



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

September 18, 2020, 12:05 p.m. – 2:24 p.m.

Meeting Conducted via Zoom

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

Members absent: Nancy Cohen, Barbara Miller, Sunita Sharma

Liaison Justices present: Justice Monica Márquez, Justice William Hood

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

Staff present: Jessica Yates, Attorney Regulation Counsel; Margaret Funk, Chief Deputy Regulation Counsel; Dawn McKnight, Deputy Regulation Counsel; Ryann Peyton, Executive Director, Colorado Attorney Mentoring Program (CAMP); Jonathan White, Professional Development Counsel, Office of Attorney Regulation Counsel

1. Approval of the May 8, 2020, Meeting Minutes

The Chair asked if there were any recommended changes to the draft of the May 8, 2020, meeting minutes distributed prior to the meeting. No members suggested changes. Mr. Reeve moved to approve the minutes. Mr. Rothrock seconded. All members voted in favor of the motion, and the minutes were approved.

2. Consideration of Admissions Rule Changes

Mr. Vigil chaired the subcommittee considering changes to admissions rules pertaining to on-motion, Uniform Bar Examination (UBE) score transfer, and bar exam applications, as well as pro hac vice procedures and practice pending admission. The subcommittee also considered adding subpoena power to the admissions rules. The committee considered the proposed changes as follows:

Proposed Changes to On-Motion, UBE Score Transfer, and Bar Exam Application Rules

Mr. Vigil began by reviewing the subcommittee's recommendations concerning C.R.C.P. 203.2 through 203.4, which pertain to on-motion, UBE score transfer, and bar exam applications. The first significant change eliminates the requirement for reciprocity for on-motion admission currently contained in C.R.C.P. 203.2(1)(a). The proposed amendments allow on-motion application by lawyers who have been admitted to practice in another jurisdiction by examination without the requirement for reciprocity by that jurisdiction for Colorado-licensed lawyers. Thirty

jurisdictions no longer require reciprocity. The subcommittee could not identify a public protection purpose for reciprocity. While the proposal eliminates reciprocity, an on-motion applicant must still comply with the other requirements in C.R.C.P. 203.2(1)(a), including the character and fitness requirements set forth in C.R.C.P. 208. Members discussed that an individual licensed to practice law in another jurisdiction who received his or her license without taking a bar exam will have to sit for the Colorado bar exam under the proposed new rule.

Other significant changes relate to use of a Multi-State Professional Responsibility Examination (MPRE) score for on-motion, UBE score transfer, and bar exam applicants. Proposed language added to C.R.C.P. 203.2(5) provides that an on-motion applicant licensed in another U.S. jurisdiction, who has been engaged in the practice of law for 15 years or more, and who does not have public discipline, may use a score on the MPRE previously accepted by another jurisdiction with his or her application for admission in Colorado regardless of when the applicant achieved the score. Other applicants may use an MPRE score obtained five years before applying for Colorado licensure if deemed a passing score by the Colorado Supreme Court. The current rule provides only for a two-year window for use of such a score. Proposed new language in C.R.C.P. 203.3(3) and C.R.C.P. 203.4(5) concerning UBE score transfer and bar exam applications mirrors these changes while adding that applicants who are not licensed in another jurisdiction may use a score obtained on the MPRE within the past two years. Mr. Vigil said that extending the time frame by which a UBE applicant may use a previous passing MPRE score gives these applicants some relief. Often many have not taken the MPRE in the last few years.

The subcommittee further proposes revising C.R.C.P. 203.4, the rule concerning admission through the Colorado bar exam for foreign-educated applicants. Pursuant to these revisions, such applicants may demonstrate that they completed course work that would be the equivalent of obtaining a bachelor's degree and a J.D. in the United States. The revisions specify certain mandatory coursework to demonstrate educational equivalency, and they require such applicants to complete an educational equivalency evaluation administered through an independent service. Alternatively, foreign-educated Colorado bar exam applicants who cannot make such a showing may still apply to take the bar exam if they can show they are admitted to the bar of the jurisdiction where they graduated law school, are in good standing, have been practicing for at least three of the past five years, and have taken certain courses including professional responsibility, civil procedure, and constitutional law through a law school accredited by the American Bar Association. The subcommittee looked at procedures for foreign-educated bar examinees adopted by other jurisdictions in developing these proposed revisions.

Following Mr. Vigil's presentation of these suggested changes and discussion among members, the Chair asked if there was a motion to approve the proposed revisions to C.R.C.P. 203.2, 203.3, and 203.4 and recommend the Colorado Supreme Court adopt those revisions. Mr. Reeve so moved. Ms. Covell seconded. The motion carried without opposition.

Proposed Changes to Pro Hac Vice and Practice Pending Admission Rules

The committee next considered revisions proposed to C.R.C.P. 205.3, 205.4, 205.6 – rules that concern pro hac vice applications and practice pending admission. Mr. Vigil explained the context for the revisions. He said that attorneys who qualify under C.R.C.P. 205.6 for practice pending admission have to file a pro hac vice motion to appear in state court matters or before state agencies while they await on-motion application determination. This can become costly for these

lawyers and their employers. The revisions, therefore, contemplate that lawyers licensed in another jurisdiction, who are practice pending admission in this state and employed by certain governmental and nonprofit entities outlined in the proposal, do not have to file a motion to appear pro hac vice before state courts or agencies. Proposed additions to C.R.C.P. 205.6(3) detail the qualifying agencies and incorporate language from the law student practice rule, C.R.C.P. 205.7.

A committee member recommended a conforming edit so that language proposed for C.R.C.P. 205.4(2) reads “state agency” rather than “state court of record.” Members also discussed the process envisioned under revisions to C.R.C.P. 205.6(1) and requiring conferral with the Office of Attorney Regulation Counsel for practice pending admission eligibility.

Following discussion, the Chair asked if there was a motion to approve the revisions with the conforming edit as recommended. Mr. Jacobson so moved, and Mr. Reeve seconded the motion. The motion carried without opposition.

Proposed Changes to Character & Fitness General Requirements and Procedures

The committee next considered a proposed addition to C.R.C.P. 208.2, which concerns general requirements related to a Colorado bar applicant’s character and fitness. Bar applicants bear the burden of demonstrating they possess the requisite character and fitness to practice law in Colorado pursuant to C.R.C.P. 208.1(2). The Office of Attorney Admissions and the Character and Fitness Committee gather extensive information from applicants as part of this process, however, neither has the power to issue a subpoena. Accordingly, a proposed change to the Rules Governing Admission to the Practice of Law in Colorado is to add the power to issue subpoenas. The new language would comprise section 2.5 of C.R.C.P. 208.2 and permit Regulation Counsel or the Chair of the Character and Fitness Committee to issue subpoenas to third parties to compel production of documents. The Presiding Disciplinary Judge would hear challenges to subpoenas issued pursuant to the new rule. Ms. Yates and Ms. McKnight stated that while bar applicants sign broad waivers that are helpful, waivers are not as effective as subpoenas in obtaining information from parties other than the applicant. They do not anticipate utilizing subpoena powers often.

Ms. Yates discussed a proposed rule change clarifying that character and fitness hearings before the Presiding Disciplinary Judge remain confidential unless exceptions to the hearing board’s recommendation are filed with the Colorado Supreme Court. The Inquiry Panel interview and findings, as well as any hearing before the Presiding Disciplinary Judge and two hearing board members, along with submission of the hearing board’s recommendation to the Colorado Supreme Court, are all confidential processes. C.R.C.P. 211.1 provides for such confidentiality, however, the Office of Attorney Regulation Counsel recently learned that C.R.C.P. 209.5(4) could be interpreted as requiring a character and fitness matter to be publicly docketed, even if no exceptions were filed. The proposed revisions to 209.5(4) sent to the committee for review before the meeting address this issue.

After discussion, the Chair asked if there was a motion to approve and recommend the Colorado Supreme Court adopt the amendments proposed to C.R.C.P. 208.2 and C.R.C.P. 209.5(4). Judge McCallin so moved. Mr. Reeve seconded. The motion carried without opposition.

3. Consideration of CLE Regulations Revisions and Fee Increase for Form 1B

Ms. McKnight reviewed highlights of proposed revisions to Regulations of the Colorado Supreme Court Continuing Legal and Judicial Education Committee submitted by that committee. The revisions prioritize placing all procedures for accrediting an activity in one place, including the fee and information on what form the Office of Continuing Legal and Judicial Education needs to receive. The Continuing Legal and Judicial Education Committee advanced these proposals to reduce the need for a person to review multiple regulations to understand what is needed for a program's accreditation.

Among the revisions are changes to comity under Regulation 102. The revisions clarify that comity is for out-of-state lawyers also licensed in Colorado and who reside and practice in another state. Comity is not intended for lawyers licensed in Colorado, as well as in another state, and who reside in Colorado.

Other important changes include a new regulation allowing a lawyer to obtain CLE credit for independent study activity that involves informing the public about the work of the Colorado Judiciary and the duties of judges and courts. Meanwhile, proposed changes to Regulation 103.2 concerning accreditation of teaching activities provide that a lawyer may earn CLE credit for teaching a program accredited for CLE in Colorado or in any other mandatory CLE jurisdiction. Another notable change involves an increase in the fee associated with submitting Form 1B from \$5.00 to \$10.00. This form allows a lawyer to earn credit for attending a live out-of-state CLE program where the entity sponsoring the program did not apply to accredit the program in this state. The fee increase reflects the fact that individuals completing a Form 1B can do so online but there is an increased transaction cost associated with an online application.

Additional revisions add Regulation 103.7 to permit accreditation of course work in pursuit of a Masters of Laws (LLM) degree.

The revisions remove existing non-certified provider language so that there no providers deemed "non-certified." There "registered" and "certified" providers under the proposed new Regulations. The revisions also permit certified providers to pay their annual fee for certification status based on the anniversary of attaining certified provider status.

After discussion, Mr. Rothrock moved to adopt the revisions. Mr. Reeve seconded. The motion carried without opposition. Pursuant to C.R.C.P. 250.3(2)(c), the committee's approval of the revisions makes the changes final and effective. They will be published on the Office of Attorney Regulation Counsel's website.

4. Update of FY 2020 Revenue and Expenditures

Ms. Yates updated members on the final fiscal year 2020 budget for the Court's regulatory offices and partner organizations. The expenditures for the fiscal year ending June 30 came in under budget for all offices. Revenue from attorney registration increased a very modest amount, while admissions and CLE revenues declined, with the CLE revenue decline likely due to the pandemic. At present, the Office has a flat revenue stream, and it remains to be seen what impact the pandemic will have on attorney registration in 2021. The 2021 registration period opens December 1, 2020.

Ms. Yates explained that while it cost more to administer the July 2020 bar exam, the increase was not substantial and came in under the amount approved by the Court in the fiscal year 2021 budget. It is likely the February 2021 examination will have additional expenses. Elsewhere, while there have been some personnel additions to the various offices, including a new staff attorney at the Office of the Presiding Disciplinary Judge and a planned addition of a part-time staff attorney at the Office of Attorney Regulation Counsel, generally the regulatory offices are observing a hiring freeze. Open positions will not be filled at this time. Both the Office of the Presiding Disciplinary Judge and the Office of Attorney Regulation Counsel have an unplanned upcoming expenditure based on the need to replace the JustWare case management software program both offices utilize, which will come to its end-of-life in 2021 and will no longer be supported.

5. Proposed Reappointments and Appointments to the Hearing Board Pool

Judge Lucero requested the committee approve and recommend to the Colorado Supreme Court the reappointment of one-third of the members of his office's pool of hearing board members. This would reappoint approximately two-dozen members for another six year term, effective November 3, 2020, through November 2, 2026. Judge Lucero provided the list of names for reappointment to members prior to the meeting. They are all members with last names in the first third of the alphabet. Judge Lucero also asked the committee to approve four new individuals to be added to the names in the hearing panel pool, and he provided these individuals' resumes. The four new individuals Judge Lucero nominated are Christine M. Hernandez, Elizabeth E. Krupa, David R. Struthers, and Khánh Q Vũ.

The committee approved, without objection, the list of reappointments as well as the four names put forward by Judge Lucero for new appointments. The names will be recommended to the Colorado Supreme Court for its approval.

6. CAMP Update

Ms. Peyton reported the pandemic has had a varying impact on CAMP's programming. New mentee applications are down 20 percent over the same timeframe last year, and the program has seen a decline in new mentors. CAMP placed on hold its 2020 Community Engagement Plan because of public health guidelines limiting travel and the size of gatherings. However, CAMP has launched eight new mentoring circles, maintained its matched mentor-mentee ratio, and continued to publish articles on the importance of mentoring. Participation in its virtual professional development events has increased 50 percent. There are also more organizations requesting group mentoring to connect individuals. Ms. Peyton said that the number of lawyers applying to be mentees and mentors has begun to recover from the decline witnessed at the beginning of the pandemic.

CAMP's strategic planning proceeds forward with a focus on its 2021-2023 Strategic Plan: Cultivating Aptitude at Altitude. There are four pillars of the plan: (1) Leading Within the Legal Profession: Generating Innovative Solutions; (2) Empowering Individuals Through Integrated Learning & Experience; (3) Community Engagement: Growing Stronger Through the Richness of Diversity; and (4) Cultivating Citizen Lawyers Through Civility and Professional Identity.

Meanwhile, CAMP continues to spearhead the pilot program for the Colorado Supreme Court Well-Being Recognition Program for Legal Employers. The pilot studies ways to recognize solo practitioners and legal employers for well-being initiatives within their organizations. The pilot program launched July 20 with 27 participants. More information may be found at www.coloradolawyerwellbeing.org.

CAMP continues to lead another pilot program, the Succession to Service Pro Bono Pipeline Pilot Program. This program strives to connect Colorado lawyers and judges to non-profit organizations, courts, and public interest organizations to provide enhanced access to justice for Coloradoans. Ms. Peyton noted the program has been exceptionally busy and that the need for pro bono representation has grown in light of the pandemic and concerns over racial justice.

7. Subcommittee Appointments

In May, the committee approved creation of two new subcommittees to study two distinct issues: (1) whether to require Colorado lawyers carry professional liability insurance, and (2) to examine succession planning requirements. Committee members discussed appointments to these two subcommittees and possible leadership. The Chair tabled consideration of appointments to December. Several individuals have come forward and expressed interest in serving on one of the subcommittees.

8. Other Updates

a. Colorado Lawyer Assistance Program

Mr. Stark provided an update on behalf of Ms. Myers. Members received COLAP's August Monthly Report documenting new contacts and activities. COLAP has registered an increase in requests for assistance during the pandemic. Members also received a copy of COLAP's "How to Help Toolkit" designed to guide individuals trying to help someone who appears to be struggling.

Mr. Stark said that Dr. Robin Hacker, a licensed psychologist, will join COLAP as the Clinical Manager beginning November 2. He also commented that Colorado Lawyers Helping Lawyers (CLHL) lost its funding from the Colorado Bar Foundation. CLHL currently runs support groups meetings for judges and lawyers. COLAP is evaluating the possibility of offering support group meetings should CLHL dissolve in order to continue that service to the legal community. No definitive plans have yet been made.

b. Office of Attorney Regulation Counsel

Ms. Yates reported that the Office has a working group studying how to improve online transactions. This includes looking at transaction fees.

The Office successfully administered the July 2020 bar examination at The Denver Mart and the state's two law schools. Release of the bar examination results on Thursday, October 8, remains on schedule. In addition, discussions have commenced on how to administer the February 2021 examination. The experience of administering the July 2020 examination should benefit that planning. Ms. Yates remarked that although one applicant reported a positive COVID-19 test result after the bar exam concluded, based on a test administered before the exam, the Office has not

received other reports of examinees, proctors, or other individuals assisting with exam administration, contracting the virus. Some applicants elected to defer taking the exam until February 2021.

The public comment period concerning revisions to C.R.C.P. 251 recommended by this committee after several years of study closed September 15.

Presently, the Office is working with the Colorado Bar Association's Ethics Committee to develop a program to provide lawyers in disciplinary matters with the assistance of counsel if the lawyers meet certain income qualifications.

c. CLE Committee's Work on Potential New Rule Proposals

Judge McCallin presented on rule proposals under consideration by the Continuing Legal and Judicial Education Committee ("CLE Committee"). The Colorado Supreme Court previously approved accreditation of programming featuring topics such as diversity and wellness as they relate to the practice of law through adoption of C.R.C.P. 250.6. Judge McCallin noted that the Colorado Bar Association, Denver Bar Association, and diversity bar associations support a diversity, equity, and inclusion requirement. Additionally, there are states that either require or provide an incentive for diversity, equity, and inclusion training as part of CLE requirements. Right now the CLE Committee is studying how to implement any requirement. It is looking closely at what model to follow in its recommendations – whether an incentive-based approach or a mandatory approach. Judge McCallin invited feedback from members and said he would keep the committee apprised of progress on this front. The CLE Committee anticipates finalizing its recommendations this fall and submitting a proposal for a rule change to the Advisory Committee at the December 11, 2020, meeting.

d. Subcommittee Concerning Paraprofessionals and Other Non-Lawyers Providing Legal Services

Mr. Stark reported that this subcommittee continues to work on issues related to the scope of authority, education, training, and testing for individuals who wish to become "limited licensed legal professionals" in Colorado. The subcommittee hopes to have a presentation on its proposals ready for this committee sometime in early 2021.

9. Proposed 2021 Meeting Dates

The next meeting of the committee is December 11, 2020, at noon. After that, proposed 2021 meeting dates are as follows:

- March 12, 2021
- May 14, 2021
- September 10, 2021
- December 10, 2021

The meeting adjourned at 2:24 p.m.

10. Modification of Proposed Unauthorized Practice of Law Procedural Rules, Rule 232.1

Following the September 18 meeting, the committee voted unanimously by email between October 29 and November 5 to modify the proposed new procedural rules concerning the unauthorized practice of law (UPL) in Colorado. The modification impacts proposed Rule 232.1. It would revise the proposed rule to read:

“Nonlawyer” means a person who is not licensed, authorized, or otherwise certified to practice law in any jurisdiction of the United States, including a disbarred lawyer.

The modification stems from concern that language originally proposed for Rule 232.1 would apply the unauthorized practice of law rules to lawyers not licensed in Colorado but licensed in another jurisdiction of the United States. The Colorado Rules of Professional Conduct and Colorado’s Rules of Procedure Regarding Attorney Discipline and Disability govern situations where a lawyer licensed in another state is found to be practicing in Colorado without authorization. The rules regarding UPL, including the proposed revisions pending before the Colorado Supreme Court, were not intended to cover such scenarios. This modification avoids ambiguity in the definition of “nonlawyer” and clarifies that the UPL rules apply to persons not licensed in any jurisdiction of the United States.

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