



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

**MEETING MINUTES
June 6, 2014, 12:00 – 1:40 p.m.
Extra-Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203**

Members present: Chair David W. Stark, Vice Chair Steve Jacobson, Daniel Vigil, Rich Nielson, David Little, Nancy L. Cohen, Cheryl Martinez-Gloria, Cynthia F. Covell, Chris Markman, and Brian Zall.

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

Liaison Justices present: Honorable Nathan (Ben) Coats and Monica Marquez.

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

Staff present: James C. Coyle, Regulation Counsel; James S. Sudler, Chief Deputy Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; Barb Ezyk, Executive Director of Colorado Lawyer Assistance Program; and Alan Obye, Staff Attorney.

Others present: James Benjamin, Sue Bertram, and Reba Nance, all from the Colorado Bar Association.

1. Approval of minutes of March 7, 2014 meeting

Ms. Cohen moved to approve the minutes from the March 7, 2014 meeting. Mr. Little seconded, and the minutes were approved.

2. Ask a Colleague Program – Application for Peer Assistance Designation

The chair introduced David Little, who requested that the committee recommend that the Supreme Court designate the Colorado Bar Association's Ask a Colleague program as a peer assistance program. Mr. Little explained that Ask a Colleague is a way for lawyers to seek help from other, more-experienced lawyers in similar areas of practice. It's a modern, formal process for lawyers who have problems with a client, another lawyer, or a point of law that will impact a

case they have. Ask a Colleague is meant to replicate the old days when courthouses had cafeterias where lawyers could talk to each other, but this program is arranged on the internet.

Mr. Little introduced Reba Nance, Jim Benjamin, and Sue Bertrand from the CBA. The CBA is sponsoring Ask a Colleague. Ms. Nance explained that a lawyer who wishes to serve as an “answering” lawyer can sign up on the CBA website and designate preferred practice areas. Lawyers seeking help can consult the website and search for other lawyers by practice area. This will be “gated” so that the public and other lawyers cannot see participating lawyers’ mentoring arrangements.

Mr. Benjamin explained that this program fills a need for younger lawyers that is not served by listservs or other methods. Listservs cannot fill this need because they are broadcast to many other lawyers and are not confidential. Mr. Benjamin noted that because experienced lawyers can volunteer to be consulted, young lawyers will not be as intimidated as if they were cold-calling a lawyer they don’t know.

Chair David Stark expressed concerns about confidentiality under Rule 1.6 and privilege issues. Do participating lawyers need client consent? Should these issues be discussed in the materials provided to participating lawyers? Mr. Little responded that the website instructions require the “colleague” to agree to hold in confidence what is talked about and to avoid participation in that matter in the future. The “calling” lawyer is admonished not to use identifying information unless it is absolutely essential, which it generally is not. This ensures the ethical rules are complied with.

A discussion ensued, with the Chair continuing to express concerns about confidentiality. Mr. Little noted the implied authority a lawyer has to discuss a client matter to the extent necessary for effective representation under Rule 1.6. Mr. Little expressed optimism that participating lawyers will know to avoid disclosing confidential client information.

Mr. Vigil mentioned the possibility of an asking lawyer getting express consent from the client. Mr. Vigil also expressed concern that the answering lawyer may not know whether a conflict exists until it is too late. Ms. Nance suggested such informed consent could be obtained in the fee agreement. Mr. Jacobson suggested the website could require lawyers to verify they’ve obtained informed consent.

Mr. Benjamin suggested that conflict concerns are minimal given these kinds of conversations have always happened informally, and if a participating lawyer realizes he or she is involved in the case, the conversation ends. In this way, the program is like an ethics hotline. Rather than having explicit rules on conflict checks and consent, the CBA chose to leave it to the lawyer’s judgment. Ms. Nance noted that she spoke with bar associations from other states, and none reported any confidentiality or conflict problems with their programs.

The Chair appointed a subcommittee to study these issues. The subcommittee will consist of Brian Zall, Dan Vigil, Cindy Covell, Jim Benjamin, David Little, and Jamie Sudler. Dan Vigil will chair the subcommittee.

3. Approval of Regulatory Offices' Budget

The chair introduced James Coyle. Mr. Coyle gave an overview of the Office of Attorney Regulation Counsel and other offices' funding. The Offices' budget comes solely from attorney registration fees and other related fees. When the budget is created in June, Mr. Coyle must be sure the budget will last through the "dry period" when no registration fees are coming in. When the last budget was created, Mr. Coyle noted that the reserve—\$5.5 million—was being depleted quickly. The result was an increase in attorney registration fees in 2013 to last through the end of 2018.

Mr. Coyle related that the offices have tried hard to cut expenses and save costs, while allowing modest salary increases that the Chief Justice gave to all judicial employees. Mr. Coyle is working on finding additional revenue sources as well to ensure that there is a sufficient reserve in June 2018 to cover expenses until the end of 2018.

Mr. Coyle distributed the proposed budget and cash flow and discussed some highlights.

There will be a slight increase in attorney registration fee income for the upcoming budget year. Contrary to Mr. Coyle's expectation in June 2013, attorneys have not "dropped out" and failed to pay registration fees as a result of last year's fee increase.

Other sources of revenue include the following:

- Single client, pro hac vice, and pro bono attorney registration fees.
- Registration fees from ethics, trust account, and professionalism schools.
- Assessed court costs from the Office of the Presiding Disciplinary Judge (Judge Lucero wondered whether the standard \$91 court cost should be increased).
- CLE registration fees. The CLE rules subcommittee believes the current fees are low. The office believes raising the registration fee from \$10 to what appears to be the national average of \$50, plus other increases, is appropriate.
- Admissions fees. Mr. Coyle expects a decrease in exam applications. There was a mild drop this year, and a greater drop is expected in the next two years. First-year law school admission is going down about a third nationwide. DU is going from a class size of 380 two years ago to an anticipated 230 in the next two years.
- On-motion fees. Mr. Coyle anticipates an increase in out-of-state lawyers coming to Colorado due to the proposed reduced years-in-practice requirement in the proposed new on-motion rule, C.R.C.P. 203.2. Under the proposed rule 203.2, on-motion applicants must have practiced for three of the past five years, as opposed to five of the past seven years in the current rule. Uniform Bar Exam fee revenue may increase modestly.

- New fees for new provisional licenses (military spouses, etc) will produce minimal additional revenue.

Regarding expenses, 75-77% of OARC's expenses are personnel-related. The office is putting austerity measures in effect to reduce other administrative expenses. Regarding expenses, Mr. Coyle noted the following:

- Grading conference savings: In the future, the bar exam grading conference will be held at the Carr Justice Center instead of a hotel. Quality of calibration will be the same, but the office will save over \$50,000 in expenses. We may have to proceed with the August 2014 grading conference due to contractual obligations.
- The office continues to incur expenses for bar exam proctors and NCBE exams, software, and testing products. These items will be reflected in specific line items in the future, so all involved can monitor these costs more effectively.
- Character and fitness investigations: There are costs for fingerprint checks and credit checks. Many of these expenses are not new, but are new line items in the budget as well.
- Bar exam facilities. This amount was previously reported in "office rent," but is now a specific line item.
- Bank charges from a new online application management program—1.8% of all online application and attorney registration fees.
- Accounting office expenses are being reduced.
- Rent has gone up. The office was unable to obtain a written lease until September 2013. The total square footage and dollar amounts in such lease were greater than what was previously quoted in May 2013.
- Computer services: the office decided not to fill the proposed website administrator position.
- Justware administrative cost is about \$40,000.
- The office is choosing not to fill an unfilled UPL attorney position.
- The office is choosing not to fill an unfilled attorney registration position.
- The office has reduced its software professional services fees.
- Attorney registration cards are a separate line item now, so all involved can monitor these costs more effectively.

- The office is going green. Committees will be asked to accept secure emails rather than receive printouts.
- COLAP: Barb Ezyk has agreed to forego a part-time assistant for another year, and has thus reduced other costs associated with the previously-proposed staff increase.

Expenses exceed revenue by approximately \$130,000, which is much better than last year's forecast that we would operate ~\$768,000 in the red. The office expects a revenue drought in the next few years due to the declining number of attorneys, so must be more protective of our reserve.

In the past, Regulation Counsel and the Controller have hammered out the budget together. This year, Regulation Counsel recruited Jamie Sudler and Matt Samuelson to participate in the process. Their participation was not only helpful in improving the budgeting process, it also helps institutionalize budgeting for years to come.

Ms. Cohen asked whether the decrease in exam applications will lead to layoffs. Mr. Coyle said not at this time, but he is monitoring the situation. As employees leave, they may not be replaced. Some exam applications are being replaced by on-motion applications.

Mr. Coyle encouraged Committee members to come to him with questions or concerns.

4. Colorado Attorney Mentoring Program (CAMP) Report

The Chair noted that John Baker was unable to attend but submitted a report on CAMP progress.

5. Colorado Lawyer Assistance Program (COLAP) Report

The Chair introduced Barb Ezyk. Ms. Ezyk reported that COLAP is very busy. COLAP now has 104 volunteers statewide. COLAP received just under 400 calls, per its 2014 annual report. Of those, approximately 119 were from the general public and the remaining were from judges, lawyers and law students seeking assistance.

Ms. Ezyk noted that approximately one third of the callers are female and two thirds are male, despite the fact that law school graduates are approximately a 50-50 ratio. This reflects the reality that about two out of three practicing lawyers are male within Colorado and nationally.

COLAP served more mental health issues overall as compared to substance abuse issues—mainly alcohol and cocaine, but there is an uptick in heroin. The statistics show COLAP received more alcohol-related-issue calls than depression-related-issue calls. The growing heroin problem is presumably due to prescription opioid abuse. Prescription drugs are expensive and hard to get, so users turn to heroin.

Ms. Covell wondered whether there should be a mandatory CLE on substance abuse. Mr. Little responded that many things should probably be mandatory CLEs, and while it's a wonderful

idea, we don't have the resources to do this. OARC's ethics and trust account schools are not mandatory either.

Mr. Coyle described some of the educational programs OARC is instituting, including programs for six-to-fifteen-year lawyers. OARC is getting the message out to local bar associations that COLAP exists. Ms. Ezyk is involved in many of OARC's educational programs, including recent Coyle trips to Gunnison, Grand Junction, and Durango, as well as professionalism schools, ethics and trust account schools, and trips to law schools.

6. Office of Attorney Regulation Counsel (OARC) Report

Mr. Coyle stated the office continues the process of a comprehensive review of all the regulatory rules.

Mr. Coyle congratulated Chief Deputy Sudler, who chaired the Rule 1.15 committee. The committee reduced the complexity of Rule 1.15 (regarding trust accounts). Ms. Cohen, Mr. Little and others also served on the committee.

Matt Samuelson is working on the CLE regulation rule, which rule hasn't been updated for 35 years. Mr. Samuelson is working with an appointed CLE Rules subcommittee.

OARC is adopting more of the ABA client protection fund rule. Next, OARC will work on the disciplinary rules. OARC and the Office of the Presiding Disciplinary Judge have given suggestions on this, as has Alec Rothrock.

OARC is working on a succession planning video with the Chief Justice Commission's Senior Lawyer Committee. Senior lawyers need a succession plan. OARC is also working on educational tool kits for six-to-fifteen-year lawyers, for use at the local bar associations.

Generally, OARC is trying to be proactive in helping lawyers, rather than reactive to complaints about lawyers. Mr. Coyle has been traveling frequently and giving numerous presentations on this topic.

7. Report on OARC Update newsletter

The Chair introduced James Carlson, Information Resource Coordinator at OARC. Mr. Carlson reported that Mr. Coyle approached him about a year ago about doing a quarterly newsletter. There have been four issues so far and the newsletter is doing very well. The newsletter is reaching about 35,000 Colorado attorneys by email. 46% of recipients open the email. The click-to-open rate—the percentage of recipients who open the email and click on a link—is about 30%. Click-to-open rate is a good way to measure the relevance of information we're providing. The industry standard click-to-open rate for legal service emails is 10-15%, so we are doing well.

Our click-to-open rate means that about 5000 Colorado attorneys are making use of the newsletter, which is good for a busy population.

The newsletter generally has five types of stories: tips and tricks (i.e. avoiding law office management mistakes), news stories, rules/policy changes (i.e. registration fee increase), reminders (i.e. CLE deadlines), and bios (i.e. bio of new Chief Justice Nancy Rice).

News, rules, and tips are the most popular articles. The most popular article was "Muse Before You Ruse," about ethical problems with Facebook and Twitter. The second most popular article was about the registration fee increase.

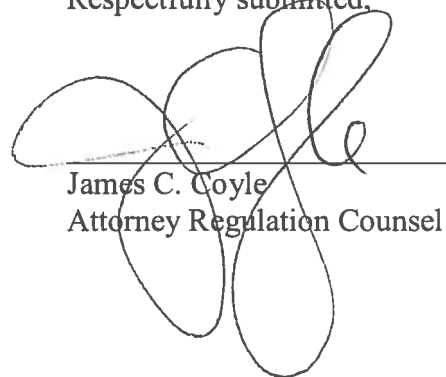
Interest in the newsletter (measured by click-to-open rate) peaked with the first issue, declined for the second issue, declined again for the third issue, and recovered to second-issue levels with the fourth issue. This is a common pattern for a new service like the newsletter.

In the future, Mr. Carlson plans on using shorter headlines because readers tend to click on shorter headlines. The newsletter will include more news articles and tips and tricks. Mr. Carlson will use Google analytics to analyze how long people spend reading each article.

9. Adjournment

The chair adjourned the meeting at 1:40 p.m.

Respectfully submitted,



James C. Coyle
Attorney Regulation Counsel