

COLORADO SUPREME COURT
Office of Attorney Regulation Counsel
Annual Report

2013



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Dear Chief Justice Rice and other members of the Court:

The year 2013 involved a lot of change. Good change. Change needed to adapt to a constantly evolving legal profession. Change brought about by a collaborative, very talented team working together with eight permanent Supreme Court committees and boards in discharging the duties involved in regulating the practice of law in Colorado.

In discharging our many duties, please know that the members of this office and the volunteer citizens who are on our committees and boards are committed to protecting the public and maintaining the high standards of professional conduct required of all Colorado practitioners. We recognize our role in ensuring that those who are admitted to practice law in Colorado are worthy of the trust and confidence that clients and the judicial system reasonably place upon them.

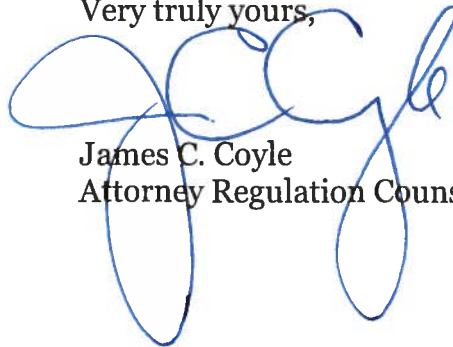
We are also committed to treating all participants in our process with dignity and respect. We recognize our long-term relationship with the general public and legal community. We know that we build trust through effective communications, timely administration, thorough investigations and reasoned judgment. Thus, while we know we cannot make everyone happy with the outcome of a particular matter, we work hard to make sure everyone has an opportunity to be heard and that their matter is addressed fairly and promptly.

We have learned that the best way to protect the public is to prevent misconduct from occurring in the first place, if at all possible. And if misconduct does occur, we make every effort to respond in an appropriate fashion that prevents future misconduct, whether this be through education and rehabilitation, or discipline when needed.

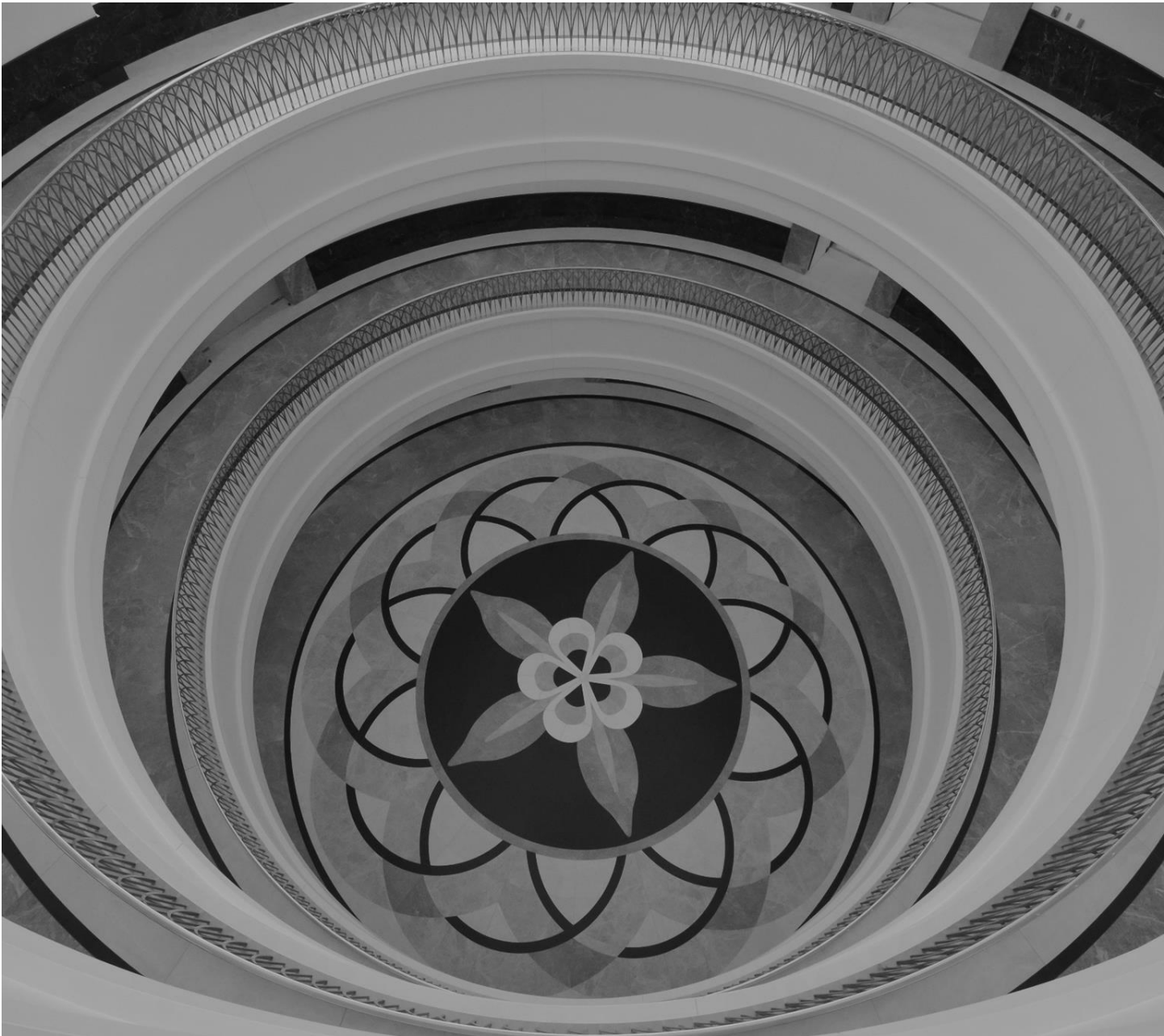
The 2013 Annual Report uses a different format than previous years. The goal of this report is to give an accurate but more succinct global assessment of each of the office's functions, with key charts to support these global assessments. We then have many appendices that contain the detailed information needed to determine whether the office and the system are meeting quality and efficiency standards set by the Court and the Advisory Committee, and to provide each of the permanent committees with the data they need to measure the effectiveness of their programs.

Overall, we had a very successful 2013 and are looking forward to an even better 2014.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'J. Coyle', with a large, stylized flourish at the end.

James C. Coyle
Attorney Regulation Counsel



WHO WE ARE

Attorney Regulation Counsel serves at the pleasure of the Colorado Supreme Court. The Supreme Court Advisory Committee assists the Court by reviewing the productivity, effectiveness and efficiency of the attorney regulation system, including Attorney Regulation Counsel.

The Office of Attorney Regulation Counsel works with seven other permanent Supreme Court committees in regulating the practice of law in Colorado. Attorney Regulation Counsel oversees the Office of Attorney Admissions, Office of Attorney Registration and Continuing Legal and Judicial Education, and the Office of Attorney Regulation. Sixty-four full-time employees work in these offices.

JUSTICES OF THE COLORADO SUPREME COURT¹

Chief Justice Nancy E. Rice

Justice Gregory J. Hobbs, Jr.

Justice Nathan B. Coats

Justice Allison H. Eid

Justice Monica M. Márquez

Justice Brian D. Boatright

Justice William W. Hood, III

SUPREME COURT ADVISORY COMMITTEE

David W. Stark, Chair

Steven K. Jacobson, Vice-Chair

Nancy L. Cohen

Cynthia F. Covell

Mac V. Danford

Cheryl Martinez-Gloria

David C. Little

Barbara A. Miller

Richard A. Nielson

Henry R. Reeve

Alexander R. Rothrock

Daniel A. Vigil

Brian Zall

Justice Nathan B. Coats

Justice Monica M. Márquez

OFFICE OF ATTORNEY REGULATION COUNSEL

James C. Coyle

Attorney Regulation Counsel

Jim Coyle is Attorney Regulation Counsel for the Colorado Supreme Court. Mr. Coyle has been a trial attorney with the Office of Disciplinary Counsel or successor

¹ The Justices of the Colorado Supreme Court in 2013 were as follows: Chief Justice Michael Bender, Chief Justice Designate Nancy E. Rice, Justice Gregory J. Hobbs, Jr., Justice Nathan B. Coats, Justice Allison H. Eid, Justice Monica M. Márquez, and Justice Brian D. Boatright.

Office of Attorney Regulation Counsel since 1990. Prior to that, he was in private practice. He earned his law degree from the University of Colorado School of Law in 1985.

Mr. Coyle is actively involved on a national level with the National Client Protection Organization, the ABA Standing Committee on Client Protection, the National Conference of Bar Examiners, National Organization of Bar Counsel, National Continuing Legal Education Regulators Association, Association of Judicial Discipline Counsel and the ABA Commission on Lawyer Assistance Programs.

Recent committee work includes acting as co-chair and organizer of the First Annual ABA Standing Committee on Client Protection UPL School in Denver in August 2013; NCBE Uniform Bar Examination Administrators Group; National Organization of Bar Counsel (NOBC) Program Committee, Special Committee on Permanent Retirement, Aging Lawyer Committee and GATS Subcommittee; Colorado Supreme Court Advisory subcommittees on Rule revisions (COLAP, CAMP, Student Practice Rule, Provision of Legal Services in a Major Emergency, Rules of Seven, Rules Governing Admissions and Continuing Legal Education, to name a few); and Colorado Chief Justice Commission

Management Team

James S. Sudler

Chief Deputy Regulation Counsel, Trial Division

Jamie Sudler is Chief Deputy Regulation Counsel overseeing the trial division. Mr. Sudler has more than 35 years of experience, both as a private attorney and as a prosecutor in the Denver District Attorney's Office and in the Colorado Attorney General's Office. He earned his law degree from the University of Denver.

Mr. Sudler designed and developed Trust Account School and regularly teaches at the Colorado Supreme Court Ethics School. He recently completed a 26-day trial in Phoenix of the former Maricopa County Attorney and two of his deputies for ethical violations over a period of years. The trial resulted in the disbarment of Andrew Thomas, who was Maricopa County Attorney, and his deputy Lisa Aubuchon. Another deputy, Rachel Alexander, was suspended for six months after her appeal to the state's Supreme Court.

Matthew A. Samuelson

Chief Deputy Regulation Counsel, Intake Division and Operations

Matthew Samuelson is Chief Deputy Regulation Counsel overseeing the intake division, admissions and mandatory continuing legal and judicial education. Mr. Samuelson received his undergraduate degree from St. John's University in Minnesota and his law degree from the DePaul University College of Law. He is a former judge advocate in the United States Air Force. After leaving active duty, Mr.

Samuelson practiced as a deputy public defender in Minnesota and was in private practice in Denver focusing in the area of defending municipalities and other governmental entities in civil rights litigation.

He has worked for the Office of Attorney Regulation Counsel since September 2000, and is a member of the Colorado Bar Association, the American Bar Association, and the National Organization of Bar Counsel.

Charles E. Mortimer

Deputy Regulation Counsel, Trial Division

Charles E. Mortimer (Chip) is Deputy Regulation Counsel in the trial division. Mr. Mortimer received his undergraduate degree from Tufts University in 1983, and his law degree from the College of William and Mary in Virginia in 1986. He was licensed to practice law in Colorado in 1986 and spent fourteen years in private practice, before joining the Office of Attorney Regulation Counsel.

Chip has served on the Thursday Night Bar Association Board of Directors, the First Judicial District Board of Trustees and Governor Owens' Commission on Civil Justice Reform. Prior to coming to the Office of Attorney Regulation Counsel, Chip chaired the Colorado Lawyer's Fidelity Fund and served as a Trustee on the Colorado Lawyer's Fund for Client Protection.

Margaret B. Funk

Deputy Regulation Counsel, Intake Division and Human Resources

Margaret Brown Funk is Deputy Regulation Counsel in the intake division. Ms. Funk joined the Office of Attorney Regulation Counsel in 2006. She graduated from the University of Denver College of Law in 1994.

In private practice, she represented individuals in civil rights matters, primarily in the area of employment law. Between 1995 and 1998, she served as President and Vice President of the Colorado Plaintiffs Employment Lawyers Association (PELA). Between 1998 and 2005, she served as a member of the PELA board of directors and was assigned the duties of chair of the legislative committee and liaison to the Colorado Bar Association. She has published several articles in the Colorado Trial Lawyers Association's monthly magazine, *Trial Talk*, and has lectured extensively on civil rights, litigation, and legal ethics.

Assistant Regulation Counsel

Louise Culberson-Smith
Amy C. DeVan
Adam J. Espinosa
Stephen R. Fatzinger²
Jill Perry Fernandez
Lisa E. Frankel
Kim E. Ikeler

Erin Robson Kristofco
Brooke H. Meyer
Geanne R. Moroye
Timothy J. O'Neill
Katrin Miller Rothgery
Catherine Shea
E. James Wilder³

Staff Attorneys

Marie Nakagawa

Alan Obye

Office of Attorney Admissions

Susan Gleeson, Director of
Examinations

Melissa Petrucelli, Director of
Character and Fitness

Office of Attorney Registration and Continuing Legal and Judicial Education

Elvia Mondragon, Clerk of Attorney Registration and Director of Continuing
Legal and Judicial Education

Investigators

Trial Division

Karen Bershenyi
Mary Lynne Elliott
Janet Layne

Donna Scherer
Laurie Ann Seab

Intake Division

Rosemary Gosda

Carla McCoy

Admissions

Michelle Meyer

Deb Ortiz

² Stephen R. Fatzinger left the Office of Attorney Regulation Counsel in January 2014 to become a Magistrate Judge in the 17th Judicial District.

³ E. James Wilder joined the office as Assistant Regulation Counsel in February 2014.

PERMANENT COMMITTEES

Board of Law Examiners

Law Committee

Richard Nielson, Chair*	Dayna B. Matthew**
John J. Barry*	David D. Powell, Jr.*
Bill C. Berger*	Barry Schwartz*
Hon. Terry Fox*	Magistrate Holly Strablizky*
John Greer*	Justice Nathan B. Coats (Liaison)
Eric Liebman*	Justice Monica Márquez (Liaison)
Christopher T. Macaulay*	
Laura M. Maresca*	

Bar Committee

Brian Zall, Chair*	Kimberly D. Nordstrom, M.D.*
Deborah Bianco*	Lorraine E. Parker*
David Diffie, Ph.D.*	Henry R. Reeve*
Erica Englert*	Corelle M. Spettigue**
Jay E. Fernandez*	Justice Nathan B. Coats (Liaison)
Stephen J. Hensen*	Justice Monica Márquez (Liaison)
Jay L. Labe*	
Kelly Murphy*	

Board of Continuing Legal and Judicial Education

David C. Little, Chair*	Peter Cannici*
Dirk T. Biermann*	Melissa Hart*

* 2013 Member

** New Member, starting in late 2013 or early 2014

Dawn M. McKnight*

Nathifa M. Miller**

Barbara J. Mueller*

David A. Price*

Susan S. Riehl*

Gordon Scheer*

Justice Nathan B. Coats
(Liaison)

Justice Monica M. Marquez
(Liaison)

Attorney Regulation Committee

Steven K. Jacobson, Chair*

Mac V. Danford, Vice-
Chair*

Doris C. Gundersen, M.D.*

Barbara J. Kelley*

Steven C. Lass*

Carey Markel**

Linda Midcap*

Kurt L. Miller, D.M.*

Lori M. Moore*

John E. Mosby*

Lance Timbreza**

Unauthorized Practice of Law Committee

Cheryl Martinez-Gloria,
Chair*

Elizabeth A. Bryant*

Elsa Djab Burchinow**

Cindy Dang*

John V. Egan, III*

Judy L. Graff*

Samantha Halliburton*

Brenda Mientka*

William M. Ojile, Jr.*

Martha Rubi*

Board of Trustees, Attorneys Fund for Client Protection

Charles Goldberg, Chair*

Charles Turner, Vice-
Chair*

Hon. Ethan D. Feldman*

Yoland M. Fennick**

Melinda M. Harper*

Michael B. Lupton*

Hon. Andrew P. McCallin*

David S. Mestas**

Nathifa Miller*

* 2013 Member

** New Member, starting in late 2013 or early 2014

Colorado Commission on Judicial Discipline

Hon. Roxanne Bailin*

Hon. Martha Minot, Chair**

Federico Alvarez**

Kathleen Kelley**

Yolanda Lyons**

Richard O. Campbell**

David L. Dill**

David Kenney**

Hon. Leroy Kirby**

Hon. Ted C. Tow III***

Hon. William D. Robbins**

William J. Campbell
(Executive Director)

* 2013 Chair

** 2013 Member

*** New Member, starting in late 2013 or early 2014



WHAT WE DO

What We Do

The Office of Attorney Regulation Counsel's duties involve all phases of the practice of law in Colorado. The primary purpose behind each of these duties is protection of the public, ensuring that Colorado providers of legal services are competent, diligent, communicative, honest and in compliance with the Colorado Rules of Professional Conduct.

The Office of Attorney Regulation Counsel administers the bar examination, screens each applicant's character and fitness to practice law in Colorado, and enforces all other attorney admission and annual registration functions. The office educates the general public and the legal profession on the underlying duties and requirements contained in the Colorado Rules of Professional Conduct. The office enforces the Colorado rules regarding attorney discipline and disability proceedings and mandatory continuing legal and judicial education. When necessary, the office oversees the handling of client files for attorneys who can no longer practice law.

The Office of Attorney Regulation Counsel also investigates and prosecutes individuals who cause harm to consumers when engaging in the unauthorized practice of law in Colorado. The office assists the Board of Trustees in administering the Attorneys' Fund for Client Protection, and the Commission on Judicial Discipline when requested. A more complete listing of office duties can be found in Appendix A.

2013 Overview

In January 2013, John S. Gleason announced his retirement after 15 years of service as Attorney Regulation Counsel and a total of 25 years of service to the Court.

The Colorado Supreme Court appointed James C. (Jim) Coyle as new Attorney Regulation Counsel. Mr. Coyle had 23 years of service to the Court prior to this appointment, including eleven years serving as Mr. Gleason's Deputy Regulation Counsel or Chief Deputy Regulation Counsel. Mr. Coyle appointed his management team, including Chief Deputies Jamie Sudler and Matt Samuelson, and Deputies Chip Mortimer and Margaret Funk.

In February 2013, the Colorado Supreme Court Attorney Mentoring Program (CAMP) was initiated with the hiring of its first director, John Baker. This office assisted the Supreme Court Advisory Committee in drafting C.R.C.P. 255, the rule that established and authorizes such program, and in the hiring of Mr. Baker.

Beginning with the February 2013 bar examination, the office began using a modified holistic grading approach for all bar examination multi-state essay and performance examinations.

On April 1, 2013, the Office of Attorney Regulation Counsel moved to its new location in the Ralph L. Carr Judicial Center, 1300 Broadway. This was a significant move over a five-day period, involving the relocation of 64 employees, office furniture, libraries and equipment, and the official files for admissions, attorney registration, attorney and judicial discipline, inventory counsel and other matters. The offices were closed for three work days to accomplish this move.

In May 2013, former Attorney Regulation Counsel John S. Gleason received the 2013 Michael Franck Professional Responsibility Award. The award, presented by the American Bar Association, honors an attorney for accomplishments in legal ethics, disciplinary enforcement, and lawyer professionalism.

In June 2013, the Court authorized new attorney registration and admission fees. These new fees are to provide stable funding for the attorney regulation process, including admissions; registration; CLE Regulation; attorney education, intake, diversion and discipline programs; client protection fund; the unauthorized

practice of law programs; the inventory counsel program; COLAP, CAMP, CJD and PDJ offices.

In July, Attorney Regulation Counsel and COLAP Executive Director Barbara Ezyk participated in an ABA Commission on Lawyer Assistance Programs Western States Regional Meeting, assisting other states in implementing effective lawyer assistance programs.

In July, the office started developing a new website that provides greater resources to the general public, consumers of legal services, attorneys and judges.

Starting in August 2013, the office started a quarterly email newsletter for the 37,700 licensed attorneys in the state of Colorado, as well as all law students in the Colorado law schools. This newsletter contains articles that educate the lawyer and law student on current practice-of-law and ethics topics, as well as reminds them of upcoming deadlines and events. *See Appendix N, pp. 84-85.*

Also in August, the office hosted the First ABA UPL School at the University of Denver Sturm College of Law. Panelists and participants from across the country discussed the current and emerging issues involving effective, consumer-based regulation of the unauthorized practice of law. This two-day school addressed how to best address unlicensed immigration consultant businesses, loan modification and debt relief scams, internet services and other legal service areas in which unauthorized practice of law may be causing significant consumer harm. The school also addressed access to justice issues and the development of new programs in several states that authorize limited legal services by non-lawyers to aid in access-to-justice issues. The school brought together legal experts in numerous fields, along with representatives of the U.S. Office of Citizenship and Immigration Services, the Department of Homeland Security, the Federal Trade Commission consumer protection unit and the Federal Bureau of Investigation to explore these issues with those who enforce unauthorized practice of law issues. A total of 85 UPL prosecutors participated in this two-day school. *See Appendix M, pp. 80-83.*

In 2013, the office started developing other educational resources designed to improve professional responsibility in the provision of legal services to Colorado consumers, and thereby reduce potential violations of duties owed to clients, the Courts and the general public. Efforts include greater use of technology to identify risk groups and provide those groups with better assessment and risk management

tools, such as the self-audit checklist and programs that address law office management and trust account issues.

The office has continued to assist the Court and Advisory Committee in a comprehensive review and rewrite of the Rules Governing Admission to the Bar, the Rules Governing Mandatory Continuing Legal and Judicial Education (CLJE) and other rules involving practice-of-law issues.

Throughout 2013, the office worked extensively with COLAP to reach out to law students to help them prepare to navigate the bar application and exam process, and to emphasize the importance of a healthy lifestyle that translates into a healthy career.

The office continued to assist the Court and its Standing Committee on the Colorado Rules of Professional Conduct in the study of new rules or comments based on August 2012 amendments to the ABA model rules; in the study and proposal of amendments to Colo. RPC 1.15; and in the study of other amendments related to marijuana issues.

The office continued to participate in and assist the Colorado Chief Justice's Commission, particularly Working Group A (development of professional identity, social responsibility and practice skills, and involvement of judges and leaders of the profession in law school) and Working Group D (development of the relationship between the legal profession and the community to enhance access to justice, delivery of justice and education of the public).

The office refined some of the curriculum in the Professionalism School for all new admittees to the practice of law in Colorado. These revisions focus on law practice systems and reactions to common scenarios that can help lawyers comply with the rules. The revisions also include more information for transactional attorneys and lawyers in the public sector. The office also started a practice monitor class for lawyers who are willing to volunteer to monitor attorneys who have had ethics problems, thereby playing a meaningful role in meeting the rehabilitative goals of the attorney regulation system.

The office continued its leadership on a national level, working with leadership from the Commission on Lawyer Assistance Programs, Association of Professional Responsibility, Lawyers National Client Protection Organization and National Organization of Bar Counsel on long-term solutions that will protect the public and

provide dignified approaches to aging-lawyer issues. The office is also stepping up its efforts to encourage all Colorado lawyers to consider succession planning so clients are less affected by sudden death, disability or other closings of a law practice.

The office implemented a new web-based application management system for all admissions applications and a new online method of filing MCLJE affidavits, and continued to develop other data management systems.

Finally, the office hosted several other jurisdictions from throughout the country, in their efforts to learn more about Colorado telephone intake, education programs, data management systems and risk assessment tools.

ATTORNEY ADMISSIONS

OVERVIEW

The Office of Attorney Admissions is the first stop within the regulatory system for attorneys wanting to practice law in the state of Colorado. The office is charged with administering the bar exam and conducting character and fitness reviews of exam, on-motion, and Uniform Bar Exam transfer applicants.

The office has undergone numerous changes in the last two years.

The office instituted a web-based application management system for all applicants for admission. The office created and filled a new position, the Director of Character & Fitness, in August 2012, and made other staffing adjustments. Now, the director, one full-time investigator, one part-time investigator, and two staff assistants review applications for character and fitness qualifications. The Office of Attorney Regulation Counsel's primary purpose is protection of the public. By addressing concerns with applicants before they become practicing attorneys, the character and fitness process takes a proactive role in providing such protection.

The character and fitness process is now more transparent as well. The Character & Fitness Admission Guidelines, approved by the Bar Committee in December 2012, articulate for applicants what criteria the office uses during a character and fitness review.⁴

Also, 2013 was the first full year that the office employed holistic grading for the Colorado Bar Exam and continued to improve upon the graders' conference, which is designed to improve the uniformity, reliability and integrity of the bar examination scoring process by having all answers graded at one time when the graders are focused and calibrated.

The office has also been working with a subcommittee of the Advisory Committee, involving a comprehensive rewrite of the Rules Governing Admission to the Practice of Law. The subcommittee met every other week from January 2013 to the

⁴ For the complete Character & Fitness Admission Guidelines, see Appendix B.

end of the year, for three hours each session, working on these rules. The subcommittee was composed of Advisory Committee members Alec Rothrock, Dan Vigil, Rich Nielson, Dick Reeve, and Brian Zall; volunteer attorney Todd Wells; Supreme Court Staff Attorney Christine Markman; O.P.D.J. Staff Attorney Ginette Chapman; and OARC members Jim Coyle, Matt Samuelson, Alan Obye and extern Erika Holmes. These new rules are designed to expand Advisory Committee jurisdiction to include oversight of all practice-of-law functions and make permanent the December 2011 Supreme Court interim order that incorporates admissions and CLJE staff functions into the Office of Attorney Regulation Counsel. The new proposed rules update application and character and fitness screening procedures and provide clear character and fitness standards. The new procedures would incorporate the Office of the Presiding Disciplinary Judge into the admissions hearing process, and would update procedures for admissions hearings, revocation proceedings, and Supreme Court review. The proposed rules would also allow greater consumer choice in the selection of their attorney and would improve mandatory CLJE programs in Colorado.

BAR EXAM

The Office of Attorney Admissions works with the Board of Law Examiners, whose volunteer members provide citizens' advice and direction on the execution of the office's duties. The Board consists of two committees – the Law Committee and the Bar Committee.

The office works with the Law Committee to administer two bar examinations each year, one in February and one in July. The Law Committee is composed of 11 volunteer members appointed by the Supreme Court. It reviews and approves the standards that must be met to pass the written examination.

In 2013, a total of 1,337 people sat for the bar exam:⁵

- 400 took the February bar exam:
 - 275 passed (69 percent pass rate); and
 - 77 percent first-time-examinee pass rate.
- 937 took the July bar exam:
 - 747 passed (80 percent pass rate); and
 - 84 percent first-time-examinee pass rate.

The Office of Attorney Admissions also processes on-motion and Uniform Bar Exam (UBE) applications.⁶

In 2013, the office processed 303 new on-motion and UBE applications:

- 249 new on-motion applications were received:
 - 192 on-motion applications were approved for admission; and
 - 17 on-motion applications were denied for admission.
- 54 new UBE applications were received.

CHARACTER AND FITNESS

The Office of Attorney Admissions reviews all bar exam, on-motion, and Uniform Bar Exam applications for moral and ethical qualifications. Applicants are required to disclose details about their past including any criminal or civil court

⁵ For a detailed break-down of bar exam statistics, see Appendix C

⁶ Colorado and 13 other states currently comprise this Uniform Bar Exam (UBE) compact. Each of these states accept scores transferred from the other states administering the Uniform Bar Exam. The other UBE states are: Alabama, Alaska, Arizona, Idaho, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Utah, Washington and Wyoming.

proceedings, financial problems, and other issues relevant to the applicants' moral and ethical qualifications.

The office works with the Bar Committee to review applicants. The Bar Committee is charged with investigating applicants' mental stability, education, professional experience, and ethical and moral qualifications for admission to practice law.

If information provided by an applicant or obtained during the character and fitness review raises concerns, he or she may appear before an inquiry panel composed of members from the Bar Committee.

An inquiry panel is composed of five members from the Bar Committee: four attorneys and one non-attorney. The inquiry panel can either approve admission, defer action until an applicant addresses trouble areas in their application, or determine that there is probable cause to deny admission based on Rules Governing Admission and the Character & Fitness Admission Guidelines.

Should the inquiry panel determine there is probable cause to deny an application, an applicant can request a formal hearing or contest a determination of probable cause to deny admission. The Supreme Court retains the ultimate decision-making authority over whether an application is granted or denied.

In 2013, the Office of Attorney Admissions reviewed 1,788 applications to determine the character and fitness qualifications of applicants:

- 30 applications were forwarded to an inquiry panel:⁷
 - 25 applicants were admitted;
 - 3 cases were deferred by an inquiry panel; and
 - 2 applications were found to have probable cause to deny.⁸

In appropriate cases, the Office of Attorney Admissions sends letters to applicants alerting them to the Colorado Lawyer Assistance Program (COLAP), and its services. The program is confidential and connects those in the legal community with resources to help with mental health issues, substance abuse problems,

⁷ Of the 30 applicants that appeared before an inquiry panel in 2013, 26 appeared for the first time and four were re-interviewed after receiving a deferral in 2012.

⁸ Both applicants requested a formal hearing, which will take place in 2014.

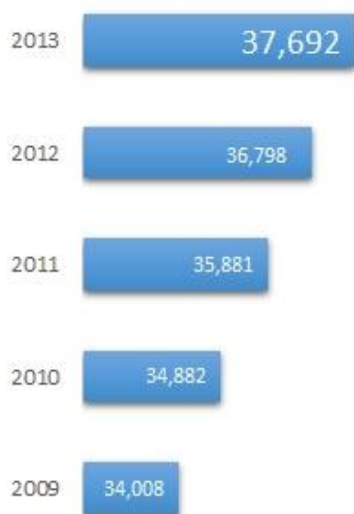
financial issues, gambling problems, relationship issues, grief counseling, aging in the profession and other similar topics. In 2013, the Office of Attorney Admissions sent COLAP letters to more than 60 applicants. In addition, Attorney Regulation Counsel and staff regularly appear at the state's two law schools, beginning with first-year orientation. These visits are to educate law students about the admissions process, COLAP and OARC resources, and professional responsibility issues.

ATTORNEY REGISTRATION AND CLE

OVERVIEW

Once an applicant meets admission requirements, the Office of Attorney Registration completes the process by administering the oath. Attorneys then

Since 2009, the number of registered attorneys in Colorado has grown by 10 percent.



register annually with the office and pay annual license fees. The annual license fees fund the Attorneys Fund for Client Protection and defray the costs of attorney regulation (including the Office of the Presiding Disciplinary Judge), attorney registration, continuing legal and judicial education, enforcement of the unauthorized-practice-of-law rules, the Colorado Lawyer Assistance Program, the Colorado Attorney Mentoring Program, the Commission on Judicial Discipline, and some library services.

In 2013, the Office of Attorney Registration merged its staff with the Board of Continuing Legal and Judicial Education. In addition to the Clerk of Attorney Registration and CLE Regulation, the office now has four full-time staff members. The office has used web-based

systems for registration and in 2013 transitioned to web-based affidavit submissions. These changes are intended to increase accuracy, reduce staff data-entry time and improve user-friendliness.

OFFICE OF ATTORNEY REGISTRATION

The Office of Attorney Registration maintains the roll of licensed attorneys in the state of Colorado.

The state began the year with 36,798 licensed Colorado attorneys and ended with 37,692:

- 25,496 active attorneys; and
- 12,196 inactive attorneys.

The Office of Attorney Registration approved for admission 1,877 new attorneys:

- 1,119 new lawyers were admitted through the bar exam;
- 13 new lawyers were admitted through application of UBE requirements;
- 185 new lawyers were admitted by on-motion applications from a reciprocal admissions state;
- 65 new lawyers were admitted as single-client certification attorneys;
- 494 new lawyers were admitted pro hac vice; and
- 1 new lawyer was admitted under the temporary professor rule.

BOARD OF CONTINUING LEGAL AND JUDICIAL EDUCATION

Attorneys have to meet continuing legal education requirements on a three-year cycle. The Office of Attorney Registration works with the Board of Continuing Legal and Judicial Education to accredit CLE courses and process affidavits affirming attorneys' attendance at events. The Board consists of nine members: six attorneys, one judge and two non-attorneys who provide a citizen's voice in administration of the continuing legal education system.

In 2013, the Board began using a web-based affidavit system. Attorneys can now enter their CLE affidavits online. The system also allows attorneys who lose the

form provided at CLE programs to look up the course and to monitor their transcript.

In 2013, the Board of Continuing Legal and Judicial Education:

- Processed 90,841 CLE affidavits;
- Processed 44 additional CLE affidavits for mentoring;
- Processed 114 additional CLE affidavits for pro bono work; and
- Accredited 5,134 CLE courses.

In May 2013, a subcommittee was formed to review and consider revisions to the current Rules and Regulations pertaining to Mandatory Continuing Legal and Judicial Education. These Rules and Regulations need thorough review and analysis due to the fact that they still contain information and dates specific to the time they were adopted in the late-1970s. The subcommittee hopes to propose revised Rules to the Supreme Court through the Court's Advisory Committee in late 2014 or early 2015.

ATTORNEY REGULATION

OVERVIEW

The Office of Attorney Regulation Counsel's traditional role is to investigate, regulate and, when necessary, prosecute attorneys accused of more serious violations of the Colorado Rules of Professional Conduct.

The Colorado model of attorney regulation is designed to move cases of minor ethical misconduct toward a quick resolution and devote its resources to cases that involve more serious attorney misconduct. The goal is to protect the public while nurturing and educating attorneys to prevent future misconduct.

In 2013, the Office of Attorney Regulation Counsel received 27,873 calls, the second-highest volume in at least 15 years. Of those, 3,883 were calls filing a request for investigation against an attorney. The office's intake division reviewed all of those cases and processed 366 matters for further investigation by the trial division.

The trial division worked those 366 cases in addition to 184 cases carried over from 2012. In total, the Office of Attorney Regulation's work in 2013 resulted in:

- 133 dismissals with educational language;
- 73 diversion agreements;
- 5 public censures;
- 46 suspensions;
- 25 probations; and
- 18 disbarments.

INTAKE DIVISION

The intake division acts as the office's triage unit. Its five attorneys, two investigators and three legal assistants are the front line for all complaints, deciding how a case is handled and whether it moves forward.⁹

Trained specialists take all calls to the office and, if necessary, assign the case to an intake attorney. That attorney reviews the facts, then decides whether the Colorado Rules of Professional Conduct are implicated and whether further investigation is warranted.

Intake attorneys have numerous options. They can dismiss cases outright; issue letters with educational language to the respondent-attorney; agree in cases of minor misconduct to an alternative to discipline involving education or monitoring; or forward matters of more serious misconduct to the trial division.

In 2013, central intake handled 27,873 telephone calls. The intake division:

- Reviewed 3,883 requests for investigation;¹⁰
- Entered into 42 diversion agreements;
- Dismissed 113 cases with educational language;
- Processed 366 cases for further investigation by the trial division.

TRIAL DIVISION

The next stop for a case is the trial division. In 2013, the trial division handled the 366 cases processed by the intake division as well as 184 cases carried over from 2012.¹¹

The trial division's 12 attorneys, five non-attorney investigators and five legal assistants investigate the cases. At the end of the investigation, there are numerous

⁹ For detailed statistics on the intake division, see Appendix D.

¹⁰ For a breakdown of complaints by practice area and by the nature of complaint, see Appendix E.

¹¹ For detailed statistics on the trial division process, see Appendices F through J.

outcomes, many intended to quickly resolve less serious matters.

In 2013, during the investigation phase, the trial division:

- Recommended the dismissal of 100 cases, 20 of them with educational language;
- Entered into 16 conditional admission agreements approved by the Presiding Disciplinary Judge; and
- Entered into 31 diversion agreements.

If at the end of the investigation phase, one of the above resolutions isn't reached, trial counsel prepares a report recommending formal proceedings or a diversion agreement. That report is presented to the Attorney Regulation Committee, which comprises nine members: six attorneys and three public members who act as an outside perspective and gatekeeper for all official disciplinary proceedings against respondent attorneys. The Committee considers reports prepared by Office of Attorney Regulation Counsel attorneys and determines whether reasonable cause exists to seek discipline.

In 2013, the trial division presented 180 matters to the Attorney Regulation Committee.¹² The Committee approved:

- 101 formal proceedings;
- 36 diversion agreements; and
- 6 private admonitions.

Several of the 101 matters in which the Office of Attorney Regulation Counsel was authorized to file a formal complaint were consolidated. In certain cases, after authority to file a formal complaint was obtained, Attorney Regulation Counsel and the respondent attorney entered into a conditional admission prior to the filing of a formal complaint.

¹² Because some matters are carried over from one calendar year to the next, the number of matters reviewed by the Attorney Regulation Committee will not conform to the number docketed or completed in the investigations area.

In 2013, after receiving authorization to file a formal complaint, the Attorney Regulation Counsel:

- Filed 48 formal complaints;
- Resolved 8 matters prior to filing a formal complaint; and
- Entered into 20 conditional admissions agreements.

The 48 formal complaints filed in 2013, and those pending from 2012, resulted in 10 discipline trials before the Presiding Disciplinary Judge. (Two of those were against non-attorneys for the unauthorized practice of law.)

OTHER ACTIONS¹³

Immediate Suspensions

On rare occasions, the Office of Attorney Regulation Counsel may seek the immediate suspension of an attorney's license in order to protect the public. An immediate suspension may be appropriate when there is reasonable cause to believe that an attorney is causing immediate and substantial public or private harm. Additionally, the office can seek such action if an attorney is in arrears on a child-support order or is not cooperating with Attorney Regulation Counsel as required by the Colorado Rules of Professional Conduct.

In 2013, the Office of Attorney Regulation Counsel filed 14 petitions for immediate suspension. Of those, 13 were granted and one was withdrawn:

- 8 involved attorneys causing immediate and substantial harm;
- 1 involved failure to pay child support;
- 3 involved failure to cooperate with Attorney Regulation Counsel; and
- 1 involved a felony conviction.

¹³ For detailed statistics on Other Actions, see Appendix K.

Disability Matters

When an attorney is unable to fulfill professional responsibilities due to physical, mental, or emotional illness, the Office of Attorney Regulation Counsel may file a petition to transfer an attorney to disability status. This is not a form of discipline.

In 2013, the Office of Attorney Regulation Counsel filed seven petitions to place attorneys on disability status. Five were granted. Two were denied.

Contempt Proceedings

The Office of Attorney Regulation Counsel may file a motion with the Supreme Court recommending contempt for an attorney practicing law while under suspension or disbarment.

In 2013, the Office of Attorney Regulation Counsel filed one motion for contempt. The hearing on that motion was not held until 2014.

Magistrates

The Office of Attorney Regulation Counsel is responsible for handling complaints against magistrates.

In 2013, 43 complaints were filed against magistrates. All were dismissed.

Reinstatement and Readmission Matters

Attorneys who have been disbarred or suspended for at least one year and one day must apply for readmission or reinstatement. The process is similar to an attorney discipline case and is intended to assess the attorney's fitness to return to the practice of law. In readmission and reinstatement matters, the applicant attorney must prove rehabilitation and other elements by clear and convincing evidence.

In 2013, six attorneys applied for reinstatement or readmission:

- 1 was readmitted;
- 1 was reinstated;
- 1 application was withdrawn; and
- 3 matters were pending at the close of 2013.

Trust Account

Attorneys in private practice are required to maintain a trust account in an approved Colorado financial institution. Those financial institutions agree to report to the Office of Attorney Regulation Counsel any overdraft on the trust accounts. The reporting requirement is designed as an early warning that an attorney is engaging in conduct that may harm clients. Reports of overdrafts receive immediate attention.

In 2013, the Office of Attorney Regulation Counsel received 247 notices of trust account checks drawn on insufficient funds. These matters were handled through the investigation process described above.

Unauthorized Practice of Law

The Office of Attorney Regulation Counsel, in coordination with the Unauthorized Practice of Law Committee (UPL), investigates and prosecutes allegations of the unauthorized practice of law. The UPL Committee is composed of nine members: six attorneys and three non-attorneys who provide a community perspective on UPL regulation and who retain jurisdiction over complaints of unauthorized practice of law.

In 2013, the Office of Attorney Regulation Counsel received 59 requests for investigation alleging the unauthorized practice of law. Of those 59 matters, 36 were completed in 2013:

- 20 were dismissed by Attorney Regulation Counsel;
- 3 resulted in written agreements to refrain from the conduct in question; and
- 13 went to an injunctive or contempt proceeding.

Commission on Judicial Discipline

The Office of Attorney Regulation Counsel acts as Special Counsel for the Colorado Commission on Judicial Discipline on request of the Executive Director.

In 2013, the Office of Attorney Regulation Counsel participated in the investigation of one judicial discipline matter. The office filed one Statement of Charges, which has since resulted in public discipline (public censure and resignation).

Attorneys Fund for Client Protection

The Office of Attorney Regulation Counsel assists the Board of Trustees for the Attorneys Fund for Client Protection by investigating claims made on the fund, alleging client loss due to the dishonest conduct of an attorney. The statistics for this work are shown in a separate annual report, posted on www.coloradosupremecourt.com, “Attorneys Fund for Client Protection Annual Report 2013.”

INVENTORY COUNSEL

The Office of Attorney Regulation Counsel's umbrella covers the end of an attorney's career and sometimes the end of his or her life. When an attorney is no longer able to perform his or her duties to clients, either due to disability or death, and there's no other party responsible for the attorney's affairs, the Office of Attorney Regulation Counsel steps in to file a petition for appointment of inventory counsel.

With the assistance of attorneys and investigators from the office, the Inventory Counsel Coordinator reviews all of the files and takes steps to protect the interests of the attorney and the attorney's clients. The file inventory and file return process may take months or years depending on the number of files, the area of practice, and the difficulty in locating the previous clients.

In 2013, the Office of Attorney Regulation Counsel:

- Filed 11 petitions for appointment of inventory counsel; and
- Inventoried 2,979 client files.

EDUCATION/OUTREACH

Since 1998, when the Colorado Supreme Court reorganized the state's attorney discipline system, the Office of Attorney Regulation Counsel has addressed minor conduct by correcting it with education and training. But the office now recognizes the best way to protect the public is to prevent misconduct before it occurs.

In pursuit of that goal, the Office of Attorney Regulation Counsel seeks to promote an understanding of the legal field and offer attorneys educational opportunities that aid them in their practices.

That pursuit takes many forms.¹⁴

- The Office of Attorney Regulation Counsel conducts a majority of its outreach through talks and presentations. The office seeks to reach attorneys early and so its members often speak to students at the state's two law schools. Members of the office also talk at bar association gatherings and CLE courses on various attorney ethics topics. And the office often delivers presentations at conferences for other bar counsel professionals.
- The office created and teaches schools for attorneys intended to improve the provision of legal services to consumers. These schools are:
 - Ethics School, a seven-hour course focusing on everyday dilemmas that confront attorneys;
 - Trust Account School, a four-hour school that addresses the correct method for maintaining and administering a trust account;
 - Professionalism School, a course that addresses the most common ethical dilemmas faced by newly admitted attorneys; and
 - Practice Monitor Class, a half-day course instructing attorneys on how to be practice monitors for other attorneys required to have supervision as part of an alternative-to-discipline program.
- The office's attorneys and investigators serve on numerous local boards and

¹⁴ For further details on the office's Education and Outreach, see Appendix L.

are active in national and international legal organizations.

- Members of the office did presentations on a national level, including presentations at the National Organization of Bar Counsel, the ABA Standing Committee on Client Protection, The National Client Protection Organization, the ABA Immigration Section, the National Association of CLE Regulators, the National Hispanic Bar Association, and the Commission on Lawyer Assistance Programs.
- In addition, the office's attorneys write and submit articles to state and national legal publications. For example, Attorney Regulation Counsel Jim Coyle and retired Attorney Regulation Counsel John Gleason wrote an October 2013 article for *The Colorado Lawyer* about the evolution of Colorado's attorney regulation system over the last 15 years.¹⁵

In 2013, the Office of Attorney Regulation Counsel:

- Delivered 169 public speeches and presentations;
- Wrote or edited 6 legal publications; and
- Was active in 12 national or international legal organizations.

In 2013, the office also began two new outreach initiatives:

1. The office started disseminating a quarterly email newsletter to the state's 37,000-plus attorneys. The newsletters contain deadline reminders and links to articles written by the office's attorneys on best practices and ethical hot topics.¹⁶
2. The office also began sending letters to attorneys who change their practice area from public service or large firm practice to solo or small-firm practice. This group of attorneys face challenges in managing a private practice they likely didn't face while working as a government or large-firm attorney. The letters ask the practitioner to fill out a self-audit checklist and discuss the results with a seasoned solo or small firm practitioner. The letters also make these attorneys aware of resources that may help them during their transition.

¹⁵ Articles written Office of Attorney Regulation Counsel attorneys can be found in Appendix M.

¹⁶ The two email newsletters sent in 2013 can be seen in Appendix N.

COMMITTEES

There are numerous boards and committees composed of volunteer members who provide critical citizen input into regulating the practice of law in Colorado.¹⁷

Supreme Court Advisory Committee

The Supreme Court Advisory Committee is a volunteer committee that assists the Court with administrative oversight of the entire attorney regulation system. The Committee's responsibilities are to review the productivity, effectiveness and efficiency of the Court's attorney regulation system including that of the Office of Attorney Regulation Counsel, the Office of the Presiding Disciplinary Judge, the Colorado Lawyer Assistance Program (COLAP) and the Colorado Attorney Mentoring Program (CAMP).

Attorney Regulation Committee

The Attorney Regulation Committee is composed of nine volunteer members: six attorneys and three public members. The Committee, known as ARC, is the gatekeeper for all official disciplinary proceedings against respondent attorneys. It considers reports prepared by Office of Attorney Regulation Counsel attorneys and determines whether reasonable cause exists to seek discipline.

Board of Trustees, Attorneys Fund for Client Protection

The Board of Trustees is composed of five attorneys and two non-attorney public members. The trustees evaluate, determine and pay claims made on the Attorneys Fund for Client Protection based on reports submitted by the Office of Attorney Regulation Counsel. The Board of Trustees issue a separate report, found on www.coloradosupremecourt.com.

Committee on the Colorado Rules of Professional Conduct

The Committee on the Colorado Rules of Professional Conduct is a composed of attorneys and judges from varying backgrounds. The Committee is charged with reviewing and updating the Colorado Rules of Professional Conduct. Prior to the committee's formation, numerous interest groups individually recommended rule

¹⁷ Committee rosters are listed on pages 8-10.

changes to the Supreme Court. Those parties continue to request changes, but the Supreme Court expects the Committee to consider these recommendations in the first instance.

Law Committee

The Law Committee is composed of 11 volunteer attorney members appointed by the Supreme Court. It reviews and approves the standards that must be met to pass the written examination.

Bar Committee

The Bar Committee is composed of 11 volunteer members: nine attorneys and two non-attorneys. The Committee is charged with investigating applicants' character and fitness to practice law in Colorado.

Board of Continuing Legal and Judicial Education

The Board of Continuing Legal and Judicial Education consists of nine members: six attorneys, one judge and two non-attorneys. The Board administers the program requiring attorneys and judges to take continuing education courses.

Unauthorized Practice of Law Committee

The Unauthorized Practice of Law Committee is composed of nine members: six attorneys and three non-attorneys. The Committee has jurisdiction over complaints of the unauthorized practice of law.

Colorado Commission on Judicial Discipline

The Colorado Commission on Judicial Discipline is composed of 10 members of the public. The Commission is charged with monitoring the conduct of the judiciary, including judges of county and district courts, the Court of Appeals, and the Supreme Court.



APPENDICES

Appendix A

OFFICE OF ATTORNEY REGULATION COUNSEL DUTIES

The Colorado Rules of Civil Procedure lay out the Office of Attorney Regulation Counsel's multiple regulatory and administrative duties. These duties include:

1. Field and investigate approximately 4,000 complaints filed with the Central Intake Division of the Office of Attorney Regulation Counsel;
2. Investigate and prosecute violations of the Colorado Rules of Professional Conduct under the direction of the Attorney Regulation Committee, C.R.C.P. 251.3;
3. Investigate and prosecute violations of the Colorado Rules of Professional Conduct relating to trust account overdraft notifications;
4. Investigate and prosecute attorney disability actions;
5. Investigate and prosecute petitions for immediate suspension, C.R.C.P. 251.8, C.R.C.P. 251.8.5, and C.R.C.P. 251.8.6;
6. Investigate and prosecute contempt proceedings for violations of the Colorado Rules of Procedure Regarding Attorney Discipline and Disability, C.R.C.P. 251.3(c)(7);
7. Investigate and prosecute violations of the Code of Judicial Conduct by attorneys serving as magistrates under the Colorado Rules for Magistrates;
8. Investigate and prosecute complaints alleging the unauthorized practice of law upon the request and direction of the Unauthorized Practice of Law Committee, C.R.C.P. 228, *et seq.*;
9. Coordinate and investigate the filing of claims with the Colorado Attorneys' Fund for Client Protection under the direction of the Colorado Attorneys' Fund for Client Protection Board of Trustees, C.R.C.P. 251.3, *et seq.*, C.R.C.P. 252, *et seq.*;
10. Perform attorney admission duties, including the administration of the Colorado Bar Examination and all character and fitness determinations; and represent and counsel the Colorado State Board of Law Examiners in inquiry panels and formal hearings as required by the rules, pursuant to the Colorado Supreme Court's interim order dated December 1, 2011;
11. As requested, represent and serve as special counsel to the Commission on

Judicial Discipline in matters related to the removal, retirement, suspension, censure, reprimand, or other discipline of judges, Colorado Rules of Judicial Discipline, Chapter 24;

12. Obtain appointment of inventory counsel in cases where an attorney has become disabled, disappeared, or died, and assist inventory counsel with the client files and funds;
13. Provide extensive educational opportunities to the practicing bar and the public on topics related to attorney ethics; and
14. Perform duties on behalf of the Board of Continuing Legal and Judicial Education pursuant to the Colorado Supreme Court's interim order dated December 1, 2011.

The various duties of the Office of Attorney Regulation Counsel are set forth individually to reflect a summary of work performed in each area. The annual report of the Colorado Attorneys' Fund for Client Protection is under separate cover.

In 2013, the Office of Attorney Regulation Counsel employed 20 full-time attorneys and a non-lawyer staff of 44 individuals.

Appendix B

CHARACTER & FITNESS ADMISSION GUIDELINES

Pursuant to C.R.C.P. 201.7, the Colorado Supreme Court Bar Committee establishes the following guidelines to be used in the review of all applications for admission to practice law in Colorado concerning the character and fitness of each applicant for admission.

(1) Purpose. The primary purpose of character and fitness investigation before an individual is admitted to practice of law in Colorado is to protect the public and safeguard the system of justice. The attorney admissions process is incomplete if testing only for minimal competence. The public is inadequately protected by a system that fails to evaluate character and fitness as those elements relate to the practice of law. The public interest requires that the public be secure in its expectation that those who are admitted as Colorado lawyers are worthy of the trust and confidence clients and the legal system may reasonably place upon them.

(2) A Lawyer's Responsibilities. The Preamble to the Colorado Rules of Professional Conduct reminds us of a lawyer's professional responsibilities:

- A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.
- In all professional functions a lawyer should be competent, prompt and diligent.
- A lawyer should maintain communication with a client concerning the representation.
- A lawyer should keep in confidence information relating to representation except so far as disclosure is required or permitted by the Colorado Rules of Professional Conduct or other law.
- A lawyer's conduct should conform to the requirements of the law, both in professional services to clients and in the lawyer's business and personal affairs.
- A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others.
- A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.
- While it is a lawyer's duty, when necessary, to challenge the rectitude of official

action, it is also the lawyer's duty to uphold the legal process.

(3) Standard of Character and Fitness. A Colorado lawyer should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional responsibilities owed to them. A basis for denial arising from lack of character may exist where the applicant's record tends to show a deficiency in honesty, integrity, judgment, trustworthiness, diligence, reliability or capacity to practice law. A basis for denial may exist where the applicant's record reveals a history of deceptiveness, criminality, fraud, negligence, irrational behavior, drug or alcohol dependence, emotional or mental instability, financial irresponsibility or violence.

(4) Essential Eligibility Requirements. Applicants must meet all of the following essential eligibility requirements to qualify for admission to the practice of law in Colorado:

- (a) The ability to be honest and candid with clients, lawyers, courts, regulatory authorities and others;
- (b) The ability to reason logically, recall complex factual information and accurately analyze legal problems;
- (c) The ability to communicate with clients, lawyers, courts and others with a high degree of organization and clarity;
- (d) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (e) The ability to conduct oneself with respect for and in accordance with the law;
- (f) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (g) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a court or tribunal;
- (h) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts and others;
- (i) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients and others; and
- (j) The ability to comply with deadlines and time constraints.

(5) Relevant Conduct. The revelation or discovery of any of the following should be

treated as cause for scrutiny of whether the applicant possesses the good character and fitness to practice law in Colorado:

- (a) Unlawful conduct;
- (b) Academic misconduct;
- (c) Misconduct in employment;
- (d) Acts involving dishonesty, fraud, deceit, or misrepresentation;
- (e) Acts which demonstrate disregard for the rights or welfare of others;
- (f) Abuse of legal process, including the filing of vexatious or frivolous lawsuits;
- (g) Neglect of financial responsibilities;
- (h) Neglect of professional obligations;
- (i) Violation of a court order, including a child support order;
- (j) Conduct that evidences current mental or emotional instability that may impair the ability to practice law;
- (k) Conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
- (l) Denial of admission to practice law in another jurisdiction on character and fitness grounds;
- (m) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction; and
- (n) The making of false statements, including omissions, on applications to practice law in this state or any other jurisdiction.

The above list is not exhaustive, but instead lists more common causes for scrutiny of whether the applicant possesses the good character and fitness to practice law in Colorado.

(6) Considerations. The Board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors may be considered in assigning weight and significance to prior conduct:

- (a) The applicant's age at the time of the conduct;

- (b) The recency of the conduct;
- (c) The reliability of the information concerning the conduct;
- (d) The seriousness of the conduct;
- (e) The factors underlying the conduct;
- (f) The cumulative effect of the conduct or information;
- (g) The evidence of rehabilitation;
- (h) The applicant's positive social contributions since the conduct;
- (i) The applicant's candor in the admissions process;
- (j) The materiality of any omissions or misrepresentations; and
- (k) Evidence of mental or emotional instability.

(7) Rehabilitation. An applicant who affirmatively asserts rehabilitation from past conduct may provide evidence of rehabilitation by submitting one or more of the following:

- (a) Evidence that the applicant has acknowledged the conduct was wrong and has accepted responsibility for the conduct;
- (b) Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative or other order, where applicable;
- (c) Evidence of lack of malice toward those whose duty compelled bringing disciplinary, judicial, administrative or other proceedings against applicant;
- (d) Evidence of cooperation with the Office of Attorney Admissions' investigation;
- (e) Evidence that the applicant intends to conform future conduct to standards of good character and fitness for legal practice;
- (f) Evidence of restitution of funds or property, where applicable;
- (g) Evidence of positive social contributions through employment, community service or civic service;
- (h) Evidence that the applicant is not currently engaging in misconduct;

(i) Evidence of a record of recent conduct that demonstrates that the applicant meets the essential eligibility requirements for the practice of law and justifies the trust of clients, adversaries, courts and the public;

(j) Evidence that the applicant has changed in ways that will reduce the likelihood of recurrence of misconduct; or

(k) Other evidence that supports an assertion of rehabilitation.

The applicant bears the burden of producing all required information in a timely manner. Once all needed information has been received, the character and fitness investigation should then proceed and be thorough and concluded expeditiously. It should be recognized that some information may be developed in the course of the investigation that is not germane to the question of licensure and should be disregarded.

Approved by the Committee on December 14, 2012.

Appendix C

BAR EXAM STATISTICS

EXAM STATISTICS
February 2013 Bar Exam

	<u>Attorney</u>	<u>Non-attorney</u>	<u>Total</u>
# of applicants	141	326	467
# of withdrawals	19	37	56
# of no shows	3	8	11
# who took exam	119	281	400
# of new applicants	99	175	274
# of updates	20	106	126 *
# who passed	88	187	275 (69%)
# who failed	31	94	125 (31%)

* 10 who have never sat for an exam in Colorado and 116 who previously failed.

PASS/FAIL RATES

By Law School

February 2013 Bar Exam

Examinees	Law School	Passed	Failed	Total
First Time	University of Colorado	6 (67%)	3 (33%)	9
	University of Denver	21 (78%)	6 (22%)	27
	National *	23 (100%)	0 (0%)	23
	Other	168 (75%)	57 (25%)	225
		218 (77%)	66 (23%)	284
Repeat	University of Colorado	6 (50%)	6 (50%)	12
	University of Denver	15 (54%)	13 (46%)	28
	National			0
	Other	36 (47%)	40 (53%)	76
		57 (49%)	59 (51%)	116
All	University of Colorado	12 (57%)	9 (43%)	21
	University of Denver	36 (65%)	19 (35%)	55
	National	23 (100%)	0 (0%)	23
	Other	204 (68%)	97 (32%)	301
		275 (69%)	125 (31%)	400

* Schools categorized as "National" are:

Columbia
Harvard
Stanford
Yale
Duke
Michigan
Chicago
California Berkeley
Virginia
Texas

EXAM STATISTICSJuly 2013 Bar Exam

	<u>Attorney</u>	<u>Non-attorney</u>	<u>Total</u>
# of applicants	142	876	1018
# of withdrawals	26	42	68
# of no shows	3	10	13
# who took exam	113	824	937
# of new applicants	89	748	837
# of updates	24	76	100 *
# who passed	80	667	747 (80%)
# who failed	33	157	190 (20%)

* 15 who have never sat for an exam in Colorado and 85 who previously failed.

PASS/FAIL RATES

By Law School

July 2013 Bar Exam

Examinees	Law School	Passed	Failed	Total
First Time	University of Colorado	135 (91%)	14 (9%)	149
	University of Denver	182 (87%)	28 (13%)	210
	National *	29 (91%)	3 (9%)	32
	Other	<u>372 (81%)</u>	<u>89 (19%)</u>	<u>461</u>
		718 (84%)	134 (16%)	852
Repeat	University of Colorado	4 (67%)	2 (33%)	6
	University of Denver	6 (38%)	10 (63%)	16
	National			0
	Other	<u>19 (30%)</u>	<u>44 (70%)</u>	<u>63</u>
		29 (34%)	56 (66%)	85
All	University of Colorado	139 (90%)	16 (10%)	155
	University of Denver	188 (83%)	38 (17%)	226
	National	29 (91%)	3 (9%)	32
	Other	<u>391 (75%)</u>	<u>133 (25%)</u>	<u>524</u>
		747 (80%)	190 (20%)	937

* Schools categorized as "National" are:

Columbia
Harvard
Stanford
Yale
Duke
Michigan
Chicago
California Berkeley
Virginia
Texas

Appendix D

INTAKE STATISTICS

TABLE 1

Year	Complaints Filed	Percent Change From Prior Year
2013	3,883	(3%)
2012	3,983	(2%)
2011	4,081	(0%)
2010	4,089	(2%)
2009	4,169	1%
2008	4,119	3%

TABLE 2

Year	Intake Complaint Calls	Additional Intake Calls	Additional Miscellaneous Calls
2013	3,883	4,641	19,349
2012	3,983	4,489	16,093
2011	4,081	4,473	15,241
2010	4,089	4,906	16,026
2009	4,169	4,720	17,014
2008	4,119	5,142	18,850

Regulation Counsel (or Chief Deputy Regulation Counsel) reviews all offers of diversion made by the central intake attorneys. Additionally, at the request of either the complainant or the respondent-attorney, Regulation Counsel reviews any determination made by a central intake attorney.

One of the goals of central intake is to handle complaints as quickly and efficiently as possible. In 1998, prior to central intake, the average time matters spent at the intake stage was 13 weeks.

TABLE 3

Average Time (weeks)	
2013	8.2
2012	1.8
2011	1.6
2010	1.7
2009	1.5
2008	1.5

The average time at intake is significantly different in this annual report from previous annual reports. This is due to the following factors:

1. One of the five (5) central intake attorneys retired in November 2012. On two separate occasions we hired people to fill that position who later declined the position for personal reasons. By the time the position was filled in early-March, 2013, the other central intake attorneys were significantly burdened by the case reassignments and increased caseload that resulted from the departure of the retired employee.
2. Although the Central Intake section of the office is staffed by five (5) attorneys, several long-term absences of those attorneys for FMLA events resulted in extended periods of time in 2013 when Central Intake was understaffed.
3. Calendar year 2013 was our first full year operating in a new software system, JustWare. This software provides additional capabilities for file creation, handling and tracking that we did not have in our previous software system. For example, our old software program did not allow us to track files when we waited for long periods of time to receive additional information or documentation from complaining witnesses, so those files were closed pending receipt of additional information. JustWare gives us the capability to track files while we wait for additional information and documentation. Although we have that capability, we are refining our internal policies and procedures for the handling of those files to ensure these files remain open only for so long as they are actively pending in the intake division. This includes a policy of waiting 60 days to allow a complainant to follow up and provide information or documentation before closing any matter. As we made adjustments to this new software system, we attempted to implement practices and policies that maximized the resources offered by the new software system. However, some of the resources utilized in JustWare gave rise to systemic difficulties for file tracking and identification, resulting in erroneous or inaccurate entries in file records. We are in the process of monitoring and revisiting policies implemented due to the capabilities of the new

software program to ensure the appropriate amount of procedural fairness for all parties involved in the attorney regulation process.

Critical to the evaluation of central intake is the number of matters processed for further investigation versus the number of cases processed for investigation prior to implementation of central intake. In 1998, prior to the implementation of central intake, 279 cases were processed for further investigation. In 2013, central intake handled 3,883 complaints; 366 of those cases were processed for further investigation. See Table 4.

TABLE 4

Year	Investigations Initiated	% Change From Prior Year
2013	366	(1%)
2012	368	(2%)
2011	377	(7%)
2010	407	1%
2009	401	11%
2008	360	(3%)

In conjunction with central intake, cases that are determined to warrant a public censure or less in discipline are eligible for a diversion program. See C.R.C.P. 251.13. Participation in diversion is always voluntary and may involve informal resolution of minor misconduct by referral to Ethics School and/or Trust School,¹ fee arbitration, an educational program, or an attorney-assistance program. If the attorney successfully completes the diversion agreement, the file in the Office of Attorney Regulation Counsel is closed and treated as a dismissal. In 2013, at the central intake stage, 15 matters were resolved by diversion agreements. See Table 5. (A representative summary of diversion agreements is published quarterly in *The Colorado Lawyer*.)

¹ Ethics School is a one-day program designed and conducted by the Office of Attorney Regulation Counsel. The program is a comprehensive review of an attorney's duty to his/her clients, courts, opposing parties and counsel, and the legal profession. The class also covers conflicts, fee issues, law office management, and trust accounts. Attendance is limited to attorneys participating in diversion agreements or otherwise ordered to attend. Trust School is a half-day program presented by the Office of Attorney Regulation Counsel. The school is available to attorneys and their staff. The class covers all aspects of an attorney's fiduciary responsibility regarding the administration of a trust account. The class also offers instruction on accounting programs available for trust and operating accounts.

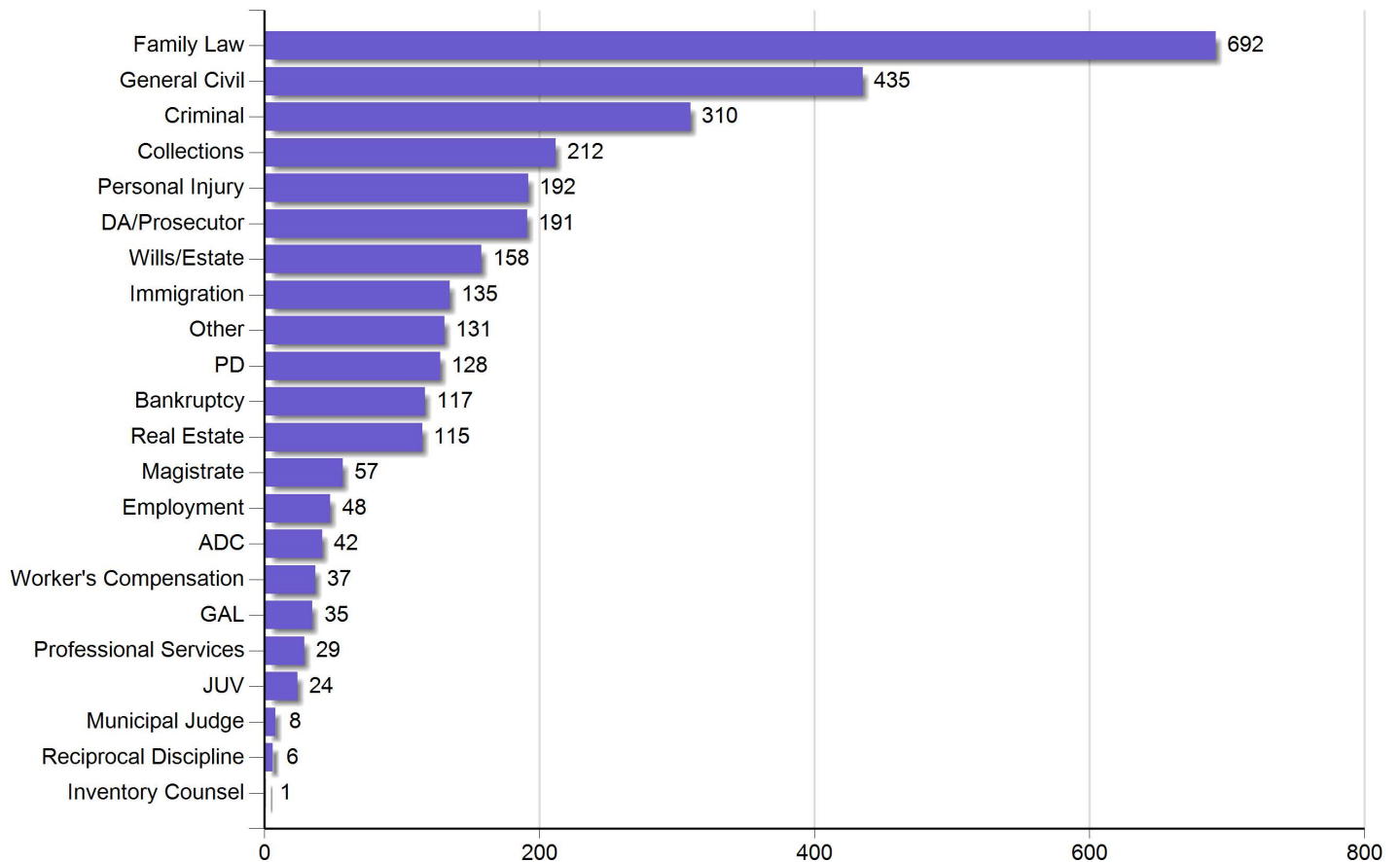
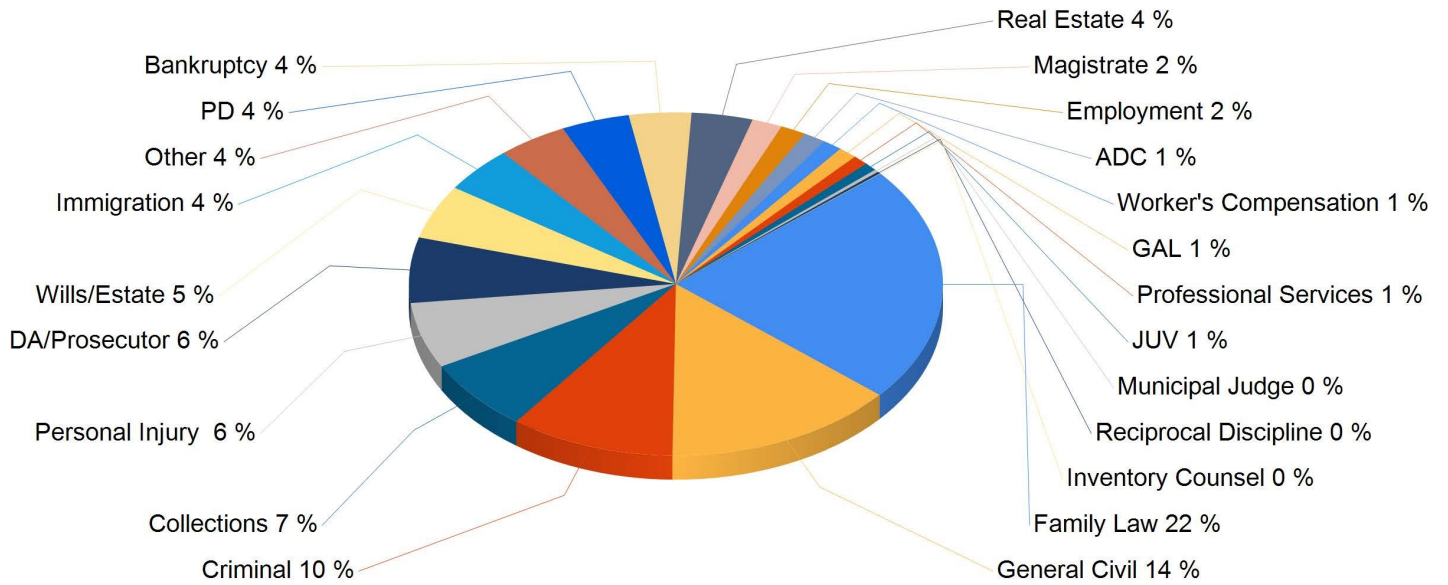
TABLE 5

Year	Central Intake Diversion Agreements
2013	42
2012	32
2011	42
2010	51(52)*
2009	45(53)*

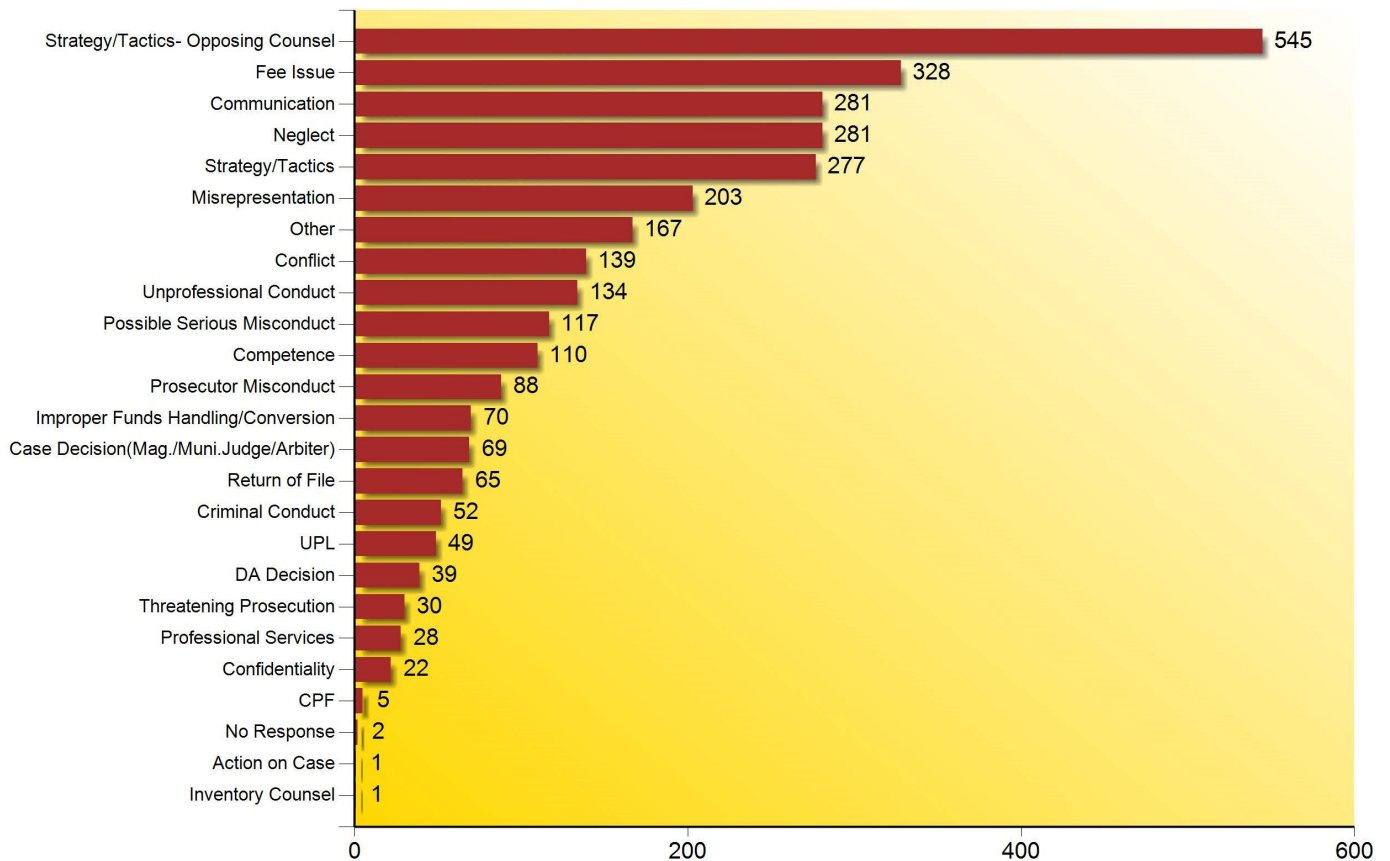
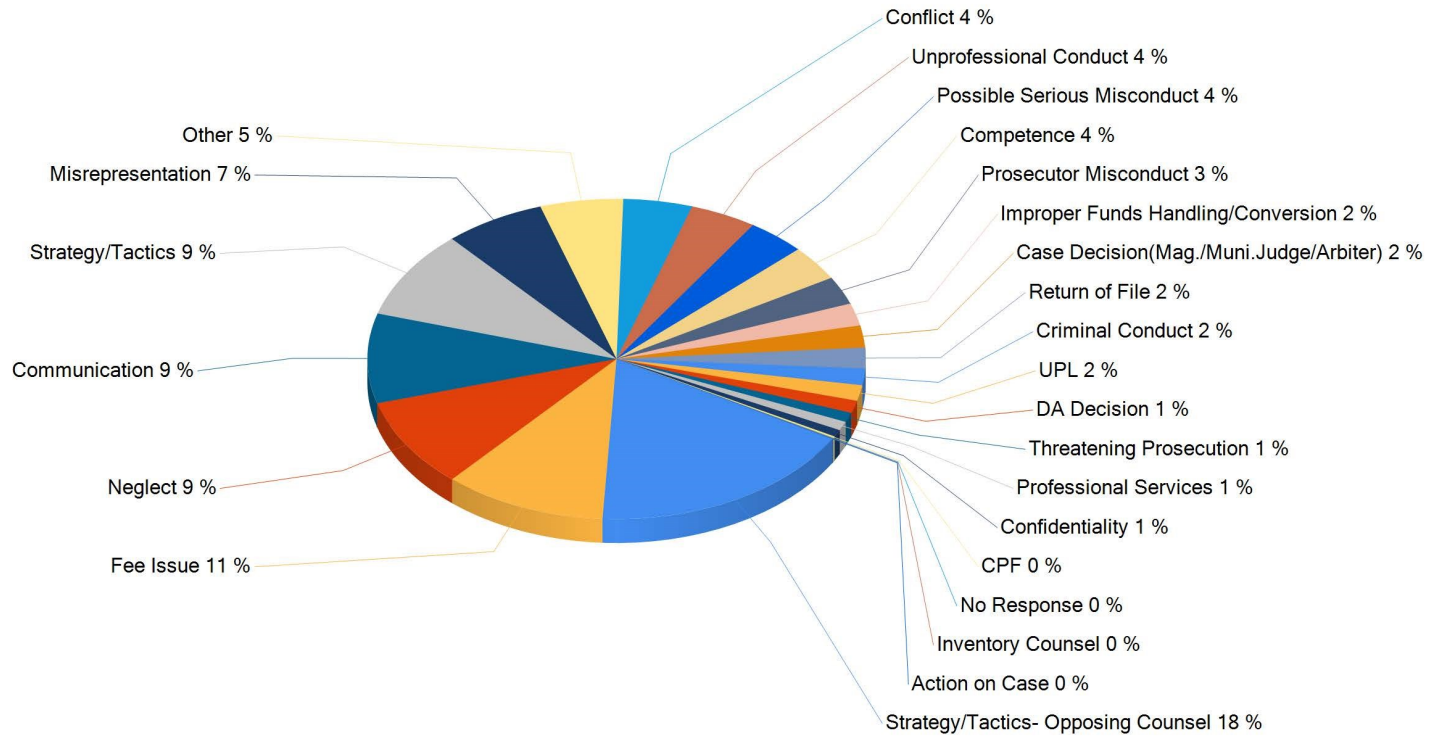
*The first number is actual diversion agreements. The second number in parentheses represents the number of separate requests for investigation involved in the files.

Appendix E

Central Intake Inquiries (by practice area)
January 1, 2013 – December 31, 2013



Central Intake Inquiries (by nature of complaint) January 1, 2013 – December 31, 2013



Appendix F

INVESTIGATION STATISTICS

Matters docketed for further investigation are assigned to trial counsel within the Office of Attorney Regulation Counsel.

Trial counsel also investigates Unauthorized Practice of Law matters and Attorneys' Fund for Client Protection matters. Statistics relating to the unauthorized practice of law are covered under a separate heading in this report. The Attorneys' Fund for Client Protection report is filed separately.

TABLE 6

Year	Investigations Initiated	Dismissed by Regulation Counsel	To Presiding Disciplinary Judge	To Attorney Regulation Committee	Directly to Presiding Disciplinary Judge	Placed in Abeyance	Other	Pending
2013	366	100	16(25)*	143(153)*	11(14)*	27	0	231
2012	368	92	17(25)*	165(171)*	11(17)*	13(32)*	0	184
2011	377	204	35(44)*	143(154)*	11	18(20)*	0	153
2010	407	128	25(39)*	217(223)*	14(29)*	30**	0	187
2009	401	140	25(33)*	115(122)*	8	7(12)*	0	229
2008	360	169	24(33)*	125(130)*	16(26)	7*	0	143

*The first number is actual files. The second number in parentheses represents the number of separate requests for investigation involved in the files.

**Twenty of the thirty matters placed in abeyance concerned one respondent.

Dismissals With Educational Language

In October 2004, the Office of Attorney Regulation Counsel began tracking matters that are dismissed with educational language. The dismissals occur both at the intake stage and the investigative stage. In 2013, 147 matters were dismissed with educational language both at the intake stage and the investigative stage. Some of the matters involve *de minimis* violations that would have been eligible for diversion. Some of the dismissals require attendance at Ethics School or Trust Account School. See Table 7.

TABLE 7

Dismissals With Educational Language

Year	Intake Stage	Investigative	Total
2013	113	20	133
2012	132	4	136
2011	199	25	224
2010	223	29	252
2009	159	27	186
2008	128	55	183

Review of Regulation Counsel Dismissals

A complainant may appeal Regulation Counsel’s determination to dismiss the matter to the full Attorney Regulation Committee. If review is requested, the Attorney Regulation Committee must review the matter and make a determination as to whether Regulation Counsel’s determination was an abuse of discretion. *See* C.R.C.P. 251.11; *see* Table 8.

TABLE 8

Year	Number of Review Requests	Regulation Counsel Sustained	Regulation Counsel Reversed
2013	1	1	0
2012	1	1	0
2011	2	2	0
2010	0	0	0
2009	4	4	0
2008	2	2	0

Appendix G

ATTORNEY REGULATION COMMITTEE (ARC)

The Attorney Regulation Committee is composed of nine members, six attorneys and three public members appointed by the Supreme Court with assistance from the Court's Advisory Committee. One of the Attorney Regulation Committee's primary functions is to review investigations conducted by Regulation Counsel and determine whether there is reasonable cause to believe grounds for discipline exist. *See* C.R.C.P. 251.12. Following review of the investigation conducted by Regulation Counsel, the Attorney Regulation Committee may dismiss the allegations, divert the matter to the alternatives to discipline program, order a private admonition be imposed, or authorize Regulation Counsel to file a formal complaint against the respondent-attorney.

In 2013 the Attorney Regulation Committee reviewed 180 matters. *See* Table 9.

TABLE 9

Cases Reviewed by ARC	
2013	180
2012	171
2011	154
2010	225
2009	122
2008	126

TABLE 10

Number of Requests for Investigation Dismissed After Investigation by the Attorney Regulation Committee	
2013	0
2012	0
2011	0
2010	2
2009	0
2008	1

TABLE 11

Number of Weeks from Case Assigned to Dismissal by Regulation Counsel/ARC	
2013	26.9
2012	25.4
2011	30.3
2010	24.2
2009	22.2
2008	19.4

The Attorney Regulation Committee’s disposition of the 180 matters presented to the Committee is detailed in Table 12.²

TABLE 12

Year	Formal Proceedings	Diversion Agreements	Private Admonition	Conditional Admissions	Dismissals	Total Cases Acted Upon By ARC
2013	101	36(44)*	6(8)*	0	0	170(180)*
2012	123	33(39)*	9	0	0	165(171)*
2011	95	36(46)*	12(13)*	0	0	143(154)*
2010	175	37(42)*	5(6)*	0	2	219(225)*
2009	87	20(25)*	2(10)*	0	0	109(122)*
2008	95	24(28)*	6(7)*	0	1	126(131)*

*The first number is actual files. The second number in parentheses represents the number of separate requests for investigation involved in the files.

TABLE 13

Number of Weeks from Case Assigned to Completion of Report/Diversion/Stipulation	
2013	25.7
2012	24.8
2011	25.4
2010	23.2
2009	22.7
2008	19.6

² Because some matters are carried over from one calendar year to the next, the number of matters reviewed by the Attorney Regulation Committee and the number of matters dismissed by Regulation Counsel generally will not conform to the number of cases docketed or completed in the investigation area. See Tables 4, 6, and 9

Appendix H

FORMAL COMPLAINTS

In 101 separate matters, the Attorney Regulation Committee found reasonable cause and authorized the Office of Attorney Regulation Counsel to file a formal complaint. *See* C.R.C.P. 251.12(e). Several matters were consolidated, and the number of formal complaints filed in 2013 was 48. In certain cases, after authority to file a formal complaint is obtained, Attorney Regulation Counsel and Respondent enter into a Conditional Admission to be filed with the Presiding Disciplinary Judge without the filing of a formal complaint. *See* Table 14.

TABLE 14

Year	Formal Complaints Filed	Resolved Prior to Complaint Filed
2013	48(73)*	8(12)*
2012	47(92)*	2(5)*
2011	35(90)*	9(19)*
2010	85(184)*	10(20)*
2009	44(68)*	13(15)*
2008	55(99)*	13(23)*

*The first number is actual files. The second number in parentheses represents the number of separate requests for investigation involved in the files.

The formal complaints filed, and those pending from 2013, in the attorney discipline area resulted in 10 trials. The trial division also participated in additional matters before the Presiding Disciplinary Judge (at issue conferences, status conferences, and pretrial conferences). Disposition of the matters is detailed in Table 15.

TABLE 15

Year	Attorney Discipline Trials	Reinstatement Hearings	Conditional Admissions	Diversion Agreements	Dismissals	Abeyance
2013	10	2	20(53)*	0	0	0
2012	11	3	24(53)*	0	3	0
2011	22	3	43(91)*	2	7	1
2010	22(29)*	2	46(96)*	2	2	2
2009	16(32)*	1	42(65)*	0	3	4
2008	15(23)*	2	42(63)*	5(7)*	2	5

*The first number represents actual files; the second number in parentheses represents the number of separate requests for investigation involved in the files.

A diversion agreement is an alternative to discipline. Diversion agreements are useful in less serious matters in which an attorney must comply with certain conditions, which may include mediation, fee arbitration, law office management assistance, evaluation and treatment through the attorneys' peer assistance program, evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or accounting procedures, continuing legal education, ethics school, the multistate professional responsibility examination, or any other program authorized by the Court. *See* Table 16.

TABLE 16

Diversion Agreements at Intake Stage	
2013	42
2012	32
2011	42
2010	51(52)*
2009	45(53)*
2008	45(49)*

Diversion Agreements at Investigative Stage Approved by the Attorney Regulation Committee	
2013	31(42)*
2012	33(39)*
2011	36(46)*
2010	37(42)*
2009	20(25)*
2008	24(28)*

Diversion Agreements at Trial Stage Approved by the Presiding Disciplinary Judge	
2013	0
2012	0
2011	2
2010	2
2009	0
2008	5(7)*

Conditional Admissions at Investigative Stage Approved by the Presiding Disciplinary Judge	
2013	16(25)*
2012	17(25)*
2011	35(44)*
2010	25(39)*
2009	25(33)*
2008	24(43)*

Conditional Admissions at Trial Stage Approved by the Presiding Disciplinary Judge	
2013	20(53)*
2012	24(53)*
2011	43(91)*
2010	40(94)*
2009	42(65)*
2008	43(63)*

*The first number represents actual files; the second number in parentheses represents the number of separate requests for investigation involved in the files.

After a formal complaint is filed with the Presiding Disciplinary Judge, the matter may be resolved by dismissal, diversion, conditional admission of misconduct,³ or by trial.

³ Pursuant to C.R.C.P. 251.22, at any point in the proceedings prior to final action by a Hearing Board, an attorney against whom proceedings are pending may tender a conditional admission of misconduct. The conditional admission constitutes grounds for discipline in exchange for a stipulated form of discipline. The conditional admission must be approved by the Regulation Counsel prior to its submission.

The following tables compare the length of time formal complaints are pending before Presiding Disciplinary Judge. Additionally, a comparison of the time period from the filing of the formal complaint until a conditional admission of misconduct is filed, and a comparison of the time period from the filing of the formal complaint to trial, is provided.

TABLE 17

Year	Average Weeks From Filing of Formal Complaint to Conditional Admission/Diversion Filed	
2013	Presiding Disciplinary Judge	23.0 weeks
2012	Presiding Disciplinary Judge	27.3 weeks
2011	Presiding Disciplinary Judge	31.9 weeks
2010	Presiding Disciplinary Judge	25.2 weeks
2009	Presiding Disciplinary Judge	19.6 weeks
2008	Presiding Disciplinary Judge	18.7 weeks

Year	Average Weeks From Filing of Formal Complaint to Trial	
2013	Presiding Disciplinary Judge	33.5 weeks
2012	Presiding Disciplinary Judge	25.9 weeks
2011	Presiding Disciplinary Judge	39.7 weeks
2010	Presiding Disciplinary Judge	32.3 weeks
2009	Presiding Disciplinary Judge	41.6 weeks
2008	Presiding Disciplinary Judge	40.8 weeks

Another comparison is the average time it takes from the filing of the formal complaint with the Presiding Disciplinary Judge until the Presiding Disciplinary Judge issues a final order.

TABLE 18

	Average Weeks from the Filing of the Formal Complaint Until the Final Order is Issued by the Presiding Disciplinary Judge	
	Conditional Admission or Diversion Filed	Trial Held
2013	22.3 weeks	36.4 weeks
2012	32.9 weeks	62.3 weeks
2011	30.6 weeks	41.8 weeks
2010	26.4 weeks	49.7 weeks
2009	20.3 weeks	61.1 weeks
2008	24.6 weeks	57.2 weeks

Appendix I

APPEALS

In 2013, four attorney discipline appeals were filed with the Court.

TABLE 19

Year	Appeal Filed With:	Number of Appeals
2013	Colorado Supreme Court	4
2012	Colorado Supreme Court	8
2011	Colorado Supreme Court	14
2010	Colorado Supreme Court	6
2009	Colorado Supreme Court	4
2008	Colorado Supreme Court	2

Year	Appeals Filed	Appeals Dismissed	Appeals Affirmed	Appeals Reversed	Appeals Pending
2013	4	0	4	0	4
2012	8	2	4	0	3
2011	14	3	5	1	9
2010	6	1	1	0	4
2009	4	0	4	0	3
2008	2	0	4	0	1

Appendix J

FINAL DISPOSITIONS

Final dispositions of proceedings are reflected in Table 20.

TABLE 20

Year	Abeyance	Dismissals	Diversions	Public Censures	Suspensions	Probations	Disbarments
2013	0	0	0	5	46(61)*	25(43)*	18(27)*
2012	0	3	0	8	43	21	8
2011	2	7	2	9	60(61)*	40	16
2010	2	2	2	15	56(59)*	29	9
2009	4	3	0	9	52(54)*	28(29)*	8(11)*
2008	5	2	5(7)*	5	51	35	10

*The first number represents actual files; the second number in parentheses represents the number of separate requests for investigation involved in the files.

Appendix K

Other Actions

Immediate Suspensions

In 2013, the Office of Attorney Regulation Counsel filed 14 petitions for immediate suspension.⁴ The petitions are filed directly with the Presiding Disciplinary Judge or the Colorado Supreme Court. The Presiding Disciplinary Judge or a Justice of the Supreme Court may issue an order to show cause why the respondent-attorney should not be immediately suspended. The respondent-attorney may request a prompt hearing if the Supreme Court enters an order to show cause. Dispositions of the immediate suspension petitions are reflected in Table 21.

TABLE 21

Year	Filed	Suspended	Suspended (Child Support)	Suspended (Failure to Cooperate)	Felony Conviction	Reinstated	Withdrawn	Discharged/Denied	Pending
2013	14	8	1	3	1	0	1	0	0
2012	16	3	0	6	0	2	0	3	1
2011	14	3	2	3	3	0	0	2	1
2010	19*	12	0	4	1	0	0	2	0
2009	17	7	0	6	1	0	0	4	1
2008	15	10	0	4	1	0	0	4	1

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

*One matter resulted in the attorney being disbarred.

⁴ Immediate suspension is the temporary suspension by the Supreme Court of an attorney's license to practice law. Ordinarily, an attorney's license is not suspended during the pendency of disciplinary proceedings, but when there is reasonable cause to believe that an attorney is causing or has caused immediate and substantial public or private harm, immediate suspension may be appropriate. Petitions are typically filed when an attorney has converted property or funds, the attorney has engaged in conduct that poses an immediate threat to the administration of justice, or the attorney has been convicted of a serious crime. *See* C.R.C.P. 251.8. Additionally, under C.R.C.P. 251.8.5, a petition for immediate suspension may be filed if an attorney is in arrears on a child-support order. Note: On October 29, 2001, the Supreme Court adopted a rule change authorizing suspension of an attorney for failure to cooperate with Regulation Counsel. *See* C.R.C.P. 251.8.6. The rule change authorizes Regulation Counsel to file a petition directly with the Supreme Court alleging that an attorney is failing to cooperate in an investigation alleging serious misconduct. Proceedings under the rule are not disciplinary proceedings. *See* Comment to Rule 251.8.6.

Disability Matters

The Office of Attorney Regulation Counsel filed seven petitions/stipulations to transfer attorneys to disability inactive status in 2013. When an attorney is unable to fulfill his/her professional responsibilities because of physical, mental, or emotional illness, disability proceedings are initiated. An attorney who has been transferred to disability inactive status may file a petition for reinstatement with the Presiding Disciplinary Judge. *See* Table 22.

TABLE 22

Year	Filed	Disability Inactive Status	Dismissed/ Discharged/ Denied	Reinstated	Withdrawn	Pending
2013	7	5	2	0	0	0
2012	8	9	2	0	0	0
2011	10	8	1	1	0	3
2010	6	4	1*	0	0	1
2009	13	14	2	2	1	2
2008	19*	12	1	2		5

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

*One matter was closed due to the death of the respondent during the proceedings.

Contempt Proceedings

The Office of Attorney Regulation Counsel one motion recommending contempt with the Supreme Court. The hearing regarding that motion was not held until 2014. Contempt proceedings are filed when an attorney practices law while under suspension or disbarment. *See* Table 23.

TABLE 23

Year	Motions for Contempt	Held in Contempt	Discharged\ Dismissed	Withdrawn	Pending
2013	1	0	0	0	0
2012	0	0	0	0	0
2011	1	0	0	0	1
2010	1	0	0	0	1
2009	0	0	0	0	0
2008	1	1	0	0	0

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

Magistrates

Effective July 2000, the Office of Attorney Regulation Counsel undertook the responsibility of handling complaints against magistrates. *See* C.R.C.P. 251.1(b). In the year 2013, the Office of Attorney Regulation Counsel received 43 complaints against magistrates. *See* Table 24.

TABLE 24

Year	Complaints	Dismissed	Diversion	Investigation Initiated
2013	43	43	0	0
2012	45	42	1	2
2011	66	66	0	0
2010	55	55	0	0
2009	51	51	0	0
2008	49	49	0	0

Reinstatement and Readmission Matters

Six reinstatement or readmission matters were filed with the Office of Attorney Regulation Counsel in 2013. When an attorney has been suspended for at least one year and one day, has been disbarred, or the court's order requires reinstatement, he/she must seek reinstatement or apply for readmission to the Bar.⁵

⁵ A disbarred attorney may seek readmission eight years after the effective date of the order of disbarment. The individual must retake and pass the Colorado Bar examination and demonstrate fitness to

TABLE 25

Year	Filed	Readmitted	Reinstated	Dismissed	Withdrawn	Denied	Pending
2013	6	1	1	0	1	0	3
2012	8	0	4	1	0	1	6
2011	3	1	6	0	0	1	3
2010	12	0	5	0	2	1	6
2009	6	1	1	1	4	0	5
2008	10	1	7	0	0	0	2

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

Trust Account Notification Matters

All Colorado attorneys in private practice must maintain a trust account in a financial institution doing business in Colorado. The financial institution must agree to report to Regulation Counsel any properly payable trust account instrument presented against insufficient funds, irrespective of whether the instrument is honored. The report by the financial institution must be made within five banking days of the date of presentation for payment against insufficient funds.

The reporting requirement is a critical aspect of the Attorneys' Fund for Client Protection. The rule is designed to operate as an "early warning" that an attorney may be engaging in conduct that might injure clients.

In 2013, the Office of Attorney Regulation Counsel received 247 notices of trust account checks drawn on insufficient funds. Because of the potentially serious nature, the reports receive immediate attention from the Office of Attorney Regulation Counsel. An investigator or attorney is required to contact the attorney account holder and the financial institution making the report. A summary of the investigator's finding is then submitted to Regulation Counsel for review. If Regulation Counsel determines that there is reasonable cause to believe that a conversion of client funds occurred, the matter is immediately assigned to trial counsel. If there is no evidence of intentional misconduct or inappropriate accounting practices, the matter is dismissed by Regulation Counsel.

practice law. Any attorney suspended for a period of one year and one day or longer must file a petition for reinstatement with the Presiding Disciplinary Judge. In some matters, reinstatement proceedings are ordered when the suspension is less than one year and one day. *See* C.R.C.P. 251.29.

TABLE 26

Year	Total Reports	Bank Errors	Bookkeeping/ Deposit Errors	Checks Cashed Prior To Deposit Clearing/ Improper Endorsement** *	Conversion/ Commingling Assigned to Trial Attorney	Diversions	Other ⁶	Pending
2013	247	25(5)**	51(19)**	30(12)**	0	0	141(29)**	33
2012	262	31(1)**	69(11)**	49(22)**	0	0	106(18)**	33
2011	256	25	111(19)**	28(15)**	23	2	60(9)**	26
2010	276	34(2)**	125(22)**	29(16)**	12	4(5)*	64(8)**	19
2009	278	34(1)**	125(22)**	23(17)**	14	5(6)*	64(10)**	11
2008	273	31	92(11)**	48(13)**	18	7(12)*	72(15)*	22

*The first number represents actual files; the number in parentheses represents the number of separate requests for investigation involved in the files.

**The number in parentheses represents the number of cases that were dismissed with educational language.

***In 2012, four matters involved checks that were not endorsed or endorsed improperly.

Unauthorized Practice of Law

The Office of Attorney Regulation Counsel investigates and prosecutes allegations of the unauthorized practice of law. In 2013, the Office of Attorney Regulation Counsel received 59 complaints regarding the unauthorized practice of law. See Table 27.

TABLE 27

UPL Complaints Received	
2013	59
2012	80
2011	147
2010	94
2009	144
2008	97

⁶ The category Other includes errors due to unanticipated credit card fees or charges, employee theft, forgery, stolen check or other criminal activity, check written on wrong account, charge back item (a fee charged to the law for a client's NSF check) and check or wire fee not anticipated.

The Unauthorized Practice of Law Committee may direct trial counsel to seek a civil injunction by filing a petition with the Supreme Court or, in the alternative, offer the respondent an opportunity to enter into a written agreement to refrain from the conduct in question, to refund any fees collected, and to make restitution. Additionally, trial counsel may institute contempt proceedings against a respondent that is engaged in the unauthorized practice of law. *See* C.R.C.P. 238.

In 2013, the Unauthorized Practice of Law Committee took action on 16 unauthorized practice of law matters, and 20 complaints were dismissed by Regulation Counsel, for a total of 36 completed matters. *See* Table 28.

TABLE 28

Unauthorized Practice of Law Dispositions						
Year	Filed	Dismissed by Regulation Counsel	Dismissed After Investigation by UPL Committee	Abeyance	Agreements	Formal (injunctive or contempt proceedings)
2013	59	20	0	0	3	13
2012	80	64	0	0	13	29
2011	147	47	0	0	14	27
2010	94	24	0	2	4	25
2009	144	33(6) **	0	0	12	17(25)*
2008	97	25(17)**	0	0	4	17(26)*

*The first number represents actual files; the number in parentheses represents the number of separate requests for investigation involved in the files.

**The number in parentheses are the cases dismissed with educational language.

(Matters filed in the previous year may be carried over to the next calendar year.)

The following information regarding the investigation and prosecution of unauthorized practice of law matters is provided for informational purposes:

INTAKE: The Office of Attorney Regulation Counsel typically receives several general inquiries on unauthorized practice of law matters each week. These calls come from lawyers, judges, clients, or non-lawyers who have questions concerning Colorado’s multi-jurisdictional practice rule, C.R.C.P. 220, and also from individuals who may be interested in opening, or who have opened, a document-preparation business. Regulation Counsel uses these telephone inquiries as an opportunity to educate the lawyer, client, or non-lawyer-provider

on the issues of what constitutes the unauthorized practice of law and possible harm that can result from the unauthorized practice of law. Regulation Counsel discusses the impact of C.R.C.P. 220 (Colorado's multi-jurisdictional rule, C.R.C.P. 221 and C.R.C.P. 221.1 (Colorado's *pro hac vice* rule), and C.R.C.P. 222 (Colorado's single-client certification rule). Regulation Counsel also discusses the fact that non-lawyers owe no duties of competence, diligence, loyalty, or truthfulness, and there may be fewer remedies as there is no system regulating the quality of such services, no client protection funds, and no errors and omissions insurance. Regulation Counsel discusses the potential issues involving types and levels of harm. Regulation Counsel encourages a caller to file a request for investigation if they believe the unauthorized practice of law has occurred rather than dissuade the caller from filing an unauthorized practice of law request for investigation.

INVESTIGATION: The Office of Attorney Regulation Counsel uses the same investigation techniques in unauthorized practice of law matters that are used in attorney discipline matters. These techniques include interviewing the complaining witness, any third-party witnesses, and the respondent(s). Regulation Counsel orders relevant court files and other documents, and frequently uses the power of subpoenas to determine the level and extent of the unauthorized practice. If the unauthorized practice of law has occurred, Regulation Counsel attempts to identify and resolve the unauthorized practice, as well as issues involving disgorgement of fees and restitution with an informal agreement. These investigations create further public awareness of what constitutes the unauthorized practice of law and this office's willingness to address unauthorized practice of law issues.

TRIAL: Once matters are investigated and issues involving serious client harm or harm to the legal system are identified, Regulation Counsel pursues enforcement of the rules concerning the unauthorized practice of law. Injunctive proceedings are used to ensure that future misconduct does not occur. Federal and state district court (and state county court) judges have taken note of this and submit the names of the problematic non-lawyer respondents. As a result of unauthorized practice of law proceedings, numerous immigration consulting businesses have been shut down throughout Colorado. In addition, other individuals who either posed as lawyers to unwary clients, or who otherwise provided incompetent legal advice were enjoined from such conduct. Two individuals were found in contempt of prior Colorado Supreme Court orders of injunction.

Regulation Counsel assigns trial counsel and non-attorney investigators to unauthorized practice of law matters.

Appendix L

EDUCATION/OUTREACH

Presentations/Talks

The Office of Attorney Regulation Counsel presented 169 total public speeches in 2013. See Table 29.

TABLE 29

Presentations/Talks Delivered	
2013	169
2012	149
2011	191
2010	144
2009	119
2008	164

Ethics School

The Office of Attorney Regulation Counsel created, designed, and staffs an Ethics School. See Table 30.

TABLE 30

Year	Classes Presented	Attendance
2013	5	91
2012	5	110
2011	5	161
2010	4	123
2009	5	143
2008	5	165

The school is a seven-hour course that focuses on the everyday ethical dilemmas attorneys confront. The course addresses the following issues:

- Establishing the attorney-client relationship;
- Fee agreements;
- Conflicts;

- Trust and business accounts;
- Law office management; and
- Private conduct of attorneys.

The Ethics School is not open to all attorneys. Rather, the attorneys attending are doing so as a condition of a diversion agreement or pursuant to an order from the Presiding Disciplinary Judge or Supreme Court. The attorneys attending Ethics School are provided with a detailed manual that addresses all of the topics covered in the school, along with suggested forms and case law.

The Ethics School manual is available for purchase for \$150. The purchase price includes manual updates for one year. A manual may be purchased by contacting the Office of Attorney Regulation Counsel.

Trust Account School

In 2003, the Office of Attorney Regulation Counsel created a four-hour school that addresses the correct method for maintaining a trust account. The course is designed for either attorneys or legal support staff. The course instructors are trial attorneys from the Office of Attorney Regulation Counsel and a certified QuickBooks instructor. *See* Table 31.

TABLE 31

Year	Classes Presented	Attendance
2013	5	76
2012	5	49
2011	5	68
2010	5	63
2009	4	47
2008	5	56

The course is accredited for four general Continuing Legal Education credits and is open to all members of the bar. The cost of the course is minimal so as to encourage widespread attendance.

Professionalism School

At the direction of the Supreme Court and in cooperation with the Colorado Bar Association, the Office of Attorney Regulation Counsel designed a professionalism school for newly admitted Colorado attorneys. The Office of Attorney Regulation Counsel designed the curriculum and teaches the course in such a fashion as to address the most common ethical dilemmas confronted by newly admitted attorneys.

Attendance at the course is a condition of admission to the Colorado Bar. On an annual basis, nearly 1,000 admittees attend and participate in the training. Lawyers from the

Office of Attorney Regulation Counsel committed hundreds of hours to the planning, administration, and presentation of the professionalism course. This course is separate and distinct from the ethics school and trust accounting school presented by the Office of Attorney Regulation Counsel. In 2013, the office participated in 15 separate presentations of the course.

Appendix M

Articles

The Office's attorneys wrote or edited six legal publications. Four are presented below.

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PROFESSIONALISM

A World of Difference in Attorney Regulation

by John S. Gleason and James C. Coyle

The Colorado attorney regulation system is the gold standard model for the nation. This article describes the journey to such status and how Colorado will continue to improve.

Fifteen years ago, Colorado embarked on a journey destined to change the way most states regulate lawyers. Following an evaluation by the American Bar Association (ABA) Standing Committee on Professional Discipline, in 1997, Chief Justice Anthony Volland appointed Colorado's version of the ABA committee to recommend changes to the state's lawyer regulation system. The Colorado committee was simply known as the Chief Justice's Committee (CJ's Committee).

Traditionally, lawyer regulation systems around the country comprised a large number of volunteer lawyers who served in all aspects of the system, including in the roles of investigator, probable cause finder, prosecutor, and hearing board member. Colorado was no different. The system was slow, devoting disproportionate resources to complaints involving minor misconduct or no misconduct, and failing to address the issues underlying the lawyer's conduct. More important, the system did not emphasize fostering public confidence and trust in attorneys.

Through the CJ's Committee, Colorado sought to regain confidence and trust in lawyers through a new regulation system.¹ The changes that followed were just the start of what today is an office that oversees the entire career of a lawyer.

Developing a New Approach to Attorney Regulation

The CJ's Committee worked quickly to address the concerns expressed in the 1997 ABA evaluation. By February 1998, recommendations had been prepared for a public hearing.²

The recommended changes were dramatic, and touched on every aspect of lawyer regulation in Colorado. The most significant proposals included:

- 1) reduction in the time to complete the disciplinary process;
- 2) consistency in discipline decisions;
- 3) creation of a central intake system; and
- 4) creation of an Office of the Presiding Disciplinary Judge, with hearing boards supplemented with two volunteer members.³

Critical to meeting the goals of both the ABA and the CJ's Committee was the task of quickly and efficiently sorting through

thousands of allegations of misconduct. To do this, Colorado created a central intake office and implemented a telephone-based complaint line. The reasons for doing this were simple. The old written-complaint system led to a significant delay between the time a person requested a complaint form and the time the form was submitted. Of those who requested a form, only one in five actually completed and submitted such a form. Research determined that it simply was too burdensome for many individuals to complete the form. Then, once the office received the form, processing proved to be cumbersome and time-consuming even before an attorney regulation attorney reviewed the complaint. These problems resulted in frustrated members of the public failing to follow through with complaints and anxious attorneys waiting long periods to hear the result of their case once a grievance was filed.

Telephone Intake Facilitates Process

Once the telephone intake system was implemented, requests for investigations increased dramatically—from approximately 1,500 per year to approximately 6,000 per year.⁴ The majority of telephone complaints were handled informally through discussions with no paperwork filed, and increased resources allowed investigations to be scheduled in a timely fashion to accommodate both the complainant and the lawyer. Approximately 60% of all requests for investigation entered the process via telephone. Non-English speaking complainants were accommodated with like-speaking staff or translators. As a result of the new telephone intake system, during the past fifteen years, the central intake division has handled more than 60,000 requests for investigation. More than 80% of all requests for investigation are resolved during the initial intake review by one of our attorneys.

The central intake division reduced review time from months to days.⁵ Now, members of the public can quickly file their complaints, and matters involving attorneys accused of minor misconduct are quickly handled so that a case does not linger without resolution. To date, our central telephone intake system has served as a model for twenty-six states.⁶



About the Authors

John S. Gleason is Director of Regulatory Services for the Oregon State Bar. He retired as Regulation Counsel for the Colorado Supreme Court in February 2013, after twenty-five years of service to the Court—jgleason@osbar.org. James C. Coyle is Regulation Counsel for the Colorado Supreme Court. He worked alongside John Gleason for more than twenty-two years before taking on this new role on behalf of the Court—(303) 928-7780, j.coyle@csc.state.co.us.

Comprehensive Diversion Program

Colorado also was the first lawyer discipline system in the country to implement a comprehensive diversion program. The program fulfilled one of the goals set forth by the ABA and the CJ's Committee: to focus on the serious matters and address minor allegations of misconduct by correcting the conduct with targeted training or mentoring. Success of such a diversion program required ensuring that any lawyer in the program was closely monitored throughout the diversion, as well as ensuring that the program addressed the underlying misconduct.⁷ Many other states have studied our diversion program and its ethics, trust account, and professionalism schools, and have adopted similar courses. Still, no lawyer regulation program in the country approaches Colorado's short time frame in addressing minor allegations of misconduct.⁸

A critical part of lawyer regulation is transparency. Notwithstanding the focus on quick resolutions of minor misconduct at every step of the process, complainants are well informed. Complainants who are unhappy with a resolution can request review or appeal a dismissal.⁹ Additionally, there is no confidentiality requirement assigned to anyone in the regulation process other than the Office of Attorney Regulation Counsel (OARC), and then the confidentiality exists only before a formal disciplinary complaint has been filed.¹⁰

Present-Day Attorney Regulation System

The Colorado attorney regulation system is the gold standard model for the nation. Far from being the sole disciplinary arm of

the legal community, our Supreme Court, its regulatory committees, and the OARC now focus on the long-term relationship with all Colorado attorneys.

This relationship starts in the law schools, where we describe to the students their professional responsibilities once they become licensed attorneys, as well as the attorney admissions and regulation process. This relationship between the lawyer and the OARC continues throughout the admissions process. Here, 1,800 applicants give us their most personal and confidential information and subject themselves to in-depth character and fitness examinations in the hope of becoming Colorado lawyers. Next, 1,450 examination applicants (~1,000 in July 2013 and ~450 in February 2013) are tested for core competencies, and their 11,600 essay and performance test answers are graded pursuant to clear guidelines. Successful applicants then take part in the swearing-in ceremony, where new lawyers meet our Supreme Court justices and other members of the judiciary for the first time, and take their solemn oath of admission.

The relationship continues during the annual attorney registration process. Here, fees are paid and information is updated, and approximately 80,000 affidavits of compliance with continuing legal education requirements are processed. In 2007, Colorado became one of the first states to provide a fully interactive online attorney registration system. Colorado attorneys also interact regularly with members of our office through the more than 200 legal education programs we conduct on an annual basis—beginning with courses in professionalism school.

Attorney Regulation staff members maintain a relationship with the community by serving on boards, councils, and committees that improve the quality of life for Colorado citizens, as well as enhance the administration of justice and the legal system. We teach, write papers, and give presentations to local, state, and national bar associations and other organizations that are informative and helpful to lawyers and members of the public.

Additionally, the OARC continues to handle more than 20,000 telephone calls each year; to investigate approximately 4,000 requests for investigation against attorneys and magistrates; and, when necessary, to prosecute the disciplinary and disability matters that are not dismissed, diverted, or otherwise settled during the intake and investigation process. Regulation Counsel also handles reinstatement and readmission proceedings of Colorado lawyers.

Regulation Counsel represents two state entities. When necessary, it represents the Commission on Judicial Discipline in judicial discipline matters. The office also serves as counsel to the Board of Trustees for the Client Protection Fund, which handles claims resulting from the dishonest conduct of a lawyer; receives and investigates all claims filed with the fund; collects fees on behalf of the fund; and maintains the money entrusted to the fund by all Colorado lawyers.

Finally, Regulation Counsel's relationship with attorneys continues to function through the end of their lives. The OARC oversees the inventory counsel process when a lawyer dies, disappears, or otherwise is unable to continue to practice law and no one else is able to close down that lawyer's practice.

What is Next

In spite of the vast improvements that have been made to the system, we do not have time to rest on our laurels. Among the many things we have learned during the past fifteen years is that

discipline is less effective than alternatives to discipline when the underlying misconduct is minor. We believe we can, first and foremost, protect the public while also improving the overall law practice experience.

We currently are redesigning Colorado's admissions process to ensure that all new Colorado lawyers possess the record of conduct that justifies the professional responsibilities entrusted to them. This includes a comprehensive rewrite of the rules governing admission to the practice of law. This rewrite will address many of the pressing issues faced by lawyers whose practices are no longer contained by state or national borders, including practice pending admission and other methods of simplifying multijurisdictional practice. This also includes a well-developed character and fitness department that reviews and investigates all applications for admission and certification.

We also are looking at new ways to help identify and assist lawyers just starting in private practice so they do not repeat the hard lessons learned by those opening an office without guidance or mentoring. For example, we have modified the change-of-address forms so that when a lawyer leaves public service or a large law firm, we can encourage him or her to complete a self-audit checklist, attend trust account school and the "Hanging Your Shingle" program produced by CLE in Colorado, Inc., or connect with a mentor.

We are considering additional educational approaches for those lawyers who are statistically prone to disciplinary action (those practicing for six to fifteen years). Such programs would adopt a more interactive learning model that better prepares the attorneys to provide professional services to their clients and the courts within the confines of the Rules of Professional Conduct.

COLAP and CAMP—New Programs Having an Impact

The Supreme Court has created two important new programs that already are having a positive impact on the law practice experience. The first is the Colorado Lawyers Assistance Program (COLAP). This program provides a confidential, free, non-disciplinary way for law students, lawyers, and judges to seek appropriate help for problems before they sabotage the lawyer's career and/or quality of life. The COLAP program can assist in (1) investigating and planning interventions, (2) entering into aftercare programs and professional peer support meetings, (3) obtaining sponsors and mentors, and (4) providing free monitoring services for a variety of situations. Through the COLAP program:

- fewer lawyers go "underground" and leave their illness untreated
- some lawyers may be eligible for an alternative that does not require self-reporting
- confidential assessments are done by recognized experts in the field
- self-referrals are fostered
- an earlier intervention frequently is accomplished, resulting in less harm to the public
- reversible causes of cognitive impairment may be identified and treated
- long-time lawyers may receive life coaching or assistance in how to retire or redirect their time and expertise after they retire
- the lawyer's health can be improved and dignity preserved, reducing shame or fear, and protecting the public.

The second initiative in effect is the Colorado Attorney Mentoring Program (CAMP). The broad objectives of CAMP are to promote professional pride and identity in the legal profession; to promote the pursuit of excellence in service; and to promote strong relationships with the bar, courts, clients, law schools, and the public. This is accomplished by teaching the core values and ideals of the legal profession and suggesting best practices for meeting those ideals.

These programs and initiatives are part of the OARC's ongoing efforts to improve the legal system through protecting the public and educating and nurturing attorneys. It is a long way from where the office was in 1997, and the efforts and new developments will continue in the future.

Notes

1. See "1997 Report of the Colorado Attorney Regulation System Planning Committee," 27 *The Colorado Lawyer* 23 (Feb. 1998).

2. The 1998 Chief Justice's Committee comprised the following members: Justice Rebecca Love Kourlis; Justice Michael Bender; M. Susan Kudla, Chairperson of the Grievance Committee; Steve Berson, State Court Administrator; Jim Benway, State Court Administrator's Office; John Doerner, State Court Administrator's Office; Linda Donnelly, Disciplinary Counsel; John Gleason, Assistant Disciplinary Counsel; Jim Hollaway, Committee Counsel; and Marilyn David, Designee of the CBA President.

3. This differed from the ABA's recommendation of one administrative law judge. Colorado adopted a hybrid system combining the experience of a judge with the insight of volunteers. The Colorado Presiding Disciplinary Judge position started as a part-time position but quickly became full-time.

4. The number of telephone complaints was predictable and expected, because the office was reaching out to individuals who found the forms too difficult to understand and complete without assistance or who did not have the ability to express their concerns in writing. The increased access by telephone did not change the percentage of formal discipline complaints.

5. See Office of Attorney Regulation Counsel (OARC) Annual Reports, 2000–12, available at www.coloradosupremecourt.com.

6. Arizona is the most recent state to fully adopt the Colorado system.

7. Ethics school, trust account school, a lawyer assistance program, a mentoring program, and continuing legal education programs are all available to lawyers in diversions.

8. See NOBC (National Organization of Bar Counsel) Survey on Lawyer Discipline at www.nobc.org. See also OARC, *supra* note 5.

9. On request, a dismissal at intake is reviewed by Regulation Counsel, and any dismissal by the trial division is subject to review pursuant to CRCP 251.11.

10. CRCP 251.31. ■

What to Do When Maintaining Client Files is the Question

BY CHARLES "CHIP" MORTIMER

No rule of professional conduct expressly requires a lawyer to maintain a client file,¹ but it would be difficult to envision the practice of law without them.

Rule 1.1 of the Colorado Rules of Professional Conduct requires representation to be "competent," to be carried out with the legal knowledge, skill, thoroughness, and preparation necessary for the representation. A lawyer could not represent a client competently without maintaining a file, but the rules are silent

concerning the contents and format of the file, or the medium in which the file is kept. The contents, organization, and storage of the file must enable the lawyer to represent clients competently, diligently, confidentially, and loyally, and to communicate with the client as may be necessary. These duties continue from formation of the attorney-client relationship through, and after, termination of the representation.

What is the Client File and Who Owns It?

The file is the property of the client. Rule 1.15 requires a lawyer to safeguard client property, including client files.

The client's file consists of all the material gathered by the lawyer during the course of the representation, with two exceptions.² First, material borrowed from other client files should not be included. Second, the lawyer's personal work product, such as billing and time records and diary or calendar entries, are not a part of the client file. Notes, memoranda, and research concerning the client's case are part of the client file.

Rule 1.16(d) requires an attorney to protect the interests of the client at the time the representation terminates. Protection of the client's interests includes "surrender of papers

and property to which the client is entitled."³

Rule 1.16A: What Happens to the File When Representation Ends?

In 2011, the Colorado Supreme Court adopted Rule 1.16A, which sets forth specific ways in which a client's interests in his or her file may be protected at termination. Rule 1.16A provides the following options to a lawyer in a civil case:

- return the file;
- get authorization from the client in writing to destroy the file;
- give written notice to the client of the lawyer's intention to destroy the file on or after a date stated in the notice, which shall not be less than 30 days after the date of the notice;⁴
- destroy the file following the expiration of a period of 10 years following the termination of the representation; or
- keep the file forever.

With certain exceptions, files may be returned in paper or electronic format. The file must be accessible to the client, and certain original documents with inherent value, such as wills, deeds, marital agreements, and stock certificates, must remain in paper. They are valuable client property and should never be destroyed.⁵


A lawyer may not destroy a file if pending or threatened legal proceedings that relate to the matter described in the file are known to the lawyer. Further, a lawyer may never destroy records when there's an obligation to retain the records pursuant to a law, court order, or rule of a tribunal. Examples of the latter include original signatures on e-filed documents and contingent fee agreements. Of course, if the file is destroyed after a "30-day" notice is provided to the client, then that notice should be retained.

Rule 1.16A also provides specific direction on how long criminal files must be retained, depending on the charge and disposition in the case.

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Document or Digital?

Just as a lawyer may maintain a file in paper or electronic format during the representation, the lawyer also may store the file in paper or electronic format. Each has limitations and benefits.

Paper storage is costly and cumbersome, but simple. Electronic storage on a CD, thumb drive, or removable hard drive may require additional scanning if the file was originally maintained in paper format. If the paper file is then shredded, a careful eye must oversee the process to ensure that original documents such as marital agreements or stock certificates are not destroyed inadvertently.

Storage in "the cloud" is another alternative. However, lawyers must take measures to ensure that the service they choose is secure, confidential, and always accessible. Recent reports of hacking make cloud storage a questionable alternative. Among other things, lawyers will want to ask: What security measures are in place? Who owns the data stored on the cloud? What will happen to the client's file if a monthly fee is not paid? Is the data always available, or are there

"down times" when I can't gain access?

Consultation with one's professional liability insurer is suggested.

How to Destroy the File

Typically, paper files should be shredded. Removable hard drives and other media on which client data is stored must be physically destroyed to the point that the data can no longer be accessed. Backed-up data also must be destroyed. Files stored in the cloud must be completely eliminated. An attorney may retain a copy of the file for his or her own purposes but is responsible for the expense and must make sure the file is secure.

Destruction of a file does not include destruction of an attorney's financial records related to the representation, such as billing records, client ledgers, or bank records. Those records must be

maintained for a period of seven years.⁶

Finally, firms must make arrangements for the disposition of files in the event of dissolution or the departure of a lawyer.⁷ **D**

Chip Mortimer is deputy regulation counsel in the Litigation Division of the Office of Attorney Regulation. There he toils over a variety of legal ethics issues, some of which are even more thrilling than file retention. Mortimer will happily field your ethics questions at (303) 928-7783 or c.mortimer@csc.state.co.us.

Retaining Client Files

Join Chip Mortimer as he discusses the life cycle of a client file at 11:30 a.m. on Monday, June 3, at CBA-CLE. The event is free for DBA members and \$15 for CBA members.

Securely Recycle Files and Electronics

Drop items for shredding and electronics recycling at 11 a.m. on Friday, June 7, on Grant Street between 19th and 20th avenues. See full details for these events on pages 20 and 21.

¹ Colo. RPC 1.16A assumes they exist.

² CBA Formal Ethics Opinion 104, "Surrender of papers to the client upon termination of the representation." Available at bit.ly/Z98KUw.

³ The rule allows for the assertion of a retaining lien pursuant to C.R.S. §12-5-120. See CBA Formal Ethics Opinion 82, "Assertion of attorney's retaining lien on client's papers." Available at bit.ly/11UQAa8.

⁴ This option can be satisfied with a written file retention policy that complies with the rule and that is delivered in a fee agreement or other writing at least 30 days prior to destruction.

⁵ No rule requires the lawyer to keep originals. The safest ethical course is to retain copies and return originals at the conclusion of the representation.

⁶ Colo. R.P.C. 1.15(j)-(m).

⁷ Colo. R.P.C. 1.15(l).

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Money is the Root of All Evil: An Essential Primer on Flat Fees

BY CHARLES E. MORTIMER

Alfred Hitchcock never had a driver's license because he feared that through a series of tragic mishaps, an innocent stop by the police would result in his plump but lifeless body dangling from the gallows. If only attorneys would give serious thought to Hitchcock's warning before they accepted money from clients.

In Colorado, complaints alleging mishandling or misappropriation of funds typically comprise 12% of our annual intake. Worse, a significant percentage of these complaints prove to be founded, resulting in action by the Office of Attorney Regulation. It is the author's observation that thirteen years after the Colorado Supreme Court set down rules for charging and handling flat fees, misunderstanding and misuse of flat fee arrangements and advanced flat fees create more exposure to the most serious sanctions than perhaps any other conduct.¹

Act One: A properly crafted and administered fee arrangement is an essential foundation for an attorney's ethical collection of fees.

A poorly devised fee arrangement not only jeopardizes the lawyer's right to receive payment for his work, it opens the gate to the gallows yard.

With the exception of contingent fee arrangements and other particular fee arrangements dictated by statute, a fee agreement may be the wise choice, but it is not required by the Colorado Rules of Professional Conduct. Colo. RPC 1.5(b) requires an attorney to provide his client a written statement concerning "the basis or rate of the fee and expenses...before or within a reasonable time after commencing the representation." This written statement is required only when the lawyer "has not regularly represented the client." Changes in the basis or rate of the fee or expenses also must be promptly communicated to the

"A poorly devised fee arrangement not only jeopardizes the lawyer's right to receive payment for his work, it opens the gate to the gallows yard."

client in writing.²

Problems arise most often when lawyers attempt fee arrangements other than hourly, typically involving a flat fee component.³ While laudable, flat fee arrangements and hybrid fee arrangements must be administered consistently with the Rules of Professional Conduct.⁴ The lawyer must communicate clearly to the client when and how fees will be earned.

Providing your client with a document stating merely that you are charging a "flat fee" to perform a certain representation is a great way to build unwanted suspense. In the absence of an expressed statement clarifying the arrangement, the fee will not be deemed earned until the representation is fully completed. A lawyer would be wise to break the representation into stages—to describe in the fee statement when each stage is completed and what amount has been earned at the completion of each particular stage. The amount charged for each stage must be reasonable when measured against the factors set forth in Colo. RPC 1.5(a).

Colo. RPC 1.5(f) provides, quite simply: "Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.5(f)(1) until earned." Rule 1.5(g) expressly prohibits nonrefundable fees and retainers.

All advance fee payments—whether they will be billed on an hourly basis, a flat fee basis, or some other basis—must be placed in trust until they are earned as described in the fee statement. When they are earned, the lawyer should provide a written notice or "accounting" to the client explaining what task has

been performed and the amount of fees earned and thus transferred from the lawyer's trust account to the operating account.⁵

Act Two: Conflict arises when a lawyer places advanced flat fees in his operating account before earning the money pursuant to the terms of the statement.

This practice amounts to the unauthorized exercise of dominion and control over the client's money—what some call conversion of client funds. Any time a lawyer is found to have converted or misappropriated client funds, serious sanctions may follow. When a lawyer attempts to defend this conduct by saying that he thought a flat fee arrangement authorized him to deposit the advanced fee in his operating account right away, he will be reminded that his belief is contrary to law which, in turn, he is considered to know—also as a matter of law.⁶ The sound of hammering can be heard as the gallows are built.

The suspense reaches fever pitch when the lawyer's services are terminated or an ethics complaint is made before completion of the representation. If the fee statement does not delineate stages or events when the fee is earned (and merely implies that the fee will be earned when the representation is completed), then termination of the representation prior to completion may result in forfeiture of the entire fee. Also, if the advanced fee was deposited in the operating account before it was earned—or worse, spent—the attorney begins the climb toward Hitchcock's noose.

If unearned funds are not refunded within a reasonable time following termination of the representation, the heavy

rope may be felt on the lawyer's neck.⁷

If the lawyer was savvy enough to communicate the basis or the rate of the fee in writing to the client at the beginning, then he or she better be prepared to live by the communication. If the attorney tries to extricate himself/herself from the predicament by claiming that the fees taken have been earned based on an hourly rate or other basis that is not described in the original fee statement, the trap door will begin to creak.

Act Three: In addition to always maintaining advanced fees in trust until earned or refunded, based on the terms of a well-drafted fee statement, two alternatives are recommended to address these circumstances.

First, an attorney would be wise to include a *quantum meruit* provision—not an hourly conversion clause—in any fee statement that does not provide for a straight hourly fee arrangement.⁸ Such a provision would advise the client that

if the attorney's services are terminated before completion of the representation, then the attorney will be entitled to compensation for services performed, but not yet paid for, based on the fair value of the services performed.⁹

Second, a well-drafted flat fee statement would include several closely situated stages when fees would be earned so that, if the client were to terminate the attorney at some point between two stages, the amount of compensation in dispute would be much less than if the client terminated the attorney and no, or few, stages were described in the fee statement. In the situation with several defined stages, the attorney would have less incentive to pursue the smaller unpaid balance and risk the counterclaim of an unhappy client.

The phone rings with a reprieve from the governor.

Prologue: The law is a professional calling, not a business intended to maximize the accumulation of wealth.

Of course, attorneys are entitled to be paid well for the services they perform. Assuming lawyers will continue to request fees for their work, the development of alternatives to hourly fee arrangements is extremely important to enhance broader access to justice. Creativity in this area is to be encouraged, but must be held in check by lawyers' professional responsibilities. Lawyers must be guided by the simple rules outlined above, lest they be tragically mistaken for criminals. **D**

Chip Mortimer is Deputy Regulation Counsel in the Office of Attorney Regulation where, after fourteen years of private practice, he no longer keeps time records, sends bills, or handles and accounts for other people's money. The irony is not lost on him. You can reach him with your questions at (303) 928-7783.

¹ This issue was first addressed by the Colorado Supreme Court in *In re Sather*, 3 P.3d 403 (Colo. 2000).

² ABA Model Rule 1.5 (b) requires the fee statement to include the scope of the representation. Unfortunately, the Colorado Rules of Professional Conduct do not include this requirement. However including the scope can only benefit each side of the bargain by nailing down the understandings and expectations of the parties about what the lawyer is doing and what the client is paying for.

³ The importance of alternatives to the hourly fee arrangement cannot be overstated. A quick Google search will locate numerous blogs and resources addressing such alternatives.

⁴ A hybrid fee arrangement that includes a contingent fee component must comply with C.R.C.P. Chapter 23.3, Rules Governing Contingent Fees.

⁵ Colo. RPC 1.15(c); 1.4 (a) (3) (b).

⁶ *In re Attorney C*, 47 P.3d 1167, 1173, n. 12 (Colo. 2002).

⁷ Colo. RPC 1.16(d).

⁸ Any agreement that purports to restrict a client's right to terminate the representation, or that unreasonably restricts a client's right to retain a refund of unearned or unreasonable fees, is prohibited. Colo. RPC 1.5(g).

⁹ This suggestion stems from *Dudding v. Norton Frickey & Associates*, 11 P.3d 441 (Colo. 2000), in which the Colorado Supreme Court held that an attorney would be entitled to compensation on termination of a contingent fee arrangement prior to completion of the representation only if a *quantum meruit* provision, and not an hourly conversion clause, were included in the contingent fee agreement. Limiting compensation to *quantum meruit* would not restrict the client's right to terminate the representation by possibly requiring the client to pay more than the original agreement would have if it had not been terminated.



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Unauthorized Practice

ABA Conducts First 'School' on Policing Unauthorized Practice of Law



BY ALAN OBYE

When one attorney discipline prosecutor was assigned his first unauthorized practice of law (UPL) case, he was less than thrilled. He was used to prosecuting lawyers for ethical violations. In comparison, prosecuting nonlawyers for practicing law without a license seemed boring.

That changed, however, when the prosecutor came to understand the seriousness of the harm UPL can cause. In that first case, the nonlawyer respondent had offered to represent several clients in immigration matters. The respondent told the clients he was an immigration attorney with ties to the Immigration and Naturalization Service and collected thousands of dollars in fees.

When the clients complained about receiving bad legal advice or receiving no services at all, the respondent refused to refund their fees and threatened them with criminal prosecution and deportation. The prosecutor succeeded in procuring an order from the Colorado Su-

preme Court enjoining the respondent from the unauthorized practice of law and disgorging his fees.¹

A Call for Collaboration

As in many states, regulation of the unauthorized practice of law is an important but little-understood component of Colorado's attorney regulation system. Since 1999, regulation of UPL has fallen under the purview of the Colorado Supreme Court Office of Attorney Regulation Counsel (OARC), on the theory that the state supreme court has the exclusive jurisdiction to decide who may practice law as well as who may not. OARC's mission in both attorney regulation and UPL prosecution is protection of the public. The unauthorized practice of law places the public at risk because those who engage in UPL often take fees from "clients" and perform subpar work—or no work at all.

In other jurisdictions, responsibility for UPL regulation may fall to attorney discipline prosecutors, state attorneys general, or other agencies, or it may not exist at all. Where UPL is a crime under state law, district attor-

Alan Obye is a staff attorney with the Colorado Supreme Court Office of Attorney Regulation Counsel.

¹ *People v. Duran*, No. 01SA342 (Colo. Mar. 4, 2002) (order granting injunction).

neys are often reluctant to prosecute low-level cases. Many jurisdictions face the related problems of a lack of resources and a lack of awareness of the importance of regulating UPL by those holding the purse strings.

UPL investigation and prosecution can pose procedural and strategic challenges for agencies tasked primarily with attorney regulation or other consumer protection goals. Nationally, there has been a general awareness among UPL prosecutors of the potential benefits of education and collaboration among jurisdictions.

The American Bar Association Standing Committee on Client Protection recognized the significant need and organized the first annual ABA Unauthorized Practice of Law School. UPL prosecutors from around the country convened on the University of Denver Sturm College of Law Aug. 16-17. Panelists and participants discussed the important issues facing UPL prosecutors and what can be done to protect the public from UPL.

UPL in the Immigration Context

The two-day UPL school consisted of nine plenary and breakout panel discussions about the major issues facing UPL prosecutors in the United States. The program paid particular attention to what in many states is the most pressing problem prosecutors face: unlicensed immigration practitioners who prey on vulnerable immigrant populations.

These unlicensed practitioners often call themselves “notarios” and offer help filling out immigration forms or guiding immigrants through the complex immigration process. The title “notario” is misleading because in many Latin American countries a “notario publico” is a lawyer or high-ranking public official with legal training, while in the United States a notary public is simply a person authorized by the state to administer oaths and witness signatures.

Notarios find clients by advertising in publications and at locations catering to specific foreign populations. They frequently pose as lawyers or government agencies or claim to work with lawyers. Notarios then take an up-front fee—sometimes equal to up to six months’ wages for a client—and often perform little or no work. Clients are reluctant to complain to authorities due to the fear of removal from the United States.

The work notarios do perform, such as selecting and preparing immigration forms, often comprises the unauthorized practice of law. Further, notarios may charge clients for the forms themselves, which are available for free on the U.S. Citizenship and Immigration Services (USCIS) website.

The harm notarios can cause is difficult to overstate. Clients given incompetent advice may face deportation or a loss of legal rights to which they would otherwise have been entitled.

The problem of notarios is widespread and likely to get worse as a comprehensive immigration reform bill works its way through Congress. If passed, an immigration reform law will effect complex changes in federal

law. Notarios will then prey upon immigrant populations, promising help under the new laws. This is already happening: according to several UPL school panelists, unlicensed immigration practitioners are taking money from clients to “get them on the list” for preferential treatment under the new laws.

Panelists who discussed these issues at the inaugural UPL school included Catherine O’Connell, disciplinary counsel at U.S. Citizenship and Immigration Services; Joseph L. Dunn, CEO of the California State Bar and former California state senator; the Honorable Mimi Tsankov, immigration judge, appearing in her personal capacity; Kenneth H. Abbe, staff attorney at the Western Region–San Francisco office of the Federal Trade Commission; Cori Alonso-Yoder, staff attorney at Ayuda Legal Services; Christina A. Fiflis, an immigration practitioner and chair of the ABA Commission on Immigration; and Tracy Tarango, acting district director at USCIS.

Education and Outreach. The consensus among panelists and participants was that the solution to the immigration UPL problem lies in education and collaboration. Education is key to warning vulnerable immigrant populations about the dangers of UPL. This can be accomplished through outreach to reputable community-based organizations and churches, libraries, and the internet. (Conversely, unlicensed practitioners sometimes associate with community-based organizations and churches to lend themselves an air of legitimacy.) Collaboration among government agencies and UPL prosecutors is key to prosecuting these cases.

Ms. O’Connell explained that USCIS has limited enforcement powers in the UPL context, but that a primary goal of USCIS is to educate potential clients through community organizations. USCIS field offices employ public engagement officers. USCIS can also help state UPL prosecutors by supplying documents and other information.

Similarly, Ms. Fiflis explained that the ABA works to educate and assist the public and lawyers, partners with the American Immigration Lawyers Association on its “Stop Notario Fraud” program in addition to promoting the ABA’s own “Fight Notario Fraud” project, and refers victim complaints to the FTC for investigation.

Mr. Dunn noted that the California State Bar has external liaison officers with the judicial, law enforcement, and consulate communities, and has a close working relationship with other state and federal agencies. According to Ms. Fiflis, “it takes a holistic effort” to combat these problems.

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UPL places the public at risk because those who engage in it often take fees for subpar work—or no work at all.

As for prosecution of UPL cases, Mr. Abbe described the FTC's role. As a consumer-protection agency, the FTC is responsible for prosecuting civil violations of the Federal Trade Commission Act, including deceptive trade practices and the provision of unauthorized legal services.

Among other remedies, the FTC can pursue a temporary restraining order, place a company into receivership, freeze assets, reach consent decrees, and win money judgments. FTC prosecutions have been successful in cases where UPL practitioners posed as government websites and charged money for services that were never provided.

Ms. Alonso-Yoder explained that other options for aggrieved consumers can include civil suits under common law tort or contract claims, criminal prosecution, or referral to prosecution under state "mini-FTC acts."

Of course, regulation of most UPL cases falls to states' individual attorney regulation authorities. One panel of the UPL school offered advice on strengthening bars' UPL programs given all-too-common budgetary constraints. Former Colorado Office of Attorney Regulation Counsel attorney Nancy Cohen said state bars should frame UPL prosecution as the "flip side" of attorney regulation and a necessary component of protection of the public.

Ms. Cohen and New Mexico Chief Disciplinary Counsel William Slease also stressed the importance of keeping statistics—the ability to demonstrate the number of UPL complaints and the number of successful prosecutions can help convince a state's high court, or whoever controls the budget, of the importance of regulating UPL.

A separate panel, composed of Illinois Attorney Registration and Disciplinary Commission Senior Counsel Scott Kozlov, Utah State Bar General Counsel Katherine Fox, and Arizona State Bar UPL/Special Services Counsel Ward Parker, discussed disciplinary counsel's role in the fight against UPL.

Loan Modification/Debt Relief Scams

A second pressing issue in UPL is scams by companies and individuals offering loan or mortgage modification help and other debt relief. Like immigration scams, these scams prey on a vulnerable population—those desperate for relief from debt and possibly in danger of losing their homes.

Many loan modification and debt relief companies take fees up front and then perform little or no work on behalf of debtor clients. Work that is done, such as reviewing loan paperwork for legal issues and negotiating with lenders, might constitute UPL.

Of course, promises to obtain debt relief are usually false or misleading because the only way to obtain relief is typically through bankruptcy, which has disastrous effects on a debtor's credit. In many cases clients

pay these companies thousands of dollars and lose their homes anyway, sometimes after relying on bad legal advice to stop making mortgage payments.

Panelist Kenneth Abbe of the FTC explained that mortgage assistance relief service providers are prohibited from taking up-front fees by FTC regulations,² but many companies continue to take them anyway, sometimes under an attorney exemption to the rule.³ Companies might solicit attorneys by promising fees for little work or for the ability to use the attorney's name in connection with the business. By partnering with attorneys, companies can continue to take up-front fees. This potentially endangers both "clients" and the lawyers. The FTC sues both lawyers and nonlawyers for these scams, and it refers the lawyers to state attorney discipline authorities.

According to panelist Andrew P. McCallin, a first assistant attorney general in the Consumer Protection Division of the Colorado Attorney General's Office, the key to combating these scams is education and collaboration.

The Colorado Attorney General's Office has set up a foreclosure hotline, with the ultimate goal of keeping people in their homes. And in 2009, the Attorney General partnered with the FTC and other state attorneys general and regulatory agencies to conduct coordinated sweeps targeting loan modification scammers. Agencies shared information about the biggest offenders. Those sweeps resulted in the FTC alone filing more than 50 lawsuits against loan modification companies.

Likewise, the California State Bar regularly attends summits on foreclosure fraud with the U.S. Department of Justice, the state Attorney General's Office, the FTC, the Consumer Financial Protection Bureau, and other agencies, with the goal of reducing duplication of effort and catching new scams quickly.

As of June 2013, the California State Bar had received over 12,500 complaints about loan modification scams, resulting in disciplinary charges in more than 1,500 cases involving 195 licensed California attorneys.

Loan modification scams proliferated in the wake of the current recession. Unfortunately, these scams are unlikely to go away unless the economy improves and more people are able to pay their mortgages. In the meantime, the message to both clients and lawyers is to avoid them altogether.

The 'Fringe' Problem

Immigration and loan modification scams are not the only issues facing UPL prosecutors. In one UPL school panel, FBI Special Agent Brad Swim of the Denver Joint Terrorism Task Force discussed "the problem of the fringe": a movement by individuals who do not recognize the laws of the United States or any state and practice law in their own sovereign jurisdictions.

These individuals, sometimes labeled "sovereign citizens" or constitutionalists, hold a wide variety of differing beliefs, united by a desire to operate outside the jurisdiction of traditional government. Some believe the United States became a corporation upon abandoning the gold standard. Some claim all individuals have a corporate, straw-man personhood, distinct from their

² 12 C.F.R. § 1015.5 (2011).

³ 12 C.F.R. § 1015.7 (2011).

true person, represented by a secret bank account held by the United States, and that individuals are entitled to the money in that account upon renouncing their corporate personhood and United States citizenship. Many believe the United States is a corporation bent on collecting money from its citizens.

The problem of unlicensed “notarios” is likely to get worse as a comprehensive immigration reform bill works its way through Congress.

The largest organized antigovernment sovereign movement, the Republic for the United States of America (no capital “u,” based on the understanding that the original U.S. Constitution envisioned the individual states to have more power than the federal government that later became the United States), consists of secretive governments-in-waiting, complete with leadership structures, prepared for the collapse of the current government system. However, most sovereign citizens are individuals or loosely organized small groups influenced by information on the internet or by traveling speakers.

Adherents to these movements—which in some cases arose out of far-right militias and involve extreme notions of personal liberty—do not recognize the power of UPL prosecutors to prevent them from practicing law, nor do they recognize the power of the traditional legal system to constrain them. The Southern Poverty Law Center estimates there may be some 300,000 “sovereign citizens” in the United States, with varying commitments to the cause.

A related example is the case of Navin C. Naidu. Mr. Naidu, a nonlawyer, promised a “client” that in exchange for \$5,000 he would order the client’s foreclosure case removed from the Colorado Court of Appeals to the Ecclesiastical Court of Justice, a Colorado non-profit corporation that employs Mr. Naidu as a “judge.” The client paid, and Mr. Naidu filed a notice of removal to the ecclesiastical court in the foreclosure case.

Of course, the court of appeals struck Mr. Naidu’s notice of removal. Mr. Naidu stopped returning the client’s calls. The client was never able to get a refund of his fee. The Colorado Office of Attorney Regulation Counsel has filed a petition for injunction against Mr. Naidu and his ecclesiastical court, and the case is pending.⁴

Mr. Naidu does not recognize the power of the Colorado Supreme Court to act against him. He believes he can adjudicate traditional legal matters in his ecclesiastical court based on the separation of church and state. In fact, he has “sued” Colorado attorney regulation officers and other public officials in his ecclesiastical court.

Individuals who do not recognize the authority of traditional governments can pose unique dangers to authorities, including UPL prosecutors. To a sovereign citizen, detention by the police is kidnapping, impoundment of a car is theft, and so on. Since 2000, at least six police officers have been killed by known sovereigns.

The majority of UPL school attendees reported having interactions with sovereign citizens. Special Agent Swim offered advice for interacting with sovereign citizens, and confirmed that some of the same individuals being prosecuted for UPL violations are on the FBI’s radar as well.

Looking Forward

Despite the best efforts of prosecutors, the problem of the unauthorized practice of law is not going away anytime soon. Education and cooperation are the first steps toward combating it.

UPL school organizers and participants are hopeful that the school can continue to provide a forum for collaboration in the future.

Course materials for many of the UPL programs are available at http://www.americanbar.org/calendar/2013/08/aba_standing_committeeonclientprotectionuplschool/coursematerials.html.

⁴ *People v. Naidu*, No. 12SA271 (Colo. filed Sept. 18, 2012).

Appendix N

Newsletters

In 2013, the Office of Attorney Regulation Counsel started disseminating a quarterly email newsletter to the state's 37,000-plus attorneys. The newsletters contain deadline reminders and links to articles written by the office's attorneys on ethical hot topics.




Vol. 1, Issue 1

OARC Update

A quarterly newsletter of the
Office of Attorney Regulation Counsel

Vol. 1 Issue 1
SUMMER 2013

PHOTOS BY BRYAN LOPEZ



Important Dates

Sept. 2 Office closed for Labor Day

Sept. 6 [Attorney Regulation Advisory Committee meets](#)

Sept. 21 "For This We Stand," a joint law school orientation

Oct. 10 [July bar exam results posted](#)

Nov. 4 Swearing-in ceremony

CLEs

Aug. 15-17 [Hanging Your Shingle](#)

Aug. 16-17 [ABA UPL School at DU Law](#)

Sept. 6 [Practice Monitor Class](#)

Oct. 11 [Trust Account School](#)

Oct. 28 [Practicing with Professionalism](#)

Oct. 29 [Practicing with Professionalism](#)

New Digs, New Team

The Office of Attorney Regulation Counsel moved into its new space in the Ralph L. Carr Judicial Center as [new leadership took the reins](#).

Muse Before You Ruse

A prosecutor's "undercover" work on Facebook got him fired this summer. [What ethical issues should you watch out for when using social media as an investigative tool?](#)

Life, Love, and the Practice of Law

Which way is your scale tipping? Toward stress or relaxation? Work or play? [The Colorado Lawyer Assistance Program can help you build a happier, healthier, more balanced life](#).

Reminder!

Attorneys who have a CLE compliance period ending in 2013 must complete all courses by Dec. 31. [Verify your compliance period, transcript and credit info here](#).

We Need Your Help

[An upcoming email survey to attorneys](#) seeks input on how the CLE requirements can better help their law practice needs.

Speaking of the New Building

[Check out the new learning center](#) in the courthouse where interactive exhibits allow you (or your kids) to weigh evidence, decide cases and learn about the rule of law.

New Chiefs in Town

[The Colorado Supreme Court and Colorado Court of Appeals recently named new head judges](#).

You've Got a Friend

Whether starting out in a law firm or hanging a shingle, new lawyers can benefit from the guidance of experienced practitioners. [The new Colorado Attorney Mentoring Program is now accepting applications](#).

"For This We Stand" Enters Second Year

[More than 450 first-year law students will participate in the orientation event aimed at promoting professionalism](#).

Client Protection Fund Approves \$63,000 in Claims Last Quarter

[With the board's action, it has now dispersed more than \\$5.2 million since 1999](#).

OARC Update

A quarterly newsletter of the
Office of Attorney Regulation Counsel

Vol. 1 Issue 2
Fall 2013



PHOTOS BY BRYAN LOPEZ



Important Dates

Nov. 4 [Fall Swearing-in Ceremony](#)

Dec. 1 February 2014 Bar Exam application deadline

Dec. 1 [Attorney registration period begins](#)

Dec. 31 February 2014 Bar Exam application late deadline

Dec. 31 [2013 CLE compliance period ends](#)

CLEs

Oct. 24 [Ethics of Rhetoric](#)

Oct. 28 [Practicing with Professionalism](#)

Oct. 29 [Practicing with Professionalism](#)

Nov. 6 [Practicing with Professionalism](#)

Nov. 19 [Practicing with Professionalism video replay](#)

Nov. 22 [Practice Monitor School](#)

Dec. 17 [Practicing with Professionalism video replay](#)

Dec. 6 [Trust Account School](#)

Fee Increase to Fund New Programs

[Colorado's attorney registration fees will remain below the national average.](#)

Bender Is Legal Profession's 'Biggest Cheerleader'

[Chief Justice Michael Bender's tenure leading the court](#) was relatively short, but he will leave a long legacy.

Scams Targeting Lawyers Get Sophisticated

[Here's what you need to know](#) about wire fraud schemes aimed at attorneys.

Avoid Law Office Management Mistakes

[A self-audit checklist](#) can help solo and small practitioners sidestep common pitfalls.

Book Provides New Business Model for Attorneys

[The Colorado manual](#) offers tips on how to make a practice out of representing moderate-income clients.

Bargaining with Complaints is Playing with Fire

[An attempt to leverage a disciplinary action can land you in ethical hot water.](#)

Addicted to Stress? Join the club.

Are you addicted to stress? Not sure? [The Colorado Lawyer Assistance Program](#) may be able to help.

CLE Affidavit System Up and Running

[The new online site](#) will make it easier for attorneys to submit and track their continuing legal education courses.

Speaking of CLEs ...

Attorneys who have a compliance period ending in 2013 must complete all courses by Dec. 31. [Verify your compliance period, transcript and credit info here.](#)

Remember: OARC Address Has Changed

When submitting your end-of-year CLE affidavits or completing your annual registration, be sure to [use the office's new address.](#)

Client Protection Fund Paid \$26,000 Last Quarter

[The fund has dispersed nearly \\$5.3 million since 1999.](#)

Beware Fake Trust Account Notices

Attorneys in some states are receiving [fraudulent emails that may contain computer viruses.](#)

October is Legal Professionalism Month

[Check out the schedule of events here.](#)

