



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE
SUBCOMMITTEE ON PROACTIVE MANAGEMENT-BASED PROGRAM**

MEETING MINUTES
January 18, 2017, 12:00 – 1:30 p.m.
Conference Room 1E
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203

Mr. Coyle welcomed the group. He remarked that on a national level, regulators and thought leaders on proactive management programs are looking to Colorado. They are interested in the work of this subcommittee. The other state actively involved in implementing such a program is Illinois. New Mexico is considering a test project. Mr. Coyle also updated the group on the national PMBP committee and its work ahead (Laurel Terry, David Pink, Susan Fortney, Margaret Drent, Ellyn Rosen, and Jim Coyle). Professor Terry is working on a toolkit which will simplify the creation of self-assessments by other states. Mr. Coyle and Professor Fortney are working on outreach, including to the Conference of Chief Justices.

(1) Update on Status of Working Group Self-Assessments and Next Steps

Mr. White discussed that the ten working groups have turned in final self-assessments and the next step is to refine these assessments for brevity and to add resources. Mr. White mentioned that in order to accomplish this, he will contact the working groups individually to explore whether certain questions can be converted into separate checklists that may be used outside of the actual PMBP assessments for practice pointers. This should preserve content and streamline the assessments. In addition, Mr. White discussed adding educational content to the assessments. The assessments have categories titled “ethical considerations” and “other resources.” These categories need to have links to the Colorado Rules of Professional Conduct, the comments to the Rules, or other resources such as advisory opinions. Mr. White will work with the groups to refine

content with the goal of finalizing content by February 15. This is in anticipation of having beta-testers complete the assessments the week of February 27.

Mr. Coyle mentioned that the content of the self-assessments will not be static. It will need to be updated. At the national level, the ABA hopes to have support staff that continually update their model PMBP. Here in Colorado, how the assessments remain up-to-date is an issue that the subcommittee may need to assess in the future. It is possible that the Office of Attorney Regulation Counsel (OARC) may not perpetually manage the assessments but instead turn over the task to a section of the Colorado Bar Association (CBA).

Mr. Coyle responded to a question as to whether the resources provided in the self-assessments would be considered standards in the disciplinary context for OARC. Mr. Coyle explained that the message to be conveyed to practitioners through the self-assessments is that the resources are just that: resources. Ultimately, how an attorney uses the resources is a matter of professional judgment. Mr. Coyle said it is important that the content of the self-assessments include resources for practitioners to review and consider. This accords with a goal of the program which is to have OARC provide resources to the Colorado legal community that elevate the practice of law in the state. Mr. Coyle further mentioned that if an attorney has completed the PMBP assessment and made progress towards developing an ethical infrastructure through the use of resources and peer review, it may be an issue that OARC considers in offering a diversion or some other alternative to discipline to help that particular lawyer and to improve the self-assessment process, if at all possible.

In response to a question concerning length of the self-assessments, Mr. Coyle said that having each assessment, of which there are ten, take ten minutes to complete was what the subcommittee was striving for. In the end, it may be desirable to shorten the assessments further so that they can be completed in an hour or so. A subcommittee member, Mr. Fernandez, suggested that the self-assessments be designed to be completed incrementally if an attorney so desires.

(2) Technology Platforms and Education Component

Ms. McKnight discussed that the self-assessments will be available for download and online learning. It is likely OARC will allow users to create their own profile to complete the assessments. She mentioned that just having an attorney download an assessment is not enough to offer CLE credit, but that a larger learning opportunity arises if the assessments are on a platform that allows for interaction. For example, if

practitioners answer “no” to a question on an assessment, they would then find the online PMBP assessment takes them to a screen or series of screens with resources and ethical considerations.

Ms. McKnight mentioned that it is possible to design the platform so that there is a record that an attorney has completed an assessment, and OARC can include a disclaimer that the information will not be used against the attorney in any disciplinary proceeding or the self-identifying information of that particular attorney can be removed and only the raw data provided. Ms. McKnight further discussed that at the end of the assessments, attorneys may be able to print out their responses, as well as any accompanying checklists, and they may also get a report card. The goal is to create online assessments that engage users with the hope that this allows the information to sink in more than it might if attorneys simply download an assessment and check boxes.

(3) Marketing

Mr. Coyle reaffirmed that the approach endorsed by the subcommittee of having the self-assessments be voluntary and incentives-based, rather than mandatory, is most desirable to engage the legal community. He noted that Illinois will make PMBP participation mandatory for attorneys who certify that they do not have professional liability insurance.

Mr. Coyle mentioned conducting outreach to local bar associations and subcommittees of the CBA to market the program. The primary PMBP audience among the approximately 26,500 active attorneys in Colorado are solo and small firm practitioners, and of particular interest those attorneys isolated by geography or practice area. Subcommittee members suggested the following approaches:

- Engaging DORA to learn how they have marketed self-assessments.
- Using a promotional page similar to a “splash page” on attorney registration.
- Webinars.
- Promoting PMBP at meetings of organizations like CTLA.
- Keep pushing, pushing, and pushing the program.
- Having a “risk management minute” in the OARC newsletter and in targeted emails.
- Promoting PMBP at professionalism school and “hanging your shingle” programs.

- Having a table at a legal conference where OARC staff can discuss PMBP one-on-one with attorneys.
- Sending direct mailings discussing the program.
- Engaging folks with local bar associations who have done the self-assessment and who can further promote the message among membership.
- Integration into the Colorado Lawyers Helping Lawyers program as an additional resource.
- Media outreach including *Law Week Colorado*, business journals, and local television.
- Reaching out to law schools so that new graduates planning to take the bar are aware of this resource. Law school outreach may also include promotion of PMBP assessments in ethics courses.

(4) Beta-Testing of Self-Assessments

After the working groups undertake a final round of refining and adding resources to the self-assessments, the assessments will be ready for preliminary beta-testing. Mr. Coyle sent out a PMBP schedule which proposes this testing take place the week of February 27, followed by meetings with those involved in testing the week of March 6 for feedback. Mr. Coyle seeks volunteers from the CBA Solo Small Firm Practice section as well as the Lawyer's Professional Liability committee. Several subcommittee members volunteered to help test the material.

(5) Professional Liability Insurance Matters

Mr. Coyle discussed that OARC does not plan to consider the issue of whether to publish the name of an attorney's professional liability insurer along with an attorney's profile for at least a year. Some members of the Solo Small Firm Practice section of the CBA have expressed concerns about this publication. Mr. Coyle said that in conducting a survey of regulators in other states that gather and publish this information, none have identified an issue related to publication of the names of insurers. OARC's goal in collecting this information is to collaborate with solo practitioners to ensure we cover all perspectives when promoting the public interest.

(6) Miscellaneous

- a. Self-assessment privilege: Mr. Coyle said that a working group is exploring an attorney self-assessment privilege so that the PMBP self-assessments are not subject to subpoena or discovery requests in a civil lawsuit.

- b. Introduction to the PMBP assessments: Assistant Regulation Counsel J.P. Moore, Information Resources Coordinator James Carlson, and Mr. White are working on an introduction to the PMBP assessments.
- c. OARC staff involvement in subcommittee. Staff from OARC on the working groups are there to help subcommittee members assemble the assessments and shoulder some of the burden since members have busy practices. If a situation arises where a vote of the subcommittee is needed, the OARC staff would abstain.

Respectfully submitted,

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