



Colorado's New Lawyer Self-Assessment Program

By Cecil Morris

The future of attorney regulation includes the use of lawyer self-assessments as a preventative approach, and Colorado is at the forefront of this development. The goal of the Lawyer Self-Assessment Program is to improve lawyers' and law firms' ethical infrastructure, by allowing them to assess their practice and identify strengths and areas for improvement.¹ In turn, this will help lawyers better serve their clients and simplify their professional lives.

The Lawyer Self-Assessment is an invaluable resource, especially for solo and small firm lawyers, new lawyers, and lawyers practicing in the areas of plaintiffs' personal injury, family law, criminal law, and bankruptcy. Lawyers completing the Self-Assessment qualify for 3 free general and ethics CLE credits. The Self-Assessment is voluntary, and lawyers' answers are confidential. The Self-Assessment is available at the following link: www.coloradosupremecourt.us/AboutUs/LawyerSelfAssessmentProgram.asp.

History

Traditionally, the approach to attorney regulation has been reactive. A lawyer takes some action or fails to take some action, a complaint is filed with the regulators (in Colorado, the Office of Attorney Regulation Counsel or OARC), the complaint is investigated, the lawyer defends himself or herself, and if misconduct is found, the lawyer either enters into a Diversion Agreement or a Conditional Admission Agreement, or the matter goes to a hearing panel headed by the Presiding Disciplinary Judge for decision and potential discipline.

First in England and Wales and then in Australia, regulators took a different, proactive approach, in an effort to prevent misconduct in the first place.² This approach became referred to as "Proactive Management Based Regulation" or "PMBR". Subsequently, the Nova Scotia Barrister's Society began in the process of implementing PMBR through an annual questionnaire that is being tested on certain law firms. The Canadian Bar Association has also developed a voluntary Self-Assessment Tool.³

In these jurisdictions, the number of complaints against lawyers for misconduct has fallen materially.⁴

Development in Colorado

In 2015, the Subcommittee on Proactive Management-Based Regulation of the Colorado Supreme Court Attorney Regulation Advisory Committee was formed to explore and potentially adopt the concept. More than 50 practicing lawyers have participated in the Subcommittee. The first task of the Subcommittee was to identify key practice risks and develop core practice principles on which the Self-Assessment would be based.

As part of this process, the Colorado Supreme Court adopted Rule Change 2016(06).⁵ Rule Change 2016(06) added a Preamble to the Rules Governing the Practice of Law in Chapters 18 to 20 of the Colorado Rules of Civil Procedure and which sets forth the Court's regulatory objectives. Proactive programs feature in multiple regulatory objectives.

Ultimately, the Subcommittee identified ten core practice principles:

1. Developing a competent practice;
2. Communicating in an effective, timely, professional manner and maintaining professional relations;
3. Ensuring that confidentiality requirements are met;
4. Avoiding conflicts of interest;
5. Maintaining appropriate file and records management systems;
6. Managing the law firm/legal entity and staff appropriately;
7. Charging appropriate fees and making appropriate disbursements;
8. Ensuring that reliable trust account practices are in use;
9. Working to improve the administration of justice and access to legal services; and
10. Wellness and inclusivity.

For each of these core principles, the Subcommittee identified objectives, requirements under the relevant Rules of Professional Conduct, practices that promote client satisfaction, and resources that provide guidance on these issues, such as Ethics Opinions, journal articles, manuals, and forms. The Self-Assessment emphasizes high quality client service, efficient law office management, and compliance with professional obligations.

The Self-Assessment went live on October 23, 2017. Lawyers can take the Self-Assessment online, or they can print out the Self-Assessment and complete it off-line. If they take it online, they can exit the program and return and complete it later.

Confidentiality

Answers on the Self-Assessment are confidential, so lawyers do not have to worry about how they answer. The Self-Assessment is administered by Standpoint Decision Support, Inc., using its AVVY.PRO online professional self-assessment platform. It is not affiliated with any regulator, and it does not allow any third-party access to its survey platform or data. Lawyers' personally-attributable answers will not be shared with the Office of Attorney Regulation

Counsel, although AVVY.PRO will provide "jurisdictional-level, anonymized, aggregate reports on answer statistics."⁶ In fact, OARC itself proposed that it not have access to lawyers' answers in order to encourage use of the Self-Assessment.

Beyond this, the Subcommittee is also working on Rule change proposals to make lawyers' answers to the Self-Assessment privileged from disclosure, like the physician peer review statute.⁷

Significance

The Lawyers Self-Assessment Program is an invaluable resource, especially for lawyers in high-risk practice areas. These include personal injury, family law, criminal defense, and bankruptcy. In 2016, 19% of all disciplinary complaints were against lawyers in family law matters, 7% in personal injury, 6% in private criminal defense, and 4% in bankruptcy.⁸

The Self-Assessment provides 3 free general and ethics CLE credits and the opportunity to improve your practice, increase client satisfaction, and reduce the risk of complaints. Try it. It will be well worth the effort. ▲▲▲

In addition to his primary practice of business and commercial litigation, Cecil

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Endnotes:

¹ Professor Ted Schneyer of the University of Arizona Rogers College of Law coined the term "ethical infrastructure" to refer to the "organization, policies, and operating procedures" of a law firm. Ted Schneyer, *Professional Discipline for Law Firms?*, 77 *Cornell L. Rev.* 1, 10 (1991).

² See, e. g., Susan Fortney, *Promoting Public Protection Through an "Attorney Integrity" System: Lessons from the Australian Experience with Proactive Regulation of Lawyers*, 23 *THE PROFESSIONAL LAWYER* 1 (2015); Susan Fortney, *The Role of Ethics Audits in Improving Management Systems and Practices: An Empirical Examination-Based Regulation of Law*, 4 *ST. MARY'S J. LEGAL MAL. & ETHICS* 112 (2014); Ted Schneyer, *On Further Reflection: How "Professional Self-Regulation" Should Promote Compliance with Broad Duties of Law Firm Management*, 53 *ARIZ. L. REV.* 577 (2011).

³ Laurel Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 *LEWIS & CLARK L. REV.* 717, 729-30, 736-37 (2016).

⁴ See Fortney, *Promoting Public Protection Through an "Attorney Integrity" System*, *supra* note 2; Fortney, *The Role of Ethics Audits*, *supra* note 2.

⁵ Rule Change 2016(06), available at [www.coloradosupremecourt.us/PDF/AboutUs/2016\(06\)%20clean%20-%20PREAMBLE%20\(regulatory%20objectives\)%20ADOPTED%2004-07-16.pdf](http://www.coloradosupremecourt.us/PDF/AboutUs/2016(06)%20clean%20-%20PREAMBLE%20(regulatory%20objectives)%20ADOPTED%2004-07-16.pdf).

⁶ See <https://avvy.pro/security-and-confidentiality/>.

⁷ C. R. S. § 12-36. 5-104(10)(a),

⁸ Colorado Office of Attorney Regulation, 2016 Annual Report at p. 68, Chart E-3, *Nature of Conduct—Percent by Practice Area*.



COLORADO LAWYER ASSISTANCE PROGRAM

The Colorado Lawyer Assistance Program (COLAP) is an independent and confidential program exclusively for Judges, Lawyers, and Law Students. Established by Colorado Supreme Court Rule 254, COLAP provides

assistance with Practice Management, Work/Life Integration, Stress/Anger Management, Anxiety, Depression, Substance Abuse, and any Career Challenge that interferes with the ability to be a productive member of the legal community. COLAP provides referrals for a wide variety of personal and professional issues, assistance with interventions, voluntary monitoring programs, supportive relationships with peer volunteers, and educational programs (including ethics CLEs).

WE WOULD LOVE TO SHARE OUR SUCCESS STORIES, BUT THEY ARE COMPLETELY CONFIDENTIAL.

For more information or for confidential assistance, please contact COLAP at **303.986.3345**
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