



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

**MEETING MINUTES
September 11, 2015, 12:00 – 1:30 p.m.
Extra-Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203**

Members present: Chair David W. Stark, Daniel Vigil, Rich Nielson, Dick Reeve, David Little, Steven Jacobson, Brian Zall (by telephone), Nancy L. Cohen, Barbara Miller, Melissa Meirink.

Members absent: Mac Danford, Alexander (Alec) Rothrock, Cheryl Martinez-Gloria, Cynthia F. Covell, Chris Markman.

Liaison Justices present: Justice Nathan (Ben) Coats, Justice Monica Márquez.

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

Staff present: James C. Coyle, Regulation Counsel; James S. Sudler, Chief Deputy Regulation Counsel (Mr. Sudler attended at the end of the meeting); Matthew A. Samuelson, Chief Deputy Regulation Counsel; Margaret B. Funk, 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; Alan Obye, Staff Attorney.

1. Approval of May 15, 2015 Meeting Minutes

The Chair began the meeting by asking if everyone had looked over the minutes from the May 15, 2015 meeting. He asked if there was a motion to accept the minutes. Mr. Little so moved, Mr. Reeve seconded, all were in favor, and the minutes from May 15, 2015 were approved.

2. Approval of June 8, 2015 Budget Meeting Minutes

The Chair referred the committee to the minutes from the budget meeting on June 8, 2015, which occurred by telephone conference. He asked if there were any questions, and hearing none, asked if there was a motion to accept the minutes. Mr. Little so moved, Mr. Nielson seconded, all were in favor, and the minutes from the June 8, 2015 meeting were approved.

3. CLE Rules and Regulations Update

Next, the Chair asked for an update from the subcommittee working on rewriting the CLE rules and regulations. Mr. Samuelson gave the update. He explained that the subcommittee is still working through the rules and regulations. The CLE Board met in late June to discuss whether reading the special issue in *The Colorado Lawyer*, released every October, should be counted as CLE. During that discussion, the Board asked the subcommittee to consider whether individualized CLE activity should be given CLE credits. The subcommittee discussed that issue and incorporated a new category of “self-study” into the revised rules and regulations, which gives lawyers and judges broader discretion on what kind of CLE activity would be relevant to their practice. Mr. Samuelson said the subcommittee is making good progress, and asked if there were any questions. The Chair asked if the new rules would contemplate that lawyers get credit for viewing videos of past CLE programs. Mr. Samuelson explained that one of the CLE requirements under the new rules includes getting a portion of the CLE credits by live credits, and the rest can be earned by home study, which allows viewing recordings of past CLE programs. Ms. Cohen asked if lawyers over the age of 65 would still be exempt from CLE requirements. Mr. Samuelson said the subcommittee is recommending that the age exemption be deleted in the new rules.

4. Attorney Regulation Counsel Employee Handbook

The Chair asked Mr. Coyle to talk a bit about the employee handbook for the office. Mr. Coyle explained that Deputy Regulation Counsel, Margaret Funk, worked very hard in creating this employment handbook. The office wanted to institutionalize the operation of the office which now has 65 employees. The handbook adopts a lot of policies that are very similar, if not identical, to the policies in the judicial branch. He asked Ms. Funk to explain a little more about the employee handbook.

Ms. Funk said the employee handbook is a compilation of chief justice directives and policies regarding employment with the court. The court’s manual expressly excludes the Office of Attorney Regulation Counsel, so the office created its own. She asked if there were any questions. Mr. Reeve said that in the District Attorney’s office, there was a lengthy discussion about what to do if, for example, a spouse or partner of an employee owned a marijuana shop and was getting income from that business. Mr. Reeve said the District Attorney’s office came to the conclusion that the office could not allow that situation to occur because it is a violation of federal law. In that scenario, the employee would have to leave employment with the office. He asked if Ms. Funk and Mr. Coyle had ever come across that question. Mr. Coyle responded that the office was not going to address that particular issue in the employment handbook.

Mr. Coyle added that the office received input from his counsel in the Attorney General’s employment law section. Then, the office sought and received input from the State Court Administrators Office, specifically Chief of Staff Mindy Masias and Personnel Director Eric Brown. Mr. Nielson asked what the office was using before this employee handbook, and Mr. Coyle replied there was no written handbook prior to this one.

5. Approvals of Nominations and Reappointments of Other Committees: Dr. Park for the Character and Fitness Committee, and David M. Johnson for the Attorney Regulation Committee

The Chair moved next to nominations for the Character and Fitness Committee. The Chair of that committee, Mr. Zall, and Mr. Coyle are asking that Dr. Charles Park, M.D. be recommended to the Court for appointment to the Character and Fitness Committee. Ms. Cohen asked how Dr. Park came to be nominated. Mr. Coyle said the committee needed a psychiatrist, and Ms. Ezyk recommended Dr. Park, who specializes in addictions. Mr. Coyle said he and others have interviewed Dr. Park for this role and believe he would be a good addition to the committee. Dr. Park would add a specialty similar to Dr. Doris Gunderson's specialty in the Attorney Regulation Committee. Ms. Cohen said she believes Dr. Park's views are a little different from Dr. Gunderson's, and Ms. Ezyk that they have different styles but COLAP has worked well with both of them. The Chair asked if there was a motion to approve the recommendation of Dr. Park. Mr. Zall so moved, Mr. Reeve seconded, all were in favor, and the recommendation to the Court was approved.

Mr. Jacobson explained to the committee that Mr. Steve Lass' term is ending on the Attorney Regulation Committee, and although the nomination to fill this position was not on today's agenda, he would like the committee to vote on the recommendation today because the next meeting is not until December. He and Mr. Coyle discussed this nomination earlier this year and would like David M. Johnson from Colorado Springs to be recommended to the Court. Mr. Johnson is a family law attorney in Colorado Springs. Ms. Cohen asked whether Mr. Johnson is a solo practitioner, and Mr. Jacobson said he is. Ms. Cohen noted Mr. Johnson is a very good attorney. Mr. Vigil asked if they have reviewed Mr. Johnson's resume. Mr. Coyle said yes, and he is very well qualified. Mr. Jacobson said he would circulate Mr. Johnson's resume to the group. The Chair asked if there was a motion to recommend Mr. Johnson's appointment. Mr. Jacobson so moved, Ms. Cohen seconded, all were in favor, and the recommendation to the Court was approved by the committee.

6. Creation of a Subcommittee on a Conditional Admission Rule; and C.R.C.P. 227, 251.28, 251.29, and 260.6 Supporting Amendments to New C.R.C.P. 211.2.

Mr. Coyle explained that the committee has been thinking of a conditional admission rule ever since the revisions to the admissions rules were completed. Mr. Samuelson and Ms. Melissa Oaks from Character and Fitness have been working on a draft of the conditional admission rule, and it is now ready to be reviewed by a subcommittee. The Chair asked Ms. Ezyk for COLAP's perspective on the conditional admission rule. Ms. Ezyk said there have been situations in the past where people had issues in law school and were monitored, did well, and then once they got licensed, did not feel the need to comply with the monitoring requirements anymore. Those are the people who would benefit from a conditional admission rule. She explained that there have been quite a few successes with monitoring after licensing, but some people have a hard time with monitoring. Not everyone needs to be admitted under a conditional admission rule. She said some states require applicants to attend a law assistance program before they may be licensed. Mr. Coyle added that in other states that do use conditional admission, the rule has been a good tool. The key is to not use it all the time. Studies show that creating a framework for meaningful recovery and having the person under monitoring provides a much better chance of success.

Mr. Jacobson asked how the person applying for admission goes from confidential COLAP monitoring to being admitted under the conditional admission rule, which he assumes is public knowledge. Mr. Coyle said the admission process remains the same, with the applicant going through an extensive application process and going through inquiry panel. A conditional admission rule gives the inquiry and hearing panels an additional tool for those limited circumstances in which the applicant is qualified for admission but has not achieved the medical profession's recommended meaningful and sustained period of recovery from an addiction or mental health condition. The Chair said a real life example would be if someone applied to the bar and there was a showing of drug use in the past, then the Character and Fitness Committee would say the person would not be admitted until that person agreed to be monitored. Mr. Coyle said only those applicants who were identified as having past conduct that could be a problem would be referred to inquiry panel. Mr. Jacobson asked where the conditionally admitted person would go if they failed to comply with monitoring. Mr. Coyle said that would become a revocation proceeding. Ms. Cohen asked about applicants who may have chronic depression and are being treated by a psychiatrist – would those people be referred to inquiry panel too? Mr. Coyle said no, only applicants who had past conduct that raised concerns about essential eligibility requirements would be referred to inquiry panel. The Department of Justice and ADA make it clear that we cannot discriminate based on a person's condition and that we must look at past conduct when engaging in the character and fitness analysis. The conditional admission rule would only be used in circumstances involving addiction and mental health issues that have an effect on the person's ability to practice law.

Ms. Miller asked whether the public would know that a person is conditionally admitted under that rule. Mr. Coyle said his view is that the public would be properly protected even if the fact of conditional admission is kept confidential. Ms. Cohen said she thinks the rule would be fine if it operated like diversion, but it becomes more complicated when mental health issues are involved. Mr. Coyle explained that a few states were running into trouble because they were using the conditional admission rule in too many circumstances, and we will be avoiding that problem in Colorado. Mr. Coyle asked that Mr. Zall be the chair of the new subcommittee, and anyone else who was interested in participating in the subcommittee contact Mr. Samuelson.

7. Other Updates (CAMP, COLAP, OARC, LLLT Subcommittee, PMBR Subcommittee)

CAMP – The Chair asked Mr. Baker to give an update about CAMP. Mr. Baker had two handouts for the committee. One handout shows a map of CAMP programs by judicial district in the state of Colorado, with contact information for each program. He explained that there is a lot of expansion with the programs because most CAMP programs begin in January, which accommodates the July exam-takers who pass in October, but does not immediately benefit the February exam-takers who pass in May. The February exam-takers had been forced to wait until January of the following year to participate in a CAMP program. Now, some programs are starting a second program to begin in the middle of the year to better serve the February exam group. Another change to CAMP programs is the now mandatory requirement for mentors and mentees to learn about the history of Colorado law. Finally, Mr. Baker passed out a handout about the “Special 2015 Fall Boot CAMP: Darrow Comes to the Colorado Supreme Court” program hosted by CAMP and the Denver Bar Association. He invited everyone to attend the special event.

COLAP – Ms. Ezyk gave the update on COLAP. She explained that the COLAP website is now completely updated and has videos featuring Mr. Coyle, Mr. Stark, the Chief Justice, and Ms. Ezyk, which she encouraged everyone to watch. She also notified everyone of the Proclamation from the Colorado Supreme Court declaring January 2016 as “Wellness Month.” As for COLAP contacts, Ms. Ezyk said first contacts to COLAP increased significantly in August of 2015. She noted that the contacts reflect an increase in the reporting of stress, secondary trauma, career development, and mental health. More law firms are coming to COLAP for presentations on mental health. The Chair asked if there was a way COLAP could show a month-by-month comparison of contacts from this year and last year. Ms. Ezyk will check if that is possible. Ms. Cohen asked if the information Ms. Ezyk relayed means that there are more issues of depression among lawyers. Ms. Ezyk said yes, stress and depression usually go together, and at the law school orientations, COLAP handed out information on stress and stress management which were well-received by the students. Mr. Coyle added that COLAP also talked a lot about the confidentiality aspect of their work. Ms. Ezyk thanked everyone for their support.

OARC – Mr. Coyle gave the update on OARC. He said the office has been very busy. There are a significant number of inventory counsel matters that the office is working on. The OBI (Organization of Bar Investigators) conference was hosted in Denver at the beginning of September, at which 75 investigators came for a three-day conference. The programs and speakers were phenomenal, including Justice Márquez who gave the keynote speech. The annual NOBC (National Organization of Bar Counsel) NITA (National Institute for Trial Advocacy) course will be held in Boulder in October, and the office will host that event as well. The office went through a financial audit to make sure the fiscal policy is up to the judicial branch’s requirements, and the office received good recommendations for improvement. An outside CPA will be working with the office to build internal controls as part of those improvements. The new administrative records request rule went into effect and the office has only received two requests so far. The new website is coming along and should be ready to show to the committee at the next meeting. The annual OARC dinner will be on December 11 this year at the new Art Hotel next to the Denver Art Museum. The Admissions conference room has been named after Minoru Yasui, a Japanese American lawyer who fought racial discrimination, to remind everyone of the great responsibility in considering the admission process to practice law in Colorado. The office continues to work with the Chief Justice Commission on diversity, and is working to implement a voluntary survey on race, ethnicity, and sexual orientation of attorneys in Colorado to get the baseline of lawyer demographics in Colorado.

LLLT Subcommittee – The Chair gave the update on the LLLT (Limited License Legal Technicians) Subcommittee because Mr. Rothrock, who is chair of that subcommittee, was absent. The Chair explained that the LLLT Subcommittee has met twice, both meetings generating interesting and competing ideas about what would be best for the community. The goal of the subcommittee wasn’t just about whether Colorado should adopt a LLLT program like Washington, but rather ways to address the justice gap in Colorado and improve access to justice. Many of the people who do not have access to justice are those that fall above the guidelines for legal aid. There have been people from the public attending the meetings. Mr. Rothrock has explained to the subcommittee that majority and minority reports may be submitted to the advisory committee at the conclusion of the subcommittee’s meetings. Ms. Cohen asked if there were a lot of people from

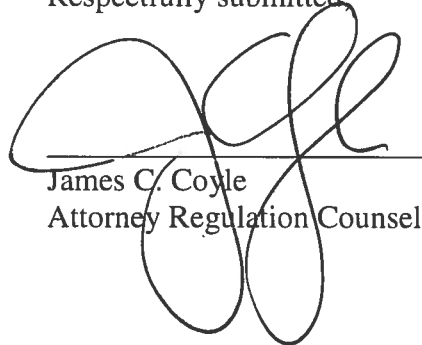
the CBA attending the meetings, and the Chair said yes, there were, and the meetings are being held at the CBA offices.

PMBR Subcommittee – The Chair moved to the update on the PMBR Subcommittee, which is based on the idea and possibility of establishing a regulatory structure where we regulate not just lawyers, but also law firms and lawyer organizations. The idea is to be proactive, helping lawyers and entities establish an ethical infrastructure on the front end rather than after OARC receives complaints. The subcommittee is meeting once a month and making a lot of progress. The Chair noted that the book, “The Relevant Lawyer”, is a great ABA resource and encouraged everyone to read it. Mr. Coyle said we already have CAMP and COLAP, which are two great proactive programs and a great start to our proactive work in Colorado. PMBR would be similar help but for law firms and sole practitioners; however, the subcommittee needs to figure out a way to help solos without imposing too much of a regulatory burden. Smaller firms do not have general counsel to be the natural fit for that role. Ms. Ezyk said that Massachusetts has a LOMAP program, which is a LAP program but for law firms. Mr. Baker asked if the subcommittee has young lawyer members who hung their own shingles, as they may have a helpful perspective on these issues. The Chair said the subcommittee has many solo practitioners participating.

8. Meeting Adjourned

The Chair asked if there was any other business to be discussed. Hearing none, the meeting was adjourned at 1:30 p.m.

Respectfully submitted,



James C. Coyle
Attorney Regulation Counsel