



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

September 8, 2017, 12:05 p.m. – 1:45 p.m.

Extra Large Conference Room

Office of Attorney Regulation Counsel

1300 Broadway, Suite 500

Denver, Colorado 80203

Members present: Chair David W. Stark, David Little, Melissa Meirink, Richard Nielson, Dick Reeve, Alec Rothrock, and Brian Zall. Nancy Cohen attended via teleconference.

Members absent: Cynthia Covell, Steven Jacobson, Cheryl Martinez-Gloria, Barbara Miller, and Daniel Vigil

Liaison Justices present: Justice Nathan Coats and Justice Monica Márquez

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

Staff present: James C. Coyle, Attorney Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; Ryann Peyton, Director, Colorado Attorney Mentoring Program (CAMP); Barbara Ezyk, Director, Colorado Lawyer Assistance Program (COLAP); Ginette Chapman, Staff Attorney, Office of the Presiding Disciplinary Judge; Cori Peterson, Staff Attorney, Office of the Presiding Disciplinary Judge; Brett Corporon, Director of Technology, Office of Attorney Regulation Counsel; Elvia Mondragon, Clerk of Attorney Registration and Director of Continuing Legal and Judicial Education, Office of Attorney Regulation Counsel; Zak Bratton, Education and Outreach Coordinator, Office of Attorney Regulation Counsel; Jonathan White, Staff Attorney, Office of Attorney Regulation Counsel.

I. Approval of March 10, 2017, Meeting Minutes

The Chair convened the meeting and asked if members had read the minutes from the May 12 meeting. Mr. Reeve moved to approve the minutes. Mr. Nielsen seconded the motion. The minutes were approved.

II. Update on New Proposed Rules on Conditional Admission, CLE, as well as RPC 8.4(c)

The Court put forward proposed amendments to C.R.C.P. 208.4, 208.5, 209, 211, 211.2, and 251.28 for public comment. These amendments would create a conditional admissions process

for bar applicants. The written comment period has closed. The Court received two comments. One comment from Alec Rothrock and John Gleason opposed the proposal in its current form because it creates an “adjudicatory conditional admissions” process. They urged the Court to adopt “an administrative” conditional admissions process. An additional comment from Barbara Ezyk supported the proposed amendments.

The Court also put forward proposed amendments to C.R.C.P. 260 and proposed new rule C.R.C.P. 250 for public comment. These proposals update continuing legal and judicial education requirements for Colorado lawyers and judges. The written comment period has now closed. Among the comments are letters of support from the Colorado Bar Association and the Denver Bar Association. An anonymous comment expressed concern with the proposals. Attorney Howard Kurtzberg wrote and objected to removing the age exemption as well as other aspects of the proposals. At present, there are no hearings set on the rule change proposals to create a conditional admissions process or to amend the continuing legal education requirements.

The Court has also placed a proposed amendment to Colo. RPC 8.4(c) before the public for comment. The Court received a number of comments, including from law enforcement agencies, the Colorado Attorney General, and Attorney Regulation Counsel. The Standing Committee on Ethics did not submit a comment, but did provide a survey of all states that have modified Rule 8.4(c) to deal with pretexting. A hearing is set for Thursday, September 14, at 1:30 p.m.

III. Request for appointment of a new subcommittee to review and update Rule 251 procedures

Last October, a subcommittee consisting of Mr. Coyle and staff attorneys from the Office of the Presiding Disciplinary Judge, Ginette Chapman, Cori Peterson, and Alexa Salg, began studying ways to improve the disciplinary/disability rule. Margaret Funk and Alec Rothrock have since joined this subcommittee. The subcommittee seeks to take the disability rule out of the discipline rule. The subcommittee also looks to create a new inventory counsel rule. This subcommittee has a number of recommendations and suggestions. Mr. Coyle requested that the Committee form a new subcommittee to address these suggestions. The Committee approved this request. Mr. Stark will chair this subcommittee. Additional members will include Ms. Chapman, Ms. Cohen, Mr. Coyle, Ms. Ezyk, Ms. Peterson, Mr. Reeve, Mr. Rothrock, and Ms. Salg.

IV. Report of the National Task Force on Lawyer Well-Being

The Report of the National Task Force on Lawyer Well-Being was released August 14, 2017. Mr. Coyle co-chaired this task force. He reported that the task force was conceptualized at the August 2016 ABA annual meeting in response to findings of two surveys released in 2016. One study by the ABA Commission on Lawyer Assistance Programs (ABA CoLAP) and the Hazelden/Betty Ford Foundation on lawyer substance use and mental health disorders, and another titled *The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns* that focused on law students, found that lawyers and law students outpace other professionals in depression, suicide, and substance use disorders.

Among the more frightening findings are that young lawyers report the highest incidence of mental health and substance use disorders of all lawyers. Mr. Coyle noted that younger generations of lawyers struggle with unemployment and heavy student loan debt. The consensus at the 2016 ABA annual meeting was that these trends are not sustainable for the profession, so a task force formed to address the issues. Less than a year after first meeting, the task force published its report. The report contains 44 specific recommendations for practical change in the culture of the legal profession to place greater emphasis on well-being.

Mr. Coyle and his task force co-chair, Bree Buchanan, Director of the Texas Lawyer Assistance Program, submitted the report to the Conference of Chief Justices (CCJ) in August. Specifically, the CCJ Professionalism and Competence of the Bar Committee considered the report on August 7. By a unanimous vote, this Committee adopted a resolution supporting “the goals of reducing impairment and addictive behavior, and improving the well-being of lawyers, and recommend[ing] that each jurisdiction considers the recommendations of the Report of the National Task Force on Lawyer Well-Being.” The Committee forwarded its resolution to the Resolutions Committee of the CCJ, which presented the resolution to the full CCJ. The full CCJ adopted the resolution on August 9, 2017. Mr. Coyle’s office has since sent a hard copy of the report to all chief justices along with an action plan that encourages chief justices to gather stakeholders, have those stakeholders review the report, and develop an action plan tailored to their jurisdiction. In Colorado, Chief Justice Rice appointed Justice Márquez to undertake review of the report and initiation of an action plan.

Also in August as part of the ABA annual meeting, a committee of the ABA Board of Governors approved a request to endorse the Report and its recommendations. Following this endorsement, the ABA issued a press release on Monday, August 14, announcing the Report and providing a link to the online version of the Report.

Mr. Coyle mentioned that ABA President Hilarie Bass intends to make well-being a presidential initiative. She has formed a working group focused specifically on recommendations to be made to legal employers. Mr. Stark is a part of this working group. The working group will make recommendations to the House of Delegates in February.

Mr. Coyle noted that the report features a number of recommendations already implemented in Colorado. The recommendations also target all sectors of the profession, including the judiciary, law schools, bar associations, regulators, legal employers, professional liability carriers, and lawyer assistance programs.

In addition to Mr. Coyle, Sarah Myers, Clinical Director at the Colorado Lawyer Assistance Program, and Mr. White, Staff Attorney, Office of Attorney Regulation Counsel, were each authors and actively involved in the task force.

Mr. Coyle mentioned that one of the key report recommendations is to modify RPC 1.1 to specifically include a reference to well-being in the comments. He said that this would underscore that to be a competent lawyer, you have to be a well lawyer. It would not be a disciplinable offense, but it would nonetheless elevate the issue.

The report is available using the following ABA link:

https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lc_colap_conference_of_chief_justices_resolution_6.authcheckdam.pdf

V. Matt Samuelson's Retirement

Mr. Samuelson has accepted a position at the National Conference of Bar Examiners to be the Director of Testing. Mr. Coyle remarked that this is a great opportunity but that Mr. Samuelson will be missed. He has taken over the continuing legal education process and re-written the continuing legal education rule to make it a national standard for professional development. He has also done an outstanding job in overseeing the Office of Attorney Admissions. Mr. Stark commented that Mr. Samuelson's service to the Advisory Committee, the Office of Attorney Regulation Counsel, the bar, and the profession in Colorado is unparalleled. Mr. Zall commented that Mr. Samuelson is a pillar of integrity. Mr. Nielsen commented that Mr. Samuelson always displays exceptional diligence and preparedness. Mr. Little praised Mr. Samuelson's involvement in revamping the continuing legal education process.

VI. Responses to Committee Inquiries

a. Attorney Registration Cards

Ms. Mondragon, Clerk of Attorney Registration and Director of Continuing Legal and Judicial Education, responded to Committee questions regarding whether to move to a different system for lawyer license cards. She said that many states offer lawyers bar cards similar to Colorado. Each printed card for Colorado lawyers costs approximately \$1.10, which includes postage, printing, and the cost of the actual card. Approximately 200 cards were returned last year. California has recently moved to a system where lawyers can elect to receive a card or not. Connecticut includes photo-identification with the bar card. Mr. Coyle recommended that the subcommittee not make any changes to the system right now and continue to study the issue. He praised Ms. Mondragon's work in overseeing continuing judicial and legal education as well as attorney registration.

b. OARC Website Updates

Mr. Corporon, Director of Technology, Office of Attorney Regulation Counsel, discussed enhancements to the website for the Office of the Presiding Disciplinary Judge. These include displaying the Presiding Disciplinary Judge's docket.

Mr. White, Staff Attorney, Office of Attorney Regulation Counsel, discussed the Colorado Lawyer Self-Assessment Program's current consolidated self-assessment. The self-assessment is available for viewing and printing on the Office of Attorney Regulation Counsel's website. Mr. White also previewed the upcoming online, interactive version of the assessment, which will launch this fall. Both the print and online assessments contain ten individual self-assessments built around ten core practice principles. Those practice principles range from avoiding conflicts of

interest, to charging appropriate fees and making appropriate disbursements, to promoting access to justice. The ten assessments represent the work of ten working groups of the Proactive Management-Based Program (PMBP) subcommittee over the course of 2016 and early 2017. They identify critical practice issues that help lawyers improve client service, expand professional competence, and enhance their ethical infrastructure. Right now, lawyers in Colorado can use the print assessment to evaluate their practice. Through it, lawyers can also access educational resources as well as references to the various Colorado Rules of Professional Conduct implicated by questions in the assessment. The online platform will feature similar content, as well as references to the Rules and educational resources. It has been designed over the course of the summer by Standpoint Decision Support working in tandem with input from the subcommittee. The focus in the design aspect has been to make the platform user-friendly, easy to navigate, and not overwhelming in terms of the volume of information.

In addition to Mr. White's discussion of the website and platform components of the PMBP subcommittee's work, Mr. Stark discussed that this subcommittee formed a working group to study development of a court rule or statutory privilege that would keep the self-assessments confidential. It would shield them from discovery in civil matters and prevent their use in administrative proceedings, including disciplinary proceedings. The working group, led by Mark Fogg, has met several times and has a draft rule that it is reviewing and hoping to finalize soon for this Committee's consideration. Mr. Stark mentioned that in drafting the proposed rule, Mr. Fogg, Margrit Parker, and Mr. White, considered the peer review and quality management privileges that apply in the medical profession, as well as C.R.C.P. 254, which established COLAP and makes it a strictly confidential program. This working group also met with Terry Scanlon and Andy Rottman from the Colorado Supreme Court as well as Sherry Stwalley at the State Court Administrator's Office to discuss a potential rule and the feasibility of pursuing a statutory privilege down-the-road. Mr. Stark said that any potential rule could face opposition from within the profession and outside the profession.

c. Colorado State Court e-Filing

Mr. Coyle has met with Mr. Ryan and learned it will likely be several more years before the Presiding Disciplinary Judge's office moves to an e-filing system.

VII. Other Updates

a. Colorado Attorney Mentoring Program (CAMP)

CAMP recently published its multi-year strategic plan, the contents of which Ms. Peyton discussed. Developing and implementing a strategic plan is a first for the program. The plan contains four main topics: (1) communications and technology, (2) sustainable partnerships, (3) programs, and (4) national trends and demographics. Preparations for the report began in December 2016 and included an assessment of what CAMP has accomplished since inception. Preparation of the report also included a community needs assessment, which had responses from approximately 100 people. The various subcommittees involved in the preparation of the report used this reflective information and feedback to come up with a vision to guide the program in the

coming years. Beyond the strategic plan, evidence of the program's success and its status as a model for other attorney mentoring programs comes in the form of coverage in a new book on attorney mentoring by Ida Abbott. Additionally, Ms. Peyton reported that already in 2017, CAMP has surpassed participation levels seen in 2016.

b. Colorado Lawyer Assistance Program (COLAP)

Ms. Ezyk reported that COLAP is averaging about fifty first contacts per month. She noted that the program has enjoyed greater contact with both law schools and that 1Ls in recovery from substance use or mental health issues have been in touch saying that they want to get involved and help other students. Ms. Ezyk has been providing business cards to law students with information about the program. She has also attended professional responsibility classes four times this year to discuss well-being and seeking help.

c. Providers of Alternative Legal Services (PALS) Subcommittee

Mr. Rothrock discussed that several members of this subcommittee have gone out to Denver County Court to assess how *pro se* litigants navigate the court system. The subcommittee chose to focus on county court collections and landlord-tenant (FED) matters. The visits to county court have led to a wealth of information about potential needs. The committee is now considering where non-lawyers would be the most helpful. This includes a consideration of whether non-lawyers should be allowed to negotiate on behalf of self-represented parties. He commented that Washington state has a proposal to expand their "limited license legal technician" (LLLT) program to allow those with LLLT certification to formally negotiate on behalf of clients. From the investigation at Denver County Court, it seems to the subcommittee that solely helping litigants prepare documents will not make a profound difference. It appears that what is needed is help in the hallway and potentially with negotiations. The subcommittee plans to collect more feedback on *pro se* litigant needs and issues, including talking to county court judges as well as lawyers involved in the collections and landlord-tenant matters.

d. Office of Attorney Regulation Counsel Report

Mr. Coyle recently spoke to the Virginia Supreme Court Commission on the Future of the Legal Profession about Colorado's Preamble to the Rules Governing the Practice of Law and about how the Preamble assists regulators. He discussed with this Commission that the Preamble allows regulators to focus on 21st century needs in the legal profession. Mr. Coyle will also be participating in a conversation with the Wisconsin Supreme Court's Disciplinary Rules Committee. His work with these committees in Virginia and Wisconsin demonstrates how other jurisdictions look to Colorado as a model in regulating lawyers.

Ms. Funk will be the new Chief Deputy Regulation Counsel following Mr. Samuelson's retirement from the Office. The Office has a new Education and Outreach Coordinator, Zak Bratton. In addition, a new intake attorney, Matt Ratterman, will be starting soon.

VIII. Next Meeting: December 8, 2017. There is no Advisory Committee banquet this year.

The meeting adjourned at 1:45 p.m.

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