



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

March 19, 2021, 12:05 p.m. – 1:42 p.m.

Conducted via Zoom

Members present: Chair David W. Stark, Nancy Cohen, Cynthia Covell, Steve Jacobson, Hon. Andrew McCallin, Barbara Miller, Henry (Dick) Reeve, Alexander (Alec) Rothrock, Sunita Sharma, Daniel Vigil, Brian Zall

Members absent: Alison Zinn

Liaison Justices present: Justice Monica Márquez, Justice Maria Berkenkotter

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); Amy Kingery, Assistant Director, COLAP; Jonathan White, Professional Development Counsel, Office of Attorney Regulation Counsel

Guests: Several members of the Paraprofessionals and Legal Services (PALS) Subcommittee attended the initial part of the meeting to introduce their proposal. Guests included: Ret. Hon. Angela Arkin of the 18th Judicial District and co-chair of the subcommittee; attorney Maha Kamal, co-chair of the subcommittee; Heather Lang, Family Court Facilitator, Douglas County District Court; Colorado Legal Services attorney Rebekah Pfahler; Ret. Hon. Daniel Taubman of the Colorado Court of Appeals.

Introductions and Preliminary Matters

The Chair convened the meeting. He asked committee members, staff, and guests to introduce themselves. The Chair then thanked Justice Hood for his service as liaison justice to the committee. He introduced Justice Maria Berkenkotter. Justice Berkenkotter now serves as liaison justice to the committee from the Colorado Supreme Court along with Justice Monica Márquez. The Chair further noted Mr. Vigil will receive the William Lee Knous Award from the University of Colorado Law School as part of its 40th Annual Colorado Law Alumni Awards Celebration in June.

1. Approval of the December 11, 2020 Meeting Minutes

Members received a copy of the December meeting minutes prior to the meeting. The Chair asked if members had any changes or corrections to be made following review of the minutes. Hearing none, the Chair asked for a motion to approve the minutes. Mr. Reeve so moved, and Ms. Sharma seconded. The December meeting minutes were approved.

2. Discussion of the PALS Subcommittee Proposal to Implement a Licensed Paralegal Program

The Chair noted the PALS subcommittee submitted a proposal for the committee's consideration that was included in the packet of materials distributed prior to the meeting. The Chair, who serves on the subcommittee, explained the subcommittee wanted to provide the committee with preliminary information today and that subcommittee members were available to answer questions. The subcommittee did not expect a vote on the proposal at this meeting. The Chair intends to ask members for a vote at the upcoming May meeting to recommend the proposal to the Colorado Supreme Court for the Court's consideration.

Judge Arkin provided an overview of the proposal. While the proposal is largely complete, the subcommittee continues to gather feedback from various constituencies, including the family law bar, paralegals, and educators. The subcommittee has already received substantial and helpful feedback from constituencies.

The subcommittee envisions creating a "Licensed Legal Paraprofessionals" ("LLP") program in Colorado. Judge Arkin discussed the need that the proposal seeks to meet. The need arises from the large number of parties to domestic relations cases in Colorado who are not represented by counsel. In fiscal year 2020, 73% of parties in domestic relations matters in Colorado were not represented. This figure has been consistent for many years. While a number of Colorado lawyers offer "unbundled" legal services and these services are helpful, limited-scope representation has not met the demand that exists in the domestic relations arena. This demand pressures courts, including judges, family court facilitators, and self-represented litigant coordinators. Family court facilitators and self-represented litigant coordinators cannot provide legal advice. They do not have the time to address the many unique and important questions these individuals and families have about their cases. Judge Arkin noted that the rules of equity apply in domestic relations matters. This requires the sharing of a significant amount of information, which creates additional challenges for all involved. The process is not simple, and LLPs will help provide assistance. They will ideally decrease the number of self-represented litigants seen throughout Colorado in domestic relations dockets.

Judge Arkin reviewed the following highlights of the proposal:

- Financial Cap: LLPs may represent a party in a domestic relations matter if the parties have less than \$200,000 in combined net marital assets. If the marital estate has over \$200,000 in assets, a LLP may represent a party only if the court finds good cause for such representation based on specific factors.
- Scope: LLPs will have a specific practice scope. They would be able to assist a party in most types of domestic relations matters that are not of great complexity. The proposal distributed to members described specific tasks LLPs can perform. This includes work on motions for contempt citations pursuant to C.R.C.P. 107.
- Matters Outside LLPs' Scope: LLPs may not engage in cases featuring questions of common law marriage, the drafting and interpretation of marital agreements ("pre-nups" and "post-nups"), and matters involving contested jurisdiction. If a LLP has a case that

comes to feature these issues, the LLP would need to notify the client that the client should consult counsel.

- Discovery: the subcommittee continues to discuss whether LLPs may be involved in discovery. It might be desirable for LLPs to participate in discovery involving pattern questions. There are concerns that discovery can be too challenging. Judge Arkin discussed that non-disclosure issues add complexity to discovery in domestic relations cases.
- Ethics: the proposal recommends LLPs be guided by the Colorado Rules of Professional Conduct where relevant. The proposal outlines specific modifications to Colorado Rules of Professional Conduct to create a set of ethics rules that apply to LLPs and their scope of work.
- Training/Licensure: the proposal features a minimum degree requirement coupled with at least 1,500 hours of substantive law-related experience in the three years before submitting an application for licensure. The substantive law training hours must feature at least 500 hours of Colorado family law experience. License requirements include two licensure examinations, specific course work in ethics and family law, and a character and fitness background investigation. LLPs would need to complete continuing legal education.

The subcommittee looked closely at a “Licensed Paralegal Practitioner” program implemented recently in Utah. Judge Arkin said that Washington state had a “Limited Licensed Legal Technician” (LLLT) program that the Washington Supreme Court has decided to sunset, although individuals licensed in that state as LLLTs will still be allowed to practice under the limited-license scheme established. Other states are considering proposals to create a licensing scheme for non-lawyer legal services. Judge Taubman commented there is a national and international effort afoot around this issue as a means to address significant access to justice issues. He stressed that the proposal would make the court system more efficient because LLPs will be able to frame issues for litigants and put them in perspective.

The subcommittee took questions from members. These included questions about the impact of the program established in Utah. The Chair said that the Utah program is in demand, though it is still too early to gauge the extent of the impact of the program.

Judge Arkin thanked the PALS subcommittee members for their commitment to this effort as well as the subcommittee for considering the proposal.

3. Additional Changes for Consideration for Proposed UPL and Attorney Discipline Procedural Rules

Ms. Yates sought the committee’s feedback on additional changes to the proposed unauthorized practice of law (UPL) and attorney discipline procedural rules pending before the Colorado Supreme Court. She said she has informed the committee’s liaison justices of the need for this committee’s input on the limited additional changes to recommend to the Court. The Court held a hearing on the proposed changes to the UPL and attorney discipline procedural rules on February 10.

First, Ms. Yates asked members for input on a proposed effective date for the rules under consideration. The working group that developed the proposed changes to the attorney discipline procedural rules recommended July 1, 2021. Members agreed that July 1 should be proposed.

Second, Ms. Yates drew the committee's attention to a footnote in proposed C.R.C.P. 232.2, comment 2, that relates to the definition of UPL. She recommended removing this footnote. The proposed footnote cites cases and authorities describing what may or may not be considered the practice of law. Ms. Yates noted that the Colorado Supreme Court typically has not cited case law in footnotes to rules. Further, the cited authorities discussing these activities could change. In addition, Ms. Yates said it may be preferable for the Court to consider specific situations that may constitute the unauthorized practice of law in discrete cases. In response to a question concerning what activities may constitute or not constitute the unauthorized practice of law, Ms. Yates said that the Office of Attorney Regulation Counsel does not pursue UPL complaints in situations where a family member is sitting at counsel table with another family member and offering support but is not in the marketplace purporting to provide legal services.

Third, Ms. Yates informed the committee that proposed C.R.C.P. 232.9 contains a new requirement that the Office of Attorney Regulation Counsel obtain permission from the Chair and Vice Chair of the Legal Regulation Committee before opening an investigation in a UPL matter. While this would be consistent with attorney discipline procedural rules, Ms. Yates explained that regulation in UPL matters does not feature regulation of attorneys and has a strong consumer protection purpose. The attorney general's office and a district attorney's office would not need to obtain permission to investigate a consumer fraud complaint. Further, obtaining the permission from two lawyers to investigate a non-lawyer's unauthorized practice of law may not be appropriate. Mr. Jacobson, Chair of the Legal Regulation Committee, commented he did not believe his approval should be sought for unauthorized practice of law investigations.

Ms. Yates noted that a letter she circulated prior to the meeting contained some additional and minor, non-substantive revisions to the proposed draft rules before the court.

Mr. Reeve moved to approve the additional changes outlined by Ms. Yates to the proposed UPL and attorney discipline procedural rules and recommend them to the Colorado Supreme Court. Mr. Vigil seconded the motion. The motion passed without opposition and these additional changes will be sent to the Court.

Following this discussion, Ms. Yates informed the committee that the working group that developed the proposed changes to the UPL rules strove to incorporate into the draft rules meaningful sanctions if a non-lawyer continues to engage in UPL despite orders enjoining this activity. The proposed rule changes aim to deter continued UPL activity by allowing the Office of Attorney Regulation Counsel to pursue a contempt citation against the non-lawyer who ignores court orders. It has been brought to Ms. Yates' attention that the proposed rules contain only punitive contempt as a sanction. It may be desirable to have a remedial contempt sanction that gives a person the opportunity to purge the contempt. Following this discussion, a sub-group including Ms. Yates and Judge McCallin will look at the proposal and consider ways to refine the sanctions to permit a person to purge the contempt. They will be guided by the principle of creating incentives for compliance with court orders and deterring further non-compliance.

4. Request for Approval of the State Public Defender's (OSPD) Peer Support Team Designation as a Peer Assistance Program Pursuant to C.R.C.P. 251.34(b)(9.5)

The OSPD applied for approval of its Peer Support Team as a peer assistance program pursuant to C.R.C.P. 251.34(b)(9.5). This is the first time the OSPD has submitted such a request. Motivating the request is a desire to relieve the Peer Support Team of the obligation to report misconduct. As explained in a letter from OSPD contained in the materials circulated to committee members, the Peer Support Team is a support resource. It provides referrals for public defenders who may be dealing with grief, anxiety, depression, or there is an issue in the work space. Mr. Jacobson moved to approve the request. Mr. Reeve seconded the request. The motion carried without opposition. The Chair said the request for an order from the Court approving this application should include a request the designation be made *nunc pro tunc* to the date of the application.

5. Other Updates

a. Colorado Attorney Mentoring Program (CAMP)

CAMP ended 2020 with overall mentee applications exceeding 2019's numbers. This is despite a lull in activity in the spring months with the onset of the pandemic. CAMP's efficacy metrics remained in the 90 percent range in 2020. Ms. Peyton also reported positively on the first quarter of 2021 and CAMP's utilization in this period.

CAMP welcomed Courtney Sommer, who will serve as the new Education & Outreach Staff Attorney. Ms. Sommer will assist with mentor and mentee matching. She will also resume CAMP's Community Engagement Plan, which was postponed in 2020 due to the pandemic. CAMP's Community Engagement Plan, formulated in 2019, aims to refine best practices and methods for engaging lawyers around the state in mentoring. It incorporates travel and dialogue with stakeholders across Colorado.

Ms. Peyton said the pilot program for the Colorado Supreme Court Well-Being Recognition Program for Legal Employers held its last collaborative session March 8. The participants will generate an action plan for their practice and/or law firm. Meanwhile, data collected from the pilot will be incorporated into a report to the Colorado Supreme Court. That report will include recommendations for shaping a well-being recognition program for legal employers as a standard program of the Court.

b. Colorado Lawyer Assistance Program (COLAP)

Ms. Myers reported COLAP concluded 2020 having witnessed an initial decline in contacts to the program during the spring months. This trend reversed, and the year finished with COLAP seeing higher numbers of contacts for all of its services than it has in the past. Ms. Myers believes the number of requests for assistance will remain elevated until the Covid-19 pandemic begins to subside.

Ms. Myers noted COLAP celebrates its tenth anniversary on January 1, 2022. She and her team are evaluating ways to promote the anniversary and COLAP's service to the Colorado legal community.

c. Office of Attorney Regulation Counsel (OARC)

Ms. Yates reported the February 2021 bar exam took place remotely with 313 examinees. The administration went well. No examinee was unable to take the exam because of a technology-related issue. The Colorado Supreme Court has approved remote administration of the July 2021 Colorado bar exam. Administering the July exam remotely depends on the National Conference of Bar Examiners (NCBE) supporting a remote examination.

The annual attorney registration cycle is nearly complete. OARC collects late fees on registration starting in March. It appears OARC will see stable revenue from the 2021 registration cycle in an amount similar to previous years.

The Colorado Supreme Court set a public hearing for April 6 on the proposed rule changes approved by this committee to require equity, diversity, and inclusivity continuing legal education. The Court also set an April 7 public hearing on revisions to the admissions rules that were approved by this committee in September 2020.

d. Legal Malpractice Subcommittee

Mr. Vigil chairs this new subcommittee. It convened for the first time in January and will meet again in the coming weeks. The subcommittee is working on collecting data at this preliminary stage to inform its work. The Chair noted the LLP proposal presented to the committee leaves open the question of requiring LLPs carry insurance. This is intentional in order to determine how any proposal from the legal malpractice subcommittee impacts LLPs.

6. Future 2021 Meeting Dates and Adjournment

- May 21, 2021
- September 17, 2021
- December 10, 2021

The Chair asked if there was a motion to adjourn the meeting. Mr. Vigil so moved and Mr. Reeve seconded. The motion carried without opposition and the meeting concluded at 1:42 p.m.

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