



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

March 13, 2020, 12:05 p.m. – 2:00 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, Brian Zall (via teleconference), Cynthia Covell, Dan Vigil (via teleconference), Dick Reeve (via teleconference), Nancy Cohen, Steven Jacobson (via teleconference), Sunita Sharma

Members absent: Alexander (Alec) Rothrock, Elizabeth Bryant

Liaison Justices present: Justice Monica Márquez, Justice William Hood (via teleconference)

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

Staff present: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Ryann Peyton, Executive Director, Colorado Attorney Mentoring Program (CAMP); Sarah Myers, Executive Director, Colorado Lawyer Assistance Program (COLAP); Jonathan White, Professional Development Counsel, Office of Attorney Regulation Counsel

Guests: Nathifa Miller, Vice-Chair, Continuing Legal & Judicial Education Committee (via teleconference); Steven Vasconcellos, State Court Administrator

1. Update from Steven Vasconcellos, State Court Administrator, re: COVID-19 Preparations

The Chair convened the meeting and welcomed members and guests. The Chair introduced Steven Vasconcellos, State Court Administrator, who gave an update on preparations by the State Court Administrator's Office to ensure continuity of operations for its office and state courts following the outbreak of the novel coronavirus, COVID-19. A guiding principle of the response is minimizing the overall state court employee footprint by allowing employees to work from home, though still permitting employees who cannot work from home to come in to the Ralph Carr Building or their court office. Growing restrictions on the size of gatherings will lead to meetings and events being cancelled in the coming months and the necessity of virtual meetings. The Colorado Collaborative Justice Conference scheduled to take place at the end of this month in Denver will be cancelled. Medical and public health experts in Colorado expect that under a well-organized response to the pandemic in the state, the remainder of March, and the months of April

and May, will require changes to normal operating procedures. Mr. Vasconcellos said that health and safety are the primary focus in the pandemic response planning.

2. Approval of the December 13, 2019, Meeting Minutes

The Chair asked if members reviewed the minutes from the committee's December 13, 2019, meeting. He also asked if there were any changes or additions. None were proposed. Ms. Covell motioned to approve the minutes from the December 13, 2019, meeting. Mr. Zall seconded the motion. The committee approved the minutes.

3. Consideration of Grant Request from Legal Entrepreneurs for Justice to CAMP

In December 2018, the committee approved a one-time \$10,000 contribution to Legal Entrepreneurs for Justice (LEJ) to help establish this lawyer incubator program that strives to address the access to justice gap in Colorado. LEJ serves clients who do not qualify for legal aid but who cannot afford legal services. The committee made this prior contribution through a variation in CAMP's fiscal year budget. CAMP has received a grant request from LEJ for an additional \$10,000 contribution.

Prior to the committee discussing this request, the Chair provided a summary of LEJ's activities since the prior contribution. Two lawyer cohorts started with LEJ in 2019, one in June and the other in November. These two cohorts each include four lawyers recognized for their demonstrated commitment to pro bono legal service. The cohorts include lawyers outside the Front Range metropolitan area with a lawyer from the San Luis Valley and one in Colorado Springs. LEJ recruited a part-time executive director. The cohorts have been successful in terms of substantive work. The Chair presented members with the 2019 Annual Report from LEJ as part of the packet of materials for this meeting. The Annual Report details the success of the program and the lawyers involved. The Chair emphasized that this success does not mean that LEJ is prepared to operate without financial support from the Colorado legal community.

LEJ has solicited contributions from each of the state's law schools as well as private law firms. The Chair asked the committee to approve another \$10,000 grant to LEJ from CAMP. He excused himself from further discussions and from the committee's vote.

Ms. Peyton said that CAMP's budget could accommodate the grant request. The grant would be delivered as a budget variance.

Ms. Cohen moved to approve the requested \$10,000 grant from CAMP. Judge McCallin seconded the motion. The motion passed without objection. Further discussion included proposing an LEJ grant as part of CAMP's annual budget to be approved when the committee approves upcoming fiscal year budgets. Ms. Funk noted that the Office of Attorney Regulation Counsel has made in-kind donations, such as providing a trust account school for LEJ's cohorts.

4. Discussion of DACA Subcommittee Analysis Concerning Undocumented or DACA Applicants

Ms. Covell said a subcommittee of this committee that initially met in 2018 and 2019 recently reconvened following the committee's December 2019 meeting. This subcommittee

initially met to consider changes to Question 20 the Colorado bar examination application in light of the likelihood of there being bar applicants in the Deferred Action for Childhood Arrivals (DACA) program. The subcommittee recommended, and the committee approved, a revision of the question to ask bar applicants whether they are eligible to work in the United States. At this past December's meeting, Professor Violeta Chapin from the University of Colorado Law School presented to the committee her concerns related to asking applicants about their work status. She recommended that the question be eliminated from the bar application. The issue has become relevant in light of the United States Supreme Court's consideration of a move by the Trump Administration to eliminate DACA. Should the Court allow the administration to end the program, some bar applicants may have to answer "no" to Question 20.

The subcommittee met January 23, 2020. It consists of the subcommittee chair, Ms. Covell, Assistant Regulation Counsel Bryon Large, Judge McCallin, Deputy Regulation Counsel Dawn McKnight, Mr. Vigil, and Ms. Yates. The subcommittee considered Ms. Chapin's remarks as well as concerns raised by members of this committee at the December 2019 meeting. Those concerns include whether a client could be engaging in illegal activity by hiring a lawyer who is not authorized to work in the United States, as well as the potential client harm that could result if that lawyer is deported during the middle of the representation of a client.

The subcommittee recommended leaving Question 20 as it is on the application. It reasoned that responding "no" to the question does not immediately result in a rejection of the application. The question is a starting point where a negative response would trigger an additional level of inquiry into whether that person can work as a lawyer. The Character & Fitness Committee could evaluate any issues raised as part of that additional inquiry. The subcommittee also felt that it was not appropriate to change Question 20 at this time and instead monitor developments related to DACA and the regulation of other professionals without documentation.

5. Rule Change Combining the Attorney Regulation Committee and the Unauthorized Practice of Law Committee into the "Legal Regulation Committee"

At this committee's two previous meetings, members heard information on the proposal to combine the Unauthorized Practice of Law (UPL) Committee and Attorney Regulation Committee (ARC). The proposal springs from the ongoing review of the procedural rules concerning UPL and attorney discipline. Ideally, if this committee and the Court approve combining the two committees, the new, combined "Legal Regulation Committee" can begin meeting in July. Ms. Bryant, chair of the UPL Committee, and Mr. Jacobson, chair of ARC, have commenced discussions to merge the two committees.

The proposal to combine the two committees stems from a desire to lend consistency in results and provide a holistic approach when a matter features both lawyer discipline issues and UPL issues. Further, should the Court in the future authorize non-lawyers to engage in the provision of certain legal services, a model gaining traction in other jurisdictions, regulation of such professionals would likely fall under the jurisdiction of a combined committee that considered attorney discipline and UPL.

Ms. Yates provided members a copy of proposed, revised C.R.C.P. 251.2 in the packet of materials distributed in advance of the meeting. She commented on the structure of the committee

proposed under the revised rule, which provides for a committee of at least nine members and at least two non-lawyers. Member terms are a period of seven years, though the chair and vice chair may serve up to 14 years in order to accommodate their leadership roles after a presumed initial term. Under the proposed rule, diversity shall be considered when making appointments. Ms. Yates noted that the powers and duties of the combined committee have not changed from the current respective powers and duties of ARC or the UPL Committee. Proposed C.R.C.P. 251.2 repeals and replaces current 251.2 concerning ARC. It also repeals C.R.C.P. 229 concerning the UPL Committee and replaces it with new rule language.

Mr. Jacobson commented that the new rule reduces duplicity between the two committees and efficiently allocates resources and volunteer time dedicated to lawyer and non-lawyer regulation.

Mr. Reeve moved that the committee recommend the Colorado Supreme Court amend C.R.C.P. 251.2 and C.R.C.P. 229 and adopt the proposed new language for those rules that creates a Legal Regulation Committee. Mr. Jacobson seconded the motion. The motion carried without opposition.

6. Proposed Changes to C.R.C.P. 254 – Colorado Lawyer Assistance Program – and C.R.C.P. 255 – Colorado Attorney Mentor Program

Members received a red-line version of C.R.C.P. 255 in the packet of materials for the meeting that displays proposed changes to the rule. Ms. Peyton discussed those changes, noting these are not substantive revisions that impact CAMP's existing programming. She noted a prominent revision is to change the program name under the rule to the "Colorado Attorney Mentoring Program," which is the name CAMP uses and has been using. Other changes to the rule would reflect that CAMP's goals are not only to help law students transition from law school to practice, but also to assist lawyers new to practice in Colorado as well as lawyers transitioning practice areas. Ms. Peyton said 40 percent of CAMP mentees are not new attorneys, and it is important the rule address CAMP's service to these lawyers. An additional change is to include among the CAMP Director's responsibilities the organization of an office to carry out CAMP's services, responsibilities assigned to the Director of COLAP and to the Presiding Disciplinary Judge.

Ms. Myers summarized proposed changes to C.R.C.P. 254, and members received a copy of the COLAP rule with proposed revisions incorporated as part of the packet of materials for the meeting. Changes include noting that substance use and mental health issues are behavioral health issues. Additional changes clarify the type of assistance COLAP offers, including consultations, referrals, and interventions. Other revisions align the description of the COLAP Director and that person's powers and duties with descriptions used in the rules related to other agencies of the Colorado Supreme Court. Meanwhile, additions to Section 6 of the rule address procedures for answering a subpoena. A new comment to the rule details a specific exception to COLAP's confidentiality for mandatory state reporting laws regarding child and elder abuse, as well as the duty to warn and protect in situations where there are threats of self-harm or harm to other people or facilities.

Following Ms. Peyton and Ms. Myers' presentations, members discussed an additional change to both C.R.C.P. 254 and 255 which would modify the first sentence of Section 3 of both rules to state that the committee "shall appoint" a COLAP or CAMP Director. Ms. Cohen moved to approve both sets of revisions with the additional amendment to the first sentence of Section 3 of C.R.C.P. 254 and 255, and to send the proposals to the Colorado Supreme Court. Mr. Reeve seconded the motion. The motion carried without opposition.

7. Consideration of Subcommittees within the Continuing Legal and Judicial Education Committee

Chair Judge McCallin and Vice Chair Nathifa Miller presented on ways that the Continuing Legal and Judicial Education Committee would like to encourage lawyers to gain additional education and skills for practicing in today's professional sphere. This includes promoting programming related to inclusiveness, diversity, and equity, as well as lawyer well-being. Judge McCallin detailed the emerging trends related to these topics. He explained that here in Colorado, there is the Professionalism Coordinating Council, the Colorado Bar Association has a Diversity & Inclusivity Committee, and there is also the Center for Legal Inclusiveness. Meanwhile, the Colorado Supreme Court, under Justice Márquez' leadership, created the Colorado Task Force on Lawyer Well-Being. He noted that in the past two years, 13 states have mandated that lawyers complete continuing legal education coursework in the area of diversity and inclusivity, while 17 states have required coursework on lawyer well-being. One way to incentivize lawyers to obtain training in these areas is to explicitly provide CLE credit for these topics.

The Continuing Legal and Judicial Education Committee formed three subcommittees in response to these trends. Two subcommittees will evaluate ways to promote programming related (1) to lawyer well-being and professionalism and (2) to diversity, equity, and inclusivity. A third subcommittee will harmonize language in the regulations with the new CLE rules adopted in 2018. Judge McCallin and Ms. Miller will apprise the committee in the future on the outcomes of these efforts. They noted diversity bar associations in the state support the Continuing Legal and Judicial Education Committee's work to form these subcommittees and undertake this review.

8. Chair and Member Appointments to the Providers of Alternative Legal Services Subcommittee Concerning Paraprofessionals and Other Non-Lawyers Providing Legal Services

Ms. Yates reported that there is a new "PALS" subcommittee – the Subcommittee Concerning Paraprofessional and Other Non-Lawyers Providing Legal Services. The Colorado Supreme Court issued an Order on February 27, 2020, creating a pilot program to explore potential creation of a regulatory regime to allow paraprofessionals to engage in the practice of law in defined contexts.

Retired 18th Judicial District Judge Angela Arkin will chair the new subcommittee. Maha Kamal will serve as vice chair. Member appointments to the committee include Retired Court of Appeals Judge Daniel Taubman, David Stark, Heather Lang, Jessica Yates, Justice Melissa Hart, and Rebekah Pfahler. Ms. Pfahler is a domestic relations coordinator at Colorado Legal Services. Ms. Lang is the Family Court Facilitator at the Douglas County District Court.

The subcommittee has a work plan in place. The plan involves first looking at what other jurisdictions are doing as regards innovation in the delivery of legal services. This includes Washington's Limited License Legal Technician program, as well as efforts underway in Arizona, Illinois, Minnesota, and Utah, along with those in certain Canadian provinces. Ms. Yates said that there are many issues after this initial step that the subcommittee will consider, including regulatory requirements and potential rules of professional conduct related to paraprofessionals.

9. Approval of Committee Appointments: Attorney Regulation Committee (ARC)

Mac Danford resigned his position as member and vice chair of ARC. Mr. Jacobson, Chair of ARC, asked that existing ARC member Alison Zinn fill the vice chair opening. Ms. Zinn's resume and a nomination letter were distributed in the packet of materials for the meeting. Ms. Zinn has been an ARC member for many years. She is a trial lawyer specializing in estate administration litigation.

To fill the vacancy on ARC created by Mr. Danford's resignation and Ms. Zinn's proposed appointment, Mr. Jacobson recommended Elsa Djab Burchinow's appointment to ARC. Ms. Burchinow currently serves on the UPL Committee. Her immigration law practice and experience on the UPL Committee would be beneficial to ARC and to the proposed Legal Regulation Committee as it considers UPL issues. Mr. Jacobson also provided Ms. Burchinow's resume and a nomination letter in the materials for the meeting.

Mr. Vigil moved to recommend the Colorado Supreme Court appoint Ms. Zinn to vice chair of ARC and that the Court appoint Ms. Burchinow to ARC. Mr. Zall seconded. The motion carried without opposition.

10. Other Updates

a. CAMP

Ms. Peyton provided members with a report in the packet of materials for the meeting. She discussed its highlights. CAMP's end-of-year 2019 metrics show a 21 percent increase in mentee participation over 2018. CAMP saw nearly 300 mentees apply to the program in 2019, its largest mentee class ever. CAMP also enjoyed an increase in partner program collaboration in the past year. Ms. Peyton noted requests for CLE credit from mentors and mentees participating in the program decreased in 2019, however, the increase in mentee participation demonstrates that lawyers have decided to participate in CAMP for reasons that are not limited to securing CLE credits. She anticipates CAMP's annual report will be released in April. She is monitoring participation in light of the COVID-19 outbreak. CAMP's Community Engagement Plan implementation and 2021-2023 strategic planning remain on track.

Ms. Peyton discussed several additional pilot projects CAMP has committed to recently. First, CAMP will administer the Colorado Supreme Court Lawyer Well-Being Recognition Pilot Program throughout the remainder of 2020 and into 2021. This pilot program encourages legal employers ranging from solo practitioners to large law firms to incorporate recommendations developed by the Colorado Task Force on Lawyer Well-Being into their organization. The recommendations distill into six different subjects: Creating a Culture of Well-Being, Fostering Competence, Developing Work/Life Integration, Promoting Diversity & Inclusivity, Assessing

Compensation Metrics, and Making Clients Part of the Conversation. An advisory board has been working on recruitment for the program. The pilot program will launch May 4, 2020. Ms. Peyton developed a website for the pilot program: coloradolawyerwellbeing.org.

Additionally, Ms. Peyton said CAMP is leading the Succession to Service Pro Bono Pipeline Project Pilot. This program connects lawyers and judges transitioning to retirement or in retirement to non-profits, to legal service providers, and to the courts to help deliver services to individuals in need of legal assistance but who cannot afford the cost of a lawyer. This pilot program launched at the end of February. Ms. Peyton also created a website for this program: www.sucessiontoservice.org.

b. COLAP

COLAP saw an approximately 28 percent increase in presentations delivered in 2019 compared to 2018. First-time contacts to the program increased by approximately 55 percent in 2019 from 2018. Ms. Myers also noted an increase in the number of judicial officers reaching out to the program. COLAP retained two temporary employees, a clinician and an administrator, to assist with the increase in requests for services. That has been helpful. COLAP may seek an additional full-time employee in the 2020-2021 fiscal year budget to provide administrative support.

c. Office of Attorney Regulation Counsel

Ms. Yates detailed the Office's preparations in response to the outbreak of COVID-19. The Office began allowing certain employees to work remotely prior to the current circumstances. The Office has very recently been working to expand capacity for more employees to work remotely with the assumption that the Office will remain open but with changes to business processes as the outbreak continues. For example, Ms. Yates said that the Office's information technology team created a new email address so that the Office can process attorney address changes and requests for certificates of good standing online.

Ms. Yates said that the February Colorado bar examination went well. 267 examinees sat for the February bar examination. Meanwhile, the primary 2020 attorney registration cycle ended February 28. It appears that the number of active lawyers registered in the state, while still growing, is beginning to flatten its growth rate. The lawyer demographic survey that the Office requests lawyers complete as part of registration remains ongoing.

Overall, the Office saw a 5.2 percent decline at the intake level in the number of requests for investigation in 2019 compared to 2018. This continues a decline seen over the past decade. This may be, in part, a result of the Office's expanded educational efforts. The Office, however, saw a 4.2 percent increase in cases processed to its trial division. These are more serious cases or cases where a lawyer has not participated in the Office's investigation process.

d. Subcommittee on Admissions Matters

Mr. Vigil reported this subcommittee met in early February and will meet again by phone March 25. An issue under review by this subcommittee is how to accommodate foreign-educated applicants to the Colorado bar. Proposals related to this issue include having an applicant show

educational equivalency and perhaps requiring such applicants to take specific courses such as civil procedure and professional responsibility. Discussion about this and other admissions requirements issues remains ongoing.

11. Other Business: 2020 Meeting Dates

- May 8, 2020
- September 11, 2020
- December 11, 2020

12. Executive Session

The full meeting adjourned at 2:00 p.m. The committee then met in Executive Session to consider a confidential matter per the Colorado Supreme Court rules.

/s/ Jessica E. Yates
Jessica E. Yates
Attorney Regulation Counsel