

PROFESSIONALISM IN PRACTICE: A SYSTEM FOR NEW ATTORNEYS

Kathryn H. Wisner ESQ.¹

Attorney

State of Colorado, United state of America

1. INTRODUCTION

In traditional American Media the stereotype of the dishonest attorney is so ingrained that it's almost hard to believe for the average American that there are honest attorneys available. This is a stereotype that the National and State Bar associations are constantly fighting against but some say is a battle of attrition.

After a review of the Colorado system of professional discipline by the American Bar association (ABA) about 18 years ago Colorado started the process that would fundamentally change the way many states disciplined attorneys and would eventually lead to them being called the gold standard in attorney discipline². The rule changes including reduction and the time taken to complete the process, increased consistency across discipline decisions, the empanelment of an entity to centralized intake procedures as well as the creation of an office of hearing boards two oversee the process³. This paper will be a discussion of the different systems in place both nationally and locally to help prevent and deal with attorney discipline problems especially those geared towards attorneys new to practice.

There are programs in place to try to combat ethical violations by attorneys new and old however there's a marked difference between the two types of offences that they usually commit. This is not to say that serious breaches of legal ethics cannot happen to a new attorney or that an experienced attorney cannot make a slip up more in line with that of his younger peer, but rather that more experienced attorneys tend to be sanctioned for more serious offenses while younger attorneys

¹ I would like to thank my great friends Gregorio Assagra de Almeida and Flávia Vigatti Coelho for all of their help and guidance.

² See John S. Gleason & James C. Coyle, *A World of Difference in Attorney Regulation*, 42 *The Colo. Lawyer* 37, 37-39 (2013).

³ See *Id.*

are sanctioned not only for large serious offenses but also for General breaches of professionalism and ethics based more in ignorance than intent.

American Bar Association oversees each of the individual bar associations that are run in each State and territory governed by the United States of America and it is a requirement that to be licensed to practice law you must be licensed in one of the states and therefore fall under the jurisdiction of one of the state or territory Bar Associations (often abbreviated in the vernacular as simple Bar). While the American Bar Association itself does not conduct attorney discipline it does have rules and structures in place under which the state bars must operate allowing both uniformity and consistency across all bars while still allowing States to enact the measures that they find to be necessary in their individual areas of authority. The split of power is not unlike that federal or state legislative Authority given to the various congress's with the Supreme Court of the United States laying down a floor that must be met while the individual states are allowed to raise but not lower the requirements.

American Bar Association statistics / Colorado statistics

According to the 2004 ABA Survey On Lawyer Discipline (SOLD)⁴ the most current collective source of statistics on attorney discipline in the United States⁵, there is currently an approximate total of 1,235,298 attorneys with active licenses and that in 2014 the number of complaints received by disciplinary agencies in the states and territories reporting was approximately 88,930 with 25,794 of those leading to some sort of investigation and handling outside of those handled by an intake program⁶.

According to the same report Colorado has 25,665 lawyers with an active license and received 3,528 complaints and reported that 90% of those were handled by an intake procedure leaving a little over 300 to be handled by other disciplinary methods⁷.

National measures in place / Colorado measures in place

The Colorado program embraces both all national measures as well implementing several measures that at the time were unique but have in later years been implemented by several other states and territories. This provides an integrated approach that offers a wide range possible learning opportunities for attorneys starting in law school and continuing through the entirety of one's legal practice. The measures come into play at different times in the life cycle of an attorney this paper will focus on three distinct parts: education, bar admittance, and admitted attorney.

4 ABA Standing Comm. Members on Prof'l Discipline, 2014 ABA Survey on Lawyer Discipline Systems (ABA 2014), http://www.americanbar.org/groups/professional_responsibility/resources/surveyonlawyerdisciplinesystem_s2014.html.

5 Connecticut, Kansas, the New York 1st Department, North Dakota, and Ohio did not provide data in time for publication.

6 2014 ABA Survey on Lawyer Discipline Systems (ABA 2014).

7 Id.

2. EDUCATION

Law School admittance requirements

Many non legal professionals in United States are unaware that there is a character and fitness process that requires new lawyers pass a screening test before being admitted to practice law, in addition to the strict structured code of rules that they are expected to follow after admission to the profession. In most cases you will be required to report on everything from minor traffic incidents and other legal system involvement, to academic discrepancies, to work and educational histories as well as provide character references to support your claim that you are capable of performing at the ethical and educational level that will required of you⁸.

National mandatory ethics courses and MPRE⁹

In order to qualify for ABA accreditation among a myriad of other requirements every law school must offer at least a two credit or six hour a week course in legal ethics¹⁰. This course is mandatory for all degrees that will result in a degree that will certify the student to sit for a bar and is suggested for those programs that will not lead to bar admittance¹¹.

There's no set curricula and the individual schools and teachers we establish what they like as long as the core subject matter is to cover the legal and ethical ramifications of being an attorney¹². These courses vary from primer on what it will take to pass the ethics exam to a discussion on what it means to be an attorney. This course in theory should help the new attorney achieve an understanding of their ethical duties not only with respect to the law and their clients but to society at large and if properly taught (and learned) should help that new attorney mitigate any ethical blunders made due to an ignorance of requirements set forth by the different national and territorial Bar Associations.

The addition to the mandated Ethics Course almost all states and territories save Maryland, Wisconsin, and Puerto Rico require the applicant to pass the Multistate Professional Responsibility Exam (MPRE)¹³. the MPRE is a two hour sixty question test that is scored on a scale ranging from 50 to 150 with passing scores determined by each individual jurisdiction¹⁴.

8 See Colo. Law Univ. of Colo. Boulder, Character and Fitness Questions on Your Application to Colorado Law (Univ. of Colo. Boulder 2015), <http://www.colorado.edu/law/character-and-fitness-questions-your-application-admission-colorado-law>.

9 California is currently the only state in the United States that allows individuals who have not passed through an ABA accredited law school program to take a bar. This means those attorneys are not necessarily required to have the ethics training nor are they required to have completed the new internship requirement. However this does not excuse the requirement that they pass the MPRE buy the selected score of eighty six.

10 Am. Bar, Section of Legal Education and Admissions to the Bar (2015) [hereinafter Standards Archives], http://www.americanbar.org/groups/legal_education/resources/standards/standards_archives.html.

11 See Standards Archives

12 Id.

13 Nat'l Conference of Bar Examiners, Multistate Professional Responsibility Examination (2016) [hereinafter The MPRE], <http://www.ncbex.org/exams/mpre/>.

14 Id.

The scores are communicable and are generally accepted for up to five years after the original taking of the test¹⁵. The MPRE covers the conduct of lawyers and judges as well as attorneys operating in non-legal capacities¹⁶. Test questions may come from any part of the American Bar association's model rules of professional conduct and the model code of judicial conduct as well as any other controlling constitutional decisions and generally accepted procedures¹⁷.

Law school Practical Studies Requirement

In 2015 the ABA's Managing Director of the Office of Legal education and Bar Admissions issued guidance on new requirements for accredited law schools, namely that each "law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: one or more experiential course(s) totaling at least six credit hours"¹⁸. They also issued guidance that this experiential course could not be satisfied by the writing requirements already in place but instead heavily suggested the use of law clinics and or field placement so that students can get real world experience working with actual clients under the direction of supervising attorneys¹⁹.

As such changes are first authored by the office then piloted in several law schools and then voted on at large by the ABA membership this indicates that practitioners in the field saw a need to give students more than just a theoretical knowledge of working with clients. Rather it seems that it was evident that the students needed real practical experience so that they could enter the profession if not ready to practice alone at least closer to that point.

3. BAR ADMISSION

Character and Fitness

This is actually a double bar to admission as this is a smaller version of this process that must be completed for admission to law school. While the Character and Fitness process for admission to the bar is more in depth than that for admittance to law school it does cover many of the same pieces and can go as far as requiring the reporting discipline infractions from Primary School and expunged or dismissed offenses that might have happened in Juvenile Justice proceedings that are usually undiscoverable²⁰, as well as references for every place in which a person has lived, references from every legal employer one has worked with as well as additional legal and nonlegal recommendations speaking to the character of the applicant²¹.

¹⁵ *Id.*

¹⁶ *See Id.*

¹⁷ *See Id.*

¹⁸ Am. Bar, Managing Director's Guidance Memo on Standards 303(a)(3), 303(b), and 304 (2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf.

¹⁹ *See Id.*

²⁰ *See* Colo. Supreme Court Office of Attorney Regulation Counsel, Character and Fitness (Colo. Supreme Court 2013), <http://www.coloradosupremecourt.us/Future%20Lawyers/CharacterAndFitness.asp>.

²¹ *See Id.*

In theory while this requirement exists to protect the public from individuals it also serves as a shield for the profession itself. This is a requirement in every US jurisdiction for admission to the bar and while failing to be admitted to the bar for character and fitness violations is uncommon, further enquiries into the background and reasoning behind questionable reporting is not. The applicant has the burden to prove they have the moral character necessary to comport themselves in such a way that not only will they be an asset to the legal community but did they will fairly and competently represent those whom will be depending on them.

Professionalism versus ethics

As should be evident by the afore discussed programs there's a very strong (and very necessary) emphasis on the ethics of legal practice. The Colorado Bar felt that there was another area that was as deserving of attention, particularly in light of evolving standards for attorneys, professionalism. One of the first requirements for admission to the bar after the completion of character and fitness and passing the required exams is a full day professionalism course based on the Colorado Principles of Professionalism. This course is based on set of values, "these values require attorneys to always act competently civilly and with integrity and commit themselves to the public good and furthering the interests of Justice."²²

In 2009 but the CBA (Colorado Bar Association) Professionalism Coordinating Council undertook the task of melding the existing professionalism guidelines into a single universal and easily accessible document this is supposed to work in tandem with local and territorial bars²³.

These guidelines comprise two main areas: first, the combination of professionalism principles into real-world goals so as to guide professional behavior in everyday practice and second, a commitment from Colorado legal professionals in general to self-police their actions in such a way they will act professionally and with integrity²⁴.

The course covering these rules was brought forth just as the Colorado bar noted a large number of complaints that received were necessarily ethical quandaries but rather gaps in professionalism, things that could be prevented if lawyers were educated in their duties as a professional to their clients, not just and their ethical responsibilities to the Bar. They took this insight and established a course that must be completed before entrance to the bar by all incoming attorneys, regardless of experience level. There has been a marked difference in the number of professionalism related complaint that have come through since the inception of the program some years seeing a decline of up to 70% with respect to the years preceding the implementation of the course²⁵.

²² See Colo. Bar, Colorado Principles of Professionalism (2009) [hereinafter Rules of Professional Conduct], bit.ly/1VSYUBF.

²³ See Id.

²⁴ See Id.

²⁵ See Id.

4 . POST BAR ADMITTANCE

New attorney mentoring program

The Colorado Attorney Mentoring Program or CAMP was started in 2013 as a statewide program to connect lawyers in mentoring relationships²⁶. It is co-sponsored through Bar association's, law firms agencies, and other organizations throughout the state²⁷. There are currently thirty programs in twenty two of the judicial districts and it is an official part of the attorney regulation system of the Colorado Supreme Court and can be used as part of the diversionary process²⁸.

The CAMP objectives include the promotion of professional pride in the legal profession, the pursuit of excellence in client representation, inclusivity and diversity in the legal profession, and the building a strong network of attorneys and judges in the state of Colorado²⁹.

The mentoring program is open to any active licensed attorney who's practicing or intends to practice in the state of Colorado in any area of law. There are no requirements on the length of practice or any other practice related requirements, rather it is open to any interested party³⁰. The mentors however are attorneys and judges in good standing or are retired attorney and judges who retired in good standing and have practiced a minimum of five years and have no recent histories of suspension, disbarment, or other disciplinary actions³¹.

The two main types of CAMP programs are. The more traditional mentor-mentee relationship which pairs a mentee with a mentor in their geographical area and a hopefully related practice area in a long and hopefully deeply meaningful relationship building experience³². The second type is something that they call Coffee list mentors where it's nothing structured or formal but rather a list of attorneys more than willing to get together over a cup of coffee or a meal to discuss a variety of issues³³.

The program also comprises several different tracks of programs for mentees entering program³⁴. CAMP recognizes that all areas and stages of practice can benefit from this type of relationship including but not limited to recently divorced attorneys, attorneys raising or caring for families, attorneys getting ready to start

26 See Colo. Courts, CAMP Colorado Attorney Mentoring Program (2013) [hereinafter CAMP], <http://coloradomentoring.org/>.

27 See Id.

28 See Id.

29 See Id.

30 See Id.

31 See CAMP

32 See Id.

33 See Id.

34 See Id.

their own practice, new attorneys, experienced attorneys newer to Colorado, and those seeking to improve their trial practice skills³⁵.

CAMP goes beyond just providing mentee/mentor relationships by also providing CLEs, a monthly networking event, additional skill training, and also programs on how to develop a professional identity both in person and in social media³⁶. One of the newer programs is a reverse mentoring program where for new attorneys speak to older attorneys about some of the newer development and legal practice many of these sessions developments in technology especially in social networking.

One Supreme Court Justice recommends CAMP to all newly admitted attorneys indicating that “this is a wonderful resource for increasing confidence and professionalism of our State’s Attorney’s”³⁷ A current CAMP member while discussing the program, admits that having a mentor that you know she can turn to questions without judgement has made her transition into a solo practitioner straight from law school possible she says, “I don’t know if I could have done it without him he’s always there when I have a question and is willing to lend a hand I can’t wait to be able to do this for somebody else one day.”

Continuing Legal Education courses

The ABA and its in-house Continuing Legal Education (CLE) program offers over a hundred and fifty different ethics-based courses covering general ethics as well as ethics specific to all subcategories of law from dispute resolution to torts³⁸. Including one section called ABA Essentials which are introductory level programs covering the basics of core practice areas specifically for new attorneys³⁹. There’s also a free CLE site on which the ABA provides a CLE for free a little more frequently than once a month, which on occasion offers ethics related material. One representative from the ABA CLE division indicated that while ethics credits⁴⁰ are not dispersed for every course offered, ethics material is covered in every CLE course as it is an integral part of legal practice⁴¹.

In addition to the ABA’s continuing legal education program each territorial Bar Association also offers CLE credits as do many private organizations and law schools throughout the country. All of which must submit syllabi and outlines in order to be accredited to award CLE credits whether focused on ethics, or on some other facet of the Law or legal practice.

35 *See Id.*

36 *See CAMP*

37 *See Id.*

38 *See American 2017 Bar Association, ABA CLE Is the ABA Academy (2017) [hereinafter Shop ABA], <https://shop.americanbar.org/eBus/abaacademy.aspx?term=ethics>.*

39 *See Id.*

40 There are two types of CLE credits general and ethics credits both of which must be earned in certain amount to renew a licence to practice law.

41 *See Shop ABA*

The Colorado Bar Association and affiliated local bars also offer a myriad of courses offering both those with a focus on ethics as well as other topics⁴². “All attorneys admitted in Colorado must earn 45 general CLE credits, including 7 ethics credits, during each compliance period.” C.R.C.P. 260.2⁴³. In Colorado the compliance period is three years from the date of admission ending on the last day of December of the third year⁴⁴. Every compliance period after that starts January first and continues for three calendar years⁴⁵.

Attorney Discipline

There is an accepted ladder of attorney discipline that is followed with little variation across all districts and states. First there may come a dismissal of the complaint due to lack of evidence or viability, then there is diversion of the complaint to one of a specified number of processes which will be discussed later in the paper, next is a private admonition received by the attorney and placed in their character and fitness files, following that is public censure, then come a string of consequences that limit the attorney’s ability to practice law: a suspension ranging from 30 days to one year during which they are unable to practice law, a suspension from one year and one day to three years with the requirement of demonstrating rehabilitation on top of the other procedural requirements for returning, and finally disbarment where an attorney must wait at least 8 years and go through the complete readmission process in order to practice law again⁴⁶.

Diversionsary programs

While every state has a diversionary program Colorado has made especially use of its program for the benefit of new attorneys by placing a high value on educational components program for those cases in which the ethical and professional related misconduct seems to be more ignorant than malicious.

The Office of Attorney Regulation Counsel has set up an intake procedure any member of the public can call and report what they believe to be an incident of misconduct by any member of the legal profession this report is then thoroughly investigated and as appropriate referred to dismissal or further review and discipline⁴⁷. One of the main forms of discipline is Colorado’s diversionary program in which the attorney who was found to have committed an ethical or professional breach is given a program of regulated education remediation and mentoring in order to help them not only realize their misconduct but prevent future cases of misconduct⁴⁸. This is especially true of newer attorneys the rules of professional conduct, misconduct and professionalism are intricate and extensive.

42 Colo. Bar, Colorado Bar Association CLE (2017) [hereinafter CBA-CLE], <http://cle.cobar.org/>.

43 *See Id.*

44 *See Id.*

45 *See Id.*

46 17 C.F.R. 205 (2003).

47 Colo. Supreme Court Office of Attorney Regulation Counsel, Complaints/Discipline – Overview (2013), http://www.coloradosupremecourt.us/Complaints/Complaints_Disc.asp.

48 *See Id.*

Colorado is showing its commitment to not only attorney ethics in the protection of those served by attorneys by its handling of this program but is also showing its commitment to developing its attorneys to be a pillar of its community by providing them with the guidance of education necessary to provide legal help in a manner that reflects highly on both the individual and the practice as a whole.

5. CONCLUSION

The Colorado program for professionalism and ethics especially where it regards new attorneys while it may no longer be groundbreaking as it has been expanded across many of the United States continues to push boundaries and stand as an example to other districts as it provides support for attorneys young and old as they navigate the complex world that is the legal profession.

The combination of rigid rules and standards that give clear guidelines for attorneys to follow as well as the personal touches of the mentoring program and thoughtful CLE offerings provides a multifaceted approach to providing attorneys with the support structures needed to be true professionals. This in combination with the national push to provide law students with the foundation necessary to enter the legal profession practice ready is providing the next generation of attorneys the ability to be the most ethical and well-equipped we've yet seen.