



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

May 8, 2020, 12:05 p.m. – 2:20 p.m.

Meeting Conducted via Zoom

Members present: Chair David W. Stark, Alexander (Alec) Rothrock, Alison Zinn, Hon. Andrew McCallin, Barbara Miller, Brian Zall, Cynthia Covell, Daniel Vigil, Henry (Dick) Reeve, Elizabeth Bryant, Nancy Cohen, Steven Jacobson, Sunita Sharma

Liaison Justices present: Justice Monica Márquez, Justice William Hood

Office of the Presiding Disciplinary Judge: Presiding Disciplinary Judge William Lucero; Cori Peterson, Senior Staff Attorney; Ginette Chapman, Senior Staff Attorney

Staff present: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Ryann Peyton, Executive 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

Guests: Charles Goldberg, Chair, Attorneys' Fund for Client Protection; Charles Turner, Vice-Chair, Attorneys' Fund for Client Protection

The Chair welcomed members. This is the first time the committee has held a virtual meeting, which was necessitated by the COVID-19 pandemic. Ms. Yates welcomed new committee member, Ms. Zinn.

1. Approval of the March 13, 2020, Meeting Minutes

The Chair sought approval of the March 13 minutes, which were included in the packet of materials distributed to members in advance of the meeting. Judge McCallin requested two minor revisions to the minutes that he later provided to Ms. Yates by email. These revisions modify the second paragraph under Item 7, Consideration of Subcommittees within the Continuing Legal and Judicial Education Committee. The second sentence of that paragraph should read: “[t]wo subcommittees will evaluate ways to promote programming related to (1) lawyer well-being and professionalism” The third sentence of the paragraph should read: “[a] third subcommittee will harmonize language in the regulations with the new CLE rules adopted in 2018.” Mr. Jacobson moved to approve the minutes with the revisions proposed. Ms. Bryant seconded. The minutes were approved subject to Judge McCallin’s revisions.

2. Consideration of Forming New Subcommittee to Address Concepts of Mandatory Insurance and Mandatory Succession Planning

Mr. Goldberg and Mr. Turner, Chair and Vice-Chair of the Attorneys' Fund for Client Protection ("the fund"), presented on two issues that they, and another trustee of the fund, Katayoun Donnelly, believe would complement the fund's efforts to protect clients. Mr. Goldberg provided a history of the fund. He noted that the Colorado Supreme Court established the fund in 1999 through Colorado Rule of Civil Procedure 252. The fund promotes public confidence in the administration of justice and in the integrity of the legal profession. It strives to reimburse clients for losses due to a lawyer's dishonest conduct. A small allocation to the fund from every Colorado lawyer's annual registration fee endows the fund. Since inception, the fund has returned over seven million dollars to clients. The fund cannot reimburse every claim presented. For example, the fund does not reimburse losses due to a lawyer's negligence.

Mr. Goldberg and Mr. Turner outlined their request in a letter included in the packet of materials for the meeting. They encouraged creation of a subcommittee to look into two subjects that may help prevent some of the losses presented to the fund but that the fund cannot reimburse. Specifically, they recommended studying requiring Colorado lawyers to carry professional liability insurance, and they recommended studying some type of mandated succession planning. They noted they do not recommend a specific outcome, but instead an investigation of these issues and weighing the merits of any solution.

Mr. Turner believes reviewing these topics might expand efforts to protect clients. He noted that there have been previous efforts to look into the issue of mandatory professional liability insurance in Colorado, including by the Colorado Bar Association's Lawyer's Professional Liability Committee and its Insurance Committee. The outcome of those efforts was that professional liability insurance should not be mandated. Mr. Turner said Oregon also requires lawyers to carry professional liability insurance, though that state accomplishes this through a captive insurance requirement with a modest level of protection.

Ms. Yates commented that Idaho very recently began requiring lawyers to carry professional liability insurance. She explained that as to succession planning, the Office of Attorney Regulation Counsel has an inventory counsel program that it can activate by rule when a lawyer dies or becomes disabled in order to secure files and property and return those items. Detailed succession planning by lawyers would go beyond the limited inventory counsel scope.

Mr. Goldberg and Mr. Turner emphasized in follow-up discussion regarding their proposals that the fund will not investigate or compensate clients for matters that relate to a lawyer's negligence. The fund also does not cover consequential damages. Several members discussed previous efforts to look at the issue of mandatory malpractice insurance and some of the concerns revealed then, including the issue of availability. The committee determined that the two issues, mandatory professional liability insurance and mandatory succession planning, should be considered through two separate subcommittees.

The Chair asked if there was a motion to create a subcommittee charged with investigating the issue of mandatory professional liability insurance. Mr. Reeve motioned to create such a subcommittee. Mr. Vigil seconded the motion. The motion carried with Ms.

Cohen, Ms. Covell, Judge McCallin, Ms. Miller, Mr. Rothrock, Mr. Zall, and Ms. Zinn in favor. Mr. Jacobson opposed creation of the subcommittee.

Thereafter the committee unanimously approved creation of a subcommittee charged with studying whether Colorado lawyers should be required to engage in some form of succession planning.

3. Approval of the Fiscal Year 2021 Annual Budget Proposal for the Office of Attorney Regulation Counsel and Offices Funded by Attorney Registration Fees

Ms. Yates discussed the proposed budget for the Office of Attorney Regulation Counsel for the upcoming fiscal year. While there are budget uncertainties due to the current pandemic, the Office has spent conservatively this past year. Expenditures for the current fiscal year are expected to come in notably less than those approved. Unexpected expenditures for the current fiscal year include equipment to facilitate remote working, personal protective and safety equipment for the July 2020 bar exam, and an increase in the cost of the RTD EcoPass effective January 1, 2020. Offsetting those unplanned expenditures for the current fiscal year include payroll reductions due to employee departures, two of which were not filled, reduction in travel costs due to budgeted travel not taking place, as well as reduction in certain operating expenses. The Office's indirect cost payment to the State Court Administrator's Office (SCAO) was also less than budgeted. Ms. Yates explained that revenues have seen some softening in the current fiscal year and will likely continue to do so for a variety of reasons including declining interest rates, inactive registrations outpacing active attorney registrations, the impact of cancellations in CLE programming due to the pandemic, and a slight decline in on-motion applications.

There are a number of variables related to the July 2020 bar exam that impact budget planning. So far, the Office of Attorney Admissions has seen an increased number of applications to sit for the upcoming bar exam compared to recent summer exam administrations. Meanwhile, costs to administer the exam have risen not only due to safety equipment expenditures, but because it may be necessary to have more administrators and proctors, given the need for additional space to comply with social distancing requirements. The same social distancing requirements may also necessitate renting additional venue space. In light of the need to plan for contingencies, Ms. Yates sought the committee's approval to increase bar exam expenditures. She noted that the Office of Attorney Admissions may also need to consider requests for refunds should examinees elect to not take the upcoming bar exam. She further explained that the Office of Attorney Admissions will see some savings related to the transition to remote grading for the summer or fall 2020 examination.

Other upcoming fiscal year budget highlights include keeping base payrolls flat with no pay increases. Certain full-time employee (FTE) positions will either remain unfilled or not filled until later in the year. Travel budgets have been significantly reduced. The upcoming fiscal year budget factors in higher employee transportation costs due to RTD EcoPass cost increases, as well as increases in expenditures to accommodate teleworking. There also have been employer cost increases related to PERA and for health plan premiums.

The committee considered proposed budgets of other agencies. Ms. Peyton said that CAMP's budget significantly reduces travel and factors in expenses related to the Pilot Program

for the Colorado Supreme Court Well-Being Recognition Program. CAMP's budget also factors in a grant of \$10,000 to Legal Entrepreneurs for Justice (LEJ) in the coming fiscal year. Previously CAMP provided this contribution to LEJ through a budget variance approved by the committee. Ms. Myers reported that COLAP's upcoming fiscal year budget also contemplates a reduction in travel costs with a slight increase in payroll expenditures due to adding a staff member. Presiding Disciplinary Judge Lucero also reported that his office budget for the coming fiscal year reduces travel and payroll expenses, with the payroll reduction occurring through an employee departure with no immediate plans to fill the position, though eventually the office intends to hire someone to fill the position. The Commission on Judicial Discipline will also see a reduction in its travel budget.

Ms. Yates responded to comments and questions from committee members. She will provide an update on current fiscal year budget revenues, costs, and expenses at the committee's September meeting, at which time the current fiscal year will have concluded. She noted that the budget situation is somewhat fluid, given the ongoing pandemic.

At the conclusion of the discussion regarding the 2021 fiscal year budget, Mr. Reeve moved to approve the proposed budget for the Office and other court-supported agencies and recommend it to the Colorado Supreme Court for review and approval. Mr. Vigil seconded the motion. The motion carried without opposition.

4. Proposed Changes to Attorney Discipline and Disability Rules of C.R.C.P. 251

The subcommittee re-writing Rule 251 of the Colorado Rules of Civil Procedure has continued to meet. At the March meeting, the committee approved combining the Attorney Regulation Committee with the Unauthorized Practice of Law (UPL) Committee, creating the Legal Regulation Committee, one of the significant changes proposed by the subcommittee. Ms. Yates and Mr. Stark acknowledged the significant contributions of many at the meeting, including Ms. Cohen, Ms. Funk, Ms. Myers, Mr. Reeve, Mr. Rothrock, Ms. Chapman, and Ms. Peterson. Deputy Regulation Counsel Gregory Sapakoff has also been an active member of the rewrite subcommittee.

Committee members received in the meeting materials packet clean and red-lined copies of proposed rule revisions, as well as cross-references to the attorney discipline and disability rules in other sections of the Colorado Rules of Civil Procedure, the Colorado Rules of Professional Conduct, the Colorado Revised Statutes, and other rules. In addition to this information, the committee was briefed on significant proposed revisions at the September and December 2019 committee meetings. At those meetings, the committee also heard about areas of disagreement among subcommittee members as to certain proposals. Ms. Yates invited members to share feedback and suggestions following their review of the materials for this meeting and discussion of significant proposed changes at prior meetings.

One committee member suggested revision to proposed C.R.C.P. 242.4, Section (d), which pertains to abstention of Legal Regulation Committee members from proceedings. The member proposed the rule apply the same standard to Legal Regulation Committee members (1)

refraining from taking part in disciplinary proceedings and (2) making determinations and combine the two concepts in one single sentence. The standard to apply would be the judicial disqualification standard. The revision would have proposed C.R.C.P. 242.4(d) read: “Regulation Committee members must refrain from taking part and shall not make a determination in a disciplinary proceeding under C.R.C.P. 242.16 where a judge, similarly situated, would be required to disqualify.”

Another member proposed that the committee adopt the position advocated by a minority of members of the subcommittee as regards the Presiding Disciplinary Judge’s ability to modify the terms of an attorney’s disciplinary probation under proposed C.R.C.P. 242.18(f)(4). Committee members discussed this proposal. They heard from members of the subcommittee as to the arguments advanced to support the minority position – allowing the Presiding Disciplinary Judge to modify the terms of probation following a probation revocation hearing – as well as arguments advanced in favor of the majority position. The majority position allows the Presiding Disciplinary Judge to revoke probation or direct it remain in effect, but the judge may not modify the terms. Arguments in favor of the majority position include that the terms of probation may have been carefully negotiated by parties in a stipulation and that the Presiding Disciplinary Judge, who may not be aware of all the considerations at play, should not be able to alter the bargain. Meanwhile, arguments in favor of the minority position include that the Presiding Disciplinary Judge may be able to fashion nuanced relief and modify the terms of probation to prevent an unduly harsh or lenient outcome resulting from revocation or keeping the probation terms in effect. The committee asked the Presiding Disciplinary Judge for his perspective, which he offered. Following the discussion, Ms. Cohen moved that the committee adopt the minority position in the proposal to be presented to the Court and have the subcommittee develop the appropriate language to reflect that position. Judge McCallin seconded the motion. The motion passed without opposition.

The committee concluded discussion of the proposed changes to the rules regarding attorney discipline and disability presented by the subcommittee. Mr. Reeve moved to approve the proposed changes with amendments to proposed C.R.C.P. 242.4(d) and 242.18(f)(4) adopted at this meeting and present the rule revisions to the Court. Mr. Vigil seconded the motion. The motion passed without opposition.

The committee also received a comprehensive list of rule and statute cross-references to C.R.C.P. 251 that will need to be revised and updated. The revisions to be proposed to the Court will create new C.R.C.P. 242, 243, 244, and 253, necessitating amendment to cross-references. Ms. Peterson and Ms. Chapman prepared the list contained in the meeting materials. Mr. Reeve moved to approve the cross-reference updates and send the list to the Court. Mr. Vigil seconded the motion. The motion carried without opposition.

5. Consideration of Proposed Changes to UPL Procedural Rules of Chapter 19, C.R.C.P. 228-240.2

The committee received an update from Ms. Yates regarding the work of the subcommittee charged with reviewing and updating the unauthorized practice of law (UPL) rules of Chapter 19 of the Colorado Rules of Civil Procedure. The subcommittee completed its work and the committee received its proposed revisions to the UPL rules in the materials for the meeting. Subcommittee members included Ms. Chapman, Ms. Funk, Ms. Peterson, and Assistant Regulation Counsel James Wilder.

Ms. Yates noted that there were no proposals that generated a split of opinion among subcommittee members. The proposed changes seek to bolster the existing rules with enhanced enforcement procedures. As the rules are currently written, it is often difficult to prevent a person who has engaged UPL from repeating the conduct and continuing to harm the public. New procedures creating interim injunctions, authorizing collections in injunctive and contempt proceedings, and shifting prosecution and determination of contempt to district courts under procedures in C.R.C.P. 107, provide greater protection for the public.

Ms. Bryant, who served as chair of the UPL Committee, which is merging into the new Legal Regulation Committee, praised the proposals. She believes they will have greater impact in dealing with individuals who engage in repeated instances of UPL.

Ms. Bryant moved to approve the proposed revisions to the rules regarding UPL procedures and recommend the revisions to the Court. Mr. Reeve seconded the motion. The motion carried without opposition. Ms. Funk thanked the committee for their consideration of these rule changes.

6. Approval of Legal Regulation Committee Appointments

The Court issued an Order April 16, 2020, establishing the Legal Regulation Committee as a permanent committee of the Colorado Supreme Court. The Legal Regulation Committee combined the Attorney Regulation Committee (ARC) with the UPL Committee. The committee considered the following nominations for membership on the Legal Regulation Committee:

- Steven K. Jacobson, currently Chair of ARC, to serve as Chair of the Legal Regulation Committee for a term of seven years effective July 1, 2020, expiring on December 31, 2027.
- Alison Zinn, currently Vice-Chair of ARC, will serve as Vice-Chair of the Legal Regulation Committee for a term of seven years effective July 1, 2020, expiring on December 31, 2027.
- Hetal J. Doshi, currently on ARC, will serve a term of six years effective July 1, 2020, expiring on December 31, 2026.

- Martha Kent, currently on ARC, will serve a term of five years effective July 1, 2020, expiring on December 31, 2025.
- David M. Johnson, currently on ARC, will serve a term of five years effective July 1, 2020, expiring on December 31, 2025.
- Elsa Djab Burchinow, currently on the UPL Committee and ARC, will serve a term of seven years effective July 1, 2020, expiring on December 31, 2027.
- Luis M.Terrazas, currently on ARC, will serve a term of three years effective July 1, 2020, expiring on December 31, 2023.
- Diana David Brown, currently on ARC, will serve a term of four years effective July 1, 2020, expiring on December 31, 2024.
- John K. Priddy, currently on the UPL Committee, will serve a term of four years effective July 1, 2020, expiring on December 31, 2024.
- Anthony J. Perea, currently on the UPL Committee, will serve a term of three years effective July 1, 2020, expiring on December 31, 2023.

Mr. Jacobson and Ms. Yates discussed that the nominees bring a diversity of professional backgrounds, strengths, and a record of dedicated service in their previous committee appointments. Mr. Jacobson moved to recommend the Court appoint the above nominees for the terms proposed. Ms. Zinn seconded the motion. The motion carried without opposition.

7. Other Updates

a. CAMP

CAMP released its 2019 Annual Report, which is publicly available through coloradomentoring.org. Ms. Peyton noted that 2019 was a year of growth. CAMP experienced an increase in program metrics it tracks, including the number of new mentees and mentors, as well as social media impressions and program participants.

Currently, CAMP is meeting the demand for continued mentoring during the pandemic and in light of the widespread transition to remote working. CAMP published materials related to virtual mentoring, including best practices and tools to maximize virtual mentoring. CAMP is either sponsoring or is involved in a number of upcoming online events and podcasts, which Ms. Peyton highlighted in the report distributed to members in advance of the meeting. She noted CAMP has seen a very small dip in mentee applications in March and April, but the program is well-positioned to bounce-back.

The Chair praised CAMP's Annual Report and encouraged members to review it.

b. COLAP

Ms. Myers informed committee members that COLAP's 2019 Annual Report has been released. Of note, COLAP saw a 56 percent increase in the number of first-time contacts in 2019 and a 29 percent increase in presentation requests. The current COVID-19 outbreak led COLAP to transfer its services to a telework platform. All presentations have moved online. There has been no interruption in the organization's service or availability. Ms. Myers reported that providers and organizers have expressed enthusiasm that COLAP can continue to present. In addition, and also in response to the pandemic, COLAP created a list of therapists who offer telehealth capability. Further, COLAP developed a tips sheet on teleworking and staying calm during changing and challenging times that is located on COLAP's website. COLAP also created a new email address, info@coloradolap.org, for inquiries about confidential consultations, helpful resources, or requests for webinar presentations. Ms. Myers reported these new resources have been positively received. The pandemic has created unique well-being issues, and COLAP is responding to those. COLAP saw 102 requests for assistance in April alone.

The Chair noted that the increase COLAP has seen in contacts both before and following the pandemic is a testament to the organization's dedication to outreach.

c. Office of Attorney Regulation Counsel

Ms. Yates thanked Mr. Zall, Chair of the Character and Fitness Committee, for facilitating a smooth transition to remote inquiry panel interviews using technology such as Zoom. Ms. Yates also said that the Office is working on its 2019 annual report.

d. Subcommittee on Admissions Matters

The subcommittee met on April 28 to review three issues. Those included whether an applicant to the Colorado bar should have taken and passed a bar examination administered in the United States. The subcommittee agreed this should be a requirement.

The second issue the subcommittee considered is whether Rule 205.6 of the Rules Governing Admission to the Practice of Law in Colorado, which pertains to practice pending admission, should continue to preclude individuals practicing under the rule from appearing in court. Mr. Vigil, subcommittee chair, said that offices such as various public defenders' offices, hire individuals who are eligible for practice pending admission, and it would be beneficial to have these individuals able to appear in court. The subcommittee determined to recommend amendment to Rule 205.6 to permit court appearances by individuals enrolled in practice pending admission if they are working for a designated public agency.

The third issue the subcommittee began to consider and will address further at future meetings relates to potential amendments to procedures in C.R.C.P. 205.3(6)(a). That Rule pertains to pro hac vice appearances by attorneys in Colorado appellate courts after an attorney obtains permission to appear pro hac vice in the same action in a Colorado state trial court.

e. Subcommittee Concerning Paraprofessionals and Other Non-Lawyers Providing Legal Services

The PALS subcommittee transitioned to a new subcommittee that will consider issues related to licensing qualified licensed paralegals for the limited practice of law in Colorado. The subcommittee divided into two working groups. One will consider the scope and authority of these paralegals. The other will consider rules and regulations that should apply to them. These two working groups meet regularly. The subcommittee intends to issue a full and detailed report in 2021.

f. Well-Being Task Force and Recognition Pilot Program

Ms. Peyton explained that the Colorado Task Force on Lawyer Well-Being has been working the past 18 months to create programs and resources to bolster lawyer, judge, and law student well-being in Colorado. The Task Force intended to release its final report and have a celebration in tandem with that release on April 30. The COVID-19 pandemic delayed the release and related event. The pandemic has also necessitated a review of some of the recommendations to be set forth in the Task Force's report. The Colorado Supreme Court Lawyer Well-Being Recognition Pilot Program, which arose out of recommendations from the Task Force, intended to commence work this week. It plans to begin in July.

8. Remaining 2020 Meeting Dates

- September 18, 2020
- December 11, 2020

The meeting adjourned at 2:20 p.m.

9. Additional Legal Regulation Committee Appointment

Following the May 8 committee meeting, a member of the UPL Committee, Charles Spence, offered his services to the Legal Regulation Committee as a potential member. Mr. Spence practices in Durango and has extensive elder law experience. His nomination would create an eleven-member Legal Regulation Committee, lessening the chance of a tie vote. At the Chair's request, Ms. Yates contacted committee members by email on June 16, 2020, to determine if there was a motion to nominate Mr. Spence to the Legal Regulation Committee. By email, Mr. Jacobson moved to so nominate Mr. Spence. The Chair seconded, also by email. The motion carried without opposition. Mr. Spence's nomination will be sent to the Court for approval.

/s/ Jessica E. Yates
Jessica E. Yates
Attorney Regulation Counsel