



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

September 13, 2019, 12:00 p.m. – 1:40 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, Judge Andrew McCallin, Barbara Miller, Brian Zall (via teleconference), Cynthia Covell, Daniel Vigil, Dick Reeve, Elizabeth Bryant, Mac Danford, Nancy Cohen (via teleconference), Steven Jacobson

Members absent: Sunita Sharma

Liaison Justices present: Justice Monica Márquez and Justice William Hood

Office of the Presiding Disciplinary Judge: Cori Peterson, Staff Attorney

Staff present: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Ryann Peyton, Director, Colorado Attorney Mentoring Program (CAMP); Sarah Myers, Executive Director, Colorado Lawyer Assistance Program (COLAP); Amy Kingery, Outreach & Volunteer Manager (COLAP); Jonathan White, Professional Development Counsel, Office of Attorney Regulation Counsel

Guests: Hon. Daniel Taubman; Hon. Adam Espinosa; Stephen Daniels, Ph.D.; Steven Vasconcellos

1. Approval of May 10, 2019, Meeting Minutes

The chair convened the meeting and after introducing guests, he asked if members had read the draft minutes from the committee's May 10 meeting. Mr. Reeve motioned to approve the May 10 minutes. Ms. Bryant seconded. The committee approved the minutes.

2. Consideration of Providers of Alternative Legal Services (PALS) Subcommittee Final Report

The PALS Subcommittee formed to study a cutting-edge program in Washington state and evaluate whether Colorado should adopt a similar program. The Washington program involved the licensure of limited license legal technicians ("LLLTs") trained and authorized to provide certain legal services. The LLLTs are non-lawyers. Until Washington created this program, the only persons who could represent clients in the provision of legal services in the United States were lawyers.

Mr. Rothrock chairs the PALS Subcommittee. He explained that there are a great many cases at the district court and county court level in Colorado where litigants cannot afford lawyers, creating a burden for the court system. This can also lead to poor outcomes for these litigants. Mr. Rothrock highlighted data in the report of the PALS Subcommittee showing that 98 percent of defendants in county court civil matters do not have an attorney to represent them. This problem is not unique to Colorado. It exists nationwide. Washington sought to address the issue through its LLLT program where non-lawyers may help litigants and non-litigants do things lawyers traditionally were authorized to do. The PALS Subcommittee looked at Washington's work and spoke to individuals from the Washington State Bar Association to study the feasibility of an analogous program in Colorado.

Licensing non-lawyers to perform legal services is complex. The PALS Subcommittee wrestled with a number of issues. Those issues include:

- How to protect the public from a person who is not qualified or competent to deliver legal representation?
- What is the scope of representation that non-lawyers should be allowed to engage in?
- Should a person who is not a lawyer even be permitted to represent clients in legal matters?
- Who pays such non-lawyer professionals? Should it be a free market model?
- Relatedly, who pays for the education of such professionals? Do they pay for education through a private institution, or should their training come from the state?

Washington, and now Utah, have adopted a free market model allowing non-lawyers to obtain licensure for a profit. The PALS Subcommittee's perspective became that any system that allows non-lawyers to engage in legal representation must somehow financially incentivize such a career so that these individuals can make a living and afford practice overhead.

The PALS Subcommittee would like this committee to adopt its report and authorize the report's submission to the Colorado Supreme Court for consideration. Mr. Rothrock noted many stakeholders' input went into the draft report. The report recommends a pilot project where non-lawyer volunteers receiving training in evictions cases, an area featuring a high number of litigants proceeding without representation, would be able to represent litigants in a limited capacity. The pilot program should have two different locations. One should be a judicial district in an urban area and the other a judicial district in a rural area. The purpose of the pilot program is to determine whether Coloradoans would benefit from the provision of certain legal services by non-lawyers. The report of the PALS Subcommittee does not recommend that these non-lawyers be allowed to represent clients at trial. They could sit at counsel table and answer questions from the judge if posed. These non-lawyers would play an essential role in educating their clients. The report recommends recruiting non-lawyer participants for this pilot program in part from Arapahoe Community College as well as other community colleges. At the conclusion of the pilot program, a final report would be submitted to this committee with an explanation of findings, conclusions, and recommendations.

The PALS Subcommittee proposes a pilot program because of the complex issues licensure of non-lawyers presents. A pilot would provide feedback and data that would be beneficial to have before creating a full apparatus of licensure.

Mr. Stark recognized the members of the PALS Subcommittee in attendance as guests: Judge Daniel Taubman of the Colorado Court of Appeals and Judge Adam Espinosa from Denver County Court. Steve Vasconcellos, acting State Court Administrator, also had previously participated in the subcommittee. Advisory Committee members Cynthia Covell and Dan Vigil were also active participants. Mr. Stark noted other jurisdictions have been considering authorization of the provision of certain legal services by nonlawyers. Utah recently permitted such services under a new program. Arizona and California are also studying the matter. It is matter of growing importance. Further, one of the issues that the pilot program hopefully will clarify is who is the client base. Are they individuals who would not qualify for legal aid? Are these services that individuals of moderate income would utilize?

Ms. Covell noted that the PALS Subcommittee included individuals familiar with the areas of law considered for a pilot program.

Committee members posed questions to members of the PALS Subcommittee. These included what criteria the PALS Subcommittee proposed to determine the success of the pilot program. The report recommends looking at evictions avoided, the number of settlements, and the amount of cases resulting in more time for a tenant to vacate the leased property. Other questions included whether the PALS Subcommittee was open to having paralegal programs beyond Arapahoe Community College be a source of recruitment. Mr. Rothrock said that the PALS Subcommittee would welcome involvement and recruitment from other paralegal training programs. One member asked whether the LLLT licensing scheme in Washington included a malpractice insurance requirement. Any committee charged with implementing the pilot program may want to investigate that discrete issue.

Mr. Stark added that steps following the submission of the PALS Subcommittee's report could include the Colorado Supreme Court creating a task force to begin working on all the details of the administration of the pilot program. There is precedent for this in the creation of the Self-Represented Litigant Coordinator (SRLC or "Sherlock") program which started small and expanded. According to the report, the State Court Administrator's Office could be a source of funding. That office may also monitor the pilot program.

Judge Espinosa added that this proposal gives the Court an opportunity to address a need for assistance. Other members of the PALS Subcommittee in attendance said that it may be helpful to get direction from the Court as to whether the Court agrees that this concept of limited licensure is appropriate at this point only for landlord-tenant matters in county courts.

The committee discussed that the change envisioned by the PALS Subcommittee, allowing non-lawyers to provide legal advice, is a substantial one. The PALS Subcommittee formed not only look at an alternative licensing scheme, but proceed in a measured way, given resistance to the limited licensing concept from certain sections of the bar. As noted in the current proposal, the pilot program has support from the Denver County Court.

Mr. Reeve motioned to have the committee approve the proposal and send it to the Colorado Supreme Court for the Court's review and to receive direction from the Court. Mr. Danford seconded the motion. The motion carried. The report should be updated with information about developments in Utah prior to submission. Following approval of the report by

the committee, Justice Hood invited members of the PALS Subcommittee to present the report and its recommendations to the Court.

3. Discussion of Key Issues in Draft Revision to Rule 251

Ms. Yates and Mr. Stark presented proposed revisions to Colorado Rule of Civil Procedure 251. Ms. Yates acknowledged the contributions of the subcommittee members who have been exploring this issue for some time. Members of that subcommittee include Ms. Cohen, Mr. Reeve, Mr. Rothrock, along with Ms. Yates, Ms. Funk, Deputy Regulation Counsel April McMurrey, Deputy Regulation Counsel Greg Sapakoff, Ms. Myers, as well as Ms. Peterson and Ginette Chapman, staff attorneys from the Office of the Presiding Disciplinary Judge. Mr. Stark thanked Ms. Peterson and Ms. Chapman for their meticulous efforts.

Ms. Yates said the subcommittee would not seek approval of the proposed revisions at this time. Instead, the subcommittee asks the committee to consider these changes in preparation for a vote on them at the December committee meeting. Ms. Yates welcomed feedback so that the subcommittee can assess that feedback between now and December. Committee members received a summary of the significant changes proposed in the packet of materials for this meeting. Copies of the draft rule language were also made available.

Ms. Yates detailed significant proposed changes to Rule 251 as follows:

- Limiting terms of Advisory Committee members to one term of seven years, with the exception of the chair and vice-chair. The changes also propose to increase the number of nonlawyer members and implementing an open application process.
- Permitting lawyers in pre-complaint proceedings to resign in lieu of discipline in specific circumstances. Those circumstances would be that no formal complaint is pending and the Office of Attorney Regulation Counsel determines that no disciplinary or disability matter should preclude resignation. At present, Colorado lawyers may only resign with approval from the Court.
- Changing procedures so that records subject to expungement would be expunged in five years rather than three as provided by the current rule, C.R.C.P. 251.33. This aligns expungement with the five-year limitation period for a complaining witness to bring a complaint. It narrows the scope of protection afforded a respondent.
- Providing that the Presiding Disciplinary Judge lacks the authority in a probation revocation matter to modify the conditions or length of probation. The Presiding Disciplinary Judge can only revoke probation or order that probation remain in effect. The three judge hearing panel has the authority to modify the conditions under the new proposal.
- Clarifying that all requests for interim suspension must now be filed with the Office of the Presiding Disciplinary Judge.
- Modifying the procedure concerning stays of discipline pending appeal so that the respondent lawyer must show a stay is warranted. Currently, the rule provides that stays are favored.

- Placing provisions for lawyer disability in a separate rule in order to reduce the stigma that may accompany the current placement of the disability rules with disciplinary procedures. In addition, the proposed disability rules would allow placement of a disciplinary matter in abeyance if disability is found.
- Creating a new standard for the degree of disability that warrants placing a disciplinary matter in abeyance. The proposed standard is: “if the respondent has a medical, mental, or cognitive condition that renders the respondent unable to prepare or present a defense.”
- Creating reciprocal transfer to disability inactive status, consistent with the American Bar Association Model Rules.
- Permitting an adverse inference to be drawn in favor of Attorney Regulation Counsel when a respondent fails to testify or produce records invoking the privilege against self-incrimination.
- Allowing the Office of Attorney Regulation Counsel to disclose the fact of a private admonition to a complaining witness in both pre-complaint and post-complaint matters. This allows the complaining witness to know about the resolution. The Office of Attorney Regulation Counsel would not be able to disclose the contents of the private admonition.
- Proposing that a lawyer alleged to have violated his or her disbarment order be subject to contempt proceedings under C.R.C.P. 246 (the unauthorized practice of law).
- Providing that parties may not stipulate to readmission.

4. Discussion of Key Issues on UPL Rule

Ms. Funk discussed the work of the subcommittee evaluating changes to the Unauthorized Practice of Law (UPL) rules, Chapter 19 of the Colorado Rules of Civil Procedure. This subcommittee has studied the rules for several years. Their recommended changes follow. The subcommittee sought to present their proposed changes at this meeting in order for the committee members to consider them in advance of a vote in December.

- Define prohibited and permitted activities in a rule and its comments. Otherwise, case law defines UPL. This can be difficult for a layperson to research.
- The UPL Committee merges with the Attorney Regulation Committee to allow more timely and efficient prosecutions. Sometimes UPL correlates to a disciplinary matter. For example, a lawyer fails to supervise a paralegal who engages in UPL. It makes sense to combine the two committees. The combined committee could be named the Legal Regulation Committee.
- A procedure for interim injunctions to issue. Current Rule 237(b) does not have such procedures.
- A procedure for stipulations to injunction reached during the investigation period to be filed with the Colorado Supreme Court by the Office of Attorney Regulation Counsel under authorization from the Legal Regulation Committee. Similarly, the new rule proposal has a procedure for a stipulation reached during an injunctive proceeding to be

filed with the Colorado Supreme Court or Office of the Presiding Disciplinary Judge, whichever is appropriate.

- Places the Presiding Disciplinary Judge’s prehearing procedures regarding disclosure and discovery into the rules concerning UPL. Currently they are in the judge’s Scheduling Order.
- In injunctive proceedings, allows victims to obtain restitution and for the Office of Attorney Regulation Counsel to collect fines and costs from respondents.
- Gives district courts jurisdiction to handle contempt proceedings once a petition for contempt citation has been filed with the Colorado Supreme Court. The Office of the Presiding Disciplinary Judge does not have appropriate facilities or personnel to handle contempt cases.
- Creates procedures for collections in contempt proceedings that also allow victims to obtain restitution and for the Office of Attorney Regulation Counsel to collect fines.
- Outlines that files and records related to a UPL proceeding are available to the public after a petition for injunction or contempt has been filed.

In addition to Ms. Funk, the subcommittee members that reviewed the UPL rules to make these proposals include Ms. Peterson and Ms. Chapman from the Office of the Presiding Disciplinary Judge. Assistant Regulation Counsel Kim Ikeler and Assistant Regulation Counsel James Wilder from the Office of Attorney Regulation Counsel also participated.

5. Discussion of ARC and UPL Merger

If the proposed changes to the UPL rules and those pertaining to lawyer discipline proceedings are adopted, there would need to be discussions regarding the composition of the Legal Regulation Committee. This would include the size of the committee as well as the lawyer and non-lawyer mix of members.

6. Other Updates

a. CAMP

Ms. Peyton reported that the fall is traditionally CAMP’s busiest time of year. The number of mentees who have applied to work with CAMP thus far in 2019 is up 27% over this time last year. CAMP has worked on a community engagement plan, and Ms. Peyton distributed a blue print of that at the meeting. Outreach and programming are important aspects of this plan. Among the groups that the plan envisions further outreach to are the judiciary, lawyers in rural Colorado, and in-house law offices. Meanwhile, Ms. Peyton and Ms. Myers will present at the 2019 American Bar Association National Conference for Lawyer Assistance Programs in Austin later this month. They will discuss how lawyer assistance programs and lawyer mentoring programs can work together.

b. COLAP

Ms. Myers introduced COLAP’s new Outreach & Volunteer Manager, Amy Kingery, who attended the meeting and shared her background. Her experience includes extensive

counselling experience. She has developed a passion for supporting professionals with vicarious trauma exposure and has nine years of experience working with these individuals.

First-time contacts to COLAP have increased significantly. At this point in 2018, there had been 374 contacts. There have been 654 first-time contacts this year. COLAP continues to respond to requests for presentations. COLAP reports an increase in the number of contacts from law students.

Mr. Stark commented that the increase in contacts is in part due to Ms. Myers and her staff's dedication. Presentations by COLAP to professional responsibility classes at both law schools in the state have been well-received.

c. Office of Attorney Regulation Counsel

Ms. Yates informed the group that the Colorado Supreme Court will hold a hearing on Wednesday, September 18, concerning proposed new Colorado Rule of Civil Procedure 8.4(i). The Rules of Professional Conduct Standing Committee of the Court put forward the proposal. It would add a rule specific to sexual harassment.

Ms. Yates expects that there will be an uptick in the bar passage rate for the July 2019 examination.

The Character and Fitness Committee added six new members following appointments by the Colorado Supreme Court. An additional recruitment effort will occur in the new year.

The Office of Attorney Regulation Counsel's most recent newsletter includes a survey on professionalism. The survey's release coincides with discussions occurring through the Colorado Task Force on Lawyer Well-Being pertaining to civility in the profession.

d. Subcommittee on Admission Matters

Mr. Vigil chairs this subcommittee. It has met several times to consider a number of issues and innovations. The subcommittee intends to make recommendations that would expand the amount of time a MPRE score is valid from two to five years and also not require lawyers seeking on motion admission who have practiced for 15 years or more to retake the MPRE. The subcommittee may also make a recommendation whereby Colorado would join the District of Columbia and other states that do not require reciprocity to allow an out-of-state lawyer to be admitted on motion. The group intends to next look at procedures for foreign-educated bar applicants.

Following Mr. Vigil's report and with no other business pending, Ms. Covell motioned to adjourn the meeting. Ms. Bryant seconded. The meeting was adjourned.

Next meeting: December 13, 2019.