as a recommendation. The exploration process would include thinking about how such an office would function. She said if the Colorado Supreme Court adopts such a recommendation, then the exploration process can launch. The Task Force was supportive of her idea to include such a recommendation in the final report.

III. Discussion Regarding Final Report and Final Event on April 30, 2020

Mr. White distributed reports issued by well-being task forces or committees in three states: Massachusetts, Vermont, and Virginia. The links to these reports are also posted on the Task Force's website. Justice Márquez reviewed the format and some of the content of these reports. She also encouraged members to look at the Office of Attorney Regulation Counsel's webpage dedicated to well-being.

Related to a recommendation in the report to the Massachusetts Supreme Judicial Court, the Task Force discussed a potential recommendation that would change court filing deadlines to 5:00 p.m. instead of 11:59 p.m.

Many members of the Task Force suggested that the report have a positive tone. The Task Force now has five working groups, with the pledge group now a part of the business case group. The report might be divided into sections that correspond to these five groups. Some members suggested creating an executive summary. Several discouraged taking a "white paper" approach. The audience reading the report may already be convinced there is a problem. Appendices to the report may be the best way to direct readers to appropriate authorities instead of an array of footnotes. Several members commented that having a description of the stressors involved in practice may be helpful.

A member noted that notwithstanding the publication of the ABA's *Well-Being Toolkit for Lawyers and Legal Employers*, there are few concrete suggestions on what law firms can do to improve lawyer well-being. One of the biggest contributions of the Task Force to the national dialogue and to efforts here in Colorado is to give concrete suggestions for lawyers and law firms.

Another member said that a theme is important. Here it could be "how to be a great lawyer." Other related themes include that focusing on lawyer well-being is good for clients and is the right thing for this profession. The "how to be a great lawyer" message can help combat the stigma surrounding getting help.

A member suggested that the report have a page limit. Other suggestions included having an introduction in each section explaining how well-being impacts that stakeholder group. The report should target the 85% of lawyers for whom this topic has yet to gain traction.

The Task Force's Planning Committee will synthesize these thoughts and come up with a template that the Task Force can use.

The final event/meeting for the Task Force will be Thursday, April 30, 2020. Ms. Yates suggested that each member bring with them one person who may be interested in this issue in order to create ambassadors. Mr. White has reserved Conference Room 1D in the Ralph Carr Building for the afternoon of April 30. The Colorado Bar Association will host the reception for the group after any CLE seminar or group presentations to be held in Conference Room 1D.

IV. Individual Working Group Reports

Data Gathering Group

This group has been working with Dr. Lee Newman to develop a proposal and recommendation for additional research. This research would gather information about lawyer well-being that has not been documented. The group is looking at developing a toolkit of questions for legal employers aimed at informing the culture of that workspace.

Law Schools Working Group

This group developed a resources placard for use at the University of Denver Sturm College of Law, the University of Colorado Law School, and the University of Wyoming College of Law. They have also created language that may be added to course syllabi regarding well-being resources. The group intends to make a recommendation that COLAP attend and present in all professionalism courses in Colorado. In terms of other projects, the group has been exploring resources to address well-being issues for diverse law students. They also hope to be able to present to law school faculties at the three law schools listed above.

Business Case Working Group

The business case working group aims to create a solution-oriented, best practices set of recommendations for a law firm recognition program. The program's target audience is private law firms. The program would recognize firms for their commitments to lawyer well-being. This group divided up its recommended best practices for firms into the following categories:

- Alternative compensation structures;
- Flexible work arrangements and work-life integration;
- Diversity, inclusivity, and well-being;
- Leadership accountability and buy-in;
- "Relatedness" (peer-to-peer connections);
- Competence; and
- Including clients in the conversation about lawyer well-being.

This group met several times over the summer.

Mr. Fogg recommended Task Force members review an article he received from Professor Austin published by the Georgetown University Law Center titled "Capitalizing on Healthy Lawyers: The Business Case for Law Firms to Promote and Prioritize Lawyer Well-Being." The author is Jarrod Reich. Mr. White will distribute this article to the full Task Force.

Judicial Working Group

This group is looking at a number of resources to assist judges in dealing with well-being issues. These include vicarious trauma resources, docket coverage, peer-to-peer coaching, a speakers' bureau, and a toolkit.

Resources Working Group

Several members of this group held a teleconference August 1 to discuss rural lawyer well-being issues and related recommendations. They have received information on resources provided by both CAMP and COLAP. Another subgroup of this working group is looking at creating a pamphlet that can be distributed to legal employers and bar associations describing well-being resources. In addition, the group discussed the concept of a "notice of absence" on a conference call this summer. This could be filed by lawyers advising courts and opposing counsels of periods of time where they are not available for scheduling matters. This would allow lawyers to have a "break" and take time for themselves and their families.

V. Conclusion and Next Meeting

Justice Márquez concluded the meeting thanking members for their work and asking them to continue to think about the final report's theme and focusing that around a positive message. She and the Task Force planning committee will discuss a report template.

The Task Force's next meeting is Wednesday, November 6, 2019, from 1:00 to 3:00 p.m. in the Ralph Carr Building, Conference Room 1D.