



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

December 9, 2016, 12:00 p.m. – 1:45 p.m.

Extra Large Conference Room

Office of Attorney Regulation Counsel

1300 Broadway, Suite 500

Denver, CO 80203

Members present: Chair David W. Stark, Nancy L. Cohen, Cynthia F. Covell, Steven Jacobson, Barbara Miller, Dick Reeve, Alexander (Alec) Rothrock, and David Little. Attending via telephone: Daniel Vigil, Cheryl Martinez-Gloria, and Brian Zall.

Members absent: Rich Nielson and Mac Danford.

Liaison Justices present: Justice Monica Márquez and Justice Nathan Coats.

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

Staff present: James C. Coyle, Attorney Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; Ryann Peyton, Director of Colorado Attorney Mentoring Program (CAMP); Barbara Ezyk, Director of Colorado Lawyer Assistance Program (COLAP); Jonathan White (Staff Attorney, Office of Attorney Regulation Counsel); and Melissa Meirink (Supreme Court Staff Attorney).

1. Approval of September 9, 2016, meeting minutes.

The Chair asked if everyone had read the minutes. The committee approved the minutes.

2. Diversity Survey Update.

Mr. Coyle updated the committee on the diversity survey conducted by the Office of Attorney Regulation Counsel working with the Center for Legal Inclusiveness. The data are in. A formal report should issue in January 2017. The report will be posted on the Office of Attorney Regulation Counsel's website. Results will be broken down by county. Approximately 8000 attorneys participated. This is a good participation rate.

3. CAMP Immunity Rule Report.

Ms. Peyton reported on a proposed immunity provision for C.R.C.P. 255 she has drafted. Currently Rule 255 lacks a description of what immunity, if any, may be afforded to the staff of the Colorado Attorney Mentoring Project (CAMP). Ms. Peyton has spoken with two liability insurance brokers who recommended creating an immunity provision in the Rule. There is a need to protect the CAMP staff from liability for acts performed in their official duties but not impede the public's right to hold attorneys accountable, including CAMP participants.

Ms. Peyton explained that CAMP will require mentors to have professional liability. Mentees will not have to carry coverage.

The Chair appointed a subcommittee evaluate the proposed immunity language. The subcommittee will include Ms. Peyton, Dick Reeve, David Little, and Nancy Cohen. Mr. Coyle will reach out to other potential subcommittee members (a member of the Colorado Attorney General Office).

4. Proposed Rule 260 Update.

Mr. Stark reported that the Advisory subcommittee reviewing changes to C.R.C.P. 260, Mandatory Continuing Legal and Judicial Education, continues its work. It is about 80 percent complete. The committee will have a proposal for the advisory committee to review in the future. Mr. Stark mentioned the concepts included in the proposal produced earlier this year remain the same.

5. Other updates:

a. Colorado Attorney Mentoring Program report

Ms. Peyton stated that CAMP will begin a strategic planning process in January 2017. There will be four working groups in the planning process: (1) Demographics & Mentoring, (2) Sustainability & Partnerships, (3) Programming, (4) Communication Delivery & Technology. As part of the process, CAMP will look at best practices in January and February 2017, followed by a community needs survey in March, and then in the spring and summer, consolidate and assess the information gathered in order to develop a strategic plan. The strategic planning process will be a multi-year effort.

b. Colorado Lawyer Assistance Program report

Ms. Ezyk reported that COLAP has been busy. From January to November of this year, contacts increased to 39.5 on average per month. Further, the number of men and women contacting COLAP has started to equalize to nearly an even 50/50 split. Formerly, only about one-third of contacts were from women. COLAP has conducted 98 presentations so far in 2016, an average of 7.5/month. This increases the number of groups receiving messages about the assistance

COLAP provides to lawyers in crisis and in need of stress management. Ms. Ezyk said that a large number of people that COLAP monitors on a monthly basis suffer from anxiety.

There have been two known suicides within the Colorado legal community recently. Ms. Ezyk reported that following these deaths, almost everyone impacted has reached out to COLAP, which indicates that word is spreading as to the services COLAP offers.

The November 2016 edition of *The Colorado Lawyer* featured an article authored by Sarah Myers and Danny Creager titled “Coping with Grief in the Workplace” that was well received.

c. Office of Attorney Regulation Counsel report

Mr. Coyle said that he has a new management team. Matt Samuelson is Chief Deputy Regulation Counsel. Margaret Funk is Senior Deputy Regulation Counsel overseeing the trial division. She has made notable improvements in the functioning of the division. April McMurrey is Deputy Regulation Counsel managing the intake division and assisting Ms. Funk in running the trial division. The office recently welcomed Dawn McKnight as Deputy Regulation Counsel overseeing CLE and admissions.

Assistant Regulation Counsel Katrin Rothgery will be leaving the office on December 16, 2016. Sarah Van Deusen has been hired to fill the vacancy in the trial division created by Ms. Rothgery’s departure. Additionally, the office added a trial attorney position which will be filled by J.P. Moore, who is currently an attorney in the intake division. Mr. Moore’s transfer to the trial division created an opening in the intake division, which will be filled by a new intake attorney, Rhonda White-Mitchell, beginning January 3, 2017. She comes to the office from private practice; she has also worked in the Office of the Colorado Attorney General. Lastly on the staffing front, Jonathan White joined the office in November as a Staff Attorney. He previously worked for the office as a law clerk in 2009-2010.

On technological issues, the Office of Attorney Regulation Counsel is working to update its servers and implement the iMIS software for attorney registration. All other software programs, including JustWare and Civicore, are working well.

The office continues its assessment of potential changes to C.R.C.P. 260 and development of a rule allowing conditional bar admissions. The office looks forward to the release of its diversity survey data.

The office continues to work with the D.U. Daniels School of Business, Business Analytics Department on a project that will better forecast baby boomer retirement rates, anticipating law practice transition issues and office budget issues.

Mr. Coyle is co-chair of a national task force on lawyer well-being, a growing coalition of the ABA, Conference of Chief Justices, National Organization of Bar Counsel and Association of Professional Responsibility Lawyers and other national organizations. This task force will publish a report detailing how the profession needs to respond and change following findings from a study

reported in an article in the January/February 2016 edition of the *Journal of Addiction Medicine* titled “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,” as well as a recent nationwide law student study. These studies found that the prevalence of substance use disorders and mental health issues is higher for attorneys and law students than other professionals.

Mr. Coyle reports that the office continues to enjoy strong relationships with COLAP and CAMP. These relationships allow the organizations to provide extensive resources for attorneys.

d. Condition Admission Rule Subcommittee Report

Mr. Samuelson reported that the subcommittee investigating whether a conditional admission rule should be proposed has completed draft revisions to C.R.C.P. 208, 209, 211 and 251.28 to create a conditional admission process to complement the other admission rules in Colorado. The conditional admissions process gives certain applicants an avenue to gain admission to the bar when previous conduct suggests that they should not be admitted but the candidate can demonstrate that a diagnosed mental health condition or substance use disorder caused the underlying misconduct. The revisions would put in place appropriate safeguards to make sure applicants continue with a sustained recovery from the disorder and thereby protect the public.

The proposals allow an Inquiry Panel to recommend conditional admission if the panel identifies circumstances where conditional admission may be appropriate. The Presiding Disciplinary Judge or a Hearing Panel pursuant to C.R.C.P. 208 may ultimately recommend admission to the Colorado Supreme Court conditioned upon compliance with terms that protect the public and ensure that the applicant will undergo continued monitoring, counseling, screenings, and receive appropriate mentoring. The Colorado Supreme Court must approve any conditional admission under the draft rule changes. The conditional admission remains confidential subject to certain exceptions that apply in the admissions context.

Mr. Samuelson advised that 24 other states have conditional admission rules. Adoption of a rule would keep Colorado on the leading edge of admissions matters.

Mr. Zall, the subcommittee’s chair, thanked the subcommittee members who have been working on the rule proposal for over a year.

Several members asked whether the proposed rule required conditional entrants to disclose to clients their provisional admission. Mr. Samuelson explained that the proposed changes not require lawyers to tell clients. However, if the client asked the attorney specifically whether he or she was conditionally admitted, the attorney would have to reveal this to the client to fulfill the duty of candor in the Rules of Professional Conduct.

Mr. Rothrock inquired about the procedure proposed in the revisions to C.R.C.P. 209.1 that would allow the Office of Attorney Regulation Counsel to take a position different from the Inquiry Panel’s findings. The proposed language requires the Office of Attorney Regulation Counsel to defend the Inquiry Panel’s recommendation, but it also gives the Office of Attorney

Regulation Counsel the opportunity to adopt a different position before the Hearing Panel convenes based on changed circumstances. Mr. Samuelson explained that this provision recognizes that by the time a hearing board assembles, there may be different circumstances for the applicant that merit adopting a different position than that recommended by the Inquiry Panel earlier in the process.

The committee resolved to take up the rule change proposal again at the March 2017 meeting. This will allow committee members to further review the subcommittee's proposals.

e. PALS Subcommittee Report

Mr. Rothrock reported that the PALS subcommittee has looked at Washington state's rules allowing for licensure of non-attorneys (legal technicians) for the limited purpose of drafting documents to be used in domestic relations proceedings. New York Justice Fern Fisher also recently spoke on the issue of "navigators" in the New York courts and had input for the subcommittee to consider. Two Colorado jurisdictions, Adams County and Summit County, are rolling out navigator programs as part of access to justice initiatives. The subcommittee will meet again on January 27, 2017.

f. PMBP Subcommittee Report

The subcommittee on proactive management based regulators (PMBR) unanimously determined at its October meeting that the self-assessments being considered should be voluntary. Accordingly, the initiative will now be called "proactive management-based program" or "PMBP." Keeping attorney participation in the program voluntary is the best way to drive participation that has value.

The ten PMBP working groups have completed their proposed self-assessments. The assessments should take an hour and forty minutes or less to complete. The subcommittee is looking at ways to incentivize participation such as through reduction in malpractice premiums or CLE credits for attorneys who complete a self-assessment and obtain peer review certification. Mr. Coyle anticipates roll out for testing in the near future.

Mr. Coyle noted that the Colorado Supreme Court's adoption of regulatory objectives earlier this year helped shape the self-assessments. Next, the subcommittee needs to consider how to develop a peer-review program.

There was discussion as to whether malpractice carriers require solo or small firm practitioners to create an ethical infrastructure using assessments and guidelines similar to PMBP. Most do not. Ms. Cohen observed that in the context of PMBP, attorneys may be hesitant to participate if there is any risk that their insurer will require them to report the result of the self-assessment. Alternatively, several members noted that PMBP assessments may help insurers identify what they need to look for, if any, in terms of an infrastructure.

6. Proposed Meeting Dates for 2017

- March 10, 2017
- May 12, 2017
- September 8, 2017
- December 8, 2017

The meeting adjourned at 1:45 p.m.

Respectfully submitted,

/s/ James C. Coyle
James C. Coyle
Attorney Regulation Counsel