



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

March 9, 2018, 12:05 p.m. – 1:25 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, Colorado 80203

Members present: Chair David W. Stark, Alexander (Alec) Rothrock, Barbara Miller, Cynthia Covell, Daniel Vigil, Dick Reeve, Nancy Cohen, and Richard Nielson. Brian Zall, Cheryl Martinez-Gloria, and Steve Jacobson attended via teleconference.

Members absent: David Little and Mac Danford

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; Margaret Funk, Chief Deputy Regulation Counsel; Ryann Peyton, Director, Colorado Attorney Mentoring Program (CAMP); Sarah Myers, Clinical Director, Colorado Lawyer Assistance Program (COLAP); Melissa Meirink, Staff Attorney, Colorado Supreme Court; Jonathan White, Staff Attorney, Office of Attorney Regulation Counsel.

Guests present: Katayoun Donnelly, Marcy Glenn, Mark Fogg, and Michael Mihm (Proactive Management-Based Program (“PMBP”) Subcommittee members)

I. Approval of December 8, 2017, Meeting Minutes

The Chair convened the meeting and asked if members had read the minutes from the Advisory Committee’s December meeting. Mr. Reeve moved to approve the meeting minutes. Mr. Nielson seconded the motion. The minutes were approved without any edits.

II. Update on New Proposed Rules on Conditional Admission, CLE, as well as Discipline, Disability, and Contempt

Mr. Coyle reported that the conditional admission rule has been placed on hold. The court held a public hearing in January on the CLE rule proposal, is currently considering the input

received, and anticipates releasing the new rule next week (approximately March 15). Meanwhile, a subcommittee has been formed to address and revise Rule 251, which pertains to lawyer discipline and procedures for discipline. Last, a committee is working on a draft for separate disability and contempt rules. It will likely be a year before a proposal is ready for consideration.

III. Vice-Chair of CLJE Committee/Board

Mr. Little, chair of the Continuing Legal and Judicial Education Board, and Mr. Coyle proposed that a vice-chair be appointed for this nine-member board. Mr. Coyle noted that all other Colorado Supreme Court regulatory committees have a vice chair. In some instances, governing rules for the committee provide for these vice-chair positions. In other cases, these positions have been appointed. Mr. Little and Mr. Coyle recommended that the committee appoint the Honorable Judge Andrew McCallin to serve as vice chair of the Continuing Legal and Judicial Education Board. The Advisory Committee approved the request. Judge McCallin's name will be submitted to the Court for consideration.

IV. Hiring process – Executive Director of COLAP and Attorney Regulation Counsel

Mr. Stark reported that the State Court Administrator's Office (SCAO) received quite a few applications for both positions. SCAO performed an initial review and scoring of applications. From that process, there are six finalists for Attorney Regulation Counsel and seven for Executive Director of COLAP. Interviews for both positions will take place in April. The subcommittee interviewing applicants will pick one person to serve as the new executive director of COLAP. The subcommittee will select three names to provide to the Court for selection of the new Attorney Regulation Counsel. The goal is to have a person selected for each position by May 1. Mr. Coyle and Ms. Ezyk retire June 29, 2018.

V. Proposed Rule 256: Proactive Management-Based Program (PMBP) and the Colorado Lawyer Self-Assessment Program

Mr. Coyle reviewed the Preamble to the Rules Governing the Practice of Law, which, among other things, prioritize increasing public understanding of and confidence in the rule of law, promoting consumer confidence, helping lawyers successfully navigate the practice of law, and protecting confidential client information. In support of those objectives, the PMBP subcommittee developed ten lawyer self-assessments for lawyers over the course of 2016 and 2017 to evaluate practice issues related to ethics, client service, and professional development. The program is known as the Colorado Lawyer Self-Assessment Program. Assessment topics range from lawyer competence, to avoiding conflicts of interest, to helping ensure access to justice, as well as lawyer well-being and inclusivity in the profession. The goal of the self-assessments is to give lawyers the opportunity to make improvements to their practice and, hopefully avoid risks such as a grievance or malpractice complaint. Lawyers can complete the self-assessments using an online platform that launched last fall. Alternatively, they may use a print version of the surveys. Both are available at:

<https://www.coloradosupremecourt.com/AboutUs/LawyerSelfAssessmentProgram.asp>.

The self-assessments are voluntary. Mr. Coyle emphasized that while his office does not collect any personally-attributable answers from users, the subcommittee has been concerned about lawyers' willingness to participate in the self-assessment program without knowing that the process is entirely confidential and non-discoverable.

Mr. Fogg said that he has worked closely with a group of lawyers to draft a proposed court rule that recognizes the Colorado Lawyer Self-Assessment Program and gives confidentiality to information derived through the program. Mr. Fogg said that the working group considered whether to go to the legislature to advocate for a broad self-assessment privilege for lawyers. He noted that at this stage, the working group felt it most appropriate to promote use of the self-assessment tool. Accordingly, the working group viewed a more limited court rule as the best approach. Mr. Fogg explained that this group considered a number of models. They looked closely at C.R.C.P. 254, the rule that established COLAP and makes information and actions taken by COLAP privileged and confidential. He also said that the working group reviewed case law concerning medical peer review privileges including *DeSantis v. Simon*, 209 P.3d 1069 (Colo. 2009), as well as case law from other jurisdictions pertaining to the scope of peer review privilege and when they may be disturbed. He said that the working group wished to have a process built into the rule that is analogous to the medical peer review process but features a different name, law practice review. In addition, the working group reviewed an Illinois Supreme Court rule establishing a somewhat similar assessment program in that state.

Mr. Fogg explained that the merit of the current proposed Rule 256 is that it is grounded in only the self-assessment program and materials arising out of the program. He explained that the working group discussed whether there should be any waiver of the privilege and concluded it was best to keep the rule simple. Confidentiality should apply universally without exceptions. Relatedly, the rule acknowledges that the Office of Attorney Regulation Counsel will not be collecting any personally-attributable or identifiable data.

Mr. Fogg further explained that the immunity provision for law practice reviewers functioning akin to a peer reviewer should promote confidence and candor in this review program.

The development of the Colorado Lawyer Self-Assessment Program has been volunteer-driven. Costs to the Office of Attorney Regulation Counsel have been very modest. Mr. Coyle said that there is a need to have a full-time position continue to develop the platform and program so it is responsive to current professionalism trends and feedback received. He emphasized that it is critical to the program's success that resources stay robust.

A member inquired whether there were any situations where the program is mandatory. Mr. Coyle said that the only reason the program would be mandatory is if his Office requires completion of the program as an alternative to discipline. In such instances, the Office would simply have the lawyer affirm that he or she has completed the self-assessment process with no further information. It is possible that the Office could encourage use of the program in a letter to

a lawyer dismissing a complaint but indicating concerns with the lawyer's practice. The program is otherwise voluntary and a resource for the Colorado legal community.

A member asked whether the working group considered potential abuse of the rule to shield information from discovery. Mr. Fogg responded that the group did consider that issue but felt that creating a provision stating that underlying facts were discoverable was unnecessary. He mentioned that the language, as written, is very tight. Mr. Stark also commented that the language defining what information and materials are confidential is specific so as to discourage potential abuse.

A minor concern involving the current language of the draft Rule 256 referencing the PMBP Subcommittee as the group that develops lawyer self-assessments was addressed. This concern was that the rule as drafted contemplates a subcommittee that exists in perpetuity but the subcommittee may not be permanent. The member expressing this concern suggested amendment to Section 2B to say that the Colorado Supreme Court Advisory Committee will approve any lawyer self-assessment tool. The chair asked if there were any additional comments or proposed changes. There were none, and a motion to approve the rule with the proposed amendment to Section 2B passed with unanimous support of the committee. The proposal is attached.

VI. Other Updates

(a) Colorado Attorney Mentoring Program (CAMP)

Ms. Peyton reported that the volume of mentees nearly doubled in 2017. More mentees applied in the fourth quarter of 2017 than in all of 2015. Mentee applications are also up 55 percent so far in 2018 over the same period in 2017. In order to meet the needs created by this increased volume, CAMP has fully implemented its strategic plan developed in 2017. This includes building programming around four categories of events: (1) Leadership Development, (2) Practice Readiness, (3) Practical Skills Training, and (4) Professionalism & Wellness. CAMP has enhanced the use of social media surrounding the program. CAMP participants have expressed an interest in collaborating together on mentoring topics and ideas through mentoring circles. Mentoring circles are now ongoing with a particular emphasis on niche and non-traditional mentoring topics. In addition, CAMP has prioritized statewide outreach. It has recently partnered with the El Paso County Bar Association and the Gunnison County Inns of Court to expand its reach. The program has also received national recognition. Ms. Peyton will be speaking at the National Legal Mentoring Consortium in April in South Carolina. Ms. Peyton emphasized that even with the increased volume, the matching timeframe remains the same. CAMP has been nominated for an ABA Gambrell award.

(b) COLAP

Ms. Myers reported that COLAP currently averages approximately 50 first-time contacts per month. The number of contacts declined during the holiday period, which is not unusual, but it has since returned to normal. COLAP's annual report will be published in April.

(c) Office of Attorney Regulation Counsel

Mr. Coyle said that annual registration for Colorado lawyers ended February 28, 2018. The number of registered lawyers in Colorado continues to grow and because of this, a registration fee increase is not necessary at this time.

340 people sat for the most recent bar exam administration on February 27 and 28, 2018. This is a slight decline from recent years. Mr. Coyle anticipates that these numbers will rise again. LSAT scores are increasing and the number of applicants sitting for the bar should begin to go back up, as should passage rates.

The Character and Fitness Committee recently conducted a retreat featuring a series of workshops and presentations. Mr. Coyle commended the agenda created by Ms. McKnight and Ms. Oakes. Topics included what to look for in independent medical examinations, judicial decorum for inquiry panel members, and issues of inclusivity.

The Office of Attorney Regulation Counsel must contribute \$300,000 to the Colorado Supreme Court library fund this year. That expense will be offset by *pro hac vice* fees along with assistance from the Attorneys' Fund for Client Protection. In 2017, the Board of Trustees for the Fund approved use of additional monies from the fund to support inventory counsel programs as well as to assist the Colorado Supreme Court library fund.

Mr. Coyle informed the Advisory Committee that his office's annual report will be published in the next week. The annual report from the Attorneys' Fund for Client Protection is also forthcoming. Collectively, the Office of Attorney Regulation Counsel and the Attorneys' Fund for Client Protection are in good financial shape.

Mr. Coyle also reported that the Colorado Supreme Court Commission on Lawyer Well-Being, chaired by Justice Márquez, will convene for the first time on March 16, 2018. The commission will gather stakeholders from a number of sectors in the legal profession in the state including the judiciary, the law schools, specialty bars, and professional liability carriers. The goal of the commission will be to address the stark numbers revealed in two 2016 reports, including a report by the ABA Commission on Lawyer Assistance Programs (ABA CoLAP) and the Hazelden/Betty Ford Foundation on lawyer substance use and mental health disorders, as well as another survey of law students titled *The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*. A number of states have launched similar initiatives in response to the release of the report of the National Task Force on Lawyer Well-Being that Mr. Coyle co-chaired. These states include Illinois, Texas, Vermont, and Virginia. Mr. Coyle encouraged Advisory Committee members to look closely at the definition of well-being created by the National Task Force on Lawyer Well-Being based off the World Health Organization model.

(d) PALS Subcommittee

Mr. Rothrock, Chair of the Providers of Alternative Legal Services Subcommittee, reported that the subcommittee continues to explore licensure or certification options that would allow non-lawyers to perform certain legal tasks. The subcommittee hopes doing so will address problems related to *pro se* litigants in the court system. The subcommittee is moving towards identifying discrete tasks that these non-lawyers could perform to assist *pro se* litigants. He hopes to make a report to this committee on recommendations in the near future. A concern remains that creating such positions will take jobs away from young lawyers. Mr. Coyle noted that alternative legal service providers should help lawyers expand their market share, which is at a very low percentage of the actual market for legal services due to access to justice and affordability issues.

(e) PMBP Subcommittee

Mr. White reported on behalf of the subcommittee. As of March 8, 2018, 132 Colorado lawyers have applied for and received credit for completing the Colorado Lawyer Self-Assessment Program. The majority of those completing the program have done so online, with 115 people having completed all ten sections online. Mr. White and subcommittee members continue to emphasize in presentations to Colorado lawyers on the program that the Office of Attorney Regulation Counsel is not collecting individually-identifiable information or answer data and that the program is entirely voluntary. This should encourage use and candor.

The online platform gives users the opportunity to offer feedback on the survey. Mr. White explained that he has formed a working group to specifically address that feedback. That working group convened for the first time in February and will continue to meet to bolster content and improve the design of the online platform.

Marketing the program continues to be a major emphasis. Recent presentations on the Colorado Lawyer Self-Assessment Program have included programs before the Colorado Bar Association's Young Lawyers Division Executive Council and as part of CAMP's new programming. In the coming weeks, Mr. White and other subcommittee members will take part in presentations on the program at the University of Denver Sturm College of Law, as well as in Pueblo, and to a group of solo and small firm lawyers in Denver.

VII. Other Business

The Advisory Committee will meet on the following dates in 2018:

- May 11;
- September 7;
- December 7.

The meeting adjourned at 1:25 p.m.

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

ATTACHMENT 1

Rule 256. The Colorado Lawyer Self-Assessment Program

(1) The Colorado Supreme Court Lawyer Self-Assessment Program. The Colorado Supreme Court hereby establishes the Colorado Lawyer Self-Assessment Program. The Colorado Lawyer Self-Assessment Program allows lawyers and law firms to evaluate confidentially and voluntarily the systems and procedures they have in place to promote compliance with professional obligations. The program gives lawyers and law firms the opportunity to improve the quality of legal services offered and to build greater client satisfaction through proactive practice review. This program also promotes access to justice, as well as inclusivity and well-being among lawyers and their staff.

Lawyer participation in this program furthers the objectives in the Preamble to Chapters 18-20 of the Colorado Rules of Civil Procedure.

The Colorado Supreme Court additionally finds that maintaining the confidentiality of information prepared, created, or communicated by a lawyer or by a law firm administrator, employee, or consultant acting under the direction of a lawyer, in connection with a lawyer self-assessment will enhance participation in the Colorado Lawyer Self-Assessment Program, which will further the objectives referenced above.

(2) Definitions. As used in this rule:

(a) “Confidential information” means any information, including, but not limited to, documents, notations, notes, records, writings, and responses prepared or created by a lawyer or by a law firm administrator, law firm employee, or consultant under the direction of a lawyer, in connection with a lawyer self-assessment. Confidential information includes any conclusions or evaluations made by a lawyer or by a law firm administrator, law firm employee, or consultant acting under the direction of a lawyer, in connection with a lawyer self-assessment. Confidential information also includes any oral, written, or electronic communication by or to a lawyer or law firm administrator, law firm employee, or consultant acting under the direction of a lawyer, in connection with a lawyer self-assessment. Confidential information further includes any information generated or communicated as part of a law practice review.

(b) “Lawyer self-assessment” means any lawyer self-assessment tool approved by the Colorado Supreme Court Advisory Committee. This includes both the online survey self-assessment tool and the downloadable and printable survey tool available at www.coloradosupremecourt.com.

(c) “Law practice review” means any oral, written, or electronic communications between a lawyer who has completed a lawyer self-assessment and one or more law practice reviewers for purposes of obtaining feedback and guidance on that lawyer’s practice.

(d) “Law practice reviewer” means a lawyer, and any consultant acting under the direction of a lawyer, who agrees to provide practice feedback and guidance to a lawyer following completion of a lawyer self-assessment.

(3) Program Administration. The Office of Attorney Regulation Counsel shall be responsible for the administration of the Colorado Lawyer Self-Assessment Program.

(4) Confidentiality.

(a) Confidential information shall be privileged, shall be kept strictly confidential, shall not be subject to discovery, and shall not be admissible in any legal proceeding.

(b) Confidential information that lawyers or staff within a law firm communicate with other lawyers or staff in the same law firm and concerning a lawyer self-assessment shall also be privileged, shall be kept strictly confidential, shall not be subject to discovery, and shall not be admissible in any legal proceeding.

(c) No person shall be required to disclose through testimony or by way of subpoena any confidential information.

(d) The Office of Attorney Regulation Counsel shall not collect any personally-attributable answer data from lawyers who participate in the Colorado Lawyer Self-Assessment Program, nor shall any confidential information be used in any investigation or any disciplinary or disability proceeding initiated by the Office of Attorney Regulation Counsel.

(5) Immunity. Any law practice reviewer is immune from suit and liability for damages in any legal proceeding related to participation in law practice review, provided the law practice reviewer acted in good faith. Law practice reviewers shall be relieved of the duty of disclosure of information to authorities imposed by Colo. RPC 8.3(a).

Adopted by the Court _____, 2018.