



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE**

MEETING MINUTES

March, 10, 2017, 12:00 p.m. – 1:52 p.m.
Extra Large Conference Room
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203

Members present: Chair David W. Stark, Nancy L. Cohen, Cynthia F. Covell, Steven Jacobson, Barbara Miller, Rich Nielson, Dick Reeve, Alexander (Alec) Rothrock, Daniel Vigil, David Little, and Brian Zall.

Members absent: Mac Danford and Cheryl Martinez-Gloria (Chairing UPL Committee meeting at same time).

Liaison Justices present: Justice Monica Márquez and Justice Nathan Coats.

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

Staff present: James C. Coyle, Attorney Regulation Counsel; Matthew A. Samuelson, Chief Deputy Regulation Counsel; Ryann Peyton, Director of Colorado Attorney Mentoring Program (CAMP); Sarah Myers, Clinical Director, Colorado Lawyer Assistance Program (COLAP); Jonathan White (Staff Attorney, Office of Attorney Regulation Counsel) and Melissa Meirink, Supreme Court Staff Attorney.

Mr. Stark began the meeting by informing the committee that Attorney Regulation Counsel James Coyle has been selected to receive the 2017 President's Award of the National Organization of Bar Counsel (NOBC). The award recognizes Mr. Coyle's leadership in domestic and international regulatory issues, his advocacy for proactive regulation and attorney well-being, and his mentorship to other regulatory counsel. The award also recognizes Mr. Coyle's mantra of "promoting the public interest" throughout his work. Mr. Stark congratulated Mr. Coyle.

Approval of December 9, 2016, meeting minutes.

The Chair asked if everyone had read the minutes from December's meeting. The committee approved the minutes with an edit requested by Mr. Nielson to the next to last paragraph on page four. The sentence reads: "Mr. Samuelson explained that the proposed changes not require

lawyers to tell clients.” The revised sentence will read “Mr. Samuelson explained that the proposed changes do not require lawyers to tell clients.”

1. C.R.C.P. 203.2 and 203.4 Amendments

Mr. Samuelson discussed proposed amendments to C.R.C.P. 203.2 and 203.4 regarding the period of time for which the professionalism course required of all new attorneys in Colorado is valid. Both sections of the rule currently provide that the professionalism course is valid for one year following its completion. Mr. Samuelson explained that there have been applicants who are not in a position to take the oath of admission within a year of completing the professionalism course. For example, some applicants may take the professionalism course immediately after sitting for the bar exam but later learn that they did not earn a passing score and will need to sit for the exam again. Other applicants sometimes have a personal or family matter arise that delays completion of their application for admission but who have nonetheless already taken the course. Attorney Regulation Counsel recommends that the period of time for which the test results are valid be increased to eighteen months. This is consistent with the eighteen month period of time for which bar exam scores are valid.

Mr. Jacobson moved to approve the proposed change to an eighteen month period. Mr. Reeve seconded and the proposed amendment passed.

2. Proposed Changes to C.R.C.P. 260 and C.R.C.P. 250

Mr. Samuelson began the discussion of proposed changes to C.R.C.P. 260 by recognizing the contributions of advisory committee member David Little to both subcommittees that worked on proposed changes and modifications to C.R.C.P. 260. Mr. Samuelson said that Mr. Little has been an invaluable member of both subcommittees, providing both a historical perspective of the CLJE Rules and Regulations, and important contributions to the proposed changes and modifications to the Rules and Regulations.

Mr. Samuelson informed the committee that the proposed modifications to C.R.C.P. 260 concerning Continuing Legal and Judicial Education that were summarized at the September 2016 meeting have not significantly changed. The changes contemplate a dual track for several years where lawyers in the middle of a compliance period would need to meet the CLE requirements outlined in C.R.C.P. 260 while lawyers starting a new compliance period beginning January 1, 2018, would follow the requirements of the new C.R.C.P. 250, which updates and modifies C.R.C.P. 260.

Among the requirements of new rule 250 are that 21 out of the 45 general credits required consist of live programming and three out of the seven required ethics credits consist of live programming. The changes eliminate the age exemption from CLE for attorneys over the age of 65. They also feature a more detailed procedure for hearings regarding compliance, and they require public disclosure of an attorney’s CLE transcript. New C.R.C.P. 250.11 further recognizes CAMP benefits. Meanwhile, new C.R.C.P. 250.3 changes the CLJE Board to the CLJE Committee

and allows this committee to formulate regulations to administer the mandatory continuing legal and judicial education program.

A member asked how the public will access an attorney's CLE history. Mr. Samuelson explained that the history will be tied to the lawyer's profile on the Attorney Registration website and will likely be available at the bottom of the profile.

A member suggested that a statement be drafted to explain to the public the previous age exemption for attorneys who, under the current rule, need not complete CLE. The member suggested this be included on the profile page for a previously-exempt attorney so that it does not incorrectly appear that the attorney is or was out of compliance with the reporting requirement.

One member asked what reaction, if any, might be expected from the Colorado legal community concerning the elimination of the age exemption. Mr. Coyle mentioned that comments from the legal community tend to indicate that this change will be favorably received. It has been established ABA policy since 1988. The Colorado Bar Association surveyed its members and that survey revealed support for elimination of the age exemption. Mr. Coyle also recognized that there is no way to predict all lawyers' opinions on this topic, and there could be easily be a group opposed to this proposal.

Mr. Stark noted that the subcommittee has worked extensively on these changes for a number of years. Mr. Reeve motioned for approval of the C.R.C.P. 260 rule changes. Mr. Nielson seconded the motion. The proposed amendments were approved.

Mr. Coyle thanked all the members of the Board of MCLE subcommittee, including Mr. Samuelson, Mr. Little, Barbara Mueller, Dawn McKnight, Alli Gerkman, Erika Holmes, Marie Nakagawa, Melissa Hart, Melissa Meirink, Nathifa Miller, Pete Cannici, Susan Riehl, Margaret Funk, and Elvia Mondragon (Mr. Coyle also served on the subcommittee). Mr. Coyle also thanked all the members of the Advisory Committee's subcommittee that reviewed the rule, including Mr. Samuelson, Mr. Little, David Stark, Dan Vigil, Dick Reeve, Alec Rothrock, Dawn McKnight, and Elvia Mondragon (Mr. Coyle also served on this subcommittee).

3. Proposed Changes to C.R.C.P. 208.4, 208.5, 209, 211, 211.2 and 251.28, Regarding Conditional Admission

Mr. Zall, chair of the subcommittee reviewing conditional admissions, began the discussion by explaining that a conditional admissions process would involve the amendment of six different rules. The proposed amendments are in a set of materials circulated to the committee prior to the meeting.

The committee next heard comments on the proposed rule changes from Mr. John Gleason, former Attorney Regulation Counsel and special counsel at the law firm of Burns Figa & Will. Mr. Gleason has experience representing applicants for admission to the bar. Mr. Gleason expressed concern that the new rules create a conditional admission regulatory process that involves the Office of the Presiding Disciplinary Judge and formal proceedings that resemble litigation. He said this will be cumbersome and expensive for applicants, who very often have

limited resources. Mr. Gleason favors a conditional admission process that involves the Office of Attorney Admissions and the Inquiry Panel and does not create litigation before the Presiding Disciplinary Judge under a high “clear and convincing” evidence standard of proof.

Mr. Gleason opposes having a lawyer in the trial division of the Office of Attorney Regulation Counsel involved in the conditional admissions, in part because of the cost of litigating the matter for the applicant and because a trial division attorney usually handles lawyer discipline, not admissions matters. Mr. Gleason said that the trial division attorney may have a different perspective on what it takes to allow conditional admission, which increases the cost to the applicant in trying to negotiate a conditional admission.

Mr. Gleason also questioned whether the process should involve the Presiding Disciplinary Judge when the Presiding Disciplinary Judge traditionally oversees lawyer discipline cases and not matters pertaining to law students seeking admission. Mr. Gleason said that the Inquiry Panel is well-suited to make a determination of fitness to practice based on the members’ experience and qualifications.

Mr. Zall explained that the subcommittee exploring the rule changes wanted to make the conditional admissions process collaborative and one that respects those circumstances where an applicant has made significant strides to address a mental health or substance abuse issue. The rule changes allow an applicant to present conditional admission as an option. Mr. Zall noted that the Presiding Disciplinary Judge has experience monitoring lawyers as part of the discipline process, and this would provide the necessary expertise to set up monitoring or approve monitoring of applicants. Mr. Zall also said that the Presiding Disciplinary Judge has experience in making sure that the plan in place for conditional admission is appropriate and balanced.

One member who represents applicants to the bar and who was a member of the subcommittee exploring the rule changes, joined in Mr. Gleason’s concern about the cost. This was an issue that the subcommittee considered. Inquiry Panel members told the subcommittee that they felt like they were not best suited to address certain issues.

A member asked why Inquiry Panel members felt they were not comfortable making a conditional admission determination. A member who serves on the Inquiry Panel said the panel’s reservation was whether they are truly in the best position to craft the conditional admission contract as opposed to relying on the Presiding Disciplinary Judge and his qualifications.

Mr. Zall stated that the ultimate concern is the health of the applicant in the chair at the time of the Inquiry Panel. If that applicant has done the work necessary to recover and rehabilitate from a mental health disorder, the process of conditionally admitting that applicant need not be adversarial.

Mr. Nielson moved to adopt the proposed amendments. Mr. Reeve seconded. The proposed amendment passed with five votes in favor, two opposed.

Mr. Coyle thanked the members of the Conditional Admission Rule subcommittee, including Brian Zall, Matt Samuelson, Dick Reeve, Dan Vigil, Rich Nielson, Nancy Cohen,

Barbara Ezyk, Ginette Chapman, Alexa Salg, Margaret Funk, and Melissa Oakes (Mr. Coyle also served on this subcommittee).

Updates from CAMP, COLAP, OARC, and the PALS and PMBP subcommittees were tabled until the May meeting. The meeting adjourned at 1:52 p.m.

Respectfully submitted,

/s/ James C. Coyle
James C. Coyle
Attorney Regulation Counsel