



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

December 11, 2015, 12:00 p.m. – 1:45 p.m.

Extra Large Conference Room

Office of Attorney Regulation Counsel

1300 Broadway, Suite 500

Denver, CO 80203

Members present: Chair David W. Stark, Nancy L. Cohen (who attended from 1:00 p.m.), Cynthia F. Covell, Steven Jacobson, Barbara Miller, Chris Markman, Rich Nielson, Dick Reeve, Alexander (Alec) Rothrock (by telephone), and Brian Zall.

Members absent: Mac Danford, Cheryl Martinez-Gloria, David Little, Melissa Meirink, and Daniel Vigil.

Liaison Justices present: Justice Monica Márquez.

Office of the Presiding Disciplinary Judge: No one present.

Staff present: James C. Coyle, Regulation Counsel; James S. Sudler, Chief Deputy Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; John Baker, Director of Colorado Attorney Mentoring Program (CAMP); Barbara Ezyk, Director of Colorado Lawyer Assistance Program (COLAP); Marie Nakagawa, Staff Attorney; and James Carlson, Information Resources Coordinator.

1. Approval of September 11, 2015 meeting minutes

The Chair asked if everyone had read the minutes and asked if there was a motion to approve. Ms. Miller so moved, Mr. Nielson seconded, all were in favor, and the minutes were approved.

2. Report on LLLT Subcommittee (Rothrock)

The Chair asked Mr. Rothrock, who was attending by telephone, to give an update about the LLLT subcommittee. Mr. Rothrock explained that the subcommittee met for the third time on October 30, 2015. There were three letters/reports circulated for that meeting: the 21st Judicial District wrote a letter in support of evaluating the need for LLLTs in Colorado; the CBA wrote a letter in opposition to LLLTs in Colorado; and there was a report comparing alternative licensure models. The subcommittee took a vote and decided to continue looking at all forms of alternative licensure

programs. At the next meeting, the subcommittee will consider various programs to determine the best features of each model of licensure.

3. Approvals of nominations and reappointments of other Committees

Next, the Chair moved to the list of nominations and reappointments provided to the committee prior to the meeting. He asked if anyone had any questions. A member asked what Patsy Leon, nominated for the UPL committee, is doing now. It was believed she was working as a landman. A member noted that it was impressive that a lawyer with only one year of experience was volunteering to serve on the CLJE Board. A member said Anna Martinez is a great choice. A member also said other people nominated are excellent choices. The Chair asked if there were any objections to any of the nominations or reappointments, and hearing none, asked for a motion. Mr. Reeve moved to approve the nominations and reappointments, Mr. Nielson seconded, and all were in favor to approve the names for recommendation to the Court.

4. Formation of a personnel subcommittee to begin search for a new CAMP Director to replace John Baker upon his retirement in June 2016

The Chair announced that there will be a personnel search subcommittee to look for someone to fill the CAMP Director position upon John Baker's retirement. He asked if anyone wanted to volunteer to be on the search subcommittee. Ms. Ezyk, Mr. Coyle, and Mr. Reeve volunteered. Mr. Baker also suggested that a young lawyer, preferably someone who has participated in CAMP, be on the search subcommittee. The Chair agreed and asked Mr. Baker for recommendations.

5. Request for increase in Administrative Fee

Mr. Coyle explained that currently, under the rules, the administrative fee for discipline and diversion matters is \$91. This fee was set in 1994 and has not increased in the past 21 years. He asked that the committee approve the request to increase this administrative fee to \$224 to match the district court filing fee. Mr. Coyle believes the administrative fee could be reviewed every ten years or so to match the district court filing fees. The Chair asked if there was a motion to approve this request. Ms. Covell so moved, Mr. Reeve seconded, and all were in favor of approving the request.

A member asked what the economic impact would be from the fee increase. Mr. Coyle said he did not do that analysis but the additional revenue raised would have little impact on the budget. Mr. Sudler added that Colorado's administrative fee is lower than other states; for example, Arizona charges an administrative fee per rule violation, resulting in fees that can be thousands of dollars. A member asked if this Colorado administrative fee is set by rule, and Mr. Coyle said no, it is set by the Court without a rule change, per C.R.C.P. 251.13 and 251.32.

6. Regulatory Objectives

Mr. Coyle introduced the discussion of the regulatory objectives. He explained that regulatory objectives are being used internationally in countries like England, Wales, Scotland, Ireland, Canada, and Australia. The regulatory objectives are an opportunity to describe the purpose of attorney regulation. If adopted by the Court, Colorado would be the first state in the U.S. to have written regulatory objectives. The ABA is drafting model regulatory objectives now. Mr. Coyle said a big part of Colorado's focus in the regulatory objectives is promoting the public interest and increasing public understanding of the administration of justice. He went through each proposed regulatory objective and explained the reasoning behind them.

A member asked what the similarities and differences are between the ABA's draft and Colorado's draft. Mr. Coyle said when the PMBR subcommittee worked on the draft, the ABA had not released their draft, so ours is fairly independent of the ABA. Ours was drafted based on Regulatory Objectives used in other countries and based on the Fordham Law Review article written by Professor Laurel Terry, Steve Marks and Tahlia Gordon. He said he would provide the ABA draft if anyone was interested. A member said there was a spirited discussion amongst the PMBR subcommittee members about legal service providers versus lawyers. A member asked how these regulatory objectives would work practically; how does this function with the federal bar and their authority over lawyers admitted to their bar? Mr. Coyle explained that the Colorado Supreme Court has jurisdiction over the practice of law in the state. Traditionally, the federal bar has often relied on the Court's resources in generally regulating the practice of law. Nevertheless, the federal courts do have their own volunteer committee on conduct for those cases that have directly involved the federal system or involve administering reciprocal discipline.

A member said the regulatory objectives seem more like goals and not objectives, which are often measurable. The member asked how it would be determined whether the Court is meeting these objectives. Mr. Coyle said that is a good question, and that determination would probably come later. He also said Colorado does not have all of the programs to meet some of these objectives because the programs have yet to be developed. But the objectives are a vision. A member agreed. A member asked if the intent was that these objectives would be read in conjunction with other rules. Mr. Coyle said the objectives should serve as guidance to future Regulation Counsel and other Supreme Court employees, as well as to the legislature and the Colorado public. Having them in a rule form gives more authority. The objectives would go in front of all the regulatory rules as a statement of the Court regarding why it regulates the practice of law in Colorado. A member asked if it was acceptable to mention specific programs by name, or if they should be left more vague. Mr. Coyle said programs developed later on can be amended into the objectives.

The Chair said at this point, the committee has several options: it can take up the objectives at a later meeting, or vote to recommend or not recommend the objectives to the Court. Mr. Nielson moved to recommend the regulatory objectives to the Court, Mr. Jacobson seconded, all were in favor, and the motion passes.

7. Financial Report

Mr. Coyle explained that after the SCAO audit occurred, one of the changes was that this committee would have more oversight of OARC's financial reports. Unfortunately, the first report is not ready yet due to an illness of the office staff member in charge of such report. The report will be provided to the committee in March.

8. Other Updates (CAMP, COLAP, OARC, LLLT Subcommittee, PMBR Subcommittee, Conditional Admission Rule)

CAMP – The Chair asked Mr. Baker for an update on CAMP. First, Mr. Baker briefly explained his reasons for deciding to retire next June. He emphasized that he would like to continue volunteering for CAMP after his retirement. He handed out maps of the judicial districts where mentoring programs have been established. Mr. Baker also said the 2016 National Legal Mentoring Consortium will be held in Colorado next June.

COLAP – Ms. Ezyk said the November report was just completed, and her staff is working on another report to compare monthly numbers to last year's monthly numbers. She said her office has consistently had higher numbers compared to the previous year. Ms. Ezyk also said that COLAP will begin working with specific groups that may need assistance, and the first group will be one geared to women. Carol Haller is involved, and the group is targeted to women coming back to the practice of law after having children. Another group is a monthly meditation group which would be held by telephone conference. Finally, Ms. Ezyk said there is currently a volunteer receptionist for the office who has been a great asset. She thanked everyone for their support.

OARC – Mr. Coyle introduced everyone to the new website which was displayed on the screens in the room. He said the new website organized information by its users rather than the departments in the office. He discussed the tagline on the first page. He emphasized he wanted a website that was user-friendly, and that is what the website is. There are many new functions on the website, such as a new section for practice management. Members expressed approval of this new website.

Mr. Samuelson gave the update on the CLE Rules subcommittee, which has been working since early 2013 on rewriting the rules and regulations. He hopes to have it ready for the Advisory Committee in early 2016. He explained that one of the issues that came up later for the subcommittee was whether CLE records should be open to the public. Mr. Coyle had recently suggested to the subcommittee that they amend the rule to make CLE records open to the public. The subcommittee had concerns about confidentiality of the CLE records, and whether the public should be able to see what CLE courses each lawyer has taken in their compliance period. A member said there will be concerns for those lawyers who are getting ready to open their own offices, and for those lawyers who go to ethics school. Mr. Coyle said the counterpoint to that would be that government administrative records should be available to the public unless there is a significant public policy reason for keeping such information out of the public realm. Mr. Coyle said there could certainly be exceptions to the general rules of transparency and accountability, just as there are exceptions in the state judicial administrative records rule. Mr. Coyle also

described a few benefits to public access, including the fact that lawyers will be more selective and discerning regarding the timing and quality of CLE programming, and may better plan the lawyer's CLEs over a three-year cycle. A member expressed concern over government agencies, for whom open records often becomes a big issue in litigation. A member said many clients are quite sophisticated and will likely try to use these CLE records to spin information. Lawyers have privacy concerns as well.

PMBR subcommittee – Most of the PMBR subcommittee update was already covered during the regulatory objectives discussion. Mr. Coyle said the PMBR subcommittee will move to the “how” of PMBR at the next meeting on December 16th.

Conditional Admission Rule subcommittee – Mr. Zall explained that the subcommittee has set its tone, agreeing to come up with a very narrow, but necessary, exception to the admission rules. The subcommittee is focusing on which areas would make the most sense to have this conditional admission rule. Currently, the subcommittee is considering including the new rule under an existing rule structure. The meetings are open to the public and he welcomed anyone who was interested to join and participate.

9. Meeting Adjourned

It was agreed that the format of the minutes would be discussed at the next meeting. The meeting was adjourned at 1:45 p.m.

Respectfully submitted,

/s/ James C. Coyle
James C. Coyle
Attorney Regulation Counsel