

# TRIAL ADVOCACY MENTORING PROGRAM HANDBOOK



4/5/2018

Colorado Attorney Mentoring Program

This handbook is intended to guide mentors and mentees participating in the Colorado Attorney Mentoring Program Trial Advocacy Mentoring Program.

# Trial Advocacy Mentoring Program Handbook

## COLORADO ATTORNEY MENTORING PROGRAM

### HISTORY OF THE TRIAL ADVOCACY MENTORING PROGRAM

Recognizing the need to address the changing profession and striving to create innovative, new mentoring opportunities, a new mentoring format was piloted in 2015. Mentee Tanner Walls of Tucker & Ellis, LLP and Mentor Rob Jones of Paul S. Edwards and Associates prepared and then tried a 5-day jury trial in Fremont County Colorado. The underlying case was the defense of a motor vehicle accident. The purpose of the program was to give 6<sup>th</sup> year associate, Tanner Walls, a structured opportunity to conduct a trial under the mentorship of an experienced Trial Advocacy, Rob Jones. Like many young attorneys in civil practice, Tanner's only trial experience was as second chair and primarily focused on motions practice.

In late 2014 Rob Jones, then President of CDLA, approached CAMP with a proposal to help give young civil Trial Advocacy sorely needed courtroom experience. Rob as in-house counsel for State Farm Insurance had an active civil trial calendar of insurance defense cases. Tanner Walls was eager to participate in the project and to co-counsel a personal injury case. Tanner approached his law firm and they supported him trying a case outside of the firm with the mentorship of Rob.

To make this happen, multiple steps were completed. Rob applied and became a mentor on the Colorado Supreme Court Registry of Pre-Approved Mentors. Tanner registered as a CAMP mentee. CAMP revised the Mentoring Agreement for Attorneys in Different Law Firms to account for the co-counseling of a non-pro bono case, confidentiality and attorney client privilege issues, and fee structure. The individual defendant, State Farm Insurance, and Tucker & Ellis, LLP co-signed the agreement with Rob and Tanner. The respective law firms completed a comprehensive conflicts check.

State Farm Insurance provided a comfort letter to the insured Defendant for coverage of any potential verdict, including one in excess of policy limits. Tanner had professional liability coverage from his firm and Rob maintained professional liability insurance through his firm. The opposing plaintiff's attorney and 11<sup>th</sup> Judicial District Judge Lynnete Wenner supported the mentoring concept for trial.

After a five day jury trial the case went to verdict in Fremont County District Court in late September of 2015. Rob and Tanner each were awarded CAMP Mentoring CLE credits (9 General Credits, including 2 Ethics Credit) for completion of the program.

Following the success of the pilot program, CAMP implemented a standing Trial Advocacy Mentoring Program pursuant to Rule 255 C.R.C.P. in 2016.

## CHECKLIST FOR PARTICIPATION IN THE PROGRAM

Mentor	Mentee
<b>Basic Qualifications</b>	<b>Basic Qualifications</b>
<input type="checkbox"/> Licensed Colorado Attorney	<input type="checkbox"/> Licensed Colorado Attorney
<input type="checkbox"/> 5+ Years in Practice	<input type="checkbox"/> Submitted Mentee Application to CAMP
<input type="checkbox"/> No Past Discipline	<input type="checkbox"/> Interest in Trial Practice
<input type="checkbox"/> Submitted Mentor Application to CAMP	
<input type="checkbox"/> Experienced in Trial Practice	
<b>Professional Liability Insurance</b>	<b>Professional Liability Insurance</b>
<input type="checkbox"/> Currently carrying malpractice insurance, <i>or</i> Will obtain malpractice insurance w/in 14 days	<input type="checkbox"/> Currently carrying malpractice insurance, <i>or</i> Will obtain malpractice insurance w/in 14 days
<input type="checkbox"/> Will qualify for MVL insurance coverage	<input type="checkbox"/> Will qualify for MVL insurance coverage
<b>Employer Permission</b>	<b>Employer Permission</b>
<input type="checkbox"/> Obtain written permission from employer to participate in program	<input type="checkbox"/> Obtain written permission from employer to participate in program
<input type="checkbox"/> Submit written permission to CAMP office	<input type="checkbox"/> Submit written permission to CAMP office
<input type="checkbox"/> Conflict Check for potential Clients	<input type="checkbox"/> Conflict Check for Potential Clients
<b>Access to Case</b>	<b>Documents to Complete</b>
<input type="checkbox"/> Case currently pending and available for co-counseling opportunity	<input type="checkbox"/> Mentoring Agreement
<input type="checkbox"/> Ability to obtain a case for co-counseling opportunity	<input type="checkbox"/> Co-Counseling Agreement
<input type="checkbox"/> Willing to take a pro bono matter through Metro Volunteer Lawyers (if co-counseling case unavailable)	<input type="checkbox"/> Engagement Agreement
<b>Documents to Complete</b>	
<input type="checkbox"/> Mentoring Agreement	
<input type="checkbox"/> Co-Counseling Agreement	
<input type="checkbox"/> Engagement Agreement	

Mentors and mentees must be able to check all corresponding boxes to participate in the Trial Advocacy Mentoring Program.

## THE MENTORING AGREEMENT

The Mentoring Agreement will govern the mentoring relationship from start to finish. It is a requirement of the program that this Agreement be reviewed and signed by the mentor, mentee, mentee and mentor’s firm representative, and the client. The Mentoring Agreement should then be returned to the CAMP office with the client name redacted. **The Mentoring Agreement is found in Appendix 1 to this Handbook.**

In signing the Agreement, all parties involve acknowledge that the Trial Advocacy Mentoring Program is not the standard CAMP Mentoring Program, but is intended to complement traditional classroom instruction with a one-on-one mentoring relationship teaching trial skills and experience, which are compatible with core values and ideals of the legal profession and the best practices for meeting those ideals.

The specific objectives of the Program:

- Promote excellence in the practice of law.
- Promote professionalism and collegiality among members of the bar through exercise of ethical and civil behavior.
- Inclusion and involvement of attorneys in the Colorado legal community, including teaching the value of networking and developing mentor relationships.
- Promote high standards for client representation through early instruction regarding competency and the exercise of sound and reasoned judgment.
- Promote high standards for client representation through acting as co-counsel on behalf of consenting clients after full disclosure to the clients.
- Promote high standards for client representation through early instruction about best practices, including ethical and professional courtroom trial practice and legal customs learned from practical experience.
- Promote public service as an indispensable component of professionalism, and instill pride in the profession and the role lawyers have played and continue to play in shaping and preserving our nation's values.

All parties involved must acknowledge and abide by the following Trial Advocacy Mentoring Program ("Program") rules:

- Any communication between the mentor and the mentee arising out of their participation in the Program will be confidential as to the client confidences, the preparation of the case for trial, the trial of the case, the appeal of the case to a higher court, and the negotiation of resolution of the case.
- As with any co-counseling arrangement, the confidential and work product protected relationship between mentor and mentee must be in compliance with the Colorado Rules of Professional Conduct.
- Mentor and mentee will be attorneys of record for the client with agreement by the client and in compliance with the Colorado Rules of Professional Conduct.
- All fees generated and any costs incurred shall be incurred by the mentor and mentee in compliance with the Colorado Rules of Professional Conduct.
- Mentee and his/her firm agree that the trial experience gained by the mentee constitutes valuable consideration for Mentee's time and that no attorney fees shall be paid to Mentee by Mentor, client, or client's liability insurance carrier (if at issue in the proceeding). Mentee and his/her firm agree to waive any and all costs incurred by Mentee that are not approved in advance by client or client's liability insurance carrier (if at issue in the proceeding) in writing.
- The Mentor and Mentee shall be covered by an appropriate professional liability policy or equivalent maintained by their respective offices.
- The Mentee agrees to waive all claims against, and to hold harmless, the Mentor; the Supreme Court of Colorado, its employees and agents; the Colorado Bar Association, its employees and agents; and the Participating Organization, its employees and agents, for any actions or inactions associated with the Program or with the Mentee's participation in same.
- The Mentor agrees to waive all claims against, and to hold harmless, the Mentee; the Supreme Court of Colorado, its employees and agents; the Colorado Bar Association, its employees and agents; and the Participating Organization, its employees and agents, for any actions or inactions associated with the Program or with the Mentee's participation in same.

As of the date of this Handbook, the Colorado Attorney Mentoring Program is unaware of any claims or grievances arising out of co-counseling and pro bono mentor programs in Colorado and the United States. Nevertheless, it is very important that the rules of the Colorado Attorney Mentoring Program be followed in an effort to reduce the risk of future malpractice claims or professional conduct grievances arising from these unique types of mentoring relationships.

## **Conflicts Check**

Prior to executing an engagement agreement with any client whose matter is to be tried by a mentoring pair match in this program, a comprehensive conflicts check must be completed by both the Mentor and Mentee in accordance with Colorado Rules of Professional Conduct 1.6, 1.7, 1.8, 1.9, and 1.10. Only upon confirmation, in writing, by both the Mentor and Mentee (and their respective law firm or organization) that no conflict of interest exists may the mentoring pair produce an engagement agreement to the prospective client.

## **Co-Counseling Agreement**

Upon the successful completion of a conflicts check, the mentoring pair shall execute a *Co-Counseling Agreement* to outline the rights and responsibilities of the Mentor and Mentee in the context of the co-counseling agreement. The Agreement should be signed by the Mentor and Mentee, as well as by a representative of their respective law firms. As many firms utilize their own co-counseling agreements, CAMP has not created a template agreement. However, all co-counseling agreements should be sure to address the following important issues:

### **RELATIONSHIP OF CO-COUNSEL**

- Responsibility for directing the course and conduct of the litigation and ensuring that the matter is prosecuted in a timely and professional manner.
- Assignment of specific task responsibility to all attorneys participating in the case.
- Cooperative work relationship and communication regarding all developments in the case, including communications with the client, court and opposing counsel.

### **IDENTIFICATION**

- Pleadings and other papers shall bear the names of all participating attorneys, and shall be signed by or on behalf of the principal drafter.

### **LITIGATION EXPENSES**

- Party responsible for advancing all litigation expenses in the case not paid for by Client.
- Definition of litigation expenses
- Approval of litigation expenses

### **LIABILITY FOR ASSESSMENT OF FEES OR SANCTIONS**

### **MAINTENANCE AND EXCHANGE OF RECORDS**

### **RECOVERY OF ATTORNEY FEES AND LITIGATION EXPENSES**

- In accordance with Colorado Rules of Professional Conduct 1.5(d)(1-3)
- Mentee and his/her firm agree that the trial experience gained by the mentee constitutes valuable consideration for Mentee's time and that no attorney fees shall be paid to Mentee by Mentor, client, or client's liability insurance carrier (if at issue in the proceeding).

## PROFESSIONAL LIABILITY INSURANCE

WITHDRAWAL

DISPUTE RESOLUTION

### Engagement Agreement

Upon the completion and execution of the Co-Counseling Agreement, the Mentor and Mentee should execute an Engagement Agreement with the client. Unless a prior existing attorney/client relationship exists between the client and the Mentee, the Engagement Agreement should be drafted by the Mentor (or Mentor's Law Firm) and signed by both the Mentor and Mentee.

### Professional Liability Insurance

It is imperative that both the Mentor and Mentee maintain professional liability insurance. While CAMP does not anticipate any increased risk of malpractice claims or professional responsibility grievances arising from this program, for the benefit of client protection both parties must carry adequate professional liability insurance.

Your professional liability insurer may require notice of a co-counseling relationship prior to extending coverage to such an event. Please ensure that you have read and complied with the terms and conditions of your policy and have communicated with your carrier as necessitated by the policy.

If you are not presently covered by a professional liability policy, the American Bar Association maintains a list of carriers providing professional liability insurance in Colorado. That list can be found at: <http://apps.americanbar.org/legalservices/lpl/directory/states/co.html>

CNA is the Colorado Bar Association sponsored professional liability insurance carrier. More information about CNA can be found here: <http://apps.americanbar.org/legalservices/lpl/directory/carriers/cna.html>

Both the Mentor and Mentee must have professional liability insurance coverage prior to the execution of an Engagement Agreement with a client.

**\*\*For purposes of client confidentiality, the Co-Counseling Agreement and Engagement Agreement should not be provided to the CAMP director or support staff\*\***

## PRO BONO OPPORTUNITIES

If any mentoring pair would prefer to take on a pro bono case as part of the Trial Advocacy Mentoring Program, CAMP has partnered with Metro Volunteer Lawyers (MVL). MVL's referral program recruits and coordinates volunteer attorneys to represent people who otherwise could not afford legal assistance. Colorado Legal Services handles the initial client intake process and then sends selected cases to MVL for referral. Once a potential client has completed an intake through Colorado Legal Services and has been accepted into our Referral program, MVL's Legal Services Coordinator further reviews the file and begins contacting volunteer attorneys to try and place the case.

MVL refers the following types of civil cases to volunteers on a pro bono or low-fee basis:

- *Adoption*
- *Bankruptcy (only low-fee, no pro bono)*

- *Conservatorships/Guardianships (To provide for the protection and oversight of people who cannot care for themselves or their affairs because of their age (children or the elderly) or conditions that affect their ability to think and act for themselves (such as Alzheimer's, etc.)*
- *Consumer Debt (such as: car repossessions, contracts/warranties, miscellaneous debt collection matters)*
- *Domestic/Family Law, both through the Family Law Court Program and otherwise.*
  - *Divorce (Dissolution of Marriage)*
  - *Custody (Allocation of Parental Responsibilities)*
  - *On a very limited basis, "post-decree" matters arising after divorces, such as enforcing parental responsibility rights (also sometimes called "custody"), parenting time (also sometimes called "visitation"), or child support orders*
  - *Protection orders for victims of domestic violence*
- *Estate planning*
  - *Wills*
  - *Living wills*
  - *Power of Attorney*
  - *Trusts*
- *Immigration ( in cooperation with Rocky Mountain Immigrant Advocacy Network)*
  - *Appeals of denials of residency*
  - *Political asylum*
  - *Representation of inmates at the INS ("Wackenhut") Detention Center*
- *Landlord/Tenant*
  - *Wrongful Evictions*
  - *Security deposit disputes*
  - *Mobile home issues*
- *Probate*
- *Will contests*
- *Mental health issues*
- *Real estate (for matters such as: fraudulent transfers, property line disputes, HOA disputes)*
- *Social Security Disability- Denial of benefits claims and Continuing Disability Reviews*
- *Tax (such as innocent spouse or audit issues)*
- *Tort Defense (such as uninsured motorists sued for personal injuries or property damage caused in accidents)*

***Criminal cases of any kind are not available.***

Any Mentor or Mentee wishing to volunteer for a pro bono or low fee referral case through MVL should complete and submit the application form found at: <http://www.metrovolunteerlawyers.org/wp-content/uploads/2016/02/Referral-Sign-Up-2016-Website.pdf>

Upon receiving a case referral from MVL, Mentors and Mentees should follow the process outlined in the “Mentoring Agreement” section above. **All volunteer attorneys taking a case referral from MVL will be automatically covered by MVL’s professional liability insurance, in addition to or in lieu of the volunteer attorney’s independent professional liability insurance.**

## PROGRAM OUTCOMES & CLE CREDIT

The outcome of the trial has no impact on the mentoring pair’s ability to earn CLE credits for participation in the program. The mentoring pair need only see the client matter to completion, whether by trial or settlement.

Upon successful completion of the program, the Mentor and Mentee will earn 9 general CLE credits and 2 ethics credits. Credits should be claimed by submitting a Certificate of Completion to the CAMP Director. **The Certificate of Completion is found in Appendix 2 to this Handbook.**

Mentees should include with the Certificate of Completion a Letter to the CAMP Director summarizing the trial experience (avoiding client names for confidentiality) and addressing the Mentee’s self-assessment of skill level, including best practices learned, as it pertains to the following trial skills:

- Best Practices for Trial
  - Organization and Preparation
  - Voir Dire or Motions Practice (if a bench trial)
  - Witness Testimony
  - Objections
  - Opening & Closing Statements
  - Technology
- Professionalism
  - Client Consent & Engagement
  - Communication with Opposing Counsel
  - Conflicts
  - Communication with the Court
  - Communication with the Jury
- Introspective Lessons Learned
  - Is litigation a good fit for you?
  - What was the most challenging aspect of trial work for you?
  - What did you enjoy most about trial work?
  - In what areas do you need improvement?
  - How do you plan to gain additional trial skills training?

## CASE MATCH



In the event that a co-counseling relationship cannot be formed as a result of lack of professional liability insurance, permission from employing law firm, client consent, etc. Mentors and Mentees may engage together in the Case Match process.

In a Case Match mentoring pair, Mentors and Mentees do not engage together or with the client in a co-counseling relationship. Instead, the Mentee is solely responsible for case management and engagement. The Mentor is available to discuss the case in a “hypothetical” manner and provide guidance, practice tips, and suggestions for resources. No legal advice is given by the Mentor and the Mentor does not engage with or enter an appearance on behalf of the client. Additionally, the Mentor may not provide any legal research or assist in document preparation or ghost writing.

The Case Match mentoring pair is a good option for Mentees who have some previous trial practice experience, who operate solo law firms, or who simply need a practice resource mentor as they grow their trial skills. Case Match mentoring will not qualify for CLE credits as a standalone mentoring activity, but may be folded into a traditional CAMP mentoring program to qualify for CLE credit.

Questions regarding the Trial  
Advocacy Mentoring Program  
should be directed to  
Ryann Peyton, Director, Colorado  
Attorney Mentoring Program at  
[r.peyton@csc.state.co.us](mailto:r.peyton@csc.state.co.us)  
or  
303-928-7750



**Colorado Attorney Mentoring Program**

**Colorado Trial Advocacy Mentoring Program**

**(For Mentoring Relationships between Lawyers Not in the Same Office or Firm)**

We agree to participate in the Colorado Attorney Mentoring Program (the “Program”) in accordance with its rules and regulations as may be amended from time to time. We understand that we will be paired in the Colorado Trial Advocacy Mentoring Program, established by CAMP pursuant to Rule 255 C.R.C.P. We understand that this Program is not the standard CAMP Mentoring Program, but is intended to complement traditional classroom instruction with a one-on-one mentoring relationship teaching trial skills and experience, which are compatible with core values and ideals of the legal profession and the best practices for meeting those ideals.

We acknowledge the specific objectives of the Program:

- Promote excellence in the practice of law.
- Promote professionalism and collegiality among members of the bar through exercise of ethical and civil behavior.
- Inclusion and involvement of attorneys in the Colorado legal community, including teaching the value of networking and developing mentor relationships.
- Promote high standards for client representation through early instruction regarding competency and the exercise of sound and reasoned judgment.
- Promote high standards for client representation through acting as co-counsel on behalf of consenting clients after full disclosure to the clients.
- Promote high standards for client representation through early instruction about best practices, including ethical and professional courtroom trial practice and legal customs learned from practical experience.
- Promote public service as an indispensable component of professionalism, and instill pride in the profession and the role lawyers have played and continue to play in shaping and preserving our nation's values.

We acknowledge and will abide by the following Trial Program rules:

- Any communication between the mentor and the mentee arising out of our participation in the Program will be confidential as to the client confidences, the preparation of the case for trial, the trial of the case, the appeal of the case to a higher court, and the negotiation of resolution of the case.

- As with any co-counselling arrangement, the confidential and work product protected relationship between mentor and mentee must be in compliance with the Colorado Rules of Professional Conduct.
- Mentor and mentee will be attorneys of record for the client with agreement by the client and in compliance with the Colorado Rules of Professional Conduct.
- All fees generated and any costs incurred shall be incurred by the mentor and mentee in compliance with the Colorado Rules of Professional Conduct.
- Mentee and his/her firm agree that the trial experience gained by the mentee constitutes valuable consideration for mentee's time and that no attorney fees shall be paid by mentor, Defendant or Defendant's liability carrier. Mentee and his/her firm agree to waive any and all costs incurred by mentee that are not approved in advance by Defendant's liability insurance carrier in writing.
- The Mentor and Mentee shall be covered by an appropriate professional liability policy or equivalent maintained by their respective offices.
- The Mentee agrees to waive all claims against, and to hold harmless, the Mentor; the Supreme Court of Colorado, its employees and agents; the Colorado Bar Association, its employees and agents; and the Participating Organization, its employees and agents, for any actions or inactions associated with the Program or with the Mentee's participation in same.
- The Mentor agrees to waive all claims against, and to hold harmless, the Mentee; the Supreme Court of Colorado, its employees and agents; the Colorado Bar Association, its employees and agents; and the Participating Organization, its employees and agents, for any actions or inactions associated with the Program or with the Mentee's participation in same.

We understand that there have been no known claims or grievances arising out of other states' mentor programs or any mentor programs in Colorado. Nevertheless, we understand that it is very important that the rules of the Colorado Attorney Mentoring Program be followed in that specific client confidences shall not be disclosed in the case of mentors and mentees who do not share clients.

We pledge to devote the time and effort needed to complete the activities selected in our Mentoring Plan.

We hereby certify that we have read the above Mentoring Agreement and agree to its terms.

\_\_\_\_\_  
Signature of Mentee                      Date

\_\_\_\_\_  
Signature of Mentor                      Date

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Attorney Registration Number

\_\_\_\_\_  
Attorney Registration Number

\_\_\_\_\_  
Signature of Mentee Firm Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Signature of Mentor Firm Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Signature of Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print/Type Name

## APPENDIX 2 – CERTIFICATE OF COMPLETION



### Colorado Attorney Mentoring Program

### Colorado Trial Advocacy Mentoring Program

### Certificate and Affidavit of Completion of Mentoring Program

We, \_\_\_\_\_, Mentor, and \_\_\_\_\_, Mentee, completed the *Colorado Trial Advocacy Mentoring Program*. We have met the requirements of the program and request certification for 9 General CLE Credits, including 2 Ethics CLE Credits as can be seen by our attached reports.

During our work on the trial preparation and in the trial, we focused on the skills for professional and ethical practice of law in furtherance of the objectives of the *Colorado Attorney Mentoring Program (CAMP)*. The skills and lessons learned are outlined in the enclosed Letter to the Director authored by the Mentee.

I hereby attest that the above information is true and accurate to the best of my knowledge.

\_\_\_\_\_  
Signature of Mentee                      Date

\_\_\_\_\_  
Signature of Mentor                      Date

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Attorney Registration Number

\_\_\_\_\_  
Attorney Registration Number

NOTE: Each participant must submit this form to the Director of the Colorado Attorney Mentoring Program. Upon receipt and verification the Director will approve and submit the certificate to the Board of Legal and Judicial Education for recording of the credits. The Director will notify the participants that their certification has been accepted and submitted to the CLJE Board. No additional forms or affidavits need be submitted to either CAMP or CLJE.

Return this form to the Colorado Attorney Mentoring Program:

CAMP Director:	Ryann Peyton
Email:	<a href="mailto:r.peyton@csc.state.co.us">r.peyton@csc.state.co.us</a>
Mailing Address:	<b>Colorado Attorney Mentoring Program (CAMP)</b> <b>Colorado Supreme Court</b> Ralph L. Carr Judicial Center 1300 Broadway, Suite 230 Denver, Colorado 80203 (303)928-7750
Administrative Assistant:	Lauren Solomon
Email:	<a href="mailto:l.solomon@csc.state.co.us">l.solomon@csc.state.co.us</a>