



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

December 13, 2019, 12:07 p.m. – 2:15 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, Brian Zall (via teleconference), Cynthia Covell (via teleconference), Dick Reeve (via teleconference), Elizabeth Bryant, Nancy Cohen, Steven Jacobson (via teleconference).

Members absent: Judge Andrew McCallin, Daniel Vigil, Mac Danford, and Sunita Sharma.

Liaison Justices present: Justice Monica Márquez and Justice William Hood.

Office of the Presiding Disciplinary Judge: Presiding Disciplinary Judge William Lucero; Cori Peterson, Senior Staff Attorney.

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); Bryon Large, Assistant Regulation Counsel; Jonathan White, Professional Development Counsel, Office of Attorney Regulation Counsel.

Guests: Charles Goldberg, Chair, Colorado Attorneys' Fund for Client Protection; Violeta Chapin, Clinical Professor of Law, University of Colorado Law School (via teleconference).

1. Approval of the September 13, 2019, Meeting Minutes

The Chair convened the meeting and welcomed Mr. Goldberg, chair of the Attorneys' Fund for Client Protection. The Chair then asked if members reviewed the minutes from the committee's September 13, 2019, meeting. He also asked if there were any changes or additions. There were no revisions proposed. Ms. Miller motioned to approve the minutes. Ms. Bryant seconded the motion. The committee approved the minutes.

2. Presentation on the Issue of Law Licensing for Undocumented Law Graduates

The committee considered the issue of allowing undocumented law graduates to apply for admission to the Colorado bar. Earlier this year, a subcommittee of this committee recommended

revising Question 20 of the Colorado bar application to ask applicants whether they are eligible to work in the United States. The subcommittee made this recommendation in part because it would be more clear that persons approved to remain in the United States under the Deferred Action for Childhood Arrivals (DACA) program may apply for admission to the Colorado bar. The DACA program allows certain individuals without a lawful presence to obtain a work permit. The committee approved that recommendation. The subcommittee also considered, but did not recommend, eliminating the question altogether, finding that work authorization was relevant to the application for admission.

Ms. Yates informed the committee that the United States Supreme Court has heard arguments in recent months supporting a potential move by the Trump Administration to rescind DACA. If this happens, individuals who currently have a work permit issued under DACA could have to answer “no” to the part of Question 20 of the Colorado bar application that asks an applicant if he or she is eligible to work in the United States.

The committee heard from Assistant Regulation Counsel Bryon Large. Mr. Large participated in the subcommittee that earlier this year recommended revising Question 20. He is a former immigration attorney. The committee also heard from Professor Violeta Chapin from the University of Colorado Law School. Professor Chapin teaches in the law school’s Criminal and Immigration Defense Clinic.

Mr. Large explained that there are many people who can work in the United States legally but who may not have a lawful presence under the U.S. Code. He said that one reason there is a debate over allowing undocumented law graduates to obtain a law license involves concerns as to whether a lawyer without documentation or authorization to work in the United States can ethically practice and represent a client without risk to that client.

Ms. Chapin said that one jurisdiction, California, allows an undocumented immigrant to obtain a law license. In its decision in *In re Garcia*, 315 P.3d 117 (Cal. 2014), the California Supreme Court determined that no state law or public policy should preclude undocumented immigrants from obtaining a license to practice law in California. She remarked that beyond the *Garcia* decision from the California Supreme Court, the California legislature has also adopted this approach through rule changes. Other jurisdictions have changed their admissions requirements to allow individuals in the DACA program to become members of the bar. Ms. Chapin said Colorado could adopt the approach taken in California and not inquire about a person’s immigration status. Ms. Chapin said that allowing any person, whether in the country lawfully or not, to obtain a law license does not require the licensing agency to monitor that person’s actual or eventual employment. Ms. Chapin referenced Colorado’s “ASSET” law (Advancing Students for a Stronger Economy Tomorrow), which allows undocumented college students to pay in-state tuition and receive a stipend under the Colorado Opportunity Fund. As part of receiving these benefits, students have to affirm that as soon as they can apply for lawful status, they will do so. Ms. Chapin encouraged the committee to differentiate licensure from employability. She said that obtaining a license to practice law does not mean a person will become employed as a lawyer.

In response to questions from members, Ms. Chapin said that 8 U.S.C. § 1324a, which provides that it is unlawful for a person or entity to hire an unauthorized alien, does not apply to independent contractors unless the person or entity knows the contractor is unauthorized to work. She said that a person could practice law as an independent contractor and the issue is not likely to arise because such violations of law generally are not prosecuted. In her analysis such a person would, in theory, meet the “substantial presence” test which allows the person to establish residence for tax purposes and obtain an Employee Identification Number or Social Security Number.

The committee discussed a number of concerns. These included that admitting undocumented persons to practice law would equate to admitting individuals who could be subject to removal proceedings. This could cause substantial harm to clients. Members also expressed concern about a client’s potential liability for hiring a lawyer who happens to be an undocumented person to represent the client in a legal matter. One member observed that an essential eligibility requirement for sitting for the Colorado bar is the ability to comply with state, local, and federal laws.

A member recommended that the committee revisit the issue depending on whether or not DACA is rescinded. Another member suggested that the committee proactively consider the issue and encouraged the subcommittee to reconvene. Ms. Chapin specifically asked the committee to consider the admission of undocumented law graduates to the Colorado bar regardless of work status.

Ms. Covell motioned to revive the subcommittee to consider specifically the issue of whether undocumented law graduates should be allowed to obtain a law license regardless of their work authorization. Mr. Reeve seconded the motion. The motion carried with support from Ms. Covell, Mr. Reeve, Ms. Bryant, Mr. Jacobson, Ms. Miller, and Mr. Zall. Ms. Cohen and Mr. Rothrock did not support the motion. The Chair asked Ms. Covell to chair the revived subcommittee. Ms. Covell accepted.

3. Discussion of Proposed Changes to Advisory Committee Rule and Summary of Major Changes to Rule 251

Ms. Yates distributed a packet of materials to members prior to the meeting that included a copy of the new proposed rule regarding the Advisory Committee (proposed Rule 242.3) as well as other significant rule changes to Rule 251. These significant changes were highlighted at the committee’s September meeting. The document showing significant rule changes also indicates where a split of opinion exists among members of the subcommittee charged with reviewing and revising Rule 251. Ms. Yates welcomed input on these proposals so that the subcommittee may consider the comments. She thanked Ms. Peterson for her assistance in preparing the documents distributed covering the new Advisory Committee rule and the significant proposed changes to Rule 251.

Ms. Yates reviewed certain new aspects of proposed Rule 242.3. The proposal creates term limits for members whereby members serve one term of seven years. The rule proposal also creates term limits for the chair and vice chair, who may serve an additional seven years after their original term. In addition, under the new rule, the chair of the Board of Trustees for the

Attorneys' Fund for Client Protection serves on the committee. Further, nonlawyer membership on the committee will increase from one to two members. The proposed new rule precludes the chair and vice chair from representing respondents in lawyer discipline matters while serving in those respective capacities.

One matter where there is a split of opinion on the subcommittee is a proposal to amend the rule for expungement of non-public disciplinary records to encompass a five-year period under which these records must be maintained by the Office of Attorney Regulation Counsel (OARC). Currently, the applicable rule, Rule 251.33, features a three-year retention period for such records. These records pertain to matters that are dismissed or where the respondent and OARC agree to an alternative to discipline. The proposal to increase the retention period would track with the five-year limitation period for initiating a complaint against a lawyer (unless the allegation involves fraudulent conduct). Ms. Funk discussed how the proposal would allow OARC to better evaluate new allegations and any potential alternative to discipline where there were prior records that showed an alternative to discipline entered or a matter dismissed. This could be particularly helpful when there is a repeated course of conduct featuring drug or alcohol abuse. One member advocated for keeping the current rule stating that any new allegations should be evaluated based on the conduct that led to that specific complaint. One member suggested that there could be a situation where a respondent lawyer is dishonest in responding to a complaint filed in the five year limitation period and any records that would prove that dishonesty could have been expunged under the current three year rule.

Another area where there is a split of opinion regards a proposal providing that the Presiding Disciplinary Judge (PDJ) lacks the authority in a probation revocation proceeding to modify the conditions or length of probation. Under the proposal, the PDJ would only be able to revoke probation or order that a lawyer's probation remains in effect. The full hearing board panel would need to approve a modification in the conditions and length of probation. One of the committee members believes that the PDJ should retain the authority provided under current Rule 251.7(e) to modify the term and condition of a lawyer's probation.

Justice Hood asked members of the subcommittee present to discuss the rationale behind the proposed amendment to Rule 251 that would provide that stays of discipline are no longer favored pending an appeal. The proposed amendment would require a respondent to demonstrate a stay is warranted. Ms. Funk said stays pending appeal outside the disciplinary rules generally require the party requesting the stay to make a showing that a stay is necessary. She noted that the current rule offering that stays are favored is not consistent with OARC's mandate to protect the public immediately once discipline is imposed. A lawyer could be suspended, seek a stay, and while the matter is on appeal, continue to practice and potentially harm clients. Justice Hood further inquired about the burden of proof required and how it would be allocated. He suggested specificity in any such proposal regarding both of these issues.

Another proposal the committee discussed is the recommendation that Colorado permit resignations in lieu of discipline in certain circumstances. The proposal allows lawyers to resign if OARC determines that no disciplinary or disability matter against the lawyer should prevent the lawyer from resigning, provided that no complaint is pending. Members discussed that this would save resources and allow certain lawyers to leave the practice in grace.

4. Draft Revision to Rule 254 – Colorado Lawyer Assistance Program

Mr. Stark said that a proposal to add administrative updates to Rule 254 will accompany the final proposal for revised Rule 251. Ms. Peyton has also provided a draft of proposed revisions to Rule 255, which pertains to CAMP. These changes are also administrative in nature.

5. Committee Appointments and Re-Appointments

In advance of the meeting, members received a packet containing the resumes of first-time nominees to several committees/boards.

a. Board of Law Examiners – Character and Fitness Committee

Mr. Stark recommended the appointment of Phil Cherner, Kelly McKown, Craig Stoner, Velveta Golightly-Howell, Hon. Betty Strobel, Hon. John Jostad, and Melinda Harper to a first term on the Board of Law Examiners – Character and Fitness Committee. He said that they would be excellent additions to the Character and Fitness Committee. Two nominees, Ms. Harper and Ms. McKown, are non-lawyers. Ms. Cohen motioned to recommend the Colorado Supreme Court appoint these individuals to the Character and Fitness Committee. Ms. Bryant seconded. The motion carried without objection. Mr. Zall thanked Mr. Stark and Ms. Yates for meeting with these applicants.

b. Board of Law Examiners – Law Committee

Mr. Stark recommended appointment of Michael Kirtland and Julia Murrow to the Law Committee and referenced the resumes of each nominee provided in the meeting packet. Ms. Bryant motioned to recommend the Colorado Supreme Court appoint these individuals to the Law Committee. Ms. Miller seconded the motion. The motion carried without objection. These nominees will be recommended to the Colorado Supreme Court.

c. Attorneys’ Fund for Client Protection

Mr. Stark and Mr. Goldberg recommended John Bunting for a first-term membership to the Board of Trustees. Mr. Bunting is a certified public accountant, a forensic accountant, and a certified fraud examiner.

Nominees for service on the Continuing Legal and Judicial Education Committee and the Unauthorized Practice of Law Committee were discussed as follows:

d. Continuing Legal and Judicial Education Committee

Mr. Stark said that Judge McCallin recommends Sam Starritt, an existing member of the Continuing Legal and Judicial Education Committee, be appointed to an additional four-year term. This new term would be effective January 1, 2020.

e. Unauthorized Practice of Law Committee

Ms. Bryant recommended Elsa Djab Burchinow, an existing member of the Unauthorized Practice of Law Committee, be reappointed to an additional three-year term effective January 1, 2020. Ms. Burchinow is an immigration lawyer and has been a valuable member of this committee.

Ms. Miller motioned to recommend Mr. Starritt and Ms. Burchinow to the Colorado Supreme Court for appointment or reappointment to these respective committees. Ms. Cohen seconded. The motion carried without objection.

6. Other Updates

a. PALS Subcommittee

Mr. Rothrock said that several members of this subcommittee will meet with Justice Hart the week of December 16 to discuss the proposal put forward by the subcommittee. Members of the subcommittee also met with the Court to discuss a pilot program proposal. They received positive feedback.

b. Subcommittee on Admission Matters

Mr. Vigil was unable to attend the meeting. Ms. Yates said that the subcommittee is working on a number of recommendations, including dispensing with the requirement that a lawyer applying for on motion admission to Colorado come from a jurisdiction that has reciprocity with Colorado. The subcommittee is also looking at the issue of foreign-educated applicants.

c. Colorado Attorney Mentoring Program

Ms. Peyton discussed CAMP's 2019-2021 Community Engagement Plan, which grew out of CAMP's Strategic Plan. Committee members received a copy of the Community Engagement Plan in the packet of materials distributed prior to the meeting. CAMP's Community Engagement Plan creates a step-by-step, consistent approach to the organization's outreach and partnership with communities in the state's legal profession. The Community Engagement Plan outlines several goals, including growing CAMP's audience and participation, as well as enhancing CAMP's engagement with stakeholders in the Colorado legal community. Ms. Peyton also presented CAMP's 2020 Event Calendar. It features a variety of speakers throughout the upcoming calendar year on topics ranging from professionalism to writing and trial techniques presented from the perspective of judicial officers.

Ms. Peyton further reported that CAMP has seen over 20% growth in the number of mentees and mentors who applied to the program from January 1, 2019, through November 30, 2019, as compared to the same time period in 2018. She noted that the number of program participants seeking CLE credit is declining despite CAMP's continued growth and expansion.

Mr. Stark mentioned that CAMP provided a \$10,000 grant earlier this year to Legal Entrepreneurs for Justice. The committee will likely receive another grant proposal for Legal Entrepreneurs for Justice from CAMP at the March 2020 meeting.

CAMP partnered with the Access to Justice Commission as well as the Colorado Bar Association and Denver Bar Association to build a website geared to lawyers preparing to either retire or scale back practice but who wish to provide pro bono service. This initiative is called “Succession to Service” and the website is “successiontoservice.org.” The website will be beta-tested in coming weeks.

Last, Ms. Peyton said that CAMP will support a pilot project launching out of the Colorado Task Force on Lawyer Well-Being that features a recognition program for legal employers that make a commitment to well-being. This pilot project will launch in 2020.

d. Colorado Lawyer Assistance Program

COLAP has seen a 59.3% increase in the number of contacts from January 1, 2019, to November 30, 2019, and a 33% increase in presentations delivered during that time period compared to the same time period in 2018. Ms. Myers said that when COLAP engages in presentations and outreach, the organization sees a corresponding increase in first-time contacts. Further, COLAP has seen growth in the number of people finding COLAP’s website through Google and then reaching out. Ms. Myers said that this has led to contacts having a greater knowledge base when they initially reach out to COLAP.

COLAP worked this year to refresh its marketing materials and toolkits to make them even more solution-oriented. COLAP has seen an uptick in its collaboration with other organizations, leading to new opportunities for presentations and wellbeing consultations that include “tiers” of services to legal employers in both the public and private sectors. Further, the addition of Amy Kingery, COLAP’s Outreach and Volunteer Manager, to COLAP’s staff has bolstered COLAP’s ability to respond to contacts and their needs.

e. Office of Attorney Regulation Counsel

Ms. Yates reported that OARC developed a series of organizational values and posted those to its website. She explained that OARC had excellent existing values but going through the process of developing a formal set of values was beneficial for current employees and should be helpful in recruiting new employees.

The 2020 attorney registration period is open. A voluntary demographic survey is part of the 2020 registration process as it was in 2019.

The Character & Fitness Committee has been busy in 2019. There has been an increase in the number of inquiry panels so far in 2019 compared to the same time frame in 2018. Meanwhile, there has been a seven percent decline in the number of complaints to OARC for the period of January 1 – November 30, 2019, compared to the same date range in 2018. There has been a 3.1% increase in the number of calls for other information. Ms. Yates said that OARC would be working in partnership with CAMP as well as COLAP on the pilot program for a

lawyer well-being recognition program being launching out of the Colorado Task Force on Lawyer Well-Being.

Ms. Yates announced that the Colorado Lawyer Self-Assessment Program received coverage in the *Los Angeles Daily Journal* in November in an article on proactive regulation. Mr. Goldberg commented that the amount of money claimants are requesting as part of a claim to the Attorneys' Fund for Client Protection has been decreasing, which he said may be due to OARC's education and outreach efforts.

7. Other Business: 2020 Meeting Dates:

- March 13, 2020
- May 8, 2020
- September 11, 2020
- December 11, 2020

8. Executive Session

The full meeting adjourned at 2:15 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