



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

May 10, 2019, 12:10 p.m. – 1:37 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, Colorado 80203

Members present: Chair David W. Stark, Judge Andrew McCallin, Brian Zall, Cynthia Covell, Daniel Vigil, Dick Reeve, Elizabeth Bryant (by teleconference), Nancy Cohen, Steven Jacobson, and Sunita Sharma.

Members absent: Alexander (Alec) Rothrock, Barbara Miller, and Mac Danford.

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

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

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

The Chair convened the meeting. He welcomed Ms. Sharma to meeting. Ms. Sharma is the new Chair of the Law Committee.

1. Approval of the March 8, 2019 Meeting Minutes

The Chair asked if there were any amendments to the March 8 meeting minutes. Members proposed several edits.

The first edit was to the top, indented paragraph on page three which recited revised language for C.R.C.P. 205.7. The last sentence of the paragraph should have read: “However a supervising lawyer must be physically present in the courtroom if the proceeding is a testimonial motions hearing or trial.”

In addition, the second line of the “CAMP update” on page four should have been revised to read: “The circle mentorships have developed, particularly with respect to cannabis law.” Finally, the last line of the section titled “COLAP update” on page five should have read: “Mr. Glaze is a licensed family therapist and attorney and started in January.”

Mr. Reeve moved to adopt the minutes with these revisions. Ms. Bryant seconded the motion. The revised minutes for the March 8 meeting were adopted.

2. Proposed Rule 206, Petitions to the Supreme Court for Waiver of Admissions Requirements

At the March 8 meeting, the committee discussed development of a rule that would create a formal process for applicants to petition the Supreme Court to waive admissions requirements. Ms. Yates presented a rule proposal developed with assistance from Cheryl Stevens, Ms. Funk, and Dawn McKnight in consultation with Justice Márquez and Justice Hood. The proposal, if adopted, would create a new rule, C.R.C.P. 206. The proposed rule contains a requirement for conferral with the Office of Attorney Regulation Counsel prior to filing a petition. It features a filing fee that is the same as the docketing fee for a Colorado Appellate Rule 21 petition. The proposed rule also contains a paragraph outlining the scope of the Supreme Court's discretion regarding such petitions.

The committee discussed the proposal. Members determined that proposed Section 5, titled "Request for Protection of Confidential Information," should be renamed "Request for Protection of Other Confidential Information." Further, the order of sections should be switched. Proposed Section 6, "Petitions for Relief Relating to Underlying Character and Fitness Investigations," should be the fifth section. Proposed Section 5 should appear as the sixth section.

Justice Márquez advised that the Supreme Court is reviewing docketing fees. Given that this new rule proposal tethers the filing fee for a petition to other docketing fee, the proposed \$225 fee could change depending on the outcome of the Court's review.

Mr. Reeve moved to approve proposed C.R.C.P. 206 with the amendments discussed. Mr. Vigil seconded. The committee voted to approve the proposed rule as revised during the meeting and recommend it to the Supreme Court for review.

3. Request by Colorado Lawyers Helping Lawyers, a Colorado Non-Profit Corporation (CLHL), for Continued Designation as a Peer Assistance Organization under C.R.C.P. 251.34(b)(9.5) and Rule 8.3(c)

CLHL filed a request for continued designation as a Peer Assistance Organization pursuant to C.R.C.P. 251.34(b)(9.5). The designation exempts CLHL from reporting requirements imposed by Colo. RPC 8.3(c). This committee has designated CLHL as a Peer Assistance Organization previously. These designations last for a period of two years under C.R.C.P. 251.34(b)(9.5)(C).

Judge McCallin moved to approve the request. Mr. Jacobson seconded. The committee approved the request by CLHL for continued Peer Assistance Organization designation, *nunc pro tunc* to the filing of the request in October 2018.

A member suggested investigating whether the two-year designation period under C.R.C.P. 251.34(b)(9.5)(C) could be extended.

4. Annual Budget Proposal for 2019-2020 for Office of Attorney Regulation Counsel

Ms. Yates presented members with a packet containing the regulatory offices' fiscal year 2020 budget request. This included sheets showing each individual unit's request. She detailed several budget trends pertaining to the Office of Attorney Regulation Counsel. Those include an increase in admissions revenue as on-motion applications continue to rise despite a decline in exam takers and Uniform Bar Exam (UBE) applications. Registration revenues also continue to rise along with the number of active attorneys. So too do revenues related to Continuing Legal Education following regulatory changes. Though the number of active attorneys continues to grow, Ms. Yates said that the number of inactive attorneys in Colorado is also rising. This is due in part to Colorado-licensed lawyers moving out of state but choosing to keep their license here.

A continued expenditure from previous years that will occur again in fiscal year 2020 for the Office of Attorney Regulation Counsel is a contribution to the Colorado Supreme Court Law Library. Meanwhile, expenditures for employee health and dental premiums continue to rise, as reflected in the various budget requests. The budget requests projected salary expenditures based on zero, three, or five percent staff raises, though the offices may not need the full projected amount based on guidance from the Court. The request for the Office of Attorney Regulation Counsel also includes projected costs for capital construction. This construction would increase security for the Office, and it would combine reception for attorney registration with regulation. The budget request for the Office of Attorney Regulation Counsel also includes reimbursement for annual attorney registration fees for the Office's lawyers. This is consistent with other public sector agencies Ms. Yates surveyed.

The 2020 fiscal year budget request continues to support 2.5 full-time employees in the Office of Attorney Regulation Counsel through funds from the Attorney Client Protection Fund. This allows the Office to perform inventory counsel duties that help reduce claims on the Attorney Client Protection Fund. The budget request also adds funding for a new disaster recovery effort for information technology services.

a. Request for Additional Funding for COLAP

Ms. Myers detailed a request for additional funding for COLAP that would add a full-time employee. This is part of COLAP's fiscal year 2020 budget request.

Ms. Myers explained COLAP's staff is extremely busy. Demand for COLAP's services, including consultations, assistance, and presentations, continues to rise. The agency needs to respond accordingly through increased capacity to avoid compromising the quality of services available to Colorado lawyers. Ms. Myers explained that a new full-time employee would provide the support necessary for COLAP to adequately and appropriately respond to requests for services, particularly through expanded outreach to remote areas in Colorado and through coordinating volunteers with necessary training and oversight. Further, although the Colorado Task Force on Lawyer Well-Being has not completed its work, preliminary reports from working groups have identified needs for both peer-to-peer assistance and increased outreach on well-being issues beyond the Front Range. As such, several Task Force members contributed to letters of support for a new employee for COLAP. Ms. Myers said that while COLAP is grateful

for their support, COLAP's need for an additional employee would exist regardless of the recommendation from the Task Force.

In response to member questions, Ms. Myers confirmed that COLAP is working closely with the law schools, and with CLHL and their volunteers. She said a new full-time employee would need to have clinical credentials and/or a law license.

The Chair further emphasized that the request to add an additional employee to COLAP arises from the combined increase in contacts and the fact that lawyer wellness has become a critical, profession-wide issue. He said that COLAP will continue to lead on this topic. Any additional initiatives that emerge from the Colorado Task Force on Lawyer Well-Being will need to closely involve COLAP.

Following the discussion of the regulatory offices' budget request, including the addition of a full-time employee to COLAP, the Chair asked if there was a motion to approve the request and submit it to the Supreme Court. Ms. Cohen moved to approve the request. Mr. Zall seconded. The committee voted to approve the request. The request will be presented to the Supreme Court.

5. 2018 Annual Reports

a. Office of Attorney Regulation Counsel

The Office of Attorney Regulation Counsel conducted an anonymous, voluntary demographic survey in conjunction with 2019 attorney registration. Ms. Yates reviewed the data, which the Office presented in its 2018 Annual Report. The data show women are under-represented in private and in-house practice. Many leave active practice after ten years or less. The data also show under-representation in the Colorado legal community of lawyers of Hispanic, Latino, or Spanish origin as well as lawyers who identify as black or African American compared to the Colorado population overall. In addition, 68.5 percent of active lawyers in Colorado practice in major metropolitan areas and there is some risk that smaller communities are under-served.

Elsewhere, the Office of Attorney Regulation Counsel's 2018 Annual Report shows a slight uptick in the number of formal complaints filed against Colorado lawyers compared to 2017. Ms. Yates also noted that while the number of active attorneys continues to rise, the number appears to be slowly plateauing. An active attorney drop could lead to the need to request a registration fee increase.

b. CAMP

Ms. Peyton discussed CAMP's 2018 Annual Report. CAMP matched its 1000th mentee in 2018. Its mentor pool rose to over 800 lawyers. CAMP added a new full-time employee in 2018, which supported an increase in program participation this year over 2018 levels. Ms. Peyton said she finds it encouraging to see a number of repeat mentees returning to CAMP.

Ms. Yates announced that Ms. Peyton will receive the 2019 Rosner & Rosner Young Lawyer Professionalism Award from the American Bar Association's Center for Professional

Responsibility. The award will be presented at the Center's upcoming National Conference on Professional Responsibility in Vancouver. The award honors a young lawyer's commitment to ethics, professionalism, client protection, and professional regulation.

c. COLAP

COLAP's 2018 Annual Report describes the confidential process callers can expect when reaching out to COLAP for assistance. Ms. Myers further detailed that in 2018, COLAP gave on average 9.5 presentations per month. She told committee members these presentations lead to requests for assistance because the contact gives attendees a sense of familiarity. These presentations resulted in over 5100 face-to-face contacts with Colorado judges, lawyers, and law students in 2018. COLAP also published 60 articles in various publications last year. Further, for the first year, COLAP had more contacts identifying as female reaching out than contacts identifying as male.

d. Office of the Presiding Disciplinary Judge

Judge Lucero detailed his office's 2018 Annual Report. 90 cases were filed with the Office of the Presiding Disciplinary Judge in 2018. The Office has a brisk motions practice. Dispositive motions practice, in particular, has increased. Judge Lucero engages in outreach and education regarding his Office's function. He presents at a number of continuing legal education seminars each year, a trend that continued in 2018. He said that his staff attorneys were very busy in 2018 participating in a comprehensive review and re-write of the attorney discipline procedures in C.R.C.P. 251. Other trends Judge Lucero mentioned to the committee include an increase in the number of lawyers facing disability and a rise in unauthorized practice of law cases, which are very time-consuming.

The Office of the Presiding Disciplinary Judge's fiscal year 2020 budget request includes upgrades to the sound system in the courtroom.

6. Approval of Committee Appointments

a. Character & Fitness Committee

The Chair of the Character & Fitness Committee, Brian Zall, requested the appointment of existing committee member Porya Mansorian to vice-chair position effective June 1, 2019. This follows the resignation of Lorraine Parker as vice-chair.

Mr. Zall also requested the appointment of Barbara Kelley, Tammy M. Eret, Dr. Sandra M. Thébaud, Gwyneth Whalen, The Honorable Terry Fox, and Dr. Robert L. Atwell to the committee serving terms of seven years each effective upon the Court's order. He thanked the justices for adopting changes to C.R.C.P. 202.3 to expand the committee's size. He noted that these appointments drew from a diverse applicant pool. The placement of an application for committee appointment through the Office of Attorney Regulation Counsel's website bolstered the recruitment process and helped increase the diversity of the applicant pool.

Mr. Reeve motioned to recommend to the Supreme Court the appointment of Ms. Mansorian as vice-chair. Mr. Vigil seconded this motion and the committee approved it. Mr.

Reeve made a second motion to recommend the Supreme Court appoint Ms. Kelley, Ms. Eret, Dr. Thébaud, Ms. Whalen, Judge Fox, and Dr. Atwell to the Character & Fitness Committee. Mr. Vigil seconded, and the committee approved the motion.

7. Other Updates

a. CAMP Update

Ms. Peyton reported a 60 percent increase in mentee applicants to CAMP so far in 2019 over the same period in 2018. CAMP has been selected to present to the American Bar Association's National Conference for Lawyer Assistance Programs in September in Austin. Meanwhile, CAMP continues its community engagement planning as part of its strategic planning.

b. COLAP Update

Ms. Myers reported on continued growth in contacts to COLAP. First-time contacts are up 70 percent this year over this time last year. COLAP has seen a 47 percent increase in the number of COLAP presentations and staff exhibit tables this year compared to the same time frame last year.

c. Office of Attorney Regulation Counsel Update

Ms. Yates stated that the February 2019 bar passage rate was 61 percent. This is an increase in the passage rate from February 2018, which was 51 percent.

The Office will welcome a new Director of Continuing Legal and Judicial Education and Clerk of Attorney Registration, Jacqueline Patterson. Ms. Patterson takes over from Elvia Mondragon, who will be leaving the Office at the end of the month.

d. Providers of Alternative Legal Services (PALS) Subcommittee

This subcommittee will meet May 15 to review and finalize a preliminary report. The Chair said that the report will propose a pilot project in one courthouse in an urban area and one courthouse in a rural area. The project will allow non-lawyer advocates to represent *pro se* litigants in eviction cases. The advocates may assist with all aspects of litigation except for actual courtroom proceedings, though the advocates may sit at counsel table. This concept is similar to the New York "Court Navigators Program."

e. Rule 251 Subcommittee Update

This subcommittee has nearly finished reviewing and making amendment proposals to C.R.C.P. 251. The new proposals would create a new rule, C.R.C.P. 242. The Chair said that the subcommittee has finished reviewing the expungement rule, is finishing the contempt section, and will next address lawyer disability procedures.

f. On-Motion/UBE Admissions Subcommittee Update

At the March meeting, Ms. Yates presented several ideas for changing requirements for on-motion and UBE transfer applicants. The Advisory Committee has formed a subcommittee to study these issues. Members include Anna Martinez, Nancy Cohen, David Stark, Dawn McKnight, Jonathan Toronto, Karen McGovern, Marcy Glenn, Margaret Funk, and Sunita Sharma. The subcommittee will meet for the first time on May 31.

g. Other Business

2019 meeting dates:

- September 13, 2019
- December 13, 2019

/s/ Jessica E. Yates

Jessica E. Yates

Attorney Regulation Counsel