



**COLORADO SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE
SUBCOMMITTEE ON PROACTIVE MANAGEMENT-BASED PROGRAM**

MEETING MINUTES
October 19, 2016, 12:00 – 2:00 p.m.
Conference Room 1D
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203

Jim Coyle introduced new OARC staff Dawn McKnight and Bryon Large to the group.

Jim also introduced Tom Werge, CBA Solo Small Firm Practice section chair who will be a liaison and member of this subcommittee.

Also in attendance was Jonathan White, who will be joining OARC on November 14, 2016, as a new staff attorney and who will be assisting Jim with, inter alia, the PMBR subcommittee.

Jim emphasized that in Colorado the self-assessment tool the subcommittee is developing is intended to be **incentive-based and voluntary**, not mandatory. We have two main goals with the tool. It is designed to assist us in reaching the regulatory objectives previously set out by the subcommittee, including the responsibility of regulators to help lawyers successfully navigate the practice of law. It will also be a useful tool for getting feedback and input from the users to allow us to be responsive to their needs and to address regulatory issues that we see arising on a frequent basis.

Taking a broad look at the tool which is intended to be completed in one hour and forty minutes (ten minutes each for each of the ten sections), Jim asked the group of describe **what we are hoping to accomplish**. Among the responses were:

- Increased compliance with the Rules of Professional Conduct
- Implementation by more attorneys of best / better practices
- Increased profits
- Better service to consumers

Discussion about **how to incentivize** attorneys to use the tool included

- Presenting them with an anecdotal “cost/benefit” analysis – showing them that the time required to prevent problems would cost attorneys less than the time they would be required to devote to responding to an RFI
- Increased peace of mind
- Usefulness of the self-evaluation tool as a method of training / supervising staff
- Aggressive roll out of the tool to targeted groups (maybe through CLEs) – especially at the beginning
- CLE credit
- Public recognition through certification
- Reduced insurance rates

This tool is designed to look at each of the 10 sections from a **systems based perspective**. Jim urged each working group to review their product from that perspective.

A question was raised about what % of the requests for investigation received by the OARC are management/systems problems versus the % that are not (such a character flaws, etc.)

A discussion was had about the pros and cons of mandated malpractice insurance, as some carriers already have similar risk reduction programs in place.

- Jim advised the group that OARC was going to start requiring not only the annual disclosure from attorneys of whether or not they are insured, but by which carrier they are insured starting with the 2017 registration cycle.
- OARC outreach in coordination with the solo/small firm section of the CBA to its members about the EXISTING requirements of malpractice insurance or lawyers practicing in corporate form, as well as the benefits to them of adequately insuring

The group discussed how we planned to get **feedback** from the tool and how to ensure that users are honest in responding to questions to ensure the tool’s usefulness.

- Jim suggested that data would be gathered anonymously.
- The group discussed the challenges presented by this and the reluctance users may have to admitting deficits in their systems/procedures if they believe this information can be used against them somehow.

- The group felt it was necessary to make sure that the tool clearly indicates that we are not using it to collect IP addresses, names, or other identifying information of users.
- Maybe make the tool available both on-line and off-line.
- Maybe have someone other than the OARC collect the data.
- Maybe abandon the goal of collecting data in favor of efforts to get broader and more truthful responses.
- Discussion was had about the desirability of creating a rule to protect the confidentiality of data provided by users – both in the civil context and in the regulatory context.

Jim discussed briefly the need for **Peer Review** and/or some type of similar certification if the self-assessment is going to be used to get insurance premium reductions.

Are any additions to the tool needed?

- Discussion of on-line reputation management
- Introductory section
 - Possibly include an emphasis on the benefits of malpractice insurance

To Dos:

Each group is to review its section

Make sure the section focuses on systems, policies and procedures

Move other information into resources

Some group need to expand their “resources” section

Final edits should be in the hands of Jon White no later than November 21, 2016.

Next subcommittee meeting will be January 18, 2017.

Respectfully submitted,

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