



**COLORADO SUPREME COURT  
ATTORNEY REGULATION ADVISORY COMMITTEE**

**MEETING MINUTES**

September 17, 2021, 12:03 p.m. – 1:29 p.m.

Conducted via Zoom

**Members present:** Chair David W. Stark, Cynthia Covell, Charles Goldberg, Steve Jacobson, Hon. Andrew McCallin, Henry (Dick) Reeve, Alexander (Alec) Rothrock, Daniel Vigil, Brian Zall

**Members absent:** Nancy Cohen, Barbara Miller, Sunita Sharma, Alison Zinn

**Liaison Justices present:** Justice Monica Márquez, Justice Maria Berkenkotter

**Colorado Lawyer Assistance Program (COLAP):** Sarah Myers, Executive Director; Amy Kingery, Assistant Director

**Colorado Attorney Mentoring Program (CAMP):** Ryann Peyton, Executive Director

**Office of Attorney Regulation Counsel (OARC):** Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Jonathan White, Professional Development Counsel

**Guests:** Justice Melissa Hart; Professor Scott Johns, University of Denver Sturm College of Law

**1. Approval of the May 21, 2021, and July 13, 2021, Meeting Minutes**

The Chair welcomed members and guests. He asked if there were suggested changes to the draft May and July meeting minutes provided in advance to committee members. There were no recommended changes. Mr. Reeve moved to approve the two sets of minutes. Mr. Zall seconded. The committee approved the May and July minutes.

**2. Consideration of the Malpractice Insurance Subcommittee Recommendations to the Advisory Committee**

At its May 2020 meeting, the committee voted to form a subcommittee to study the issue of mandatory professional liability insurance for Colorado lawyers. The Malpractice Insurance Subcommittee, chaired by Mr. Vigil, has now met multiple times. It submitted a recommendation in the meeting materials.

Mr. Vigil and Ms. Yates provided an overview of the subcommittee's work and recommendation. The subcommittee initially considered whether to require lawyers to purchase

professional liability insurance. It decided to table that discussion. The subcommittee then considered whether to require lawyers to make a meaningful disclosure to clients and potential clients about whether they carry professional liability insurance. Rules of Professional Conduct in certain states, including California, New Mexico, Pennsylvania, South Dakota, and Washington, require such disclosure. The subcommittee recommends that Colorado lawyers be similarly required to disclose whether or not they have coverage, and if they do have coverage, the limits of that coverage. The subcommittee believes this proposal accords with lawyers' obligations to protect client interests. While a Colorado attorney's public registration information reveals whether or not that lawyer carries professional liability insurance, not all clients and potential client know to go to the Office of Attorney Regulation Counsel's website to search for this information.

Those jurisdictions that require such a disclosure accomplished this by amending their Rules of Professional Conduct to associate the disclosure with a lawyer's duties of communication under Rule 1.4. The subcommittee's proposal provides that Colo. RPC 1.4 should be amended to mandate disclosure and that such disclosure constitutes informed consent. The subcommittee believes such disclosure needs to be in writing but need not include a client's signature on the writing. The subcommittee asks this committee to approve sending this disclosure proposal to the Colorado Supreme Court's Standing Committee on the Rules of Professional Conduct so that it can develop a proposal to amend Colo. RPC 1.4. The subcommittee believes such an amendment should include form language that satisfies the disclosure obligation. The subcommittee also recommends the required disclosure include a lawyer's per claim and aggregate coverage limits, along with an explanation that there may not be sufficient insurance funds to pay a claim if funds have been depleted to pay to defend a malpractice claim.

Members discussed the proposal. One member shared concerns about how to make the disclosure helpful and not confusing to clients. Another member pointed out that the coverage could lapse during the course of a client's representation. One member suggested that more general information be made available as part of attorney registration searches through the Office of Attorney Regulation Counsel's webpage that educates the public about professional liability coverage. Members also discussed that beyond Colo. RPC 1.4 amendments, there may need to be changes to the attorney registration rules to implement a disclosure requirement. Further discussion included that because such a disclosure would be a culture change, it would be beneficial to have a period of time before the requirement went into effect in order to educate lawyers.

Following this discussion, the chair asked if there was a motion to approve sending the subcommittee's report to the Standing Committee on the Rules of Professional Conduct to consider amendments to Colo. RPC 1.4. Mr. Goldberg so moved, and Mr. Reeve seconded. Mr. Jacobson, Mr. Vigil, and Mr. Zall supported the motion. Ms. Covell and Mr. Rothrock opposed. The motion carried, and the proposal will be sent to the Standing Committee on the Rules of Professional Conduct.

### **3. Discussion of Legal Entrepreneurs for Justice Moving to CAMP**

The chair discussed the purpose and history of Legal Entrepreneurs (LEJ), noting he is the chair of LEJ's board. LEJ is a 501(c)(3) incubator for lawyers wishing to serve members of the public in need of legal help but who cannot afford lawyers. LEJ needs financial stability to continue its work. It has approached various organizations to provide it with an institutional "home." The Colorado Attorney Mentoring Program (CAMP) was one organization LEJ approached. Ms.

Peyton, CAMP's executive director, believes placing LEJ under CAMP's umbrella would be in the best interests of both organizations.

Ms. Peyton noted for members, and described in a memo distributed in advance of the meeting, that bringing the LEJ program within the CAMP organization advances CAMP's four strategic initiatives: (1) leading within the legal profession: generating innovative solutions, (2) empowering individuals through integrated learning and experience, (3) community engagement: growing stronger through the richness of diversity, (4) cultivating citizen lawyers through civility and professional identity. Ms. Peyton also explained that CAMP has been an important partner since LEJ launched, providing mentors for each participant, offering trainings, and creating a mentoring plan for LEJ. CAMP has also supported LEJ with a \$10,000 annual contribution incorporated into CAMP's budget. If the Colorado Supreme Court were to approve of CAMP onboarding LEJ, Colorado would have the first court-sponsored legal incubator. Ms. Peyton expects CAMP can house LEJ with significant cost savings to LEJ's current annual budget without requiring additional resources for CAMP in FY 2022.

Ms. Peyton said conversations with LEJ's former executive director Laurie Gilbertson have resulted in re-thinking certain aspects of LEJ's model. These include reducing the current schedule to one cohort annually and reducing the program duration to one year from the current 18 months. Ms. Peyton anticipates CAMP's maintenance of LEJ will not burden CAMP's current staff, all of whom support this transition.

The chair and Ms. Peyton said amendments to CAMP's authorizing rule, C.R.C.P. 255, may be needed.

Mr. Vigil moved to recommend to the Colorado Supreme Court that CAMP absorb LEJ's programs and activities. Ms. Covell seconded. All members voted in favor of the motion. The chair noted that LEJ would likely be dissolved as a 501(c)(3) as part of the change.

#### **4. Consideration of the Proposed Admissions Rule Changes for Foreign Educated Applicants and Housekeeping Amendment re: ABA Law School Accreditation Appendix**

At the September 2020 meeting, the committee approved amendments to the Rules Governing Admission to the Practice of Law in Colorado. Those amendments included proposed changes to admission requirements for foreign-educated individuals. Currently, C.R.C.P. 203.4 limits the ability of a foreign-educated applicant to sit for the bar exam. Only applicants who received a law degree from a common law, English speaking country and who were engaged in the practice of law for three of the past five years are eligible to sit for the bar exam.

After receiving public comments and holding a public hearing, the Colorado Supreme Court tabled the amendments related to foreign-educated applicants. Thereafter, Ms. Yates reconvened the subcommittee that had previously worked on the proposal to re-consider other changes to these rules. OARC staff sought additional input from the state's two law schools. They also spoke with admissions offices in New York and Texas. Both states have flexible approaches to such applications. Ms. Yates said Texas' approach was particularly easy to comprehend and offered flexibility.

Members received a proposed set of amended rules in the materials for the meeting. The amended proposed rules establish new paths to allow foreign-educated applicants to sit for the bar exam even if they did not attend a law school in an English-speaking common law country and do not have the required practice time. The additional paths would be based on the receipt of an LL.M. degree from an American Bar Association (ABA) accredited law school in the United States, provided the course of study includes specific instruction and credits as set out in the proposed rule. The LL.M. programs at both of the state's law schools meet these proposed requirements.

Ms. Yates said modifying the rules related to foreign-educated applicants is important to diversifying the profession, and the subcommittee received a letter from students at the University of Colorado Law School supporting revisions to accomplish this objective. Ms. Yates also asked the committee to recommend removal from the Colorado Rules of Civil Procedure an appendix of standards and rules for law school accreditation published by the ABA. This appendix is outdated and does not need to be retained within the rule, since the ABA publishes those standards on the public section of its website.

The chair moved to approve the new set of proposed amendments and the housekeeping amendment removing the ABA appendix and to then send this recommendation to the Colorado Supreme Court. Mr. Reeve seconded, and the motion carried without opposition. The Chair thanked Mr. Vigil, Ms. Yates, and members of the subcommittee who worked on the proposal.

## **5. Consideration of Judge Lucero's Letter for Reappointment of Individuals to the Hearing Board Pool for an Additional Six-Year Term**

Presiding Disciplinary Judge Lucero proposed reappointments to the hearing board pool in a letter to the committee earlier this month. The lawyers and non-lawyers Judge Lucero requests the committee approve and recommend to the Colorado Supreme Court for reappointment comprise approximately one-third of the pool of hearing board volunteers for his office. Judge Lucero requests the reappointments pursuant to C.R.C.P. 242.7(b)(1), under which these members' term would last for six years. All the members he recommends re-appointments for have served since November 2015. The chair noted these are well-qualified individuals. Mr. Reeve moved to recommend these members' reappointment to the Colorado Supreme Court. Ms. Covell seconded. The motion carried without opposition. Ms. Yates will transmit the request for reappointment to the Colorado Supreme Court.

## **6. Other Updates**

### CAMP

Ms. Peyton provided members with a written report in advance of the meeting. She reported CAMP has enjoyed a busy current quarter and summer. Mentoring circles that began in 2020 will conclude their year-long work soon and new mentoring circles will form. The number of new mentees at intake is the same as in 2020. Ms. Peyton noted many mentors elect to stay involved with CAMP even after their work with a specific mentee ends. The program benefits from their continued experience and through less time spent recruiting new mentors.

CAMP led the year-long pilot project for the Colorado Supreme Court Well-Being Recognition Program. The pilot project completed work in May 2021 and submitted a report to the Colorado

Supreme Court in July 2021. Justice Márquez informed the committee that the Court considered the report and has authorized an implementation committee.

CAMP also led the pilot project of the “Succession to Service” pro bono pipeline program. This program aims to connect Colorado lawyers and judges with nonprofits, courts, and legal service organizations that need volunteers to assist in providing legal services to underserved populations. Succession to Service looks to advance access to justice. Following the success of the pilot program, CAMP will help build a statewide Succession to Service pro bono portal to help lawyers, judges, and law students identify pro bono opportunities around the state.

### COLAP

Ms. Myers said COLAP anticipates a busy fall. It will launch a new website this fall and other projects that will increase efficiency and usability for clients. While COLAP saw a slight reduction in calls during July and August, the intensity of topics has increased for the legal community, and overall contacts so far in 2021 are higher than the number the organization experienced to this same date in 2020.

### OARC

Ms. Yates reported that there were nationwide issues with the software used to administer the online July 2021 bar exam. Colorado experienced such issues, though they may not have been as bad as reports from other states. The Office of Attorney Admissions sought to prepare applicants for the possibility of a computer freeze by conducting a webinar in advance of the exam. For most applicants who experienced a computer freeze, it was a one-time issue. The Law Committee is charged with certifying the results of the July bar exam and recommending those to the Colorado Supreme Court. The Law Committee and the Office of Attorney Admissions are evaluating the impact of the technical issues experienced during the exam in advance of certifying the results to the Court.

The working groups this committee approved in July for implementation of the Paraprofessionals and Legal Services (PALS) subcommittee plan are getting underway. There are four groups: (1) a qualifications and licensure working group, (2) a rules working group, (3) a systems working group, and (4) a communication and outreach working group. The chair commented that certain members of the PALS subcommittee participate in a regular national roundtable on non-lawyers providing limited legal services. Many states are looking at this issue.

Ms. Yates reported that the rollout of the new equity, diversity, and inclusivity (DEI) continuing legal education requirements continues to go well. The new requirement has been positively received, and applications have come in to the Office of Continuing Legal and Judicial Education for accreditation of DEI programming.

## **7. Remaining 2021 Meeting Date: December 10, 2021**

## **8. Proposed 2022 Meeting Dates:**

- March 18, 2022
- May 20, 2022

- September 16, 2022
- December 9, 2022

At the end of the meeting, guest Professor Johns spoke to the committee. He had also sent a letter to the committee in advance of the meeting. He thanked OARC for its assistance with recent bar examinations, and he emphasized the importance of COLAP to the whole profession, including law students. He said he was pleased to see OARC participated in a study with the July 2021 bar examination that allowed examinees to participate in “mindset” courses in association with the exam. Such courses were found to improve bar exam performance among a certain demographic of California bar exam takers over a five-year period.

The meeting adjourned at 1:29 p.m.

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