



MEETING MINUTES
December 14, 2018, 12:05 p.m. – 2:10 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, Colorado 80203

Members present: Chair David W. Stark, Alexander (Alec) Rothrock, Brian Zall, Cynthia Covell, Daniel Vigil, David Little, Dick Reeve, Mac Danford, Nancy Cohen, Richard Nielson, and Steven Jacobson.

Members absent: Barbara Miller and Cheryl Martinez-Gloria.

Liaison Justice present: Justice William Hood.

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

Guests: Christopher Ryan, State Court Administrator; Jason Haubenreiser (University of Denver Sturm College of Law 2017 graduate).

Staff present: Jessica Yates, Attorney Regulation Counsel; Dawn McKnight, Deputy Regulation Counsel; Ryann Peyton, Director, Colorado Attorney Mentoring Program (CAMP); Sarah Myers, Executive Director, Colorado Lawyer Assistance Program (COLAP); Jonathan White, Professional Development Counsel, Office of Attorney Regulation Counsel.

1. Approval of September 7, 2018 meeting minutes.

Chair David Stark convened the meeting and asked if members had read the minutes of the committee's September 7 meeting. There were no proposed amendments. Mr. Reeve motioned to approve the minutes. Mr. Nielson seconded. The minutes were approved.

2. Discussion of Incubator Project.

Mr. Stark reviewed the "Incubator" project, an initiative led by Justice Melissa Hart and formally known as "Legal Entrepreneurs for Justice." Legal Entrepreneurs for Justice is a small business incubator designed to mentor young lawyers, principally new lawyers coming out of law school. The goal is to teach them to build a sustainable practice while serving clients who do not qualify for legal aid but who also cannot afford a lawyer at traditional billable hour rates. Legal Entrepreneurs for Justice will train these new lawyers to deliver affordable legal services through technology, limited-scope representation, and alternative billing methods. The

organization will operate as a 501(c)(3) non-profit; IRS certification is pending at this time. The Chicago Bar Foundation has a similar program that served as a model for the creation of this program in Colorado. Mr. Stark is the sole director at this time of Legal Entrepreneurs for Justice, though interviews are underway for board members with the goal of selecting a board by January 2019. After forming a board, Legal Entrepreneurs for Justice will begin interviewing applicants in anticipation of a May 2019 launch. Successful applicants will enter an 18-month program, which will have various stages of instruction from a boot camp focusing on solo practice with pro bono services to instruction on building a practice using mentors through CAMP. Lawyers in the program will office at LawBank, and they will have staggered rent increases throughout the program.

Legal Entrepreneurs for Justice requires seed money. Mr. Stark said Justice Hart, who could not attend this meeting, requested the Advisory Committee approve \$10,000 in seed money to help launch the program. This would be a one-time contribution from attorney regulation's current fiscal year budget. Once Legal Entrepreneurs for Justice is running, it hopes to generate operating funds through grants. The program intends to hire an executive director.

The committee discussed that this program's mission accords with that of CAMP. It may be appropriate to amend CAMP's budget for this requested contribution. Ms. Cohen proposed that the committee approve a \$10,000 contribution to Legal Entrepreneurs for Justice from the current fiscal year budget for CAMP. Mr. Rothrock seconded, and the motion passed with no opposition. Mr. Stark did not participate in the committee discussion regarding this requested contribution or the committee vote.

3. Discussion of DACA Applicants

The Office of Attorney Admissions recently received two inquiries related to Question 20 on the Colorado bar application. Question 20 asks whether bar applicants are United States citizens. If an applicant answers "no," he or she must include an alien registration or visa number and submit documentation "identifying the Federal authority under which you are lawfully present in the United States." Both inquiries concerned whether "lawful presence" is necessary in order to obtain admission to the bar in Colorado and whether some policy for admission should be implemented that contemplates certain applicants not having lawful presence. One of the inquiries came from the Office of Legislative Legal Services. The state legislature is looking at this issue. Another inquiry arose out of an immigration legal clinic at the University of Colorado Law School. Under the Deferred Action for Childhood Arrivals (DACA) program, undocumented young people may be eligible to receive a work permit and will not be deported. Possible amendments to Question 20 might be disclosure of immigration status or authorization for employment. The bar application could also state, for example, that unavailability of documentation demonstrating a lawful presence does not create a character and fitness issue.

The committee discussed forming a subcommittee to look at this issue quickly, including perhaps making a recommendation at the March 2019 committee meeting. A threshold legal question for this subcommittee to answer is whether undocumented persons can or cannot apply to take the Colorado bar exam. Depending on the subcommittee's answer to that question, it may consider revisions to the bar application, a policy statement, or a rule change. There is an aspect to this issue which is character and fitness related, which the subcommittee may also want to address. The subcommittee may consider collateral bar application requirements impacted by

citizenship status, including provision of a social security number and furnishing income tax returns. The committee created a subcommittee comprised of Ms. Cohen, Ms. Covell, Mr. Reeve, Mr. Vigil, and Mr. Zall to study this issue. A resource for the subcommittee may be Assistant Regulation Counsel Bryon Large, who has an immigration law background.

4. Comments from Guest, Jason Haubenreiser

Mr. Haubenreiser, a December 2017 graduate of the University of Denver Sturm College of Law, spoke to the committee. Mr. Haubenreiser took the February 2018 bar exam and did not pass. He re-sat for the examination in July 2018 but also did not pass. His July 2018 exam score was two points below the revised cut-off for July 2018 Colorado bar examinees. During the July exam, Mr. Haubenreiser sat in a portion of the room where an air conditioning pan on the ceiling overflowed. He alleges it dripped on to his notes. He submitted a petition for reconsideration of his admission denial. He believes the water leak impacted his performance. He said that not being admitted has taken a tremendous financial toll on him and his family and more should be done for law school graduates who do not pass the bar. He requested financial assistance with sitting for the bar exam again or, alternatively, admission to the bar based on coming close to the cut-off score. The committee does not have jurisdiction to change his score or provide financial aid to him. Mr. Stark encouraged Mr. Haubenreiser to contact CAMP and COLAP.

5. Vote on Proposed Regulation or Rule Changes

(a) Proposed amendment to Rule 251.31 reflecting HB 18-1152 provisions under a new subsection (r) to address availability of records related to sexual harassment investigations.

The committee approved a proposed amendment to C.R.C.P. 251.31 to address the availability of records related to sexual harassment investigations. The proposed amendment reflects recent changes to the Colorado Open Records Act (CORA) that impact sexual harassment investigations. The proposed amendment adds a new subsection (r) to C.R.C.P. 251.31 that states:

For matters that are confidential under subsection (b) of this rule and that involve allegations of sexual harassment, Regulation Counsel's investigation records regarding the sexual harassment allegations, not otherwise privilege or protected by court rule or court order, shall be available to the complainant and respondent, subject to the provisions of C.R.C.P. 251.33.

Mr. Rothrock motioned that the proposed amendment to C.R.C.P. 251.31 be approved and submitted to the Colorado Supreme Court for consideration. Mr. Danford seconded. The committee approved the motion unanimously.

(b) Proposed changes to Rules 211.2 and 250.7 to eliminate bar examination requirement for reinstatement after administrative suspensions.

Following a request from Ms. Yates at the September committee meeting, the committee approved deletion of subsection (2) of C.R.C.P. 211.2 as well as the last sentence of subsection

(10) of C.R.C.P. 250.7. This eliminates the requirement that a lawyer re-take the bar exam after an administrative suspension of five years or longer.

Mr. Rothrock motioned that these proposed deletions be submitted to the Colorado Supreme Court for consideration. Mr. Reeve seconded the motion. The committee approved the motion unanimously.

(c) Proposed regulatory change to allow for reciprocity and comity.

Ms. Yates reviewed proposed changes to the Regulations of the Colorado Supreme Court Continuing Legal and Judicial Education Committee that would allow for comity for out-of-state lawyers licensed in Colorado as regards continuing legal education requirements and reciprocity for live out-of-state continuing legal education activities. She presented these proposed changes at the September committee meeting. They allow lawyers licensed in Colorado and in another jurisdiction to obtain continuing legal education credit for accredited courses taken in another jurisdiction. Mr. Jacobson moved to approve the proposed changes. Mr. Rothrock seconded the motion. The committee approved the motion unanimously. Because these are regulatory changes, the Colorado Supreme Court does not need to consider the recommendation pursuant to C.R.C.P. 250.3(c). Following the committee approval of these regulatory changes on December 14, 2018, they will be effective January 1, 2019.

(d) Proposed housekeeping changes to attorney registration and CLJE rules.

The committee approved a proposed amendment to C.R.C.P. 203.1 that would add a new paragraph (8) titled “Mandatory Professionalism Course.” This brings the mandatory professionalism course requirement under the general provisions for a Colorado law license. The language models current C.R.C.P. 203.2(6). The proposed language reads:

Mandatory Professionalism Course. All applicants under these rules, unless otherwise exempted, must complete the required course of professionalism presented by the Office of Attorney Regulation Counsel in cooperation with the Colorado Bar Association – CLE. Continuing legal education credit will be applied to the attorneys’ first compliance period pursuant to C.R.C.P. 250.2(1). Any fees received for the course shall be divided equally between the Colorado Bar Association – CLE and the Office of Attorney Regulation Counsel to pay for administering the course and to fund the attorney regulation system. Credit for completion of the professionalism course will be valid for eighteen months following completion of the course. Applicants under C.R.C.P. 205 temporary practice rules are not required to take this course.

The proposal also amends C.R.C.P. 203.2(6). The rule would read only: “All applicants under this rule must complete the course of professionalism as described in C.R.C.P. 203.1(8), within six months following admission.”

Mr. Reeve moved to approve the proposed amendments and send them to the Colorado Supreme Court for consideration. Mr. Nielson seconded. The motion passed unanimously.

6. Discussion of Open Application Process for Committee/Board Appointments

Ms. Yates discussed creating an open application process to recruit members for committee and board positions. This will further efforts to build diversity among members and to have representation from different parts of Colorado. The committee agreed this would be helpful. Ms. Yates said her office would begin working on an application that could be publicly-posted.

7. Information Item from Public Defender's Office Regarding Law Student Practice

The Office of the State Public Defender sent a letter to the committee detailing the impact of the decision in *People v. McGlaughlin*, 428 P.3d 691 (Colo. App. 2018), on the office's function. The letter explains that the decision's requirement that a licensed attorney provide in-court observation of summer externs and post-bar law school graduates has doubled the resources needed to represent individual clients. It has negatively impacted caseloads and the office's ability to represent clients. Prior to *McGlaughlin*, once summer externs or post-bar law school graduates demonstrated competence to handle routine docket matters, they could appear in court without in-court observation by a licensed lawyer from the office.

Several committee members noted the Law Student Practice Act, C.R.S. §13-93-201 *et seq.*, permits law students to engage in practice under certain conditions, including under the supervision of a supervising lawyer. The committee discussed offering a proposed court rule to address the concerns raised by the Office of the State Public Defender following *McGlaughlin*. Any such proposal should allow summer externs in law school as well as post-bar law school graduates to appear in court with the client's consent. These persons should not be allowed to handle trials. Mr. Jacobson and Ms. McKnight agreed to prepare a rule proposal that will be presented at the next committee meeting in March.

8. Approval of Committee Appointments and Re-Appointments.

The committee approved the appointment and re-appointment of the following board and committee positions based on chair recommendations. Ms. Covell moved to approve the proposed candidates. Mr. Rothrock seconded. The motion carried without opposition.

a. Attorneys' Fund for Client Protection

At the recommendation of Charles Goldberg, Chair of the Attorneys' Fund for Client Protection, Allison Gambill, Dr. Suzy Coykendall, and Lisa Dailey were appointed to the Attorneys' Fund for Client Protection each for a term of two years effective January 1, 2019.

Also at Mr. Goldberg's recommendation, Vice-Chair Charles Turner was appointed to an additional three-year term effective January 1, 2019.

b. Attorney Regulation Committee

At the recommendation of Mr. Jacobson, Chair of the Attorney Regulation Committee, Hetal J. Doshi was appointed to the Attorney Regulation Committee for a term of seven years effective March 1, 2019. Ms. Doshi fills the position vacated by Barbara Kelley when her term expires February 28, 2019.

c. Continuing Legal and Judicial Education Committee

At the recommendation of David Little, Chair of the Continuing Legal and Judicial Education Committee, The Honorable Amanda Hopkins, Martha Rubi-Byers, Rachel B. Sheikh, and Genet Johnson were re-appointed to the Continuing Legal and Judicial Education Committee, each to serve a term of seven years effective January 1, 2019.

Also at Mr. Little's recommendation, Karen Hester was appointed to the Continuing Legal and Judicial Education Committee for a term of seven years effective January 1, 2019. Ms. Hester will fill a vacant seat upon Mr. Little's retirement on December 31, 2018.

Upon Mr. Stark's recommendation and the committee's approval, The Honorable Andrew McCallin, who is currently Vice Chair, will fill the Chair position effective January 1, 2019. Mr. Stark also recommended existing member Nathifa M. Miller fill the Vice-Chair position effective January 1, 2019.

d. Law Committee

At the recommendation of Richard Nielson, Chair of the Law Committee, Charles Norton was appointed to the Law Committee for a term of seven years effective January 1, 2019.

Also at Mr. Nielson's recommendation, existing committee member Anna M. Martinez will be appointed as Vice-Chair on the Law Committee upon an order of the Court.

e. Unauthorized Practice of Law Committee

At the recommendation of David Stark, existing committee member Elizabeth A. Bryant was appointed to serve as Chair effective January 1, 2019. Also at Mr. Stark's recommendation, existing committee member Judy Graff was appointed to an additional three year term as Vice-Chair, effective January 1, 2019. Ms. Martinez-Gloria will resign as Chair of the Unauthorized Practice of Law Committee effective December 31, 2018.

At the recommendation of David Stark, Patsy Leon and John Priddy were each appointed to an additional three year term effective January 1, 2019, on the Unauthorized Practice of Law Committee.

9. Other updates

a. CAMP

Ms. Peyton reported that CAMP is at the end of the first year of its strategic plan and has a strategic plan scorecard in place. The scorecard shows 94% partial completion of strategic plan goals. CAMP made significant progress in 2018 on its first strategic plan objective: program development. CAMP expanded programming to include live events on professional development topics. These have been successful, averaging 15 participants per event. CAMP broadcasts these events in webinar format, permitting lawyers outside the Denver metropolitan area to participate.

CAMP will focus on two other pillars of its strategic plan in 2019: developing strategic partnerships and innovative communication. Already, ten professional development events have been scheduled for 2019.

b. COLAP

Ms. Myers reported that COLAP hired a clinical director, Chip Glaze. He comes from the Mississippi Lawyers & Judges Assistance Program, where he served as director. Mr. Glaze is a lawyer and a clinician. He will begin January 1, 2019. Meanwhile, the number of contacts to COLAP has grown, as has the number of presentations Ms. Myers is giving. COLAP had 77 first-time contacts in November. It has received 36 so far in December.

c. Office of Attorney Regulation Counsel

Ms. Yates reported that annual attorney registration is open. As part of registration, the Office of Attorney Registration encourages Colorado lawyers to participate in a voluntary survey so that the Office has a better understanding of the bar's demographics. So far the response rate to that survey has been higher for active attorneys as opposed to inactive attorneys. The Office of Attorney Admissions, under the leadership of Ms. McKnight, and with the assistance of a new full-time employee, has sped-up the review process for on-motion and UBE applications. Elsewhere, the subcommittee studying revisions to C.R.C.P. 251 continues to meet every two weeks. Mr. Stark thanked staff attorneys from the Office of the Presiding Disciplinary Judge for their assistance to this subcommittee. He said that the subcommittee's work could not be done without their assistance.

d. Providers of Alternative Legal Services (PALS) subcommittee

Mr. Rothrock reported that the PALS subcommittee continues to explore whether and how to license non-lawyers to expand access to justice in Colorado. The subcommittee has made progress. He said he intends to make revisions to a draft report for this committee's consideration at the March meeting. He plans to submit that to the PALS subcommittee for its approval at the next meeting in January.

The meeting adjourned at 2:10 p.m. The committee will meet again March 8, 2019. Following the March meeting, the committee's 2019 meeting dates are:

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

/s/ Jessica E. Yates

Jessica E. Yates

Attorney Regulation Counsel