



**COLORADO SUPREME COURT  
ATTORNEY REGULATION ADVISORY COMMITTEE**

**MEETING MINUTES  
December 12, 2014, 12:00 – 1:22 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; Rich Nielson; David Little; Nancy L. Cohen; Cynthia F. Covell; Barbara Miller; Alexander (Alec) Rothrock; and Brian Zall, who arrived late.

**Members attending by telephone:** Dick Reeve.

**Members absent:** Cheryl Martinez-Gloria, Chris Markman, Daniel Vigil, and Mac Danford.

**Liaison Justices present:** Honorable Nathan (Ben) Coats.

**Liaison Justices absent:** Honorable Monica Marquez.

**Staff present:** James C. Coyle, Regulation Counsel; James S. Sudler, Chief Deputy Regulation Counsel, who arrived late; Matthew A. Samuelson, Chief Deputy Regulation Counsel; Barb Ezyk, Executive Director of the Colorado Lawyer Assistance Program (COLAP); Carrie Bowers, COLAP Office Administrator; Alan Obye, Staff Attorney; and Melissa Meirink, Supreme Court Staff Attorney.

**1. Welcome**

The Chair convened the meeting and welcomed Melissa Meirink, a new Supreme Court Staff Attorney, and Carrie Bowers from COLAP, who is attending with Barb Ezyk.

**2. Approval of minutes of September 5, 2014 meeting**

Barb Ezyk pointed out a mistake in paragraph 7, “notes from Gleason,” which states that the State of Colorado has many “firsts” in attorney regulation. The list should not have included “lawyer assistance and monitoring programs.” These are things John is proud that this Committee has done, but we were in fact the 42<sup>nd</sup> state to implement a lawyer assistance program. The language should be amended to delete the lawyer assistance program and

monitoring program as part of the “firsts.” The words “lawyer assistance program and monitoring” will be stricken.

With that correction, Mr. Rothrock moved to approve the minutes from the September 5, 2014 meeting. Ms. Covell seconded, and the minutes were approved.

**3. Amendments to court rules to conform with new Colo. RPC 1.15:**

Mr. Coyle apologized for not being able to attend the last meeting due to illness. The first set of conforming amendments deals with new rules 1.15A-1.15E. The following rules will be amended as proposed in the agenda to conform with new Colo. RPC 1.15A-1.15E: C.R.C.P. 205.3, 205.5, 205.6, and 227.

**4. Amendments to court rules to conform to new Rules Governing Admission to the Practice of Law**

There will be housekeeping amendments to the following rules to reflect the adoption of the new admissions rules: C.R.C.P. 224, 227, 251, and 260.

The chair asked for a motion to recommend the adoption of the above amendments to conform to new Rules 1.15A-1.15E and the new Rules Governing Admission to the Practice of Law. Mr. Rothrock moved, Ms. Miller seconded, and the motion was approved. The recommendation will be sent to the Court.

**5. Request for approval of CBA Ethics Committee as a Peer Assistance Program per C.R.C.P. 251.34**

Mr. Coyle introduced Dick Reeve, who appears by telephone.

Mr. Reeve described a gap in approval of the Ethics Committee as a peer assistance program under Rule 251.34. He is seeking renewed approval. This is for both the committee as a whole and the call-in ethics hotline. There are guidelines about what questions should and should not be answered on the ethics hotline, but sometimes information is shared that gives rise to a question about whether there is a duty to report attorney misconduct. Sometimes the Ethics Committee as whole discusses those calls and whether there is a duty to report.

Mr. Rothrock asked what the purpose is of having an organization designated as a peer assistance program. All it does is exempt the lawyer from having a duty to report. Mr. Rothrock supports the recommendation. Mr. Reeve moved for approval, Ms. Cohen seconded, and the motion passed.

## **6. Approval of nominations and reappointments of other committees**

### **a. Character and Fitness Committee**

Mr. Coyle explained that two people are leaving the Character and Fitness Committee (formerly known as the Bar Committee): Deborah Bianco and Jay Labe's terms end on December 31, 2014.

Mr. Coyle explained that the constitution of the Character and Fitness Committee has changed as a result of new rules. There are now seven lawyers and four non-lawyers, two of whom are mental health professionals.

We have made two requests. The first is Carolyn D. Love, Ph.D. Ms. Love did a presentation to us recently that addressed gender and generational bias. We learned a lot and believe she would be an excellent member of the Committee.

The second recommendation is Linda Midcap. She is a schoolteacher from Wiggins, Colorado who is finishing seven years on the Attorney Regulation Committee.

### **b. Law Committee**

Sunita Sharma and Jennifer Cadena Fortier are candidates for the Law Committee.

Mr. Coyle explained that this committee deals with the bar exam. Mr. Coyle and Mr. Nielson discussed the difficulty of replacing John Barry and Christopher McCauley. Mr. Barry and Mr. McCauley have both served as chair of the Law Committee and have served for a combined forty years. Their terms end on December 31, 2014.

Mr. Nielson explained that he and Mr. Coyle had lunch with both candidates. Sunita has graded the bar exam for 15 years. Jennifer has not been involved in the process and will be a fresh face. She majored in history and minored in molecular biology, so she can handle anything we throw her way.

Mr. Coyle also recommended reappointing John Greer, Barry Schwartz, and Holly Strablizky. Each has served approximately three or four years on the Committee.

### **c. Unauthorized Practice of Law Committee**

Mr. Coyle explained that the Advisory Committee already made the appointments for 2015, but John Egan has now resigned. Mr. Coyle recommends Tony Perea to fill this appointment.

Cheryl Martinez-Gloria, Mr. Sudler, and Mr. Coyle met with Tony Perea. Mr. Perea is a Deputy District Attorney in the 19<sup>th</sup> Judicial District. It will be helpful to have a rural district attorney's perspective on how to handle these nonlawyers.

Mr. Coyle suggested reappointing Cheryl Martinez-Gloria.

Mr. Coyle asked that the Committee take action on these appointments.

The Chair asked for a motion, Ms. Cohen moved, and Mr. Rothrock seconded. Ms. Covell Abstained. The motion passed, and the recommendations will go to the Court.

**7. Colorado Lawyers Helping Lawyers – C.R.C.P. 251.34(b)(9.5) – subcommittee report**

The Chair introduced Mr. Sudler. Mr. Sudler said there was a subcommittee formed at the last Advisory Committee meeting to address Colorado Lawyers Helping Lawyers (CLHL)'s position about exemption from the Colo. RPC 8.3(a) reporting requirement. That rule provides that a lawyer must report to OARC if another lawyer's conduct reflects adversely on honesty or trustworthiness.

Scott Meiklejohn and Paul Quinn have asked for an exemption from this reporting requirement on behalf of CLHL. Such an exemption would go through this Committee. However, CLHL's request goes further than a Rule 8.3 exemption and would ask for immunity from civil liability. Scott Meiklejohn and Paul Quinn may go to the legislature and ask for statutory immunity for their organization.

The subcommittee met twice. They were good meetings, but there has been no consensus. Mr. Sudler's sense is that the subcommittee will not recommend an exemption for CLHL but is not at that point yet.

CLHL is different from the way COLAP is run. COLAP has a more explicit confidentiality rule. Mr. Sudler explained that Mr. Rothrock thinks CLHL should be under the same umbrella as COLAP.

There is some thought that the subcommittee should not go forward, but Mr. Sudler thinks it should meet one more time out of consideration for Mr. Meiklejohn.

Ms. Cohen asked if CLHL is currently exempt from the reporting requirement. Mr. Sudler said no. Mr. Little thinks there has been an exemption in past organizations that are similar to CLHL.

Mr. Stark clarified that there are two issues. First, should there be an exemption from the duty to report under Rule 8.3? Second, is there some type of privilege so that there could be a statutory amendment, somewhat like COLAP? Mr. Meiklejohn has drafted a proposed amendment to the privilege statute. Mr. Stark explained such an amendment would not be under this Committee's jurisdiction.

Discussion ensued about the difference between privilege and immunity from lawsuits. Mr. Stark wondered whether CLHL is like a twelve-step program or group.

Mr. Little agreed that the only source of either immunity or privilege must come from the legislature, but this Committee can recommend to the Court that CLHL be exempt from the Rule 8.3 reporting requirement. Mr. Little wondered whether that exemption is all CLHL is asking this Committee for, and Mr. Sudler clarified that they are asking for more. There was general agreement that this Committee and the Court do not have jurisdiction over anything more than the Rule 8.3 exemption.

Mr. Rothrock stated that other similar support groups around the country are under the umbrella of lawyer assistance programs, and they receive that privilege or immunity. Here, CLHL is a free-standing group of citizens with no one to report to. Mr. Rothrock believes CLHL should eventually be part of COLAP in order to get C.R.C.P. 254 immunity and privilege. Mr. Rothrock has no objection to CLHL being a peer assistance program for purposes of an exemption from Rule 8.3.

Ms. Cohen asked whether CLHL has asked to be part of COLAP. Mr. Sudler said no. Mr. Stark pointed out they have different focuses. CLHL has a continuing support program with regular group meetings, while COLAP is immediate and responsive.

Ms. Ezyk agreed that COLAP has not established support groups yet, but there is a need for both. In other states, these support groups have come under lawyer assistance program umbrellas. Here, CLHL has always been independent. There has never been a liability issue, i.e. a lawsuit over a drunk driver who CLHL failed to help. Further discussion ensued.

Mr. Sudler stated that it would be fair for the subcommittee to meet again with CLHL and ask for an application for the Rule 8.3 exemption, but explain that the Committee cannot go further than that. There was general agreement.

Ms. Covell wondered whether the Committee should give its support to CLHL's effort to go to the legislature. Mr. Stark and Mr. Coyle agreed that it is too early to say, but it is probably not the Committee's role.

Ms. Cohen asked whether Ms. Ezyk has been subpoenaed in a civil lawsuit where a lawyer has gone to COLAP. Ms. Ezyk responded that the Attorney General represents her in such a situation and files a motion to quash under Rule 254. She has not been challenged on a motion to quash yet.

Mr. Sudler asked the Chair to let the subcommittee continue meeting with Mr. Meiklejohn. The Chair agreed.

## **8. Continuing Legal Education rule subcommittee report**

Mr. Samuelson reported that a subcommittee has been working on the continuing legal education (CLE) rules. At its first meetings, the subcommittee reviewed C.R.C.P. 260 and its subparts. The subcommittee has set aside the definitions for now. The subcommittee has added proposed Rule 260.9 to incorporate COLAP into the rule. The subcommittee is reviewing the interplay between 260.8 and 260.9 for consistency.

The subcommittee got through the entire rule. The final task is to work on the regulations. The subcommittee is reorganizing the rule and regulations to flow better and provide more guidance to sponsors and lawyers alike. There are more detailed standards for accreditation. The subcommittee is trying to break out the bullet point entries—there will be separate accreditation standards for different CLE activities such as programs, teaching, and research activities.

Recently the subcommittee proposed standards for accrediting sponsors, which will be a section of the regulations.

The subcommittee incorporated a new fee structure, which was approved by the Court.

The subcommittee is hoping to have final revisions to the rules and regulations by Spring. They will then go to the CLE Board for approval, and back to the May Advisory Committee meeting.

Mr. Little noted that during the Chief Justice Commission discussion yesterday, the question arose whether the CLE menu should include the subject of health and wellness. This would either dilute or add to the 45-hour requirement. This discussion will continue. Mr. Stark added that such a requirement could potentially be mandatory. Mr. Coyle noted that the Committee would have to do studies, because other states have tried this. Questions would include whether we need certified providers and what kind of programs would be beneficial. Mr. Stark stated that the Chief Justice Commission will continue to explore this idea.

Mr. Stark wondered what will happen to lawyers over age 65. Mr. Coyle noted that he has proposed eliminating the over-65 exemption from CLE requirements. The court has disagreed with this in the past, but there may be new interest on the Court in light of aging-lawyer studies.

Ms. Cohen noted that many people may be stuck practicing because of the economy, and there is no reason they should not be taking classes. Mr. Coyle and Ms. Cohen agreed that the ABA has supported eliminating the over-65 exemption.

Mr. Little stated that the bar overall has supported doing away with the exemption. Many aging lawyers don't want to be exempt.

Mr. Jacobson stated that the Attorney Regulation Committee (ARC) would wholeheartedly support doing away with the exemption. Many things ARC sees, such as minor trust account violations, could be fixed with CLE requirements.

Ms. Ezyk stated that many aging lawyers continue doing CLEs. Mr. Samuelson confirmed that OARC accepts their CLE applications. Mr. Coyle suggested aging lawyers want to have their CLE attendance recorded in Supreme Court records for malpractice insurance reasons.

## **9. Colorado Attorney Mentoring Program report**

Mr. Baker referred to the written report. There is a map showing how CAMP is “invading” the state with programs, whether formal or informal.

The National Legal Mentoring Consortium is holding a convention here in Denver at the Carr center. The largest attendance in the past has been 120, but Mr. Baker and the Sturm College of Law are trying to beat that. The convention is May 5-7, 2015.

Mr. Baker explained that starting CAMP programs around the state is easy, but sustaining them for the second year is more difficult. The CAMP office will have to have more continuing involvement in these programs around the state.

Mentors are fearful of liability and getting pulled into lawsuits. Mr. Baker acknowledges this is possible, even with the safeguard of telling mentors from different firms not to discuss specific cases. Mr. Baker thinks this kind of talk about specific cases probably goes on anyway, and he has not figured out how to get around it.

The Colorado defense lawyers association has come up with a proposal: Mr. Little would like to bring in young lawyers from insurance defense carriers to try cases with him. This would help with the prohibition on lawyers from different firms working together on cases under CAMP rules. State Farm and other liability carriers are consenting to this—the private firm would loan a young lawyer out to work with State Farm, and the young lawyer would gain experience. (Young lawyers at insurance defense firms don't always get trial experience, but the insurance companies sometimes try their own smaller cases). This may happen in the near future. Mr. Baker would like to figure out how to do this with plaintiffs' lawyers as well.

Mr. Stark wondered what we would do about conflicts. Mr. Baker agreed that will have to be dealt with.

## **10. Colorado Lawyer Assistance Program report**

Barb Ezyk referred to the monthly report. COLAP has been busy. Sometimes things slow down at the holidays because people don't want to change old habits, but after thanksgiving COLAP received eight calls in two days.

COLAP is involved in a research project in which twelve states participated, including Colorado. Colorado is the only voluntary bar state participating. An email survey was sent out to all 38,000 Colorado attorneys. There have been over 5,000 Colorado responses, which are made anonymous by the portal. According to the survey administrators, this is a huge response. The survey will stay open until January 10, 2015.

Ms. Ezyk reported that the Chief Justice Commission meeting yesterday was about health and wellness. It was brought up to do a "wellness month." Mr. Stark suggested January, right after the holidays. We have a year to think about it. COLAP would be involved. This would include mental, physical, and financial wellness.

Ms. Ezyk introduced Carrie Bowers, COLAP Office Administrator. Ms. Bowers started in April. Ms. Bowers stated she was a paralegal in civil firms and an office manager in the past. She is

happy to be somewhere she can reach out and help people dealing with stress and work/life balance, having seen those problems at law firms in the past. She graduated from CU Denver in 2012 with a major in History. She has also been a barista and bartender in the past. She thanked the Committee for letting her sit in.

#### **11. Office of Attorney Regulation Counsel report**

Mr. Coyle introduced Barbara Miller, who discussed how she will be joining a team of lawyers (Barbara is a non-lawyer) to go to Burma and work on a rule-of-law project.

Mr. Coyle explained that a lot of exciting things are going on at OARC. OARC is a dynamic member of the community, and Mr. Coyle is proud of his staff working together in a way they have not before. There is new technology in place. OARC is reviewing and revising rules and procedures and institutionalizing procedures. Mr. Coyle referred to the written report attached to the agenda for details. OARC is trying to give more valuable information to the community about how the legal profession can be improved.

2015 will be very busy. Many states have visited to look at the Colorado attorney regulation system. Nebraska recently visited. Vermont is coming in January. There is an NOBC program on the Colorado model in February. Colorado hosted the first unauthorized practice of law school in 2013 and will be participating in the second school this Spring. The ABA National Conference on Professional Responsibility is coming to Denver May 28-29, 2015. The ABA Center for Professional Responsibility is adding a third day to that conference to address international issues involving entity regulation. OARC is hosting that day at the Carr Center, Supreme Court conference room.

The Organization of Bar Investigators annual meeting is also in Denver on September 1-3, 2015. OARC is getting a lot of attention from around the country. We are involved in programming for national organizations; details are in the report.

Mr. Stark thanked all the members of this volunteer Committee for all their hard work. Mr. Stark has been with the Committee since 1996 and has been Chair since 2001. Mr. Stark stated that our system is the best in the nation and the Committee should be proud.

#### **12. Proposed dates for 2015 meetings**

The Chair proposed the following 2015 meeting dates: March 6, May 15, September 11, and December 11.

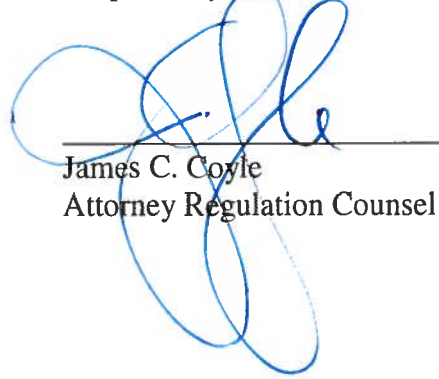
Mr. Coyle will send calendar invites.

#### **13. Adjournment**

Ms. Cohen moved to adjourn. The chair adjourned the meeting at 1:22 p.m.



Respectfully submitted,



James C. Coyle  
Attorney Regulation Counsel