



MEETING MINUTES

Friday, March 8, 2019, 12:00 p.m. – 1:46 p.m.

Extra Large Conference Room

Office of Attorney Regulation Counsel

1300 Broadway, Suite 500

Denver, Colorado 80203

Members present: Chair David W. Stark, Hon. Andrew McCallin, Barbara Miller, Cynthia Covell, Dick Reeve, Elizabeth Bryant, Nancy Cohen, and Richard Nielson.

Members absent: Brian Zall and Mac Danforth.

Telephone: Alec Rothrock, Daniel Vigil, and Steve Jacobson.

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

Staff present: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Attorney Regulation Counsel; Dawn McKnight, 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; Melissa Meirink, Supreme Court Staff Attorney.

1. Approval of the December 14, 2018 Meeting Minutes

The chair convened the meeting and asked if members had read the minutes of the committee's December 14 meeting. There were no proposed amendments. Mr. Nielson motioned to approve the minutes. Ms. Covell seconded. The minutes were approved.

2. Vote on Proposed Regulation or Rule Changes

- a. Proposed change to Rule 202.3 governing the Board of Law Examiners – Character and Fitness Committee to expand the size of the committee from 11 to 17 members.

The committee approved the proposal to change Colorado Rule of Civil Procedure 202.3 to increase the number of members on the Character and Fitness Committee from 11 to at least 17. It also approved a change to institute seven-year terms for the Chair and Vice Chair. The changes will assist with succession planning and will provide greater coverage for inquiry panels and hearing panels, as the Character and Fitness Committee members may serve on either an inquiry panel or a hearing panel but not both. The Character and Fitness Committee will recruit at least six new members, aiming for a mix of lawyers, non-lawyers and mental health

professionals. A question was raised about whether the proportion of attorneys to non-attorneys serving on the Character and Fitness Committee would be higher. Ms. Yates explained that because attorneys (and not non-attorneys) write the reports from the inquiry panels, adding attorneys would alleviate the workload. Ms. McKnight indicated that when any given inquiry panel is assembled, it always contains a mix of lawyers and non-lawyers, specifically to include a mental health professional.

Ms. Yates added that the ratio of attorneys versus non-attorneys was not fixed—rather the Character and Fitness Committee intends to recruit a minimum of six new members. The Character and Fitness Committee would accept applications on a rolling basis and, after evaluating a candidate, would place his or her name on a list of members that could be used to assemble an inquiry panel or a hearing board.

Mr. Reeve moved to approve the proposed rule change; Ms. Cohen seconded the motion. The proposed rule change passed.

b. Proposed amendment to Rule 205.7, Student Practice, to address issues raised by the Court of Appeals in *People v. McGlaughlin*

Mr. Jacobson, who drafted the proposed changes to Colorado Rule of Civil Procedure 205.7, began the discussion. He stated that in *People v. McGlaughlin*, the court of appeals held that an indigent client is entitled to representation by a lawyer, which does not include law student representation. Because the holding relied in part on Rule 205.7, which permits law students to practice law in certain circumstances, Mr. Jacobson developed proposed changes to the rule to respond to *McGlaughlin* while supporting offices like the district attorney and the public defender that rely on the rule for their internship programs.

There were a number of questions and suggested clarifications by the members of the committee. One question focused on whether the supervisor must be present during the proceeding so that the client could consult with the supervising attorney. Mr. Jacobson clarified that the supervisor would be available, but his or her physical presence in the courtroom would not always be required. Mr. Jacobson agreed the change should be made to reflect the requirement that the supervising attorney need not be present during the proceeding. An additional suggestion was made to clarify exactly when a supervising attorney's presence was required.

The committee determined that a supervising attorney's physical presence would be required when there was an adversarial proceeding involving testimony or evidence, and debated what terms most accurately captured that concept. The committee eventually concluded that "testimonial hearing" struck the best balance between allowing students to practice law with limited autonomy and ensuring indigent clients had access to supervising attorneys during critical proceedings. The word, "testimonial" instead of "evidentiary" or "motions" is more specific and reflects the idea that taking testimony is something new to a law student that requires the presence of a supervising attorney.

The committee next discussed that perhaps it should clarify when physical presence was required and that, for consistency with other rules, it should change "attorney" to "lawyer." The committee changed Mr. Jacobson's original proposal revising Rule 205.7 as follows:

In such case, the record shall reflect the name of a supervising lawyer, and a supervising lawyer must be available, but not necessarily physically present in the courtroom, if the person wants to consult with him or her. However, a supervising lawyer must be physically present in the courtroom if the proceeding is a testimonial motions hearing or trial.

Mr. Jacobson moved to approve; Mr. Reeve seconded the motion. The motion carried, and the proposed rule change will be considered by the Supreme Court.

3. Discussion of Proposed Change to Question 20 on the Admission Application

Ms. Yates reported that at the December 2018 meeting, the committee formed a subcommittee to address Question 20 of the Colorado bar application, which asks whether bar applicants are U.S. citizens, and if the answer is no, the applicants are asked to supply documentation of alien registration or a visa. The question as currently drafted implies that an applicant must have a “lawful presence” in the United States. However, persons approved to remain in the United States without imminent deportation under the Deferred Action for Childhood Arrivals (DACA) program do not have a lawful presence as defined by Congress. DACA persons can apply for and receive a work permit, so the subcommittee felt a better question to ask was whether and applicant was eligible to work in the United States. If the answer is “no,” the Character and Fitness Committee would address the issue.

One of the DACA subcommittee members mentioned that the subcommittee looked to other jurisdictions, like New York and Connecticut, which had also considered DACA applicants, and ultimately decided that revising the language to Question 20 to focus on work-eligibility status would be the best fix for Colorado. Ms. Yates noted that the Office of Attorney Admissions would provide guidance for applicants, and the online application would be updated as soon as possible, but it was not clear it could be updated for the July 2019 bar application. The committee decided that because the proposed resolution was a change not to a rule but to an application question, the change did not have to be approved by the Supreme Court.

Ms. Cohen moved to adopt the revision to Question 20. Ms. Bryant seconded the motion. The motion carried, and Question 20 of the bar application will be changed.

4. Discussion of Admissions Matters

a. MPRE requirement for on motion applicants

Ms. Yates asked if the committee should consider changing a number of requirements applicable to on-motion applicants and UBE transfer applicants. For example, Colorado currently requires applicants to submit MPRE scores that are no more than two years old. Because on-motion applicants by definition have been practicing for at least three years, most of them must sit for the MPRE, even though most previously took and passed that exam in another jurisdiction. One option might be to require scores no more than five years old. Another option would be to consider the score regardless of when the test was taken. There may be other examples of requirements that are not strongly correlated to either competency or character and fitness and thus perhaps should be revisited.

Ms. Yates mentioned that on-motion applicants still must complete the same professionalism course as new lawyers, but it might be better to have a course that is more geared to their experience. One committee member agreed that a professionalism course geared toward practicing professionals (rather than to recent graduates) would be better because the information could focus on lawyer culture instead of basic ethics—a practicing lawyer would already be familiar with these concepts. There were suggestions that perhaps the MPRE should be waived for on-motion applicants.

Requirements relating to UBE score transfers also may need to be revisited. Ms. McKnight indicated that the time periods for UBE and MPRE did not match—Colorado accepts UBE scores that are up to five years old, but MPRE scores are only valid for two. If the UBE and MPRE time periods aligned, it would be better. On an average yearly basis, the Office of Attorney Regulation Counsel (OARC) receives about 100 applications for admission based on UBE scores and 500 on-motion applications. Ms. McKnight indicated that, in contrast to most on-motion applicants, some UBE applicants have not yet taken the MPRE.

Another issue that should be addressed is reciprocity, specifically whether it is still important now that the UBE is so prevalent. The committee decided to form a subcommittee to explore these issues. Mr. Vigil, Mr. Stark, and Ms. Cohen indicated that they would be willing to sit on the subcommittee. Ms. Yates and Ms. McKnight also can serve on the subcommittee. Ms. Yates said she would recruit other participants as well.

b. Proposing rule for admission waivers

Ms. Yates indicated that, at times, applicants petition the Supreme Court to waive certain admission requirements. When this occurs, the request goes to a Liaison Justice who asks for input from OARC. Justice Márquez said perhaps a rule could be developed that would create a structured process to address these requests. Ms. Yates stated she would work with Justice Márquez on a path forward for developing such a rule.

5. Approval of Committee Appointments

a. Law Committee

Mr. Nielson is resigning as Chair of the Law Committee, but will remain on the Law Committee to help with the transition. The committee thanked Mr. Nielson for his years of service. Mr. Stark proposed that existing member Sunita Sharma to fill the Chair opening. Mr. Nielson endorsed Ms. Sharma as the Chair.

Mr. Nielson moved to recommend that Ms. Sharma be the new Chair. Mr. Reeve seconded, and the motion carried.

6. Other Updates

a. CAMP update

Ms. Peyton mentioned that repeat mentees whose professional goals have changed have returned to seek mentorship. The circle mentorships have developed, particularly with respect to

cannabis law. The feedback for mentorship has been very positive, and the participation is up 66% compared to last year. CAMP is making personal relationships with mentors and mentees.

Ms. Peyton expects CAMP's annual report will be ready by April.

b. COLAP update

Ms. Myers anticipated that COLAP's annual report would be ready by April. Mr. Chip Glaze was introduced as the Deputy Director at COLAP. Mr. Glaze is an attorney and a licensed family therapist and started in January.

c. OARC update

Ms. Yates reports that the February bar exam went well. For the first time, metal detectors were used, and that process went smoothly. The number for people taking the bar decreased compared to last year. In 2019, 299 people sat for the February exam, and 360 sat last year. Though the number of applicants sitting for the bar decreased, the number of on-motion applicants is rising.

Ms. Yates reported that OARC is currently searching for a new clerk because Elvia Mondragon will be leaving.

6,700 active attorneys have participated so far in OARC's demographic survey. OARC's annual report will likely be ready by May. There was a high level of participation for OARC's survey of active attorneys.

Representative Weissman reached out to the Court to ask if Colorado was considering the use of legal providers (trained non-attorneys to assist with legal matters at a lower cost) and mentioned that he might consider proposing legislation next year. Ms. Yates provided a summary to the legislator of the current approaches being studied by the PALS subcommittee, as well as other efforts by the Court to help pro se parties.

d. Providers of Alternative Legal Services (PALS) subcommittee update

Mr. Rothrock indicated that the subcommittee is looking at the possibility of allowing non-lawyers for persons who cannot afford lawyers in a pilot project aimed at landlord-tenant disputes. He hopes to have a report for the committee's next meeting.

e. Rule 251 Subcommittee update

Mr. Stark reported the subcommittee has met often and is making excellent progress. It should have a work product for the committee to review soon.

7. Other Business

a. 2019 meeting dates:

May 10, 2019

September 13, 2019

December 13, 2019

Meeting adjourned at 1:46 p.m.