

Self-Assessment Program Aims to Enhance Lawyer Competency and Client Satisfaction

BY JONATHAN P. WHITE

Proactive prevention of practice problems: this is the easy-to-embrace idea behind a new lawyer self-assessment program developed by a subcommittee of the Colorado Supreme Court Advisory Committee. As this article goes to press, this subcommittee is putting the final touches on an innovative online self-assessment survey that covers a variety of professional responsibility issues. A print version of the survey is already available for use through the Office of Attorney Regulation Counsel's website.¹ Some of the issues featured in these self-assessments arise directly from requirements in the Colorado Rules of Professional Conduct. Others embody practices that promote compliance with the Rules and enhance client service.

This new self-assessment program offers lawyers a chance to review what is working well and what could be improved in their practice. It incorporates 10 core practice principles:

1. developing competent practices;
2. communicating in an effective, timely, professional manner, and maintaining professional relations;
3. ensuring confidentiality;
4. avoiding conflicts of interest;
5. maintaining appropriate file and records management systems;
6. managing the legal entity and staff effectively;
7. charging appropriate fees and making appropriate disbursements;
8. having appropriate systems in place to safeguard client trust money and property;

9. working to improve the administration of justice and access to legal services; and
10. creating a culture of wellness and inclusivity.

In both the online and print surveys, these 10 practice principles correspond to 10 subject-specific self-assessments.

Giving lawyers the ability to self-evaluate their practice in these 10 core areas furthers the subcommittee's goal of helping lawyers increase client satisfaction. Time spent reviewing the issues raised during the self-assessment process should pay dividends for attorneys, resulting in happier clients, less time lost to management problems, and more time to focus on cases. Proactive self-assessment should also reduce the potential for malpractice claims and grievances. An ounce of prevention should prove to be worth a pound of cure.²

Origin of the Self-Assessment Concept for Lawyers

This simple idea—getting lawyers to self-assess—emerged more than 25 years ago with a *Cornell Law Review* article by Professor Ted Schneyer of the University of Arizona James E. Rogers College of Law. Professor Schneyer wrote about an “ethical infrastructure” in the law firm practice setting that consists of a firm’s “organization, policies, and operating procedures.”³ Professor Schneyer suggested that a firm’s efforts to bolster its ethical infrastructure could have a salutary effect on disciplinary claims against individual lawyers, creating less disruption and harm to the firm’s operation.⁴

More recently, a 2008 study analyzed law firms in New South Wales, Australia, that had undergone self-assessment to ensure compliance with ethical standards.⁵ The results strongly supported Professor Schneyer’s thinking regarding the benefits of an ethical infrastructure. According to the data, firms that underwent self-assessment experienced a two-thirds drop in the number of complaints after the self-assessment,⁶ and they had one-third the number of complaints compared to firms that did not undertake self-assessment.⁷ The New South Wales data arose in the context of that particular jurisdiction permitting non-lawyer ownership of law firms and the corresponding creation of a mandatory risk evaluation process for such practices.⁸

The statistics from New South Wales did not go unnoticed. In recent years, a number of Canadian provinces have considered implementing proactive risk-assessment programs.⁹ Nova Scotia, through the Nova Scotia Barristers’ Society, as well as the Canadian Bar Association, have both drafted self-assessment tools for lawyers to use.¹⁰ In the United States, Colorado is one of two states actively developing such a program. Illinois is the other state.¹¹

Colorado’s development of a proactive assessment program began with Denver hosting the first international Regulators’ Workshop on Proactive, Risk-Based Regulation in May 2015 as part of the American Bar Association (ABA) Conference on Professional Responsibility. The Office of Attorney Regulation Counsel hosted and co-sponsored this workshop under the leadership of Attorney Regulation Counsel James C. Coyle. Coyle has had a longstanding interest in establishing a proactive risk-assessment program to help lawyers, and through the workshop, he helped position Colorado as a national leader in this initiative. The ABA Center for Professional Responsibility and the Maurice Deane School of Law at Hofstra University also co-sponsored the Denver workshop.¹² Workshop attendees explored ways to implement proactive risk-assessment programs to improve professionalism.¹³

Following the May 2015 workshop, the Colorado Supreme Court Advisory Committee formed a subcommittee to study creating a

proactive practice assessment program.¹⁴ Denver lawyer David Stark, a partner at Faegre Baker Daniels LLP and chair of the Supreme Court Advisory Committee, chairs this subcommittee. The launch of the online self-assessment platform represents the culmination of two years of extensive work by the subcommittee.

Fulfilling the Mission of the Office of Attorney Regulation Counsel through Proactive Self-Assessments

Before designing lawyer self-assessments, the subcommittee focused on a broader but essential task: drafting objectives for the Colorado Supreme Court's regulatory arm.¹⁵ These "regulatory objectives" equate to a mission statement for the Office of Attorney Regulation Counsel, which oversees not only disciplinary investigations and proceedings but also attorney admissions, attorney registration, and mandatory continuing legal and judicial education.¹⁶ In drafting the regulatory objectives, the subcommittee emphasized the role of proactive programs in enhancing client protection, helping lawyers successfully navigate the practice of law, and elevating competence and professionalism. The Colorado Supreme Court adopted the regulatory objectives in April 2016. They form the Preamble to Chapters 18 through 20 of the Colorado Rules of Civil Procedure, which are the Rules Governing the Practice of Law.¹⁷

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The self-assessment program fits squarely in the ambit of the regulatory objectives that highlight proactive programs. The program complements the proactive approach to lawyer

regulation that the Office of Attorney Regulation Counsel, which hosts and administers the program, has committed to for some time. Other proactive, risk-prevention programs the Office has sponsored include trust account school, ethics school, and professionalism school. The Office also offers alternatives to discipline, including diversion and probation programs for lawyers who commit minor misconduct and who are experiencing a mental health or substance use disorder to help them complete a course of recovery and return to practice. The new self-assessment program continues this tradition of using education and prioritizing risk management to protect the public and assist lawyers.

The Self-Assessment Process

As previously mentioned, the survey takes two forms: a printable PDF version and the online platform. Lawyers can use whichever version they prefer.

The printable PDF survey features 10 discrete self-assessments corresponding to the 10 core practice principles. Within each assessment, a series of questions features best practices or actual rule requirements. The questions pair with citations to the Colorado Rules of Professional Conduct or discussion of best practices. Critically, too, the questions pair with educational resources. The subcommittee



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believes it is essential that the assessments offer guidance on how to build an ethical infrastructure through reference to educational materials. These educational resources include formal ethics opinions issued by the CBA Ethics Committee and the ABA, as well as articles published in law review and bar journals. Other resources include template forms and articles from professional liability insurers, such as the CBA's preferred carrier, ALPS Corporation. Many of the educational materials cited can be found in the public domain. The printable PDF survey is available for download on the Office of Attorney Regulation Counsel's website, www.coloradosupremecourt.com.

The online survey, scheduled to launch this fall, will include questions similar to those in the print survey and likewise will feature 10 specific areas of self-assessment corresponding to the 10 practice principles. Because it is designed for use on a computer or mobile device, the online survey will have a different look and feel from the PDF version, displaying only a limited amount of information on the screen at one time. This will enable users to focus on one practice principle before moving to the next. Upon completing the online assessment, lawyers will have the option to download and print a report card showing their answers, references to the Colorado Rules of Professional Conduct, and educational resources. The online assessment itself will contain references to the Colorado Rules of Professional Conduct and links to educational resources.

The online assessment will be confidential. Neither the Office of Attorney Regulation Counsel nor the survey platform host will see a user's individual answers or report card. The platform host will gather aggregate, anonymous data, such as the general geographic location where survey participants base their practice, the size of their practice, and the sections and questions that generate the most user traffic. This aggregate data will help identify topics for educational programming offered to the legal community.

Considerable time and deliberation went into crafting the self-assessment content. In 2016, the subcommittee divided up into 10 working groups to create the 10 self-assessments, with

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each working group focusing on one practice principle. The working group members looked at the salient issues on their topic from their own professional experience.

The subcommittee has nearly 50 members at present,¹⁸ with practice backgrounds ranging from criminal defense to general civil litigation to professional liability. While some members practice in large- or medium-sized firms, many are solo or small-firm practitioners, reflecting the subcommittee's view that this program should be particularly useful to those in solo or small firm practices. Collectively, the varied professional experiences of the subcommittee members led to the creation of a comprehensive series of self-assessments that reflect the practice experience of many.

Mentoring and Community Collaboration


Self-evaluation lends itself to teachable moments. To facilitate this, the subcommittee envisions a second step in the self-assessment process: peer review. Once a lawyer completes the online or print self-assessment surveys, he or she should discuss the results with a lawyer peer reviewer. This person could also be a mentor from the CBA, a specialty bar, an inn of court, the Colorado Attorney Mentoring Program, or elsewhere. The peer review process gives lawyers the chance to explore ways to improve their practice by sharing ideas. Developing a peer review process to complement the online or written self-assessment will be the next area

of focus for the subcommittee.

Peer review, as well as the varied practice backgrounds of the subcommittee members, underscore the collaborative nature of the self-assessment program. Law is a practice. Experience and learning from others are crucial to success. As the proactive practice program advances, the legal community's collective wisdom will help the program remain timely and relevant. Lawyers can offer input on practice points to feature and additional ethical issues to highlight. They can identify new educational resources to incorporate into the survey. The print assessments and the online survey are not static. They are designed to evolve through refinement and updating. Reflecting this continual evolution, the subcommittee plans to add to the online assessment video learning modules that provide another educational resource and that can be updated over time.

The self-assessment process is voluntary. The subcommittee hopes this encourages buy-in from the legal community. To incentivize participation, the subcommittee will explore ways to allow those completing the assessments to obtain CLE credits for time spent evaluating their practice. It also plans to discuss with professional liability carriers whether lawyers who complete the assessments can receive discounted premiums.

A Win-Win

The practice of law will always be challenging. The "ounce of prevention is worth a pound of cure" approach of the proactive practice program seeks to reduce some of that stress. The self-assessments give lawyers the blueprint to build an ethical infrastructure. Lawyers, in turn, benefit from enhanced peace of mind. Clients benefit from exceptional service. It is a win-win for all. 



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NOTES

1. The print version of the survey can be accessed using the “Lawyer Self-Assessment Program” link at www.coloradosupremecourt.com.
2. Pennsylvania State University Dickinson School of Law Professor Laurel Terry has described the movement toward proactive legal regulation as an example of Benjamin Franklin’s “an ounce of prevention is worth a pound of cure” adage. See Terry, “When It Comes to Lawyers . . . Is an Ounce of Prevention Worth a Pound of Cure?” *JOTWELL* (July 13, 2016) (reviewing Fortney, “Promoting Public Protection through an ‘Attorney Integrity’ System: Lessons from the Australian Experience with Proactive Regulation of Lawyers,” 23 *Prof. Law.* 16 (2015)).
3. Schneyer, “Professional Discipline for Law Firms?” 77 *Cornell L.Rev.* 1, 10 (1991).
4. *Id.* at 10, 14.
5. Fortney and Gordon, “Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation,” 10 *U. St. Thomas L.J.* 166-67 (2013) (citing Gordon et al., “Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW,” Univ. Melbourne Legal Studies Research Paper No. 453 (2009)). See also Schneyer, “The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers,” 42 *Hofstra L.Rev.* 233 (2013).
6. *Id.* at 167 (citing Gordon et al., *supra* note 5 at 23).
7. *Id.* (citing Gordon et al., *supra* note 5 at 25-26).
8. *Id.* at 158-65.
9. Terry, “The Power of Lawyer Regulators To Increase Client & Public Protection Through Adoption of a Proactive Regulation System,” 20 *Lewis & Clark L.Rev.* 717, 729-51 (2016).
10. *Id.* at 729-30, 748-51.
11. Ill. Sup. Ct. R. 794(d)(1) (2017).
12. Office of Attorney Regulation Counsel, 2015 Annual Report, App. O, www.coloradosupremecourt.com/PDF/AboutUs/Annual%20Reports/2015%20Annual%20Report.pdf.
13. *Id.* Two additional workshops have been held since June 2015—one in June 2016 and the other in June 2017. The Office of Attorney Regulation Counsel’s website features links to the minutes of all three workshops at www.coloradosupremecourt.com/AboutUs/PMBRMinutes.asp. Leadership behind the international workshops includes James C. Coyle, Attorney Regulation Counsel, Colorado Supreme Court; Professor Susan S. Fortney, Texas A&M University School of Law; Ellyn S. Rosen, Deputy Director, ABA Center for Professional Responsibility; Darrel I. Pink, Executive Director, Nova Scotia Barristers Society; Laurel S. Terry, Professor, Penn State Dickinson Law; and Margaret Drent, Senior Counsel, Law Society of Upper Canada.
14. *Id.* at 36.
15. *Id.*
16. *Id.*
17. CRCP, Ch. 18-20 pmbl. (2016).
18. Current and past members of the subcommittee include David Stark (chair), Suzann Bacon, Barbara Brown, Vince Buzek, Brett Corporon, Jim Coyle, Amy DeVan, Katy Donnelly, Barbara Ezyk, Jay Fernandez, Jill Fernandez, Mark Fogg, Margaret Funk, Charles Garcia, Marcy Glenn, Karen Hammer, Jack Hanley, Melinda Harper, Karen Hester, Kim Ikeler, Steve Jacobson, Patricia Jarzowski, Genet T. Johnson, Josh Junevicius, Mark Lyda, Dawn McKnight, April McMurrey, Scott Meiklejohn, Michael Mihm, Justin Moore, Geanne Moroye, Cecil Morris, Chip Mortimer, Chris Murray, Reba Nance, Chris Newbold, William Ojile, Tim O’Neill, Margrit Parker, Cori Peterson, Ryann Peyton, Leni Plimpton, Dick Reeve, Kati Rothgery, Matthew Samuelson, Catherine Shea, Jamie Sudler, Sara Van Deusen, Tom Werge, James Wilder, Jonathan White, and David H. Wollins.

CBA ETHICS HOTLINE

A Service for Attorneys

The CBA Ethics Hotline is a free resource for attorneys who need immediate assistance with an ethical dilemma or question. Inquiries are handled by individual members of the CBA Ethics Committee. Attorneys can expect to briefly discuss an ethical issue with a hotline volunteer and are asked to do their own research before calling the hotline.

To contact a hotline volunteer, please call the CBA offices at 303-860-1115.

