



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES
May 21, 2021, 12:05 p.m. – 1:50 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

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

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 first part of the meeting to further detail their subcommittee's proposal, which they initially presented at the committee's March 2021 meeting. 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; Ret. Hon. Daniel Taubman of the Colorado Court of Appeals; Colleen McManamon, a paralegal, mediator, arbitrator, and trained Parenting Coordinator / Decision Maker who has also been appointed as a child-family investigator.

1. Request for Approval of the PALS Subcommittee Recommendations and Report

The Chair welcomed members and guests. The meeting began with discussion of the report and recommendations of the PALS subcommittee and a request for approval of the report. Members received the report and recommendations in advance of the meeting. Judge Arkin introduced members of the PALS subcommittee. She mentioned the subcommittee revised certain recommendations since the March presentation.

Judge Arkin explained the subcommittee continues to recommend the Colorado Supreme Court implement a "Licensed Legal Paraprofessionals" ("LLP") program in this state. LLPs would be able to assist parties in domestic relations cases featuring relatively uncomplicated issues. This licensure would make a difference for many litigants in domestic relations matters who are currently unable to afford attorneys. Judge Arkin emphasized that the proposal creates an

alternative to no representation, which is desirable, given that 75% of litigants in domestic relations matters in Colorado are unrepresented. LLPs also meet a need for representation among litigants who do not qualify for Colorado Legal Services.

Judge Arkin reviewed the updated proposed scope of representation. The subcommittee recommends LLPs be authorized to assist parties in cases where there are less than \$200,000 in combined net assets, unless good cause is shown for a court to permit LLP representation in a matter featuring marital assets in excess of that amount. Moving to the scope of substantive legal issues, LLPs could not assist with punitive contempt actions due to Fifth Amendment concerns and the potential availability of appointed counsel. Other matters falling outside the proposed scope of representation are those involving trusts, common law marriage, marital agreement litigation, contested jurisdiction, and non-pattern discovery. Judge Arkin noted if a LLP works with a lawyer, together they may assemble a team to handle all aspects of the representation if the matter involves more complex issues. The lawyer could provide limited-scope representation on discrete matters outside the LLP's scope. Judge Arkin noted that when an issue falls outside of a LLP's scope of work, he or she must explain to the client that he or she cannot assist with a discrete issue.

A LLP could assist with pattern discovery, but not non-pattern discovery and depositions. The subcommittee made this recommendation based upon feedback from other jurisdictions that have allowed non-lawyer representation in domestic relations matters. To facilitate a LLP program and the intended scope, the subcommittee recommends amending Colorado Rule of Civil Procedure 16.2 to require court approval for the parties to a domestic relations case to engage in discovery. This would be advantageous to LLPs as they evaluate the representation and whether it is within their scope. It may also help prevent an opposing lawyer from engaging in non-pattern discovery in order to remove a LLP from that portion of the case.

Judge Arkin reviewed suggested licensure requirements. These include minimum educational requirements and the expectation that every person licensed as a LLP complete a "Colorado LLP Family Law Examination" and a "Colorado LLP Professional Ethics Examination." An additional licensure requirement is that LLPs complete 1,500 hours of substantive law-related experience in the three years prior to applying for LLP licensure, with at least 500 hours of Colorado family law experience. The subcommittee developed a "grandfathering provision" to allow the Colorado Supreme Court to waive minimum educational requirements for three years from the date that the Court begins to accept applications for licensure where certain conditions have been met. The proposal includes provisions that LLPs complete mandatory continuing legal education, pay an annual registration fee, and be subject to a set of ethics rules modified from the Colorado Rules of Professional Conduct.

In response to questions, Judge Arkin said that the subcommittee closely considered the 1,500 hour requirement substantive law-related experience. She said that Utah uses a 1,500 hour requirement. Ms. McManamon said the subcommittee wanted to ensure that LLPs have a certain level of education and experience before they being working with parties. Separately, Judge Arkin noted that the subcommittee was not inclined to recommend LLPs carry malpractice insurance unless that becomes a mandate for lawyers practicing in Colorado.

Several committee members suggested that the \$200,000 net marital assets cap be increased in light of the average home price in Colorado. Doing so may reduce the number of

requests for exemption that courts must entertain. Judge Arkin explained that this is a net figure that includes marital assets less marital debts. Members discussed that the current proposed figure may need to fluctuate to reflect economic conditions. The Chair observed that the proposed cap is based on guidance from bankruptcy law.

Members discussed revising the proposal to change the term “grandfathering provision” on page 8. They also considered whether a new law school graduate would have to go through the LLP licensure requirements if that person chose not to sit for the bar examination. Judge Arkin said that the subcommittee’s intent is that the licensure requirements must be met regardless of whether someone has a law degree because it is critical LLPs have education in Colorado family law. Additional discussion included whether LLPs will have attorney-client privilege. Judge Arkin said that the subcommittee anticipates that LLPs will have a legal privilege surrounding client communications. The subcommittee also expects that certain fundamental ethical duties such as that of confidentiality will apply to LLPs. Judge Taubman said that Utah and Washington have developed a separate code of conduct for limited-license technicians. The subcommittee envisions that if the committee and the Colorado Supreme Court approve this proposal, a separate “implementation” committee would need to draft rules for key aspects of the program, including professional conduct and discipline procedures.

Members discussed that a desirable outcome would be to leverage the availability of LLPs as well as technology to assist litigants in rural parts of the state.

Ms. Cohen moved to approve the subcommittee’s report and present it to the Colorado Supreme Court with amendment to change the term “grandfathering.” Mr. Reeve seconded the motion. The motion carried without opposition.

2. Approval of the March 19, 2021 Meeting Minutes

The Chair asked if members had any changes to recommend to the draft of the March meeting minutes. Hearing none, the Chair asked for a motion to approve the minutes. Mr. Reeve so moved, and Mr. Jacobson seconded. The March 19 meeting minutes were approved.

3. Discussion of the FY2022 Annual Budget Proposal for the Office of Attorney Regulation Counsel (OARC) and Offices Funded by Attorney Registration Fees

Office of Attorney Regulation Counsel (OARC)

Ms. Yates provided members in advance of the meeting with spreadsheets and highlights of both fiscal year 2021 budget trends and the fiscal year 2022 budget. Overall, OARC and other offices funded by attorney registration fees spent over \$1,000,000 less than projected revenues for the current 2021 fiscal year. The 2021 attorney registration cycle ended with an increase in active attorney registrations.

Fiscal year 2021 generated a number of pandemic-related expenses for OARC, such as the need to provide all staff with laptops for remote work. There were also unplanned expenses to allow the July 2020 bar examination to take place in person, as well as to accommodate a remote bar examination in February 2021. Despite these pandemic-related expenses, overall expenditures came in under budget.

In the upcoming fiscal year, OARC will add a new full-time employee (FTE) position, a controller. The State Court Administrator's Office (SCAO) previously provided the services the new controller position will cover but SCAO is no longer able to do so. OARC hired a person to fill this position starting June 1, 2021. Another expense in the proposed budget is investment in a new CLE database which will integrate with OARC's current attorney registration system. The current CLE database needs to be retired. Ms. Yates commented that the new database will be compatible with the new equity, diversity, and inclusivity CLE rule approved this spring by the Colorado Supreme Court.

OARC is seeing a rise in the number of complaints in 2021 compared to previous years. The office is on track to see potentially 500 more complaints this year as opposed to 2019 and 2020. Ms. Yates said that complaints increased following the last recession approximately a decade ago. The increase is already being felt in the office's intake and trial divisions. The proposed fiscal year 2022 budget includes a three percent salary increase for employees.

Members inquired about, and Ms. Yates addressed, the Attorneys' Fund for Client Protection claim awards in the current fiscal year. The Board of the Attorneys' Fund for Client Protection determined to pay a single \$850,000 claim resulting from one attorney's conversion of client funds. The fund remains stable with an approximate balance of \$4,500,000.

OARC and the Office of the Presiding Disciplinary Judge do not anticipate that court filings with the Presiding Disciplinary Judge will move online in the coming fiscal year. Judge Lucero said that his staff works diligently to accommodate requests to view files.

COLAP

Ms. Myers said COLAP is on track to be under budget for the current fiscal year. Looking ahead, COLAP needs a new database. COLAP's fiscal year 2022 budget proposal contemplates the database build-out, an expense that will be recouped in a year due to a lower subscription fee. COLAP's 10th anniversary is January 1, 2022, and the upcoming 2022 fiscal year budget proposal features a modest budget for anniversary materials.

CAMP

Ms. Peyton said that CAMP's proposed budget envisions the office returning to pre-pandemic operations. The proposal also reflects CAMP having a new FTE staff attorney position, as well as an annual \$10,000 contribution to Legal Entrepreneurs for Justice.

Office of the Presiding Disciplinary Judge

Judge Lucero commented that the upcoming fiscal year budget for his office recommends a merit-based salary increase for a staff attorney.

At the conclusion of the discussion regarding the 2020-2021 fiscal year budget, Mr. Reeve moved to approve the proposed budget for OARC and other offices funded by attorney registration fees and recommend the proposed budget to the Colorado Supreme Court for review and approval. Mr. Jacobson seconded the motion. The motion carried without opposition.

4. Update of Rules Regarding Continuing Legal and Judicial Education and Admissions to Practice Law in Colorado

Ms. Yates informed members that the Colorado Supreme Court approved adding the requirement that Colorado lawyers complete at least two hours of education in equity, diversity, and inclusivity topics as part of each CLE compliance period. This requirement commences with attorneys in the three-year compliance period that began on January 1, 2021. In addition to these two credit hours, lawyers will need to complete five credit hours in legal ethics or legal professionalism. The Chair commended the Continuing Legal and Judicial Education (CLJE) Committee's work, including Judge McCallin and vice-chair Natifa Miller's leadership in helping develop and steer the rule proposal.

Ms. Yates also mentioned the Colorado Supreme Court issued amendments to the Rules Governing Admission to the Practice of Law in Colorado following a proposal submitted to the Court that was approved by this committee in September 2020. The amendments eliminate the reciprocity requirement for on-motion applicants. They extend the amount of time a MPRE score may be used in association with a bar application. Meanwhile, portions of the proposal related to foreign-educated Colorado bar applicants were not approved. Ms. Yates will convene a group to review that proposal, gather more information from other jurisdictions, and revise it.

5. Legal Regulation Committee Appointment Approval

The Chair informed members that Luis Terrazas is resigning from the Legal Regulation Committee effective July 31, 2021. Mr. Jacobson, Chair of the Legal Regulation Committee, asks for Kristin Shapiro to be appointed to replace Mr. Terrazas. Ms. Shapiro lives in Pueblo, teaches in Florence, Colorado, and has a demonstrated commitment to community service. She understands the role the Legal Regulation Committee plays in the attorney discipline process. Members received a nomination letter and Ms. Shapiro's résumé prior to the meeting. Ms. Miller moved to appoint Ms. Shapiro to the Legal Regulation Committee. Mr. Reeve seconded. The Motion carried without opposition.

6. Other Updates

a. CAMP

Ms. Peyton provided members with a written report in advance of the meeting. Among the highlights in the report are that CAMP is seeing an increase in new mentee applications compared to the same time period in 2020. There has been a minor delay in CAMP's matching of mentors due to time spent onboarding new staff. Meanwhile, the number of new CAMP mentors has declined, but this reflects a positive trend: current mentors are remaining active with the program and willing to continue to volunteer their time.

CAMP released its 2020 Annual Report recently. Ms. Peyton emphasized that in a time of crisis, CAMP engaged with the Colorado legal community and provided needed resources. For example, over 800 lawyers attended CAMP's monthly CLE webinars last year.

CAMP continues its leadership of the Colorado Supreme Court Lawyer Well-Being Recognition Pilot Program. Colorado Lawyer Well-Being Learning Pods have arisen out of the

pilot program, which CAMP is convening. The learning pods form a space for members to share their experience and lessons in working to advance well-being in their workplaces. They are also a space to receive feedback. The pods launched in March 2021 and will conclude in August 2021.

b. COLAP

Ms. Myers reviewed the highlights of COLAP's 2020 Annual Report. COLAP saw an increase across the board in its numbers last year. It received over 1,000 requests for assistance. Its educational presentations reached over 17,000 members of the Colorado legal community. The shift to Zoom as a platform to present to and engage with lawyers offered an important way to stay connected and reach lawyers throughout the state. Though COLAP had hoped to see a decrease in requests for assistance in the current calendar year with a gradual return to normal following the rollout of vaccines, this has not been the case. COLAP continues to see a high volume of calls. Ms. Myers told members that COLAP's confidentiality has also played an important role in generating contacts from colleagues and family members concerned about a legal professional during this stressful period.

Ms. Myers advised that COLAP is seeing an increase in "therapeutic entrepreneurs" looking to provide assistance to Colorado lawyers. She said that while many of these individuals may have altruistic motives, many also lack the proper credentialing to provide mental health or substance use disorder treatment or therapy. In light of this trend, COLAP will continue to educate Colorado lawyers to be discerning consumers of mental health resources.

c. OARC

The Colorado Supreme Court issued new rules of procedure regarding attorney discipline and disability on May 19. Ms. Yates informed the subcommittee members that worked on the rule revisions of this development, and she circulated a red-line document to members of the committee and subcommittee showing the Court's changes to the draft rules approved by the committee.

d. Legal Malpractice Subcommittee

Mr. Vigil reported this subcommittee met for a second time recently. Its members decided to gather more data about whether potential clients research whether a lawyer they want to hire carries professional liability insurance. The subcommittee is exploring whether to recommend requiring lawyers make a disclosure to clients about whether or not they have professional liability coverage.

e. The Colorado Supreme Court Lawyer Well-Being Recognition Pilot Program

Ms. Peyton reported the core activities of the pilot program concluded in March. She is working to collect final data as well as organizational action plans from the pilot program participants. She and the planning committee for the pilot program will work on a final report that she anticipates concluding in July.

7. Remaining 2021 Meeting Dates

- September 17, 2021
- December 10, 2021

The meeting adjourned at 1:50 p.m.

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