Rule Change #1998(10)

The Colorado Rules of Civil Procedure
Chapter 20. Colorado Rules of Procedure Regarding
Lawyer Discipline and Disability Proceedings
and Mandatory Continuing Legal Education and Judicial Education
Appendix to Chapters 18 to 20. The Colorado Rules of Professional Conduct

Effective June 30, 1998

227(A)(1)(c)

Effective July 1, 1998

201.6
201.9
201.12

227(A)(2)(a)
227(A)(3)(a)

251.7
251.8
251.9
251.10
251.11
251.12
251.13
251.29
251.32
251.34

Effective January 1, 1999

251.1
251.2
251.3
251.4
251.5
251.6
251.14
251.15
251.16
251.17
251.18
251.19
251.20
251.21
251.22
251.23
251.24
251.25
251.26
251.27
251.28
251.30
251.31
251.33

252.1 through 252.16

Colo.RPC 1.15(a),(g),(h),(i),(j)

July 1, 1999

Colo.RPC 1.15(f)

241.1, et seq. is Repealed effective January 1, 1999

Amended and Adopted by the Court, En Banc, June 25, 1998, effective as stated.

BY THE COURT:

Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court

Redline Version
of
Amended Rules

CRCP 201.6
CRCP 201.9
CRCP 201.12
CRCP 227

Colo RPC 1.15

Rule 201.6. Moral and Ethical Qualifications

(1) Applicants must demonstrate that they are mentally stable and morally and ethically qualified for admission. Fingerprints may be required of all applicants.

(2) The Bar Committee may require further evidence of an applicant's mental stability and moral and ethical qualifications reasonably related to the standards for admission as it deems appropriate, including a current mental status examination. Costs for any mental status examination or for obtaining any additional information required by the Bar Committee shall be borne by the applicant.

(3) Applicants must certify that they are in compliance with any child support order as defined by §26-13-123(a), C.R.S. **[Amendment effective July 1, 1998.]**

Rule 201.9. Review by Inquiry Panel

(1) If, after investigation conducted pursuant to guidelines developed by the Bar Committee, the executive director recommends that an inquiry panel be convened to determine whether there is probable cause to believe that an applicant is not mentally stable or ethically or morally qualified, the chair of the Bar Committee shall designate a member of the Bar Committee to review the director's recommendation. If the reviewing member concurs with the executive director's recommendation, the chair of the Bar Committee shall convene an inquiry panel which includes the reviewing member and designate one of the inquiry panel members as chair.

(2) The director shall notify the applicant in writing of the general matters in question and invite the applicant to appear for an interview with the inquiry panel. The applicant may be accompanied by counsel, and the notice shall so advise. The notice shall be sent by certified mail, at least fifteen days before the interview is scheduled, to the address listed on the application or the address subsequently provided in writing to the Board by the applicant.

(3) If not satisfactorily explained, an applicant's failure to appear for an interview may be grounds to recommend denial of the application.

(4) Probable cause for denial exists under the following circumstances:

(a) The applicant has been convicted of a felony or a crime of moral turpitude, or any crime involving a breach of fiduciary duty, or accepted a deferred judgment which is pending as to such a charge in any jurisdiction;

(b) The applicant has been publicly disciplined in any jurisdiction for a violation of a code of professional responsibility or a comparable code of ethics;

(c) The applicant has been declared mentally ill or incompetent by a court having jurisdiction and the declaration has not been dissolved or rescinded;

(d) The applicant has been found not guilty of any crime by reason of insanity.
~~insanity~~ (e) The applicant is in arrears under a child support order as defined by §26-13-123(a), C.R.S.

(5) In addition, probable cause for denial of an application may be established by any evidence which, in the judgment of the majority of the inquiry panel members, tends to show that the applicant is not mentally stable or morally or ethically fit to practice law. In making its probable cause determination, the inquiry panel is not bound by formal rules of evidence and may consider all documents, statements or other matters brought to its attention.

(6) If the inquiry panel determines that there is probable cause to believe that the applicant is unqualified,

(a) The panel shall set forth its findings in writing within thirty days after the panel meeting at which such determination is made;

(b) The findings shall state with particularity the specific matters indicating that the applicant is not qualified; and

(c) The executive director shall send a copy of the inquiry panel's findings to the applicant with a notice that these findings shall become the Bar Committee's recommendation to be filed with the Supreme Court, unless within thirty days after the notice is mailed, the applicant files with the Board a written request for a hearing. The request shall include the applicant's response to each of the specific matters in the inquiry panel findings.

(d) If an applicant files a written request for a hearing, but voluntarily withdraws that request before the hearing is held, the inquiry panel's findings shall become the Bar Committee's recommendation to be filed with the Supreme Court.

(7) If the reviewing member ascertains that an inquiry panel proceeding is not justified or the inquiry panel determines that there is not probable cause to believe that the applicant is unqualified, the executive director shall certify to the Supreme Court that the Bar Committee recommends the applicant's admission.

[Amendment effective July 1, 1998.]

Rule 201.12. Reapplication for Admission

(1) An applicant who has been rejected by the Supreme Court as mentally unstable or ethically or morally unfit may reapply for admission five years after the date of the Supreme Court's ruling unless otherwise ordered by the Supreme Court. Upon reapplication, the applicant shall have the burden of showing to

the Bar Committee by a preponderance of the evidence the applicant's fitness to practice as prescribed by these rules. Upon reapplication, the applicant also shall complete successfully the written examination for admission to practice, even though the applicant has previously passed such an examination in Colorado.

(2) An applicant for readmission to the Bar after disbarment will be considered a Class B applicant under Rule 201.3(4) and shall satisfy all requirements of Rule 241.22 ~~and meet all the standards for admission prescribed for Class B applicants under this rule. Additionally,~~ .
~~a disbarred applicant shall be required to submit to a hearing, as prescribed in Rule 201.10, before a hearing panel of the Bar Committee. At the hearing, the disbarred applicant shall demonstrate by clear and convincing evidence that the applicant is rehabilitated, that the applicant has complied with all court orders and rules associated with the disbarment proceedings, and that the applicant is now a proper person to be readmitted to the Bar of Colorado fully considering and notwithstanding the previous disciplinary action taken against the applicant. The Supreme Court, after reviewing the findings of the hearing panel and any exceptions filed thereto, may readmit or decline to readmit the disbarred applicant.~~

[Amendment effective July 1, 1998.]

Rule 227. Registration Fee
A. Registration Fee of Attorneys and Attorney Judges

(1) General Provisions

(a) Fees. On or before February 28 of each year, every attorney admitted to practice in Colorado (including judges, those admitted on a provisional or temporary basis and those admitted as judge advocate) shall annually file a registration statement and pay a fee of $115.00; provided that the fee of any attorney whose first admission to practice is within the preceding three years shall be $75.00. The annual fee for an attorney on inactive status shall be $25.00. All persons first becoming subject to this rule shall file a statement required by this rule at the time of admission, but no annual fee shall be payable until the first day of January following such admission.

(b) Collection of Fee. The annual fee shall be collected by the Clerk of the Supreme Court of Colorado, who shall send and receive the notices and statements provided for hereafter.

(c) Application of Fees. The fee shall be divided ~~into two parts~~. Ten dollars shall be used to pay the costs of establishing and administering the mandatory continuing legal education requirement. No later than June 30, 1998, $4.50 of the fee paid after January 1, 1998, shall be transferred to the Administering Entity chosen by the Advisory Committee as provided

in C.R.C.P. 241.34(b)(8), which amount shall be used to support designated providers that have been selected by the Advisory Committee to provide assistance to attorneys needing help in dealing with physical, emotional, or psychological problems which may be detrimental to their ability to practice law. Effective July 1, 1998, nine dollars shall be paid to the administering entity that has been selected by the Advisory Committee as provided in C.R.C.P. 241.2(b)(8), which amount shall be used to support designated providers that have selected by the Advisory Committee to provide assistance to attorneys needing help in dealing with physical, emotional, or psychological problems which may be detrimental to their ability to practice law. The remaining portion of the fee, and the entire fee of those on inactive status, shall be used only to establish and maintain an attorneys' fund for client protection, and to defray the costs of disciplinary administration and enforcement, the costs incurred with respect to unauthorized practice matters, and the expenses incurred in the administration of this rule. [Amendments effective June 30, 1998.]

(d) Annual Report. On or before October 1 of each year, the Clerk of the Supreme Court shall prepare a written report of the receipts and disbursements under this rule during the preceding fiscal year for approval by the Supreme Court. This report when approved shall be a public document.

(e) Initial Registration of Non-Registered Attorneys. Every attorney admitted to practice in Colorado before January 1, 1974 who has not previously complied with the provisions of C.R.C.P. 227 may apply for registration with the clerk of the Supreme Court of Colorado by filing a registration statement and paying a fee of $100.00.

(2) Statement.

(a) Contents. The annual registration statement shall be on a form prescribed by the Clerk, setting forth (1) date of admission to the Bar of the Colorado Supreme Court, (2) registration number, (3) current residence and office addresses, ~~and (4~~(4) certification as to whether the attorney has been ordered to pay child support and whether the attorney is in compliance with any child support order, and (5) such other information as the Clerk may from time to time direct.

(b) Notification of Change. Every attorney shall file a supplemental statement of change in the information previously submitted, including home and business addresses, within 30 days of such change.

(3) Compliance.

(a) Late Fee. Any attorney who ~~fails to pay~~pays the annual fee or files the annual registration statement ~~on or before February 28 shall pay a late fee of $15.00, or in the case of an attorney on inactive status, $5.00,~~after February 28 but on or before March 31 shall pay a late fee of $50.00 in addition to the registration fee. Any attorney who pays the annual fee or files

the annual registration statement after March 31 shall pay a late fee of $150.00 for each such year, in addition to the registration fee.

(b) Receipt - Demonstration of Compliance. Within 20 days of the receipt of each fee and of each statement filed by an attorney in accordance with the provisions of this rule, receipt thereof shall be acknowledged on a form prescribed by the Clerk in order to enable the attorney on request to demonstrate compliance with the requirement of registration pursuant to this rule.

(c) Initial Pleading Must Contain Registration Number. Whenever an initial pleading is signed by an attorney, it shall also include thereon the attorney's registration number. Whenever an initial appearance is made in court without a written pleading, the attorney shall advise the court of the registration number. The number need not be on any subsequent pleadings.

(4) Suspension.

(a) Failure to Pay Fee or File Statement - Notice of Delinquency. Any attorney who fails to timely pay the fee or file the statement of supplement thereto required by this rule shall be summarily suspended, provided a notice of delinquency has been issued by the Clerk and mailed to the attorney by certified mail addressed to the attorney's last known business address (or in the case of an inactive attorney, the last known home address) at least 30 days prior to such suspension, unless an excuse has been granted on grounds of financial hardship.

(b) Failure of Judge to Pay Fee or File Statement. Any judge subject to the jurisdiction of the Commission on Judicial Qualifications or the Denver County Court Judicial Qualifications Commission who fails to timely pay the fee or file the statement or supplement thereto required by this rule shall be reported to the appropriate commission, provided a notice of delinquency has been issued by the Clerk and mailed to the judge by certified mail addressed to the judge's last known business address at least 30 days prior to such reporting, unless an excuse has been granted on grounds of financial hardship.

(5) Reinstatement.

(a) Application - Reinstatement Fee. Any attorney suspended under the provisions of Section (4)(a) above shall not be reinstated until application for reinstatement is made in writing and the Clerk acts favorably on the application. Each application for reinstatement shall be accompanied by a reinstatement fee of $~~5~~100.00 and payment of all arrearages to the date of the request for reinstatement.

(b) Report Judge's Payment. If any judge who is reported to a commission under the provisions of section (4)(b) above subsequently makes payment of all arrearages, such payment shall be reported to the commission by the Clerk.

(6) Inactive Status.

(a) Notice. An attorney who has retired or is not engaged in practice shall file a notice in writing with the Clerk that he or she desires to transfer to inactive status and discontinue the practice of law.

(b) Payment of Fee - Filing of Statement. Upon the filing of the notice to transfer to inactive status, the attorney shall no longer be eligible to practice law but shall continue to pay the fee required under section (1)(a) above and file the statements and supplements thereto required by this rule on an annual basis.

(c) Exemption - Age 65. Any registered inactive attorney over the age of 65 is exempt from payment of the annual fee.

(7) Transfer to Active Status.

Upon the filing of a notice to transfer to inactive status and payment of the fee required under section (1)(a) above and any arrearages, if owed, an attorney shall be removed from the roll of those classified as active until and unless a request for transfer to active status is made and granted. Transfer to active status shall be granted, unless the attorney is subject to an outstanding order of suspension or disbarment, upon the payment of any assessment in effect for the year the request is made and any accumulated arrearages for non-payment of inactive fees.

(8) Resignation.

An attorney may resign from the practice of law in Colorado upon order of the Supreme Court and thereby be excused from paying the annual registration fee provided that no disciplinary or disability matter or order is pending against the attorney. Any attorney who wishes to resign must petition the Supreme Court pursuant to this Rule and tender the attorney's certificate of admission with the petition. Any attorney who so resigns is not eligible for reinstatement or transfer to active or inactive status and may be admitted to the practice of law in Colorado only by complying with Rule 201 regarding admission to the practice of law. Any attorney who so resigns remains subject to the jurisdiction of the Supreme Court as set forth in Rule 241.1(b) with respect to the attorney's practice of law in Colorado.

B. Registration Fee of Nonattorney Judges - No Change

[Amendments effective July 1, 1998.]

COLORADO RULE OF PROFESSIONAL CONDUCT 1.15

Rule 1.15. Safekeeping Property; Interest -Bearing Accounts To Be Established For The Benefit Of The Client Or Third Persons Or The Colorado Trust Account Foundation; Notice Of Overdrafts; Record Keeping

(a) In connection with a representation, an attorney shall hold property of clients or third persons that is in an attorney 's possession separate from the attorney's own property. Funds shall be kept in a separate account maintained in the state where the attorney's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the attorney and shall be preserved for a period of s~~ix~~even years after termination of the representation.

(b) - (e) ****[NO CHANGE]****

(f) Required Bank Accounts. Every attorney in private practice in this state shall maintain in a financial institution of Colorado, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation or limited liability corporation of which the attorney is a member, or in the name of the attorney or entity by whom employed:

(1) A trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care and any advance payment of fees that has not been earned shall be deposited (except that such a trust account shall not be required if the attorney does not ever receive such funds); and,

(2) A business account into which all funds received for professional services shall be deposited.

(3) One or more of the trust accounts may be the account or accounts described in Rule 1.15(e)(2), known as COLTAF (Colorado Trust Account Foundation) accounts.

(4) Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all trust accounts, whether general or specific, as well as all deposits slips and checks drawn thereon, shall be prominently designated as a "trust account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as a "professional account," or an "office account." The COLTAF account or accounts shall each be designated "COLTAF Trust Account."

(5) The name of institutions in which such accounts are maintained and identification numbers of each account shall be recorded on a statement filed with the annual attorney registration payment, pursuant to Rule 227(2). Such information shall be available for use in accordance with paragraph (g) of this Rule. For all COLTAF

accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the same statement.

(6) A trust account shall be maintained only in Colorado financial institutions approved by the Regulation Counsel with policy guidelines by the Board of Trustees of the Colorado Attorneys' fund for Client Protection, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Regulation Counsel an agreement, in a form provided, to report to the Regulation Counsel in the event any properly payable trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days notice in writing to the Regulation Counsel. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds. In addition, each financial institution approved by the Regulation Counsel must cooperate with the COLTAF program and must offer a COLTAF account to any attorney who wishes to open one. In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Regulation Counsel and to produce any trust account or business account records on receipt of a subpoena therefor in connection with any proceeding pursuant to C.R.C.P. 251. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements of this rule. **[Subsection f of Rule 1.15 shall become effective July 1, 1999.]**

(g) Required Accounting Records. Attorneys, partnerships of attorneys, professional corporation and limited liability corporations in private practice in this state shall maintain in a current status and retain for a period of seven years after the event which they record:

(1) Appropriate receipt and disbursement records of all deposits in and withdrawals from accounts specified in subsection (a) of this rule and any other bank account which concerns their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee, and purpose of each disbursement. All trust account receipts shall be deposited intact and the duplicate deposit slip should be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by authorized bank or wire transfer or by check payable to a named payee and not to cash. Only an attorney admitted to practice law

in this state or a person supervised by such shall be an authorized signatory on a trust account; and,

(2) An appropriate record-keeping system identifying each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client ledgers shall be maintained and reconciled at least quarterly with the applicable bank statements.

(3) Copies of all retainer and compensation agreements with clients; and,

(4) Copies of all statements to clients showing the disbursement of funds to them or on their behalf; and,

(5) Copies of all bills issued to clients and,

(6) Copies of all records showing payments to any persons, not in their regular employ, for services rendered or performed; and,

(7) All bank statements and prenumbered canceled checks; and,

(8) Copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

(h) Type and Availability of Accounting Records. The financial books and other records required by subsections (f) and (g) of this rule shall be maintained in accordance with generally accepted accounting principles, such as the accrual method, the cash basis method and the income tax method. Bookkeeping records may be maintained by computer provided they otherwise comply with this Rule and provided further that printed copies can be made on demand in accordance with this subsection or subsection (g). They shall be located at the principal Colorado office of each attorney, partnership, professional corporation, or limited liability corporation.

(i) Dissolutions. Upon the dissolution of any partnership of attorneys or of any professional corporation or limited liability corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor form of the records specified in paragraph (g) of this Rule.

(j) Availability Of Records. Any of the records required to be kept by this Rule shall be produced in response to a subpoena duces tecum issued in connection with proceedings pursuant to C.R.C.P. 251. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.

Final Version
of
Amended Rules

CRCP 201.6
CRCP 201.9
CRCP 201.12
CRCP 227

Colo RPC 1.15

Rule 201.6. Moral and Ethical Qualifications

(1) Applicants must demonstrate that they are mentally stable and morally and ethically qualified for admission. Fingerprints may be required of all applicants.

(2) The Bar Committee may require further evidence of an applicant's mental stability and moral and ethical qualifications reasonably related to the standards for admission as it deems appropriate, including a current mental status examination. Costs for any mental status examination or for obtaining any additional information required by the Bar Committee shall be borne by the applicant.

(3) Applicants must certify that they are in compliance with any child support order as defined by §26-13-123(a), C.R.S. **[Amendment effective July 1, 1998.]**

Rule 201.9. Review by Inquiry Panel

(1) If, after investigation conducted pursuant to guidelines developed by the Bar Committee, the executive director recommends that an inquiry panel be convened to determine whether there is probable cause to believe that an applicant is not mentally stable or ethically or morally qualified, the chair of the Bar Committee shall designate a member of the Bar Committee to review the director's recommendation. If the reviewing member concurs with the executive director's recommendation, the chair of the Bar Committee shall convene an inquiry panel which includes the reviewing member and designate one of the inquiry panel members as chair.

(2) The director shall notify the applicant in writing of the general matters in question and invite the applicant to appear for an interview with the inquiry panel. The applicant may be accompanied by counsel, and the notice shall so advise. The notice shall be sent by certified mail, at least fifteen days before the interview is scheduled, to the address listed on the application or the address subsequently provided in writing to the Board by the applicant.

(3) If not satisfactorily explained, an applicant's failure to appear for an interview may be grounds to recommend denial of the application.

(4) Probable cause for denial exists under the following circumstances:

(a) The applicant has been convicted of a felony or a crime of moral turpitude, or any crime involving a breach of fiduciary duty, or accepted a deferred judgment which is pending as to such a charge in any jurisdiction;

(b) The applicant has been publicly disciplined in any jurisdiction for a violation of a code of professional responsibility or a comparable code of ethics;

(c) The applicant has been declared mentally ill or incompetent by a court having jurisdiction and the declaration has not been dissolved or rescinded;

(d) The applicant has been found not guilty of any crime by reason of insanity.

(e) The applicant is in arrears under a child support order as defined by §26-13-123(a), C.R.S.

(5) In addition, probable cause for denial of an application may be established by any evidence which, in the judgment of the majority of the inquiry panel members, tends to show that the applicant is not mentally stable or morally or ethically fit to practice law. In making its probable cause determination, the inquiry panel is not bound by formal rules of evidence and may consider all documents, statements or other matters brought to its attention.

(6) If the inquiry panel determines that there is probable cause to believe that the applicant is unqualified,

(a) The panel shall set forth its findings in writing within thirty days after the panel meeting at which such determination is made;

(b) The findings shall state with particularity the specific matters indicating that the applicant is not qualified; and

(c) The executive director shall send a copy of the inquiry panel's findings to the applicant with a notice that these findings shall become the Bar Committee's recommendation to be filed with the Supreme Court, unless within thirty days after the notice is mailed, the applicant files with the Board a written request for a hearing. The request shall include the applicant's response to each of the specific matters in the inquiry panel findings.

(d) If an applicant files a written request for a hearing, but voluntarily withdraws that request before the hearing is held, the inquiry panel's findings shall become the Bar Committee's recommendation to be filed with the Supreme Court.

(7) If the reviewing member ascertains that an inquiry panel proceeding is not justified or the inquiry panel determines that there is not probable cause to believe that the applicant is unqualified, the executive director shall certify to the Supreme Court that the Bar Committee recommends the applicant's admission.

[Amendment effective July 1, 1998.]

Rule 201.12. Reapplication for Admission

(1) An applicant who has been rejected by the Supreme Court as mentally unstable or ethically or morally unfit may reapply for admission five years after the date of the Supreme Court's ruling unless otherwise ordered by the Supreme Court. Upon reapplication, the applicant shall have the burden of showing to

the Bar Committee by a preponderance of the evidence the applicant's fitness to practice as prescribed by these rules. Upon reapplication, the applicant also shall complete successfully the written examination for admission to practice, even though the applicant has previously passed such an examination in Colorado.

(2) An applicant for readmission to the Bar after disbarment will be considered a Class B applicant under Rule 201.3(4) and shall satisfy all requirements of Rule 241.22. **[Amendment effective July 1, 1998.]**

Rule 227. Registration Fee

A. Registration Fee of Attorneys and Attorney Judges

(1) General Provisions

(a) Fees. On or before February 28 of each year, every attorney admitted to practice in Colorado (including judges, those admitted on a provisional or temporary basis and those admitted as judge advocate) shall annually file a registration statement and pay a fee of $115.00; provided that the fee of any attorney whose first admission to practice is within the preceding three years shall be $75.00. The annual fee for an attorney on inactive status shall be $25.00. All persons first becoming subject to this rule shall file a statement required by this rule at the time of admission, but no annual fee shall be payable until the first day of January following such admission.

(b) Collection of Fee. The annual fee shall be collected by the Clerk of the Supreme Court of Colorado, who shall send and receive the notices and statements provided for hereafter.

(c) Application of Fees. The fee shall be divided. Ten dollars shall be used to pay the costs of establishing and administering the mandatory continuing legal education requirement. No later than June 30, 1998, $4.50 of the fee paid after January 1, 1998, shall be transferred to the Administering Entity chosen by the Advisory Committee as provided in C.R.C.P. 241.34(b)(8), which amount shall be used to support designated providers that have been selected by the Advisory Committee to provide assistance to attorneys needing help in dealing with physical, emotional, or psychological problems which may be detrimental to their ability to practice law. Effective July 1, 1998, nine dollars shall be paid to the administering entity that has been selected by the Advisory Committee as provided in C.R.C.P. 241.2(b)(8), which amount shall be used to support designated providers that have selected by the Advisory Committee to provide assistance to attorneys needing help in dealing with physical, emotional, or psychological problems which may be detrimental to their ability to practice law. The remaining portion of the fee, and the entire fee of those on inactive status, shall be used only to establish and maintain an

attorneys' fund for client protection, and to defray the costs of disciplinary administration and enforcement, the costs incurred with respect to unauthorized practice matters, and the expenses incurred in the administration of this rule. [Amendments effective June 30, 1998.]

(d) Annual Report. On or before October 1 of each year, the Clerk of the Supreme Court shall prepare a written report of the receipts and disbursements under this rule during the preceding fiscal year for approval by the Supreme Court. This report when approved shall be a public document.

(e) Initial Registration of Non-Registered Attorneys. Every attorney admitted to practice in Colorado before January 1, 1974 who has not previously complied with the provisions of C.R.C.P. 227 may apply for registration with the clerk of the Supreme Court of Colorado by filing a registration statement and paying a fee of $100.00.

(2) Statement.

(a) Contents. The annual registration statement shall be on a form prescribed by the Clerk, setting forth (1) date of admission to the Bar of the Colorado Supreme Court, (2) registration number, (3) current residence and office addresses, (4) certification as to whether the attorney has been ordered to pay child support and whether the attorney is in compliance with any child support order, and (5) such other information as the Clerk may from time to time direct.

(b) Notification of Change. Every attorney shall file a supplemental statement of change in the information previously submitted, including home and business addresses, within 30 days of such change.

(3) Compliance.

(a) Late Fee. Any attorney who pays the annual fee or files the annual registration statement after February 28 but on or before March 31 shall pay a late fee of $50.00 in addition to the registration fee. Any attorney who pays the annual fee or files the annual registration statement after March 31 shall pay a late fee of $150.00 for each such year, in addition to the registration fee.

(b) Receipt - Demonstration of Compliance. Within 20 days of the receipt of each fee and of each statement filed by an attorney in accordance with the provisions of this rule, receipt thereof shall be acknowledged on a form prescribed by the Clerk in order to enable the attorney on request to demonstrate compliance with the requirement of registration pursuant to this rule.

(c) Initial Pleading Must Contain Registration Number. Whenever an initial pleading is signed by an attorney, it shall also include thereon the attorney's registration number. Whenever an initial appearance is made in court without a written pleading, the attorney shall advise the court of the registration number. The number need not be on any subsequent pleadings.

(4) Suspension.

(a) Failure to Pay Fee or File Statement - Notice of Delinquency. Any attorney who fails to timely pay the fee or file the statement of supplement thereto required by this rule shall be summarily suspended, provided a notice of delinquency has been issued by the Clerk and mailed to the attorney by certified mail addressed to the attorney's last known business address (or in the case of an inactive attorney, the last known home address) at least 30 days prior to such suspension, unless an excuse has been granted on grounds of financial hardship.

(b) Failure of Judge to Pay Fee or File Statement. Any judge subject to the jurisdiction of the Commission on Judicial Qualifications or the Denver County Court Judicial Qualifications Commission who fails to timely pay the fee or file the statement or supplement thereto required by this rule shall be reported to the appropriate commission, provided a notice of delinquency has been issued by the Clerk and mailed to the judge by certified mail addressed to the judge's last known business address at least 30 days prior to such reporting, unless an excuse has been granted on grounds of financial hardship.

(5) Reinstatement.

(a) Application - Reinstatement Fee. Any attorney suspended under the provisions of Section (4)(a) above shall not be reinstated until application for reinstatement is made in writing and the Clerk acts favorably on the application. Each application for reinstatement shall be accompanied by a reinstatement fee of $100.00 and payment of all arrearages to the date of the request for reinstatement.

(b) Report Judge's Payment. If any judge who is reported to a commission under the provisions of section (4)(b) above subsequently makes payment of all arrearages, such payment shall be reported to the commission by the Clerk.

(6) Inactive Status.

(a) Notice. An attorney who has retired or is not engaged in practice shall file a notice in writing with the Clerk that he or she desires to transfer to inactive status and discontinue the practice of law.

(b) Payment of Fee - Filing of Statement. Upon the filing of the notice to transfer to inactive status, the attorney shall no longer be eligible to practice law but shall continue to pay the fee required under section (1)(a) above and file the statements and supplements thereto required by this rule on an annual basis.

(c) Exemption - Age 65. Any registered inactive attorney over the age of 65 is exempt from payment of the annual fee.

(7) Transfer to Active Status.

Upon the filing of a notice to transfer to inactive status and payment of the fee required under section (1)(a) above and any arrearages, if owed, an attorney shall be removed from the roll of those classified as active until and unless a request for

transfer to active status is made and granted. Transfer to active status shall be granted, unless the attorney is subject to an outstanding order of suspension or disbarment, upon the payment of any assessment in effect for the year the request is made and any accumulated arrearages for non-payment of inactive fees.

(8) Resignation.

An attorney may resign from the practice of law in Colorado upon order of the Supreme Court and thereby be excused from paying the annual registration fee provided that no disciplinary or disability matter or order is pending against the attorney. Any attorney who wishes to resign must petition the Supreme Court pursuant to this Rule and tender the attorney's certificate of admission with the petition. Any attorney who so resigns is not eligible for reinstatement or transfer to active or inactive status and may be admitted to the practice of law in Colorado only by complying with Rule 201 regarding admission to the practice of law. Any attorney who so resigns remains subject to the jurisdiction of the Supreme Court as set forth in Rule 241.1(b) with respect to the attorney's practice of law in Colorado.

B. Registration Fee of Nonattorney Judges - No Change

[Amendments effective July 1, 1998.]

COLORADO RULE OF PROFESSIONAL CONDUCT 1.15

Rule 1.15. Safekeeping Property; Interest -Bearing Accounts To Be Established For The Benefit Of The Client Or Third Persons Or The Colorado Trust Account Foundation; Notice Of Overdrafts; Record Keeping

(a) In connection with a representation, an attorney shall hold property of clients or third persons that is in an attorney 's possession separate from the attorney's own property. Funds shall be kept in a separate account maintained in the state where the attorney's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the attorney and shall be preserved for a period of seven years after termination of the representation.

(b) - (e) ****[NO CHANGE]****

(f) Required Bank Accounts. Every attorney in private practice in this state shall maintain in a financial institution of Colorado, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation or limited liability corporation of which the attorney is a member, or in the name of the attorney or entity by whom employed:

(1) A trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care and any advance payment of fees that has not been earned shall be deposited (except that such a trust account shall not be required if the attorney does not ever receive such funds); and,

(2) A business account into which all funds received for professional services shall be deposited.

(3) One or more of the trust accounts may be the account or accounts described in Rule 1.15(e)(2), known as COLTAF (Colorado Trust Account Foundation) accounts.

(4) Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all trust accounts, whether general or specific, as well as all deposits slips and checks drawn thereon, shall be prominently designated as a "trust account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as a "professional account," or an "office account." The COLTAF account or accounts shall each be designated "COLTAF Trust Account."

(5) The name of institutions in which such accounts are maintained and identification numbers of each account shall be recorded on a statement filed with the annual attorney registration payment, pursuant to Rule 227(2). Such information shall be available for use in accordance with paragraph (g) of this Rule. For all COLTAF

accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the same statement.

(6) A trust account shall be maintained only in Colorado financial institutions approved by the Regulation Counsel with policy guidelines by the Board of Trustees of the Colorado Attorneys' fund for Client Protection, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Regulation Counsel an agreement, in a form provided, to report to the Regulation Counsel in the event any properly payable trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days notice in writing to the Regulation Counsel. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds. In addition, each financial institution approved by the Regulation Counsel must cooperate with the COLTAF program and must offer a COLTAF account to any attorney who wishes to open one. In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Regulation Counsel and to produce any trust account or business account records on receipt of a subpoena therefor in connection with any proceeding pursuant to C.R.C.P. 251. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements of this rule. **[Subsection f of Rule 1.15 shall become effective July 1, 1999.]**

(g) Required Accounting Records. Attorneys, partnerships of attorneys, professional corporation and limited liability corporations in private practice in this state shall maintain in a current status and retain for a period of seven years after the event which they record:

(1) Appropriate receipt and disbursement records of all deposits in and withdrawals from accounts specified in subsection (a) of this rule and any other bank account which concerns their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee, and purpose of each disbursement. All trust account receipts shall be deposited intact and the duplicate deposit slip should be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by authorized bank or wire transfer or by check payable to a named payee and not to cash. Only an attorney admitted to practice law

in this state or a person supervised by such shall be an authorized signatory on a trust account; and,

(2) An appropriate record-keeping system identifying each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client ledgers shall be maintained and reconciled at least quarterly with the applicable bank statements.

(3) Copies of all retainer and compensation agreements with clients; and,

(4) Copies of all statements to clients showing the disbursement of funds to them or on their behalf; and,

(5) Copies of all bills issued to clients and,

(6) Copies of all records showing payments to any persons, not in their regular employ, for services rendered or performed; and,

(7) All bank statements and prenumbered canceled checks; and,

(8) Copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

(h) Type and Availability of Accounting Records. The financial books and other records required by subsections (f) and (g) of this rule shall be maintained in accordance with generally accepted accounting principles, such as the accrual method, the cash basis method and the income tax method. Bookkeeping records may be maintained by computer provided they otherwise comply with this Rule and provided further that printed copies can be made on demand in accordance with this subsection or subsection (g). They shall be located at the principal Colorado office of each attorney, partnership, professional corporation, or limited liability corporation.

(i) Dissolutions. Upon the dissolution of any partnership of attorneys or of any professional corporation or limited liability corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor form of the records specified in paragraph (g) of this Rule.

(j) Availability Of Records. Any of the records required to be kept by this Rule shall be produced in response to a subpoena duces tecum issued in connection with proceedings pursuant to C.R.C.P. 251. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.

[Amendments effective January 1, 1999.]

New Rules 251.1 through 252.16

Rule 241.1, et seq. is Repealed effective January 1, 1999

CHAPTER 20

COLORADO RULES OF PROCEDURE REGARDING ATTORNEY DISCIPLINE AND DISABILITY PROCEEDINGS, COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION, AND MANDATORY CONTINUING LEGAL EDUCATION AND JUDICIAL EDUCATION

[The CLE Rules are not included]

RULE 251.1. DISCIPLINE AND DISABILITY: POLICY — JURISDICTION

(a) Statement of Policy. All members of the Bar of Colorado, having taken an oath to support the Constitution and laws of this state and of the United States, are charged with obedience to those laws at all times. As officers of the Supreme Court of Colorado, attorneys must observe the highest standards of professional conduct. A license to practice law is a proclamation by this Court that its holder is a person to whom members of the public may entrust their legal affairs with confidence; that the attorney will be true to that trust; that the attorney will hold inviolate the confidences of clients; and that the attorney will competently fulfill the responsibilities owed to clients and to the courts.

In order to maintain the highest standards of professional conduct, attorneys who have demonstrated that they are unable, or are likely to be unable, to discharge their professional responsibilities shall be subject to appropriate disciplinary or disability proceedings.

(b) Jurisdiction. Every attorney licensed to practice law in the State of Colorado is subject to the disciplinary and disability jurisdiction of the Supreme Court in all matters relating to the practice of law. Every attorney specially admitted to practice law in this state pursuant to C.R.C.P. 221 or C.R.C.P. 221.1 is subject to the disciplinary and disability jurisdiction of the Supreme Court for conduct related to that proceeding.

(c) Standards of Conduct. Any reference contained in these Rules to the Code of Professional Responsibility pertains to conduct occurring prior to January 1, 1993. On January 1, 1993, and thereafter, the conduct of attorneys licensed to practice law in the State of Colorado shall be governed by the Colorado Rules of Professional Conduct and the other Rules or Standards of Professional Conduct adopted from time to time by this Court.

(d) Plenary Power of the Supreme Court. The Supreme Court reserves the authority to review any determination made in the course of a disciplinary proceeding and to enter any order with respect thereto, including an order directing that further proceedings be conducted as provided by these Rules.

RULE 251.2. ATTORNEY REGULATION COMMITTEE

(a) Attorney Regulation Committee. The Attorney Regulation Committee of the Supreme Court of Colorado (hereinafter committee) is hereby established. The committee shall serve as a permanent committee of the Supreme Court.

(1) Members. The committee shall be composed of nine members, six of whom shall be members of the Bar of Colorado and three of whom shall be public members. Diversity shall be a consideration in making the appointments.

The Supreme Court, with the assistance of the Advisory Committee, shall appoint the members of the committee to serve terms of two years. The terms of the members of the committee shall be staggered to provide, so far as possible, for the expiration each year of the terms of an equal number of committee members. Members of the committee shall be eligible to serve no more than three consecutive terms.

The members of the committee shall serve at the pleasure of the Supreme Court and may be dismissed from the committee at any time by order of the Supreme Court. A member of the committee may resign at any time.

(2) Vacancy. In the event of a vacancy on the committee, the Supreme Court shall appoint a successor to serve the remainder of the unexpired term.

(3) Chair and Vice-Chair. The members of the committee shall elect from among themselves one Chair, who shall appoint one Vice-Chair. The Chair shall exercise overall supervisory control of the committee. The Vice-Chair shall assist the Chair and shall serve as Chair in the Chair's absence.

(4) Reimbursement of Committee Members. The members of the committee shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) Powers and Duties of the Committee. The committee shall be authorized and empowered to act in accordance with these Rules and to:

(1) Enlist the assistance of members of the Bar to conduct investigations, or assist with investigations;

(2) Periodically report to the Advisory Committee and the management committee on the operation of the committee;

(3) Recommend to the Advisory Committee proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and

(4) Adopt such practices as may from time to time become necessary to govern the internal operation of the committee, as approved by the Supreme Court.

(c) Abstention of Committee Members. Committee members shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of a member of the committee, or any attorney in any way affiliated with a committee member or the member's law firm, may accept or continue in employment connected with any matter pending before the committee, the Presiding Disciplinary Judge, a Hearing Board, or the Appellate Discipline Commission as long as the member is serving on the committee.

(d) Disqualification. A former member of the committee shall not represent an attorney in any proceeding as provided in these Rules for a period of one year following the completion of the member's term of service on the committee.

RULE 251.3. ATTORNEY REGULATION COUNSEL

(a) Attorney Regulation Counsel. The Supreme Court shall appoint a Regulation Counsel. The Regulation Counsel shall serve at the pleasure of the Supreme Court.

(b) Qualifications. The Regulation Counsel shall be an attorney, duly admitted to the Bar of Colorado, with no less than five years experience in the practice of law. The Regulation Counsel, while serving in that capacity, shall not hold any other public office or engage in the private practice of law.

(c) Powers and Duties. The Regulation Counsel shall act in accordance with these Rules and:

(1) Maintain and supervise a permanent office to serve as a central office for the filing of requests for investigation and for the coordination of such investigations; the filing of claims with the Colorado Attorneys' Fund for Client Protection as provided in C.R.C.P. 252 and the consideration of such claims; the administration of all disciplinary and disability enforcement proceedings carried on pursuant to these Rules; and, the administration of all proceedings conducted pursuant to C.R.C.P. 252, et seq., under a budget approved by the Supreme Court;

(2) Appoint and supervise a staff as necessary to carry out the duties of the Regulation Counsel;

(3) Conduct investigations as provided by C.R.C.P. 251.9 and C.R.C.P. 251.10, dismiss the allegations as provided in C.R.C.P. 251.11, and report to the committee as provided in C.R.C.P. 251.12;

(4) Prepare and prosecute disciplinary and disability actions against attorneys as provided by these Rules;

(5) In appropriate cases, negotiate dispositions of pending matters as authorized in C.R.C.P. 251.10(b)(4) and C.R.C.P. 251.22;

(6) Prepare and prosecute petitions for immediate suspension in conformity with C.R.C.P. 251.8;

(7) Prosecute contempt proceedings for violations of these Rules;

(8) Prosecute contempt proceedings for violations of orders of the Supreme Court relating to suspended and disbarred attorneys and attorneys placed on disability inactive status;

(9) Participate in and present recommendations reflecting the public interest in all proceedings for reinstatement held pursuant to C.R.C.P. 251.29 and C.R.C.P. 251.30;

(10) Maintain permanent records of matters processed by the committee, and the disposition thereof;

(11) Participate in the management and supervision of the bar mediation process established by the Supreme Court, implemented by the Colorado Bar

Association, and administered by the mediation committee of the association in conjunction with the committee; and,

(12) Perform such other duties as the Supreme Court may direct.

Mediators shall be appointed by the Supreme Court. The mediation committee and the Regulation Counsel shall jointly recommend attorneys to the Court for appointment as mediators. The Regulation Counsel shall forward the names of those recommended to the Court together with a proposed order making the appointment of the mediators.

(d) Disqualification. A former member of the Regulation Counsel's staff shall not represent an attorney in any proceeding that was being investigated and/or prosecuted during the member's association with the Regulation Counsel's staff.

RULE 251.4. DUTY OF JUDGE TO REPORT MISCONDUCT OR DISABILITY

A judge has a duty to report unprofessional conduct by an attorney to Regulation Counsel pursuant to Canon 3(B)(3) of the Colorado Code of Judicial Conduct. No action taken by any judge pursuant to Canon 3(B)(3) shall in any way limit the power of the reporting judge to exercise the power of contempt against an attorney, nor should the reporting of such matters to the Regulation Counsel be used in lieu of contempt proceedings.

RULE 251.5. GROUNDS FOR DISCIPLINE

Misconduct by an attorney, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:

(a) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct;

(b) Any act or omission which violates the criminal laws of this state or any other state, or of the United States; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action;

(c) Any act or omission which violates these Rules or which violates an order of discipline or disability; or

(d) Failure to respond without good cause shown to a request by the committee, the Regulation Counsel, or the Board of Trustees of the Colorado Attorneys' Fund for Client Protection or obstruction of the committee, the Regulation Counsel, or the Board or any part thereof in the performance of their duties. Good cause includes, but is not limited to, an assertion that a response would violate the respondent's constitutional privilege against self-incrimination.

This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

RULE 251.6. FORMS OF DISCIPLINE

Any of the following forms of discipline may be imposed in those cases where grounds for discipline have been established:

(a) Disbarment. Disbarment is the revocation of an attorney's license to practice law in this state, subject to readmission as provided by C.R.C.P. 251.29(a). Disbarment shall be for at least eight years;

(b) Suspension. Suspension is the temporary suspension of an attorney's license to practice law in this state, subject to reinstatement as provided in C.R.C.P. 251.29(b). Suspension, which may be stayed in whole or in part, shall be for a definite period of time not to exceed three years;

(c) Public Censure. Public censure is a reproach published with other grievance decisions and made available to the public; and

(d) Private Admonition. Private admonition is an unpublished reproach. An attorney who has been admonished by the committee and who wishes to challenge the order of admonition may, by written petition filed with the Regulation Counsel within twenty days after the date the letter of admonition was mailed to the admonished attorney or personally read to the attorney, demand as a matter of right that imposition of the admonition be vacated, that a complaint be filed against the attorney, and that disciplinary proceedings continue in the manner prescribed by these Rules.

RULE 251.7. PROBATION

(a) Eligibility. When an attorney has demonstrated that the attorney:

(1) Is unlikely to harm the public during the period of probation and can be adequately supervised;

(2) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and,

(3) Has not committed acts warranting disbarment, then the attorney may be placed on probation. Probation shall be imposed for a specified period of time in conjunction with a suspension which may be stayed in whole or in part. Such an order shall be regarded as an order of discipline. The period of probation shall not exceed three years unless an extension is granted upon motion by either party. A motion for an extension must be filed prior to the conclusion of the period originally specified.

(b) Conditions. The order placing an attorney on probation shall specify the conditions of probation. The conditions shall take into consideration the nature and circumstances of the attorney's misconduct and the history, character, and health status of the attorney and shall include no further violations of the Colorado Rules of Professional Conduct. The conditions may include but are not limited to the following:

(1) Making periodic reports to the Regulation Counsel or to the attorneys' peer assistance program as provided in subsection **(d)** of this Rule;

(2) Monitoring the attorney's practice or accounting procedures;

(3) Establishing a relationship with an attorney-mentor, and regular reporting with respect to the development of that relationship;

(4) Satisfactory completion of a course of study;

(5) Successful completion of the multi-state professional responsibility examination;

(6) Refund or restitution;

(7) Medical evaluation or treatment;

(8) Mental health evaluation or treatment;

(9) Evaluation or treatment in a program that specializes in treating disorders related to sexual misconduct;

(10) Evaluation or treatment in a program that specializes in treating matters relating to perpetration of family violence, including but not limited to domestic partner, elder, and child abuse;

(11) Substance abuse evaluation or treatment;

(12) Abstinence from alcohol and drugs; and

(13) No further violations of the Colorado Rules of Professional Conduct.

(c) Costs. The attorney shall also be responsible for all costs of evaluation, treatment and supervision. Failure to pay these costs prior to termination of probation shall constitute a violation of probation.

(d) Monitoring. The Regulation Counsel shall monitor the attorney's compliance with the conditions of probation imposed under these rules. When appropriate, the Regulation Counsel may delegate its monitoring role to the attorneys' peer assistance program. In cases in which the attorneys' peer assistance program is the designated monitor, regular reports regarding the progress of the attorney shall be submitted by the attorneys' peer assistance program to the Regulation Counsel.

(e) Violations. If, during the period the attorney is on probation, the Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order requiring the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. The filing of such a motion shall toll any period of suspension until final action. A hearing shall be held upon motion of either party before the Presiding Disciplinary Judge. At the hearing, the Regulation Counsel has the burden of establishing by a preponderance of the evidence the violation of a condition of probation. When, in a revocation hearing, the alleged violation of a condition is the attorney's failure to pay restitution or costs, the evidence of the failure to pay shall constitute prima facie evidence of a violation. Any evidence having probative value shall be received regardless of its admissibility under the rules of evidence if the attorney is accorded a fair opportunity to rebut hearsay evidence. At the conclusion of a hearing, the Presiding Disciplinary Judge shall prepare a report setting forth findings of fact and decision.

(f) Termination. Unless otherwise provided in the order of suspension, within thirty days and no less than fifteen days prior to the expiration of the period of probation, the attorney shall file an affidavit with the Regulation Counsel stating that the attorney has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. The order shall become effective upon the expiration of the period of probation.

(g) Independent Charges. A motion for revocation of an attorney's probation shall not preclude the Regulation Counsel from filing independent disciplinary charges based on the same conduct as alleged in the motion.

RULE 251.8. IMMEDIATE SUSPENSION

(a) Immediate Suspension. Immediate suspension is the temporary suspension by the Supreme Court of an attorney's license to practice law for a definite or indefinite period of time while proceedings conducted pursuant to this Rule and these Rules are pending against the attorney.

Although an attorney's license to practice law shall not ordinarily be suspended during the pendency of such proceedings, when there is reasonable cause to believe that an attorney is causing or has caused immediate and substantial public or private harm because the attorney has been convicted of a serious crime as defined by C.R.C.P. 251.20(e), or because the attorney has converted property or funds, or because the attorney has engaged in conduct which poses an immediate threat to the effective administration of justice, the Supreme Court may order the attorney's license to practice law immediately suspended.

(b) Petition for Immediate Suspension.

(1) When it is believed that an attorney should be immediately suspended, the committee or Regulation Counsel shall file a petition with the Presiding Disciplinary Judge. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause that the alleged conduct has in fact occurred. A copy of the petition shall be served on the attorney pursuant to these Rules.

(2) The Presiding Disciplinary Judge, or the Supreme Court, by any justice thereof, may order the issuance of an order to show cause directing the attorney to show cause why the attorney should not be immediately suspended, which order shall be returnable within ten days. After the issuance of an order to show cause, and after the period for response has passed without a response having been filed, or after consideration of any response and reply, the Presiding Disciplinary Judge shall prepare a report setting forth findings of fact and recommendation and file the report with the Supreme Court. After receipt of the report the Supreme Court may enter an order immediately suspending the attorney from the practice of law or dissolve the order to show cause.

(3) If a response to the order to show cause is filed and the attorney requests a hearing on the petition, said hearing shall be held within ten days before the Presiding Disciplinary Judge. Thereafter, the Presiding Disciplinary Judge shall submit a transcript of the hearing and a report setting forth findings of fact and a recommendation to the Supreme Court within five days after the conclusion of the hearing. Upon the receipt of the recommendation and the record relating thereto, the Supreme Court may enter an order immediately suspending the attorney from the practice of law or dissolve the order to show cause.

(4) When the Supreme Court enters an order immediately suspending the attorney, the Regulation Counsel shall promptly prepare and file a complaint against the attorney as provided in C.R.C.P. 251.14, notwithstanding the provisions of C.R.C.P. 251.10 and C.R.C.P. 251.12. Thereafter the matter shall proceed as provided by these Rules.

(5) An attorney who has been immediately suspended pursuant to this Rule shall have the right to request an accelerated disposition of the allegations which form the bases for the immediate suspension by filing a notice with the Regulation Counsel requesting accelerated disposition. After the notice has been filed, the Regulation Counsel shall promptly file a complaint pursuant to these Rules and the matter shall be docketed by the Presiding Disciplinary Judge for accelerated disposition. Thereafter the matter shall proceed and be concluded without appreciable delay.

(c) Suspension for Nonpayment of Child Support. The provisions of this rule shall apply in all cases to an attorney licensed or admitted to practice law in Colorado who is in arrears in payment of child support or who is in arrears under a child-support order as defined by §26-13-123(a), C.R.S.

(1) Upon receipt of information that an attorney is in arrears in payment under a child-support order, Regulation Counsel shall promptly file a petition for suspension with the Presiding Disciplinary Judge setting forth sufficient facts to give rise to reasonable cause to believe that the attorney is in arrears on a child-support order. A copy of the petition shall be served on the attorney pursuant to these rules.

(2) The Presiding Disciplinary Judge shall order the issuance of an order to show cause directing the attorney to show cause why the attorney should not be immediately suspended, which order shall be returnable within thirty days. After the issuance of an order to show cause, and after the period for response has passed without a response having been filed, or after consideration of any response and reply, the Presiding Disciplinary Judge shall enter an order immediately suspending the attorney from the practice of law if the attorney fails to pay the pastdue obligation, negotiate a payment plan approved by a court, or file a motion to modify the court ordered support obligation within the thirty day period.

(3) If a response to the Order to Show Cause is timely filed and the attorney requests a hearing on the petition, said hearing shall be held within ten days before the Presiding Disciplinary Judge. A hearing shall be held solely for the purpose of determining whether there exists, as of the date of the hearing, proof that full payment of all arrears of support established by the order of a court owed by the attorney has been paid; that there is a mistake in the identity of the attorney; that the attorney has

entered into a court approved payment plan; or that the attorney has filed a motion to modify the court ordered child support obligation. No evidence with respect to the appropriateness of the underlying court order or ability of the attorney in arrears to comply with such order shall be received or considered by the Presiding Disciplinary Judge. Upon conclusion of the hearing, the Presiding Disciplinary Judge shall enter an order immediately suspending the attorney from the practice of law if the attorney fails to pay the past due obligation, negotiate a payment plan approved by a court, or file a motion to modify the court ordered support obligation as of the date of the hearing.

RULE 251.9. REQUEST FOR INVESTIGATION

(a) Commencement. Proceedings as provided in these Rules shall be commenced:

(1) Upon a request for investigation made by any person and directed to the Regulation Counsel; or

(2) Upon a report made by a judge of any court of record of this state and directed to the Regulation Counsel, as provided in C.R.C.P. 251.4;

(3) By the committee upon its own motion; or

(4) By the Regulation Counsel with the concurrence of the Chair or Vice-Chair of the committee.

(b) Determination to Proceed. Immediately upon receipt of a request for investigation, a report made by a judge, or a motion made by the committee, as provided in subsection (a) of this Rule, the matter shall be referred to the Regulation Counsel to determine:

(1) If the attorney in question is subject to the disciplinary jurisdiction of the Supreme Court;

(2) If there is an allegation made against the attorney in question which, if proved, would constitute grounds for discipline; and

(3) If the matter should be investigated as provided by C.R.C.P. 251.10 or addressed by means of an alternative to discipline as provided by C.R.C.P. 251.13.

In making a determination whether to proceed, the Regulation Counsel may make inquiry regarding the underlying facts and consult with the Chair of the committee. The decision of the Regulation Counsel shall be final, and the complaining witness shall have no right to appeal.

RULE 251.10. INVESTIGATION OF ALLEGATIONS

(a) When Commenced. If, pursuant to C.R.C.P. 251.9, the Regulation Counsel makes a determination to proceed with an investigation, the Regulation Counsel shall give the attorney in question written notice that the attorney is under investigation and of the general nature of the allegations made against the attorney. The attorney in question shall file with the Regulation Counsel a written response to the allegations made against the attorney within twenty days after notice of the investigation is given.

Upon receipt of the attorney's response, or at the expiration of the twenty-day period if no response is received, the matter shall be assigned to an Investigator for investigation and report.

(b) Procedures for Investigation.

(1) The Investigator. A member of the committee, the Regulation Counsel, a member of the Regulation Counsel's staff, or an attorney enlisted pursuant to C.R.C.P. 251.2(b)(1) may act as Investigator. The Investigator shall expeditiously conduct an investigation of the allegations made against the attorney in question.

(2) Procurement of Evidence During Investigation. In the course of an investigation conducted pursuant to these Rules, the Investigator, acting pursuant to and in conformity with these Rules, shall have the power to administer oaths and affirmations.

In connection with an investigation of allegations made against an attorney, the Chair of the committee or the Regulation Counsel may issue subpoenas to compel the attendance of witnesses, including the attorney in question, and the production of pertinent books, papers, documents, or other evidence in proceedings before the Investigator. All such subpoenas shall be subject to the provisions of C.R.C.P. 45. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the Presiding Disciplinary Judge.

Any person who fails or refuses to comply with a subpoena issued pursuant to this Rule may be cited for contempt of the Supreme Court.

Any person who intentionally obstructs the Regulation Counsel or the committee or any part thereof in the performance of their duties may be cited for contempt of the Supreme Court.

Any person having been duly sworn to testify who refuses to answer any proper question may be cited for contempt of the Supreme Court.

A contempt citation may be issued by the Supreme Court upon recommendation of the Presiding Disciplinary Judge. A copy of the recommendation, together with the findings of fact made by the Presiding Disciplinary Judge surrounding the contemptuous conduct, shall be filed with the Supreme Court. The Supreme Court shall then determine whether to impose contempt.

(3) Investigator's Report. When the Investigator is not a member of the Regulation Counsel's staff, the Investigator shall submit a written report of investigation and recommendation to the committee for a determination as provided in C.R.C.P. 251.12. If the Investigator is a member of the Regulation Counsel's staff, the matter shall be submitted as provided in C.R.C.P. 252.11.

(4) Conditional Admission. While the matter is under investigation, the attorney in question and the Regulation Counsel may tender an agreed upon conditional admission of misconduct as provided in C.R.C.P. 251.22 to the committee when the form of discipline is no greater than a private admonition. When the form of discipline is greater than a private admonition or, if a range of disciplinary measures is specified in the conditional admission, then the conditional admission shall be tendered to the Presiding Disciplinary Judge. When a conditional admission is tendered pursuant to this Rule, the person acting as Investigator may forego submitting a written

report of investigation and recommendation to the committee as provided in subsection (3) of this Rule.

RULE 251.11. DETERMINATION BY THE REGULATION COUNSEL

During the investigation or at the conclusion thereof, the Regulation Counsel may determine that the matter should be diverted to the alternatives to discipline program as provided in C.R.C.P. 251.13.

At the conclusion of an investigation of a matter that has not been diverted, the Regulation Counsel shall either dismiss the allegations or report to the committee for a determination as provided in C.R.C.P. 251.12. If the Regulation Counsel dismisses the allegations as provided herein, the person making the allegations against the attorney in question may request review of the Regulation Counsel's decision. If review is requested, the committee shall review the matter and make a determination as provided by C.R.C.P. 251.12; provided, however, that the committee shall sustain the dismissal unless it determines that the Regulation Counsel's determination constituted an abuse of discretion. When the committee sustains a dismissal, it shall furnish the person making the allegations with a written explanation of its determination.

RULE 251.12. DETERMINATION BY THE COMMITTEE

If, at the conclusion of an investigation, the Regulation Counsel believes that the committee should order private admonition imposed or authorize the Regulation Counsel to prepare and file a complaint, the Regulation Counsel shall submit a report of investigation and recommendation to the committee, which shall determine whether there is reasonable cause to believe grounds for discipline exist and shall either:

(a) Direct the Regulation Counsel or other investigator appointed pursuant to C.R.C.P. 251.2(b)(1) to conduct further investigation;

(b) Dismiss the allegations and furnish the person making the allegations with a written explanation of its determination;

(c) Divert the matter to the alternatives to discipline program as provided by C.R.C.P. 251.13;

(d) Order private admonition imposed; or

(e) Authorize the Regulation Counsel to prepare and file a complaint against the attorney.

In determining whether to authorize the Regulation Counsel to file a complaint, the committee shall consider the following:

(1) Whether it is reasonable to believe that misconduct warranting discipline can be proved by clear and convincing evidence;

(2) The level of injury;

(3) Whether the attorney previously has been disciplined; and

(4) Whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings because it involves misrepresentation,

conversion or commingling of funds, acts of violence, or criminal or other misconduct that ordinarily would result in public censure, suspension or disbarment.

RULE 251.13. ALTERNATIVES TO DISCIPLINE

(a) Referral to Program. The Regulation Counsel, the committee, the Presiding Disciplinary Judge, a Hearing Board, the Appellate Discipline Commission, or the Supreme Court may offer diversion to the alternatives to discipline program to the attorney. The alternatives to discipline program may include, but is not limited to, diversion or other programs such as 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.

(b) Participation in the Program. As an alternative to a form of discipline, an attorney may participate in an approved diversion program in cases where there is little likelihood that the attorney will harm the public during the period of participation, where the Regulation Counsel can adequately supervise the conditions of diversion, and where participation in the program is likely to benefit the attorney and accomplish the goals of the program. A matter generally will not be diverted under this Rule when:

(1) The presumptive form of discipline in the matter is likely to be greater than public censure;

(2) The misconduct involves misappropriation of funds or property of a client or a third party;

(3) The misconduct involves a serious crime as defined by C.R.C.P. 251.20(e);

(4) The misconduct involves family violence;

(5) The misconduct resulted in or is likely to result in actual injury (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a condition of diversion;

(6) The attorney has been publicly disciplined in the last three years;

(7) The matter is of the same nature as misconduct for which the attorney has been disciplined in the last five years;

(8) The misconduct involves dishonesty, deceit, fraud, or misrepresentation; or

(9) The misconduct is part of a pattern of similar misconduct.

(c) Diversion Agreement. If an attorney agrees to an offer of diversion as provided by this rule, the terms of the diversion shall be set forth in a written agreement. If the agreement is entered prior to a determination to proceed is made pursuant to C.R.C.P. 251.9, the agreement shall be between the attorney and Regulation Counsel. If diversion is offered and entered after a determination to proceed is made pursuant to C.R.C.P. 251.9 but before authorization to file a complaint, the diversion agreement between the attorney and Regulation Counsel shall be submitted to the committee for consideration. If the committee rejects the diversion agreement, the

matter shall proceed as otherwise provided by these Rules. If diversion is offered and entered after a complaint has been filed pursuant to C.R.C.P. 251.14, the diversion agreement shall be submitted to the Presiding Disciplinary Judge, Appellate Discipline Commission, or Supreme Court, whichever body before which the matter is pending for consideration. If the diversion agreement is rejected, the matter shall proceed as provided by these Rules.

The agreement shall specify the program(s) to which the attorney shall be diverted, the general purpose of the diversion, the manner in which compliance is to be monitored, and any requirement for payment of restitution or costs.

(d) Costs of the Diversion. The attorney shall pay all the costs incurred in connection with participation in any diversion program.

(e) Effect of Diversion. When the recommendation for diversion becomes final, the attorney shall enter into the diversion program(s) and complete the requirements thereof. Upon the attorney's entry into the diversion program(s), the underlying matter shall be placed in abeyance, indicating diversion. Diversion shall not constitute a form of discipline.

(f) Effect of Successful Completion of the Diversion Program. If diversion is entered prior to a determination to proceed is made pursuant to C.R.C.P. 251.9(b)(3), and if Regulation Counsel determines that the attorney has successfully completed all requirements of the diversion program, the Regulation Counsel shall close the file. If diversion is successfully completed in a matter that was determined to warrant investigation or other proceedings pursuant to these Rules, the matter shall be dismissed and expunged pursuant to C.R.C.P 251.33(d). After the file is expunged, the attorney may respond to any general inquiry as provided in C.R.C.P. 251.33(d).

(g) Breach of Diversion Agreement. The determination of a breach of a diversion agreement will be as follows:

(1) If the Regulation Counsel has reason to believe that the attorney has breached the diversion agreement, and the diversion agreement was entered prior to a decision to proceed pursuant to C.R.C.P. 251.9(b), and after the attorney has had an opportunity to respond, Regulation Counsel may elect to modify the diversion agreement or terminate the diversion agreement and proceed with the matter as provided by these rules.

(2) If Regulation Counsel has reason to believe that the attorney has breached the diversion agreement after a determination to proceed has been made, then the matter shall be referred to the Presiding Disciplinary Judge, Appellate Discipline Commission, or Supreme Court, whichever body approved the diversion agreement, with an opportunity for the attorney to respond. The Regulation Counsel will have the burden by a preponderance of the evidence to establish the materiality of the breach, and the attorney will have the burden by a preponderance of the evidence to establish justification for the breach. If after consideration of the information presented by the Regulation Counsel and the attorney's response, if any, it is determined that the breach was material without justification, the agreement will be terminated and the matter will proceed as provided for by these rules. If a breach is established but determined to be not material or to be with justification, the diversion agreement may be modified in

light of the breach. If no breach is found, the matter shall proceed pursuant to the terms of the original diversion agreement.

(3) If the matter has been referred for determination to the committee, Presiding Disciplinary Judge, Appellate Discipline Commission, or the Supreme Court as provided for in section (g)(2) of this rule, upon motion of either party, the Presiding Disciplinary Judge shall hold a hearing on the matter. Upon conclusion of the hearing, the Presiding Disciplinary Judge shall prepare written findings of fact and conclusions and enter an appropriate order in those matters in which the Presiding Disciplinary Judge originally approved the diversion agreement. If a hearing is requested in a matter pending before the committee, Appellate Discipline Commission, or Supreme Court for consideration, the Presiding Disciplinary Judge shall prepare findings of fact and recommendations and forward them to the body which originally approved the diversion agreement for its determination of the matter.

(h) Effect of Rejection of Recommendation for Diversion. If an attorney rejects a diversion recommendation, the matter shall proceed as otherwise provided in these Rules.

(i) Confidentiality. All the files and records resulting from the diversion of a matter shall not be made public except by order of the Supreme Court. Information of misconduct admitted by the attorney to a treatment provider or a monitor while in a diversion program is confidential if the misconduct occurred before the attorney's entry into a diversion program.

RULE 251.14. COMPLAINT — CONTENTS, SERVICE

(a) Contents of Complaint. Complaints seeking to establish grounds for discipline of an attorney shall be filed as provided by these Rules with the Presiding Disciplinary Judge. An original and three copies of the complaint shall be filed.

The complaint shall set forth clearly and with particularity the grounds for discipline with which the respondent is charged and the conduct of the respondent which gave rise to those charges.

(b) Service of Complaint. The regulation Counsel shall promptly serve upon the respondent, as provided in C.R.C.P. 251.32(b), a citation and a copy of the complaint filed against the respondent. The citation shall require the respondent within twenty days after service thereof to file an original and three copies of a written answer to the complaint, in compliance with C.R.C.P. 251.15.

RULE 251.15. ANSWER — FILING, FAILURE TO ANSWER, DEFAULT

(a) Answer. Within twenty days after service of the citation and complaint, or within such greater period of time as may be approved by the Presiding Disciplinary Judge, the respondent shall file an original and three copies of an answer to the complaint with the Presiding Disciplinary Judge and one copy with the Regulation Counsel. In the answer the respondent shall either admit or deny every material allegation contained in the complaint, or request that the allegation be set forth with

greater particularity. In addition, the respondent shall set forth in the answer any affirmative defenses. Any objection to the complaint which a respondent may assert, including a challenge to the complaint for failure to charge misconduct constituting grounds for discipline, must also be set forth in the answer.

(b) Failure to Answer, and Default. If the respondent fails to file an answer within the period provided by subsection (a) of this Rule, the Regulation Counsel shall file a motion for default with the Presiding Disciplinary Judge. Thereafter, the Presiding Disciplinary Judge shall enter a default and the complaint shall be deemed admitted; provided, however, that a respondent who fails to file a timely answer may, upon a showing that the failure to answer was the result of mistake, inadvertence, surprise, or excusable neglect, obtain leave of the Presiding Disciplinary Judge to file an answer.

Notwithstanding the entry of a default, the Regulation Counsel shall give the respondent notice of the final hearing, at which the respondent may appear and present arguments to the Hearing Board regarding the form of discipline to be imposed.

Thereafter, the Hearing Board shall review all pleadings, arguments, and the report of investigation and shall prepare a report setting forth its findings of fact and its decision as provided in C.R.C.P. 251.19.

RULE 251.16. PRESIDING DISCIPLINARY JUDGE

(a) Presiding Disciplinary Judge. The office of the Presiding Disciplinary Judge of the Supreme Court of Colorado is hereby established. The Supreme Court shall appoint a Presiding Disciplinary Judge to serve at the pleasure of the Supreme Court.

(b) Qualifications. The Presiding Disciplinary Judge shall be an attorney, duly admitted to the Bar of Colorado, with no less than five years experience in the practice of law. The Presiding Disciplinary Judge, while serving in that capacity, may not hold any other public office.

(c) Powers and Duties of the Presiding Disciplinary Judge. The Presiding Disciplinary Judge shall be authorized and empowered to act in accordance with these Rules and to:

(1) Maintain and supervise a permanent office in the Denver metropolitan area to serve as the central office in which disciplinary and disability proceedings shall be conducted as provided in these Rules, under a budget approved by the Supreme Court;

(2) Select counsel and appoint a staff as necessary to assist the Presiding Disciplinary Judge in the administration of the judge's office and in the performance of the judge's duties;

(3) Order the parties in disciplinary proceedings to attend a settlement conference;

(4) Impose discipline on an attorney or transfer an attorney to disability inactive status as provided in these Rules;

(5) Periodically report to the Advisory Committee and the management committee on the operation of the office of the Presiding Disciplinary Judge;

(6) Recommend to the Advisory Committee proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and

(7) Adopt such practices as may from time to time become necessary to govern the internal operation of the office of the Presiding Disciplinary Judge, as approved by the Supreme Court.

(d) Abstention. The Presiding Disciplinary Judge shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of the Presiding Disciplinary Judge, or any attorney in any way affiliated with the Presiding Disciplinary Judge or the Judge's law firm, may accept or continue in employment connected with any matter pending before the committee, the Judge, a Hearing Board, or the Appellate Discipline Commission as long as the Judge is serving as the Presiding Disciplinary Judge.

(e) Disqualification. Persons appointed to serve as Presiding Disciplinary Judge shall not represent an attorney in any proceeding as provided in these Rules during their terms of service, and following the completion of their terms of service shall not represent an attorney in any matter that was being investigated and/or prosecuted during their terms of service.

RULE 251.17. HEARING BOARD

(a) Hearing Board. Hearing Boards are hereby established and empowered to act in accordance with these Rules.

(1) Members. The Supreme Court shall appoint a diverse pool of members of the Bar of Colorado and members of the public to serve as members of Hearing Boards. Persons appointed shall serve terms of two years. Terms shall be staggered to provide, so far as possible, for the expiration each year of the terms of an equal number of persons. Persons appointed shall be eligible to serve no more than three consecutive terms.

Persons appointed shall serve at the pleasure of the Supreme Court and may be dismissed from service at any time by order of the Supreme Court. Persons appointed may resign at any time.

(2) Vacancy. In the event of vacancies on the list of Hearing Board members, the Supreme Court shall, with the assistance of the Advisory Committee, appoint new persons to the list to serve on Hearing Boards.

(3) Reimbursement. Members of Hearing Boards shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) Abstention of Members. Members of Hearing Boards shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of a member of the Board, or any attorney in any way affiliated with a member of the Board or the member's law firm, may accept or continue in employment connected with any matter pending before the

Hearing Board as long as the member is serving on the Hearing Board. However, a partner or an associate in the law firm of a member of the Board, or any attorney in any way affiliated with a member of the Board or the member's law firm, may accept or continue in employment connected with any matter pending before a Hearing Board upon which the member is not serving.

(c) Disqualification. Persons appointed to serve as members of Hearing Boards shall not represent an attorney in any proceeding as provided in these Rules during their terms of service.

RULE 251.18. HEARINGS BEFORE THE HEARING BOARD

(a) Notice. Not less than sixty days before the date set for the hearing of a complaint, the Regulation Counsel shall give notice of such hearing as provided in C.R.C.P. 251.32(b) to the respondent, or the respondent's counsel, and to the complaining witness. The notice shall designate the date, place, and time of the hearing. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence in the respondent's own behalf.

The notice shall also advise the complaining witness that the complaining witness has a right to be present at the hearing and if there is a finding of misconduct to make a statement, orally or in writing, regarding the form of discipline.

(b) Designation of a Hearing Board. All hearings on complaints seeking disciplinary action against a respondent shall be conducted by a Hearing Board. A Hearing Board shall consist of the Presiding Disciplinary Judge and two other members, one of whom shall be an attorney, who are to be selected at random from the pool of Hearing Board Members by the clerk for the Presiding Disciplinary Judge. If the Presiding Disciplinary Judge has been disqualified, then a presiding officer shall be selected at random from among the attorneys on the list of Hearing Board members. The presiding officer shall, in all respects, act in accordance with these Rules.

The Presiding Disciplinary Judge or the presiding officer shall rule on all motions, objections, and other matters presented after a complaint is filed and in the course of a hearing.

(c) Prehearing Conference. At the discretion of the Presiding Disciplinary Judge, a prehearing conference may be ordered.

(d) Procedure and Proof. Except as otherwise provided in these Rules, hearings and all matters commencing with filing the complaint as provided in C.R.C.P. 251.14 shall be conducted in conformity with the Colorado Rules of Civil Procedure, the Colorado Rules of Evidence, and the practice in this state in the trial of civil cases; provided, however, that proof shall be by clear and convincing evidence, and provided further that the respondent may not be required to testify or to produce records over the respondent's objection if to do so would be in violation of the respondent's constitutional privilege against self-incrimination.

In the course of proceedings conducted pursuant to this Rule, the Presiding Disciplinary Judge or the Presiding Officer, acting pursuant to and in conformity with these Rules, shall have the power to administer oaths and affirmations.

A complete record shall be made of all depositions and of all testimony taken at hearings before a Hearing Board.

(e) Order for Examination. When the mental or physical condition of the attorney in question has become an issue in the proceeding, the Presiding Disciplinary Judge, on motion of the Regulation Counsel, may order the attorney to submit to a physical or mental examination by a suitable licensed or certified examiner. The order may be made only upon a determination that reasonable cause exists and after notice to the attorney. The attorney will be provided the opportunity to respond to the motion of the Regulation Counsel, and the attorney may request a hearing before the Presiding Disciplinary Judge. If requested, the hearing shall be held within thirty days of the date of the attorney's request, and shall be limited to the issue of whether reasonable cause exists for such an order.

(f) Procurement of Evidence During Hearing.

(1) Subpoena. In the course of a hearing conducted pursuant to these Rules, and upon the petition of any party to the hearing, the clerk of the Presiding Disciplinary Judge may, for the use of a party, issue subpoenas to compel the attendance of witnesses and the production of pertinent books, papers, documents, or other evidence.

Witnesses shall be entitled to receive fees for mileage as provided by law for witnesses in civil actions.

(2) Quashing a Subpoena. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the Presiding Disciplinary Judge or the Presiding Officer of the Hearing Board.

(3) Contempt. Any person who fails or refuses to comply with a subpoena issued pursuant to these Rules may be cited for contempt of the Supreme Court.

Any person who by misbehavior obstructs the Hearing Board or any part thereof in the performance of its duties may be cited for contempt of the Supreme Court.

Any person having been duly sworn to testify who refuses to answer any proper question may be cited for contempt of the Supreme Court.

A contempt citation may be issued by the Presiding Disciplinary Judge or the presiding officer. A copy of the contempt citation, together with the findings of fact made by the Presiding Disciplinary Judge or the presiding officer surrounding the contempt, shall be filed with the Supreme Court. The Supreme Court shall then determine whether to impose contempt.

(4) Discovery.

(A) Purpose and Scope. Rules 16 and 26 of the Colorado Rules of Civil Procedure shall not apply to proceedings conducted pursuant to these Rules. This Rule shall govern discovery in attorney discipline and disability proceedings.

(B) Meeting. A meeting of the parties must be held no later than fifteen days after the case is at issue to confer with each other about the nature and basis of the claims and defenses and discuss the matters to be disclosed.

(C) Disclosures. No later than thirty days after the case is at issue, the parties shall disclose:

(i) The name and, if known, the address, and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged in the pleadings, identifying who the person is and the subjects of the information;

(ii) A listing, together with a copy of, or a description of, all documents, data compilations, and tangible things in the possession, custody, or control of the parties that are relevant to the disputed facts in the pleadings; and

(iii) A statement of whether the parties anticipate use of expert witnesses, identifying the subject areas of the proposed experts.

(D) Trial Management Order. Upon the request of one of the parties or upon order of the Presiding Disciplinary Judge or the presiding officer of the Hearing Board, no later than forty-five days prior to the trial date, the parties shall disclose to the other party and file a trial management order containing the following matters under the following captions and in the following order:

(i) Statement of Claims and Defenses to be Pursued or Withdrawn. The parties shall set forth a listing of the claims and defenses remaining for trial. Any claims or defenses set forth in the pleadings which will not be at issue at trial shall be designated as "withdrawn."

(ii) Stipulated Facts. The parties shall set forth a plain, concise statement of all facts which the Hearing Board shall accept as undisputed.

(iii) Pretrial Motions. The parties shall list motions, if any, which are anticipated to be filed before trial as well as motions, if any, which are pending before the Hearing Board. The parties shall indicate a deadline for the filing of such motions which shall be no later than fourteen days prior to the date set for trial.

(iv) Legal Issues. The parties shall set forth a list of legal issues that are controverted, including appropriate citation of statutory, case or other authority. In addition, the parties shall indicate whether trial briefs will be filed, including a schedule for their filing. Trial briefs shall be filed no later than seven days before the commencement of the trial.

(v) Identification of Witnesses and Exhibits. Each party shall provide the following information:

(a) Lay Witnesses. Each party shall include a list containing the name, address, and telephone number of any person whom the party will call and of any person whom the party may call as a witness at trial.

(b) Exhibits. Each party shall attach a list describing any physical or documentary evidence which the party intends to introduce at trial. Complainant shall assign a number and respondent shall assign a letter designation for each exhibit. If any party wishes to object to the authenticity or admissibility of any exhibit, such objection shall be noted, together with the grounds therefor.

(c) Expert Witnesses. Each party shall attach to the trial management order a list of the name, address, and telephone number of each person whom the party will call and any person whom the party may call as an expert witness at trial, indicating the anticipated length of testimony, including cross-examination. The list shall indicate whether the opposing party accepts or challenges the qualifications of a witness to

testify as an expert as to the opinions expressed. If there is a challenge, the list shall be accompanied by a resume setting forth the basis for the expertise of the challenged witness. Copies of any expert reports shall be provided to the other party at this time.

(vi) Presentation of Testimony. If the testimony of any witness is to be presented by deposition or through any other acceptable means in lieu of live testimony, a copy shall be submitted to the Hearing Board and include the proponent's and opponent's anticipated designations of the pertinent portions of such testimony or a statement why designation is not feasible prior to trial. If any party wishes to object to the admissibility of the testimony or to any tendered question or answer therein, it shall be noted, setting forth the grounds therefor.

(vii) Trial Efficiencies. If the anticipated length of the trial has changed, the parties shall so indicate.

(E) Limitations. Except upon order by the Presiding Disciplinary Judge or the presiding officer of the Hearing Board for good cause shown, discovery shall be limited as follows:

(i) The Regulation Counsel may take one deposition of the respondent and two other persons in addition to the depositions of experts as provided in C.R.C.P. 26. The respondent may take one deposition of the complaining witness and two other persons in addition to the depositions of experts as provided in C.R.C.P. 26. The scope and manner of proceeding by way of deposition and the use thereof shall otherwise be governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45.

(ii) A party may serve on the adverse party 30 written interrogatories, each of which shall consist of a single question. The scope and manner of proceeding by means of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. Rules 26 and 33.

(iii) The Regulation Counsel may obtain a physical or mental examination of the respondent pursuant to C.R.C.P. 251.18(e).

(iv) A party may serve the adverse party requests for production of documents pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number, each of which shall consist of a single request.

(v) A party may serve on the adverse party 20 requests for admission, each of which shall consist of a single request. The scope and manner of proceeding by means of requests for admission and the use thereof shall otherwise be governed by C.R.C.P. 36.

(F) In determining good cause pursuant to C.R.C.P. 251.18(f)(4)(E), the Presiding Disciplinary Judge or the presiding officer of the Hearing Board shall consider the following:

(i) Whether the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the action to obtain the information sought;

(iii) Whether the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the parties' resources, the

importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues; and

(iv) Whether, because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.

(G) Supplementation of Disclosures and Discovery Responses. A party is under a duty to supplement its disclosures under section (f)(4)(C) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends both to information contained in the expert's report or summary disclosed pursuant to section (f)(4)(D)(v)(c) of this Rule and to information provided through any deposition of or interrogatory responses by the expert. Supplementation shall be performed in a timely manner.

RULE 251.19. FINDINGS OF FACT AND DECISION

(a) Hearing Board Opinion and Decision. Within sixty days after the hearing, the Hearing Board shall prepare an opinion setting forth its findings of fact and its decision. In preparing its decision, the Hearing Board shall take into consideration the respondent's prior disciplinary record, if any. The opinion shall be signed by each concurring member of the Hearing Board. Two members are required to make a decision. Members of the Hearing Board who dissent shall also sign the opinion, provided they indicate the basis of their dissent in the opinion.

(b) Decision of the Hearing Board. When it renders its decision, the Hearing Board shall:

(1) Determine that the complaint is not proved and enter an order dismissing the complaint;

(2) Enter an order imposing private admonition, public censure, a definite period of suspension, or disbarment; or

(3) Enter an order conditioned on the agreement of the attorney diverting the case to the alternatives to discipline program.

The Hearing Board may also enter other appropriate orders including, without limitation, probation, and orders requiring the respondent to pay the costs of the disciplinary proceeding, to make restitution, or to refund money paid to the respondent.

(4) Within fifteen days of entry of an order as provided in this Rule or such greater time as the Hearing Board may allow, a party may move for post-hearing relief as provided in C.R.C.P. 59. In the event a motion for post-hearing relief is filed, the

Presiding Disciplinary Judge or the presiding officer shall consult with the other members of the Hearing Board and then rule on the motion.

(5) For purposes of this Rule, the decision of the Hearing Board shall be final and time for filing notice of appeal shall commence as set forth in C.R.C.P. 251.26.

RULE 251.20. ATTORNEY CONVICTED OF A CRIME

(a) Proof of Conviction. Except as otherwise provided by these Rules, a certified copy of the judgment of conviction from the clerk of any court of criminal jurisdiction indicating that an attorney has been convicted of a crime in that court shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings in this state and shall be conclusive proof of the commission of that crime by the respondent.

(b) Duty to Report Conviction. Every attorney subject to these Rules, upon being convicted of a crime, except those misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, shall notify the Regulation Counsel in writing of such conviction within ten days after the date of the conviction. In addition, the clerk of any court in this state in which the conviction was entered shall transmit to the Regulation Counsel within ten days after the date of the conviction a certificate thereof.

(c) Commencement of Disciplinary Proceedings Upon Notice of Conviction. Upon receiving notice that an attorney subject to these Rules has been convicted of a crime, other than a serious crime as hereinafter defined, the Regulation Counsel shall, following an investigation as provided in these Rules, make a determination as provided in C.R.C.P. 251.11 or refer the matter to the committee for further proceedings consistent with C.R.C.P. 251.12.

If the conviction is for a serious crime as hereinafter defined, the Regulation Counsel shall obtain the record of conviction and prepare and file a complaint against the respondent as provided in C.R.C.P. 251.14.

If a complaint is filed against a respondent pursuant to the provisions of this Rule, the Regulation Counsel shall present proof of the criminal conviction and may present any other evidence which the Regulation Counsel deems appropriate. If the respondent's criminal conviction is either proved or admitted, the respondent shall have the right to be heard by the Hearing Board only on matters of rebuttal of any evidence presented by the Regulation Counsel other than proof of the conviction.

(d) Conviction of a Serious Crime — Immediate Suspension. The Regulation Counsel shall report to the Supreme Court the name of any attorney who has been convicted of a serious crime, as hereinafter defined. The Supreme Court shall thereupon issue a citation directing the convicted attorney to show cause why the attorney's license to practice law should not be immediately suspended pursuant to C.R.C.P. 251.8. Upon full consideration of the matter, the Supreme Court may either impose immediate suspension for a definite or indefinite period or may discharge the rule to show cause. The fact that a convicted attorney is seeking appellate review of the

conviction shall not limit the power of the Supreme Court to impose immediate suspension.

(e) Serious Crime Defined. The term serious crime as used in these Rules shall include:

(1) Any felony; and

(2) Any lesser crime a necessary element of which, as determined by its statutory or common law definition, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, or theft; or an attempt or conspiracy to commit such crime; or solicitation of another to commit such crime.

(f) Notice to Clients and Others of Immediate Suspension. An order of immediate suspension of an attorney pursuant to this Rule shall constitute a suspension of the attorney for the purpose of the provisions of C.R.C.P. 251.28.

(g) Automatic Reinstatement From Immediate Suspension When Conviction Reversed. An attorney suspended under the provisions of this Rule shall be reinstated to practice law immediately upon filing a certificate demonstrating that the underlying criminal conviction has been reversed; provided, however, that reinstatement of the attorney shall have no effect on any proceedings conducted pursuant to these Rules then pending against him.

(h) Conviction Defined. The term conviction as used in these Rules shall include any ultimate finding of fact in a criminal proceeding that an individual is guilty of a crime, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of *nolo contendere*, and irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court.

RULE 251.21. DISCIPLINE IMPOSED BY FOREIGN JURISDICTION

(a) Proof of Discipline Imposed. Except as otherwise provided by these Rules, a final adjudication in another jurisdiction of misconduct constituting grounds for discipline of an attorney shall, for purposes of proceedings pursuant to these Rules, conclusively establish such misconduct.

(b) Duty to Report Discipline Imposed. Any attorney subject to these Rules against whom any form of public discipline has been imposed by the authorities of another jurisdiction, or who voluntarily surrenders the attorney's license to practice law in connection with disciplinary proceedings in another jurisdiction, shall notify the Regulation Counsel of such action in writing within ten days thereof.

(c) Commencement of Proceedings Upon Notice of Voluntary Surrender of License. Upon receiving notice that an attorney subject to these Rules has voluntarily surrendered his license to practice law in another jurisdiction, the Regulation Counsel shall, following investigation pursuant to these Rules, refer the matter to the committee for further proceedings consistent with C.R.C.P. 251.12.

(d) Commencement of Proceedings Upon Notice of Discipline Imposed. Upon receiving notice that an attorney subject to these Rules has been publicly disciplined in another jurisdiction, the Regulation Counsel shall obtain the disciplinary

order and prepare and file a complaint against the attorney as provided in C.R.C.P. 251.14. If the Regulation Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent shall be given in the complaint.

If the attorney intends to challenge the validity of the disciplinary order entered in the foreign jurisdiction, the attorney must file with the Presiding Disciplinary Judge an answer and a full copy of the record of the disciplinary proceedings which resulted in the imposition of that disciplinary order within twenty days after service of the complaint or such greater time as the Presiding Disciplinary Judge may allow for good cause shown.

At the conclusion of proceedings brought under this Rule, the Hearing Board shall issue a decision imposing the same discipline as was imposed by the foreign jurisdiction, unless it is determined by the Hearing Board that:

(1) The procedure followed in the foreign jurisdiction did not comport with requirements of due process of law;

(2) The proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the Hearing Board cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction;

(3) The imposition by the Hearing Board of the same discipline as was imposed in the foreign jurisdiction would result in grave injustice; or

(4) The misconduct proved warrants that a substantially different form of discipline be imposed by the Hearing Board.

RULE 251.22. DISCIPLINE BASED ON ADMITTED MISCONDUCT

(a) Acceptance of Admission. An attorney against whom proceedings are pending pursuant to these Rules may, at any point in the proceedings prior to final action by a Hearing Board, tender a conditional admission of misconduct constituting grounds for discipline in exchange for a stipulated form of discipline. The conditional admission must be approved by the Regulation Counsel prior to being tendered to the committee or the Presiding Disciplinary Judge.

If the form of discipline stipulated to is private admonition, the conditional admission shall be tendered to the committee for its review. The committee shall either reject the conditional admission and order the proceedings continued in accordance with these Rules, or accept the conditional admission and order private admonition imposed.

If the form of discipline stipulated to is disbarment, suspension, public censure, or a range that includes any of the former and private admonition, the conditional admission shall be tendered to the Presiding Disciplinary Judge for review. The Presiding Disciplinary Judge or Presiding Officer of the Hearing Board shall, after conducting a hearing as provided in this Rule, if one is requested, either reject the conditional admission and order the proceedings continued in accordance with these Rules, or approve the conditional admission and enter an appropriate order.

Imposition of discipline pursuant to a conditional admission of misconduct shall terminate all proceedings conducted pursuant to these Rules and pending against the attorney in connection with that misconduct.

(b) Conditional Admission — Contents. A conditional admission of misconduct shall be set forth in the form of an affidavit, be submitted by the attorney, and shall contain:

(1) An admission of misconduct which constitutes grounds for discipline;

(2) An acknowledgment of the proceedings pending against the attorney; and

(3) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the attorney is fully aware of the implications of the attorney's admission.

If the conditional admission is tendered before a complaint is filed as provided in C.R.C.P. 251.14, it shall remain confidential if the form of discipline stipulated to is private admonition and its contents shall not be publicly disclosed or made available for use in any proceedings outside this Chapter except as otherwise provided in these Rules or by order of the Supreme Court.

(c) Conditional Admission – Hearing.

(1) Procedure. Within fifteen days of the date a conditional admission is filed, the respondent or the Regulation Counsel may request a hearing before the Presiding Disciplinary Judge. If a hearing is requested, it shall be set promptly.

(2) Notice. Not less than fifteen days before the date set for the hearing on the conditional admission, the Regulation Counsel shall give notice of such hearing as provided in C.R.C.P. 251.32(b) to the respondent, the respondent's counsel, and the complaining witness. The notice shall designate the date, place, and time of the hearing. The notice shall advise the respondent that the respondent is entitled to be represented by counsel at the hearing and to present argument regarding the form of discipline to be ordered.

(3) Complaining Witness. In addition to the foregoing, the notice shall advise the complaining witness that the complaining witness has a right to be present at the hearing and to make a statement, orally or in writing, to the Presiding Disciplinary Judge regarding the form of discipline.

(d) Stay of Proceedings. Proceedings conducted pursuant to these Rules that are pending before the Presiding Disciplinary Judge at the time a conditional admission is tendered may be stayed by order of the Presiding Disciplinary Judge.

(e) Further Proceedings. If the conditional admission of misconduct is rejected and the matter is returned for further proceedings consistent with these Rules, the conditional admission may not be used against the attorney.

RULE 251.23. DISABILITY INACTIVE STATUS

(a) Disability Inactive Status. Where it is shown that an attorney is unable to fulfill professional responsibilities competently because of physical, mental, or emotional infirmity or illness, including addiction to drugs or intoxicants, the attorney

shall be transferred to disability inactive status. During such time as an attorney is on disability inactive status the attorney shall not engage in the practice of law.

Proceedings instituted against an attorney pursuant to this Rule are disability proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a violation of the attorney's oath. The pendency of proceedings provided for by this Rule shall not defer or abate other proceedings conducted pursuant to these Rules, unless after a hearing the Presiding Disciplinary Judge determines that the attorney is unable to assist in the defense of those other proceedings because of the disability. If such other proceedings are deferred, then the deferral shall continue until such time as the attorney is found to be eligible for reinstatement as provided by C.R.C.P. 251.30.

(b) Transfer to Disability Inactive Status Without a Hearing. Where an attorney who is subject to these Rules has been judicially declared mentally ill, or has been involuntarily committed to a mental hospital, or has voluntarily petitioned for the appointment of a guardian, or has been found not guilty by reason of insanity in a criminal proceeding in a court of record, the Presiding Disciplinary Judge, upon proper proof of the fact, shall enter an order transferring the attorney to disability inactive status. Such order shall remain in effect unless altered by the Presiding Disciplinary Judge, the Appellate Discipline Commission or the Supreme Court. A copy of the order transferring an attorney to disability inactive status shall be served upon the attorney and upon either the attorney's guardian or the superintendent of the hospital in which the attorney is confined. Service shall be made in such manner as the Presiding Disciplinary Judge may direct.

(c) Procedure When Disability is Alleged. Whenever any interested party shall petition the Presiding Disciplinary Judge to determine whether an attorney is incapable of continuing to practice law by reason of physical, mental, or emotional infirmity or illness, including addiction to drugs or intoxicants, or whether the attorney in a proceeding conducted pursuant to these Rules is so incapacitated as to be unable to proffer a defense, the Presiding Disciplinary Judge shall direct such action as it deems necessary or proper to determine whether the attorney is incapacitated, including an examination of the attorney by qualified medical experts designated by the Presiding Disciplinary Judge; provided, however, that before any medical examination or other action may be ordered, the Presiding Disciplinary Judge must afford the attorney an opportunity to show cause why such examination or action should not be ordered. If, upon due consideration of the matter, the Presiding Disciplinary Judge determines that the attorney is incapable of continuing to practice law or is incapable of defending in proceedings conducted pursuant to these Rules, the Presiding Disciplinary Judge shall enter an order transferring the attorney to disability inactive status. Such order shall remain in effect unless altered by the Presiding Disciplinary Judge, the Appellate Discipline Commission or the Supreme Court.

An attorney against whom disability proceedings are pending shall be given notice of such proceedings. Notice shall be given in such a manner as the Presiding Disciplinary Judge may direct. The Presiding Disciplinary Judge may appoint counsel to represent the attorney if the attorney is without adequate representation.

(d) Procedure When Attorney During Course of Proceedings Alleges a Disability That Impairs the Attorney's Ability to Defend. If in the course of proceedings conducted pursuant to these Rules the attorney alleges disability by reason of physical, mental, or emotional infirmity or illness, including addiction to drugs or intoxicants, that impairs the attorney's ability to defend adequately in such proceedings, such proceedings shall be suspended and the Presiding Disciplinary Judge shall enter an order transferring the attorney to disability inactive status and order a medical examination of the attorney. Upon review of the report of the medical examination and other relevant information, the Presiding Disciplinary Judge may do any of the following:

(1) Order a hearing on the issue of whether the attorney suffers from a disability that impairs the attorney's ability to defend adequately in such other proceedings;

(2) Continue the order transferring the attorney to disability inactive status;

(3) Discharge the order transferring the attorney to disability inactive status and order that the proceedings pending against the attorney be resumed;

(4) Enter any other appropriate order, including an order directing further examination of the attorney.

(e) Burden of Proof. In a disability proceeding seeking the transfer of an attorney to disability inactive status the party petitioning for transfer shall bear the burden of proof by clear and convincing evidence.

(f) Hearings. Any hearings held pursuant to this Rule shall be conducted by the Presiding Disciplinary Judge in the manner prescribed by C.R.C.P. 251.18 and C.R.C.P. 251.19, and a Hearing Board shall not be required.

(g) Compensation. The Presiding Disciplinary Judge may fix the compensation to be paid to any legal counsel or medical expert appointed by the Presiding Disciplinary Judge pursuant to this Rule. The Presiding Disciplinary Judge may direct that such compensation be assessed as part of the costs of a proceeding held pursuant to this Rule and that it be paid as such in accordance with law.

(h) Post-Hearing Relief and Notice of Appeal. The attorney may file a motion for post-hearing relief or a notice of appeal as provided in C.R.C.P. 251.19.

RULE 251.24. APPELLATE DISCIPLINE COMMISSION

(a) Appellate Discipline Commission. The Appellate Discipline Commission is hereby established and empowered to act in accordance with these Rules.

(1) Members. The Supreme Court shall, with the assistance of the Advisory Committee, appoint five members of the Bar of Colorado and two lay persons to serve as members of the Appellate Discipline Commission. Diversity shall be a consideration in making the appointments. Persons appointed shall serve terms of two years. Terms shall be staggered to provide, so far as possible, for the expiration each year of the terms of an equal number of persons. Persons appointed shall be eligible to serve no more than three consecutive terms.

Persons appointed shall serve at the pleasure of the Supreme Court and may be dismissed from service at any time by order of the Supreme Court. Persons appointed may resign at any time.

(2) Vacancy. In the event of vacancies on the Appellate Discipline Commission, the Supreme Court shall, with the assistance of the Advisory Committee, appoint new persons to serve.

(3) Chair and Vice-Chair. The members of the Appellate Discipline Commission shall elect from among themselves one Chair who shall appoint one Vice-Chair. The Chair shall exercise overall supervisory control of the Appellate Discipline Commission. The Vice-Chair shall assist the Chair, and the Vice-Chair shall serve as Chair in the absence of the Chair.

(4) Reimbursement. Members of the Appellate Discipline Commission shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) Powers and Duties of the Appellate Discipline Commission. The Appellate Discipline Commission shall be authorized and empowered to act in accordance with these Rules and to:

(1) Impose discipline or transfer an attorney to disability inactive status as provided in these Rules;

(2) Periodically report to the Advisory Committee on the operation of the Appellate Discipline Commission;

(3) Recommend to the Advisory Committee proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and

(4) Adopt such practices as may from time to time become necessary to govern the internal operation of the Appellate Discipline Commission, as approved by the Supreme Court.

(c) Abstention of Appellate Discipline Commission Members. Members of the Appellate Discipline Commission shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of a member of the Appellate Discipline Commission, or any attorney in any way affiliated with a member of the Appellate Discipline Commission or the member's law firm, may accept or continue in employment connected with any matter pending before a Hearing Board or the Appellate Discipline Commission as long as the member is serving on the Appellate Discipline Commission.

(d) Disqualification. Persons appointed to serve as members of the Appellate Discipline Commission shall not represent an attorney in any proceeding as provided in these Rules during their terms of service and for a period of one year following the completion of their terms of service, the former members shall not represent an attorney in a case that was being investigated or prosecuted during their terms of service.

RULE 251.25. COUNSEL FOR THE APPELLATE DISCIPLINE COMMISSION

(a) Counsel. The Supreme Court shall appoint counsel for the Appellate Discipline Commission who shall serve at the pleasure of the Supreme Court.

(b) Qualifications. Counsel shall be an attorney, duly admitted to the Bar of Colorado, with no less than five years experience in the practice of law. Counsel, while serving in that capacity, may not hold any other public office or engage in the private practice of law.

(c) Powers and Duties of Counsel. Counsel shall act in accordance with these Rules and:

(1) Maintain and supervise a permanent office under a budget approved by the Supreme Court;

(2) Employ a staff as necessary to carry out the duties of counsel;

(3) Maintain permanent records of matters processed by the Appellate Discipline Commission and the disposition thereof;

(4) Serve as counsel to the Appellate Discipline Commission; and

(5) Perform such other duties as the Appellate Discipline Commission or the Supreme Court may direct.

(d) Disqualification. A former member of counsel's staff shall not represent an attorney in any proceeding that was being investigated and/or prosecuted while the individual was employed on staff.

RULE 251.26. PROCEEDINGS BEFORE THE APPELLATE DISCIPLINE COMMISSION

(a) Standard of Review. All disciplinary and disability proceedings filed with the Appellate Discipline Commission as herein provided shall be conducted in the name of the People of the State of Colorado and shall be prosecuted by the Regulation Counsel.

When proceedings before the Appellate Discipline Commission are conducted, the Appellate Discipline Commission shall affirm the decision of the Hearing Board unless it determines that, based on the record, the findings of fact of the Hearing Board are clearly erroneous or that the form of discipline imposed by the Hearing Board (1) bears no relation to the conduct, (2) is manifestly excessive or insufficient in relation to the needs of the public, or (3) is otherwise unreasonable. The Appellate Discipline Commission may conduct a de novo review of the conclusions of law.

The matter shall be docketed as:

APPELLATE DISCIPLINE COMMISSION, STATE OF COLORADO
Case No.
PROCEEDING IN DISCIPLINE [OR DISABILITY]

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

v.

_____,

Respondent.

(b) Appeal – How Taken. An appeal from a Hearing Board to the Appellate Discipline Commission shall be taken by filing a notice of appeal with the Appellate Discipline Commission within the time set forth in this Rule. Upon the filing of the notice of appeal, the Appellate Discipline Commission shall have the exclusive jurisdiction over the appeal and procedures concerning the appeal unless otherwise specified by these Rules. An advisory copy of the notice of appeal shall be served on the Presiding Disciplinary Judge within the time for its filing in the Appellate Discipline Commission. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is a ground only for such action as the Appellate Discipline Commission deems appropriate, which may include dismissal of the appeal. Content of the notice of appeal shall not be deemed jurisdictional.

(c) Contents of Notice of Appeal. Except as otherwise provided by these rules, and to the extent practicable, the notice of appeal shall conform to the requirements set forth in C.A.R. 3(e).

(d) Contents of Any Notice of Cross-Appeal. A notice of cross-appeal shall set forth the same information required for a notice of appeal and shall set forth the party initiating the cross-appeal and designate all cross-appellees.

(e) Number of Copies to be Filed. Five copies of the notice of appeal or cross-appeal shall be filed with the original.

(f) Appeal – When Taken. The notice of appeal required by this rule shall be filed with the Appellate Discipline Commission with an advisory copy served on the Presiding Disciplinary Judge within twenty days of the date of mailing the decision from which the party appeals. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days of the date on which the first notice of appeal is filed, or within the time otherwise prescribed by this section (f), whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed with the Presiding Disciplinary Judge by any party pursuant to the Colorado Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (f) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion under C.R.C.P. 52 or 59, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) granting or denying a motion under C.R.C.P. 59,

to alter or amend the judgment; (3) denying a motion for a new hearing under C.R.C.P. 59; (4) expiration of a extension of time granted by the Presiding Disciplinary Judge to file motion(s) for post-hearing relief under C.R.C.P. 59, where no motion is filed. The Hearing Board shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the Appellate Discipline Commission shall be stayed. If the decision is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the decision.

Upon a showing of excusable neglect, the Appellate Discipline Commission may extend the time for filing the notice of appeal by a party for a period not to exceed thirty days from the expiration of the time otherwise prescribed by this section (f). Such an extension may be granted before or after the time otherwise prescribed by this section (f) has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the Appellate Discipline Commission shall deem appropriate.

(g) Stay Pending Appeal. Application for a stay of the decision of a Hearing Board pending appeal must ordinarily be made in the first instance to the Hearing Board. The application for stay pending appeal should be granted except when an immediate suspension has been ordered, or when no conditions of probation and supervision while the appeal is pending will protect the public. A motion for such relief may be made to the Appellate Discipline Commission, but the motion shall show that application to the Hearing Board for the relief sought is not practicable, or that the Hearing Board has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Hearing Board for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the Appellate Discipline Commission and normally will be considered by the Commission, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by the chair of the Appellate Discipline Commission or in the absence of the Chair, by any available member of the Appellate Discipline Commission.

(h) Record on Appeal - Composition.

(1) The final pleadings which frame the issues before the Hearing Board; the findings of fact, conclusions of law and decision; motions for new trial and other post-trial motions, if any, and the Hearing Board's ruling; together with any other documents which by designation of either party or by stipulation are directed to be included shall constitute the record on appeal in all cases.

(2) The reporter's transcript, or such parts thereof as provided under section (i) of this rule, relevant depositions and exhibits may be made a part of the record.

(3) The records and files of the Hearing Board shall be certified by the clerk of the Presiding Disciplinary Judge.

(4) The original papers in all instances shall be in the record submitted. Except on written request by a party, the Presiding Disciplinary Judge need not duplicate or retain a copy of the papers or exhibits included in the record. The party requesting that a duplicate be retained shall advance the cost of preparing the copies.

(5) The record shall be properly paginated and fully indexed and shall be prepared and bound under the direction of the Presiding Disciplinary Judge.

(i) Record of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Record is Ordered; Costs. Within ten days after filing the notice of appeal, the appellant shall file with the Presiding Disciplinary Judge and with the clerk of the Appellate Discipline Commission either: (1) a statement that no portions of the record other than those numerated in section (h) are desired or (2) a detailed designation of record, setting forth specifically those portions of the record to be included and all dates of proceedings for which transcripts are requested and the name(s) of the court reporter(s) who reported the proceedings which the appellant directs to be included in the record. The appellant shall serve a copy of the designation of record on each court reporter listed therein. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall include in the designation of record a description of the part of the transcript which the appellant intends to include in the record and a statement of the issues to be presented on appeal. If the appellee deems to be necessary a transcript of other proceedings, or other parts of the record, the appellee shall, within ten days after the service of the statement or the appellant's designation of the record, file with the Presiding Disciplinary Judge and the Appellate Discipline Commission and serve on the appellant and on any court reporter who reported proceedings of which the appellee desires additional transcript a designation of additional items to be included. Service on any court reporter of the appellant's designation of record or the appellee's additional designation of record shall constitute a request for transcription of the specified proceedings. Within fourteen days after service of any such designation of record, each such court reporter shall provide in writing to all counsel in the appeal: (1) the estimated number of pages to be transcribed; (2) the estimated completion date; and (3) the estimated cost of transcription within twenty days after receiving the reporter's estimate, the designating party shall deposit the full amount of such estimate with the court reporter. For good cause shown, within said twenty days and upon the agreement of the court reporter, the Presiding Disciplinary Judge may order a payment schedule extending the time for payment. When the cost of the transcription will be paid by public funds, the public entity shall make arrangements with the court reporter for payment of the transcription costs. Within thirty days of the transmittal of the court reporter's cost estimate to the pro se party of counsel, the court reporter shall file with the Presiding Disciplinary Judge and the Appellate Discipline Commission a statement of : (1) the date the court reporter's estimate was provided and the date on which the reporter received full

payment of the estimate, or (2) the schedule of payments approved by the Presiding Disciplinary Judge under a good cause extension, or (3) that the cost of the transcript will be paid from public funds. Each party shall advance the cost of preparing that part of the record designated by such party except as otherwise ordered by the Presiding Disciplinary Judge for good cause shown.

(j) Transmission of the Record.

(1) Time. The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the Appellate Discipline Commission within sixty days after the filing of the notice of appeal unless the time is shortened or extended by an order entered as provided in this rule. After filing the notice of appeal the appellant shall comply with the provisions of this rule and shall take any other action necessary to enable the Presiding Disciplinary Judge to assemble and transmit the record.

(2) Duty Of Presiding Disciplinary Judge To Transmit The Record. When the record, including any designated transcript , is complete for purposes of the appeal, the clerk of the Presiding Disciplinary Judge shall transmit it to the clerk of the Appellate Discipline Commission. The clerk of the Presiding Disciplinary Judge shall number the documents comprising the entire designated record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted unless the Presiding Disciplinary Judge is directed to do so by a party or by the Appellate Discipline Commission. A party must make advance arrangements for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the Presiding Disciplinary Judge mails or otherwise forwards the record to the clerk of the Appellate Discipline Commission. The clerk of the Presiding Disciplinary Judge shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the Appellate Discipline Commission.

(3) Temporary Retention Of Record By The Presiding Disciplinary Judge For Use In Preparing Appellate Papers. Notwithstanding the provisions of this rule, the parties may stipulate, or the Presiding Disciplinary Judge on motion of any party may order, that the record shall temporarily be retained by the Presiding Disciplinary Judge for use by the parties in preparing appellate papers. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by complying with the provisions of this rule and by presenting to the Appellate Discipline Commission a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if the appellant is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the Appellate Discipline Commission may order, the appellant shall request the Presiding Disciplinary Judge to transmit the record.

(4) Extension Of Time For Transmission Of The Record; Reduction Of Time. The Appellate Discipline Commission for good cause shown may extend the time for transmitting the record. A request for extension must be made within the time originally prescribed or within an extension previously granted. Any request for extension of the period of time based upon the reporter's inability to complete the transcript shall be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared, and the date by which the transcript can be completed and a statement by the court reporter that all payments due have been made. Failure to pay for the transcript in accordance with C.R.C.P. 251.26(I) is grounds for denial of a motion for extension. The Appellate Discipline Commission may direct the Presiding Disciplinary Judge to expedite the preparation and transmittal of the record on appeal and, upon motion or sua sponte, take other appropriate action regarding preparation and completion of the record.

(5) Stipulation Of Parties That Parts Of The Record Be Retained By The Presiding Disciplinary Judge. The parties may agree by written stipulation filed with the Presiding Disciplinary Judge that designated parts of the record shall be retained by the Presiding Disciplinary Judge unless thereafter the Appellate Discipline Commission shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(6) Preliminary Record Transmitted To The Appellate Discipline Commission. If prior to the time the record is transmitted, a party desires to make to the Appellate Discipline Commission a motion for dismissal, for a stay pending appeal, or for any intermediate order, the Presiding Disciplinary Judge at the request of any party shall transmit to the Appellate Discipline Commission such parts of the original record as any party shall designate.

(k) Docketing the Appeal.

(1) Filing. At the time of the filing of the notice of appeal or the time of filing any documents with the Appellate Discipline Commission before the filing of the notice of appeal, the Appellate Discipline Commission shall enter the appeal upon the docket. The party appealing shall docket the case as nearly as possible under the title given to the action by the Hearing Board, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title. Unless necessary to show the relationship of the parties, such caption shall not include the names of parties not involved in the appeal.

(2) Leave To Proceed On Appeal In Forma Pauperis From Hearing Board To Appellate Discipline Commission. A party to an action before a Hearing Board who desires to proceed on appeal in forma pauperis shall file with the Presiding Disciplinary Judge a motion for leave so to proceed, together with an affidavit showing an inability to pay costs, a belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. If the motion is granted, the party may proceed without further application to the Appellate Discipline Commission and without prepayment of costs. If the motion is denied, the Presiding Disciplinary Judge shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action before the Presiding Disciplinary Judge in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the Presiding Disciplinary Judge shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the Presiding Disciplinary Judge shall state in writing the reasons for such certification or finding. A party proceeding under this subparagraph shall attach a copy of the Presiding Disciplinary Judge's order granting or denying leave to proceed in forma pauperis before the Hearing Board with the appendix to the notice of appeal.

(3) Filing Of The Record. Upon receipt of the record or papers authorized to be filed in lieu of the record under the provisions of subsections (j)(3) and (j)(6) of this rule following timely transmittal, the clerk of the Appellate Discipline Commission shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(l) General Provisions. Except as otherwise provided in these rules, and to the extent practicable, appeals shall be conducted in conformity with the general provisions found in C.A.R. 25, 26, 27, 28, 29, 31, 32, 34, 36, 38, 39, 42, and 45.

(m) Decision of the Appellate Discipline Commission. When it renders its decision, the Appellate Discipline Commission shall:

(1) Determine that the complaint is not proved and enter an order dismissing the complaint; or,

(2) Enter an order imposing private admonition, public censure, a definite period of suspension, or disbarment, or transferring the attorney to disability inactive status.

The Appellate Discipline Commission may also enter other appropriate orders including, without limitation, probation, and orders requiring the respondent to pay the costs of the disciplinary proceeding, to make restitution, or to refund money paid to the respondent.

(n) Decision is Final. The decision of the Appellate Discipline Commission is final upon the expiration of thirty days from the date of its opinion, unless a party files notice of appeal within thirty days with the Supreme Court as provided in C.R.C.P. 251.27. A petition for rehearing is not permitted.

RULE 251.27. PROCEEDINGS BEFORE THE SUPREME COURT

(a) Appellate Jurisdiction. Appellate review by the Supreme Court of every final decision of the Appellate Discipline Commission in which public censure, a period of suspension, disbarment, or transfer to disability inactive status is ordered or in which reinstatement or readmission is denied shall be allowed as provided by these rules.

(b) Standard of Review. All disciplinary and disability proceedings filed in the Supreme Court as herein provided shall be conducted in the name of the people of the State of Colorado and shall be prosecuted by the Regulation Counsel.

When proceedings are conducted before the Supreme Court as herein provided, the Supreme Court shall affirm the decision of the Appellate Discipline Commission unless it determines that, based on the record, the findings of fact of the Hearing Board are clearly erroneous or that the form of discipline imposed by the Appellate Discipline Commission (1) bears no relation to the conduct, (2) is manifestly excessive or insufficient in relation to the needs of the public, or (3) is otherwise unreasonable. The Supreme Court may conduct a de novo review of the conclusions of law.

In those cases where the Appellate Discipline Commission suspends or disbars the respondent or transfers the attorney to disability inactive status, the counsel for the Appellate Discipline Commission shall promptly file with the clerk of the Supreme Court the decision of the Appellate Discipline Commission, but only when a party files a notice of appeal as herein provided. The matter shall be docketed by the clerk of the Supreme Court as:

SUPREME COURT, STATE OF COLORADO
Case No.
ORIGINAL PROCEEDING IN DISCIPLINE [OR DISABILITY]

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

_____,
Respondent.

(c) Notice of Appeal from the Decision of the Appellate Discipline Commission.

(1) Notice. A notice of appeal from the decision of the Appellate Discipline Commission by any party shall be filed with the counsel for the Appellate Discipline Commission and the clerk of the Supreme Court and be served on the opposing party within thirty days after the date of the opinion of the Appellate Discipline Commission.

(2) Contents Of The Notice Of Appeal. The notice of appeal shall set forth:

(i) The case title with the appellant before the Supreme Court identified as such;

(ii) The Appellate Discipline Commission case number;

(iii) The date of the decision of the Appellate Discipline Commission;

(iv) A listing of the issues to be raised on appeal;

(v) An appendix containing a copy of the decision being appealed; and

(vi) A certificate of service and compliance with C.A.R. 25 showing service on counsel for the Appellate Discipline Commission and the opposing party.

(3) If a notice of appeal is filed, the appellant shall within ten days after filing the notice of appeal request the counsel for the Appellate Discipline Commission to transmit the record on appeal to the Supreme Court.

(4) The appellant shall have thirty days after the filing with the clerk of the Supreme Court of the record on appeal within which to file an opening brief. The appellee shall have thirty days after the filing of the appellant's opening brief within which to file an answer brief. The appellant shall have ten days after the filing of the answer brief within which to file a reply brief.

(d) Indigency. The Supreme Court may permit an attorney to proceed in forma pauperis pursuant to C.R.C.P. 251.26(k)(2).

(e) Oral Argument. Oral argument may be allowed at the discretion of the court in accordance with C.A.R. 34.

(f) Disposition. When proceedings are conducted before the Supreme Court as herein provided, the Supreme Court may resolve the matter by opinion or by order without opinion, as the court shall determine in its discretion.

RULE 251.28. REQUIRED ACTION AFTER DISBARMENT, SUSPENSION, OR TRANSFER TO DISABILITY INACTIVE STATUS

(a) Effective Date of Order — Winding Up Affairs. Orders imposing disbarment, a definite suspension, or an administrative suspension for failure to comply with rules governing attorney registration or continuing legal education, shall become effective thirty-one days after the date of entry of the decision or order, or at such other time as the Supreme Court, the Appellate Discipline Commission, a Hearing Board or the Presiding Disciplinary Judge may order. Orders imposing immediate suspension or transferring an attorney to disability inactive status shall become effective immediately upon the date of entry of the order, unless otherwise ordered by the Supreme Court, the Appellate Discipline Commission, a Hearing Board, or the Presiding Disciplinary Judge. After the entry of an order of disbarment, suspension, or transfer to disability inactive status the attorney may not accept any new retainer or employment as an attorney in any new case or legal matter; provided, however, that during any period between the date of entry of an order and its effective date the attorney may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the order.

(b) Notice to Clients in Pending Matters. An attorney against whom an order of disbarment, suspension, administrative suspension, or transfer to disability inactive status has been entered shall promptly notify in writing by certified mail each client whom the attorney represents in a matter still pending of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of such order, and advising such clients to seek legal services elsewhere. In addition, the attorney shall deliver to each client all papers and property to which the client is entitled. An attorney who has been suspended as provided in the rules

governing attorney registration or continuing legal education need not comply with the requirements of this subsection if the attorney has sought reinstatement as provided by the rules governing attorney registration or continuing legal education and reasonably believes that reinstatement will occur within fifteen days of the date of the order of suspension. If the attorney is not reinstated within those fifteen days, then the attorney must comply with this subsection.

(c) Notice to Parties in Litigation. An attorney against whom an order of disbarment, suspension, or transfer to disability inactive status is entered and who represents a client in a matter involving litigation or proceedings before an administrative body shall notify that client as required by subsection (b) of this rule, and shall recommend that the client promptly obtain substitute counsel. In addition, the attorney must notify in writing by certified mail the opposing counsel of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice to opposing counsel shall state the place of residence of the client of the attorney against whom the order was entered. An attorney who has been suspended as provided in the rules governing attorney registration or continuing legal education need not comply with the requirements of this subsection if the attorney has sought reinstatement as provided by the rules governing attorney registration or continuing legal education and reasonably believes that reinstatement will occur within fifteen days of the date of the order of suspension. If the attorney is not reinstated within those fifteen days, then the attorney must comply with this subsection.

If the client of the attorney against whom an order was entered does not obtain substitute counsel before the effective date of such order, the attorney must appear before the court or administrative body in which the proceeding is pending and move for leave to withdraw.

(d) Affidavit Filed with Supreme Court, Appellate Discipline Commission, or the Hearing Board. Within ten days after the effective date of the order of disbarment, suspension, or transfer to disability inactive status, or within such additional time as allowed by the Supreme Court, the Appellate Discipline Commission, a the Hearing Board, or the Presiding Disciplinary Judge, the attorney shall file with the Supreme Court, the Appellate Discipline Commission, or the Hearing Board an affidavit setting forth a list of all pending matters in which the attorney served as counsel and showing:

(1) That the attorney has fully complied with the provisions of the order and of this rule;

(2) That the attorney has notified every other jurisdiction before which the attorney is admitted to practice law of the order entered against the attorney; and

(3) That the attorney has served a copy of such affidavit upon counsel for the Appellate Discipline Commission, the Presiding Disciplinary Judge, and the Regulation Counsel.

Such affidavit shall also set forth the address of the attorney to which communications may thereafter be directed.

In addition, the attorney shall continue to file a registration statement in accordance with C.R.C.P. 227 for a period of five years following the effective date of

the order listing the attorney's residence or other address where communications may thereafter be directed to the attorney; provided, however, that the annual registration fee need not be paid during such five-year period unless and until the attorney is reinstated. Upon reinstatement the attorney shall pay the annual registration fee for the year in which reinstatement occurs.

(e) Public Notice of Order. The clerk of the Supreme Court, counsel for the Appellate Discipline Commission, or the Presiding Disciplinary Judge shall cause a notice of the disbarment, suspension, or transfer to disability inactive status entered against an attorney to be published in a newspaper or newspapers of general circulation in each judicial district of Colorado in which the attorney maintained an office for the practice of law.

(f) Notice of Order to the Courts. The Presiding Disciplinary Judge, the clerk of the Appellate Discipline Commission, or the clerk of the Supreme Court shall promptly transmit notice of the final order of disbarment, suspension, or transfer to disability inactive status to all courts in this state. The chief judge of each judicial district may make such further orders pursuant to C.R.C.P. 251.32(h) or otherwise as the Chief Judge deems necessary to protect the rights of clients of the attorney.

(g) Duty to Maintain Records. An attorney who has been disbarred, suspended, or transferred to disability inactive status shall keep and maintain records of any steps taken by the attorney pursuant to this rule as proof of compliance with this rule and with the order entered against the attorney. Failure to comply with this subsection without good cause shown shall constitute contempt of the Supreme Court. Proof of compliance with this subsection shall be a condition precedent to any petition for reinstatement or readmission.

RULE 251.29. READMISSION AND REINSTATEMENT AFTER DISCIPLINE

(a) Readmission After Disbarment. A disbarred attorney may not apply for readmission until at least eight years after the effective date of the order of disbarment. To be eligible for readmission the attorney must demonstrate the attorney's fitness to practice law and professional competence, and must successfully complete the written examination for admission to the Bar. The attorney must file a petition for readmission, properly verified, with the Presiding Disciplinary Judge, and furnish a copy to the Regulation Counsel. Thereafter, the petition shall be heard in procedures identical to those outlined by these rules governing hearings of complaints, except it is the attorney who must demonstrate by clear and convincing evidence the attorney's rehabilitation and full compliance with all applicable disciplinary orders and with all provisions of this Chapter. A Hearing Board shall consider every petition for readmission and shall enter an order granting or denying readmission.

(b) Reinstatement After Suspension. Unless otherwise provided by the Supreme Court, the Appellate Discipline Commission, a Hearing Board, or the Presiding Disciplinary Judge in the order of suspension, an attorney who has been suspended for a period of one year or less shall be reinstated by order of the Presiding Disciplinary Judge, provided the attorney files an affidavit with the Regulation

Counsel within 30 days prior to the expiration of the period of suspension, stating that the attorney has fully complied with the order of suspension and with all applicable provisions of this chapter. Upon receipt of the attorney's affidavit that has been timely filed, the Regulation Counsel shall notify the Presiding Disciplinary Judge of the attorney's compliance with this rule. Upon receipt of the notice, the Presiding Disciplinary Judge shall issue an order reinstating the attorney. The order shall become effective upon the expiration of the period of suspension. If the attorney fails to file the required affidavit within the time specified, the attorney must seek reinstatement pursuant to section (c) of this Rule; provided, however, that a suspended attorney who fails to file a timely affidavit may obtain leave of the Presiding Disciplinary Judge to file an affidavit upon showing that the attorney's failure to file the affidavit was the result of mistake, inadvertence, surprise, or excusable neglect. An attorney reinstated pursuant to this section shall not be required to show proof of rehabilitation.

An attorney who has been suspended for a period longer than one year must file a petition with the Presiding Disciplinary Judge for reinstatement and must prove by clear and convincing evidence that the attorney has been rehabilitated, has complied with all applicable disciplinary orders and with all provisions of this chapter, and is fit to practice law.

If the attorney remains suspended for five years or longer, reinstatement shall be conditioned upon certification by the state board of law examiners of the attorney's successful completion, after the expiration of the period of suspension, of the examination for admission to practice law and upon a showing by the attorney of such other proof of professional competence as the Supreme Court, the Appellate Discipline Commission, or a Hearing Board may require; provided, however, that filing a petition for reinstatement within five years of the effective date of the suspension of the attorney tolls the five-year period until such time as the Hearing Board rules on the petition.

(c) Petition for Reinstatement. Any attorney who has been suspended for a period longer than one year must file a petition with the Presiding Disciplinary Judge for an order of reinstatement if the attorney wishes to be reinstated to practice law. The petition must be properly verified and, when filed, a copy must be furnished to the Regulation Counsel.

The petition for reinstatement must set forth:

(1) The date the order of suspension was entered and the effective date thereof, and a copy of the disciplinary order or opinion;

(2) The date on which all prior petitions for reinstatement were filed and the disposition thereof;

(3) The facts other than passage of time and absence of additional misconduct upon which the petitioning attorney relies to establish that the attorney possesses all of the qualifications required of applicants for admission to the Bar of Colorado, fully considering the previous disciplinary action taken against the attorney;

(4) Evidence of compliance with all applicable disciplinary orders and with all provisions of this Chapter regarding actions required of suspended attorneys;

(5) Evidence of efforts to maintain professional competence through continuing legal education or otherwise during the period of suspension; and

(6) A statement of restitution made as ordered to any persons and the Colorado Attorneys' Fund for Client Protection and the source and amount of funds used to make restitution.

(d) Reinstatement Proceedings. Immediately upon receipt of a petition for reinstatement the Regulation Counsel shall conduct any investigation the Regulation Counsel deems necessary. The petitioner shall cooperate in any such investigation.

The Regulation Counsel shall submit an answer to the petition. Thereafter, the petition for reinstatement shall be reviewed in procedures identical to those outlined by these Rules governing hearings of complaints.

The Regulation Counsel may present evidence bearing upon the matters in issue, and the attorney seeking reinstatement shall bear the burden of proving by clear and convincing evidence the averments in the petition.

(e) Hearing Board Decision. In deciding whether to grant or deny the petition, the Hearing Board shall consider the attorney's past disciplinary record.

The Hearing Board may condition reinstatement upon compliance with any additional orders it deems appropriate, including but not limited to the payment of restitution to any person harmed by the misconduct for which the petitioner was suspended.

(f) Readmission and Reinstatement Proceedings Before Appellate Discipline Commission and the Supreme Court. An attorney whose petition for readmission or reinstatement is denied by the Hearing Board may proceed before the Appellate Discipline Commission in a manner identical to that outlined in C.R.C.P. 251.26. An attorney whose petition for readmission or reinstatement is denied by the Appellate Discipline Commission may proceed before the Supreme Court in a manner identical to that outlined in C.R.C.P. 251.27.

(g) Successive Petitions. No petition for reinstatement under this Rule shall be accepted within two years following a denial of a previous petition for reinstatement filed on behalf of the same person.

(h) Public Information. Notwithstanding the provisions of C.R.C.P. 251.31, and any Rule relating to the confidentiality of Bar admissions, petitions for reinstatement and applications for readmission shall be matters of public record.

Any hearing held under subsections (a) and (d) of this Rule shall be open to the public.

(i) Cost Deposit. Petitions for readmission or reinstatement under this Rule shall be accompanied by a cost deposit of $500 to be used to pay all expenses connected with the reinstatement proceedings. If such costs should exceed $500, the Supreme Court, the Appellate Discipline Commission, the Presiding Disciplinary Judge or the presiding officer of the Hearing Board may enter an order requiring the petitioner to supply an additional deposit. Upon the completion of proceedings held pursuant to this Rule an accounting shall be rendered and any portion of the cost deposit unexpended shall be returned to the petitioner.

(j) Reinstatement on Stipulation. Provided the petition for reinstatement under section (c) of this rule is filed within thirty days prior to the expiration of the period of suspension or ninety days if the period of suspension is longer than one year and provided the attorney seeking reinstatement and the Regulation Counsel, after any investigation the Regulation Counsel deems necessary, stipulate to reinstatement, the Regulation Counsel shall file with the Presiding Disciplinary Judge the stipulation containing such terms and conditions of reinstatement, if any, as may be agreed. Upon receipt of the stipulation, the Presiding Disciplinary Judge may approve the stipulation following an appearance by the attorney before the Presiding Disciplinary Judge and enter an order of reinstatement on the terms and conditions contained in the stipulation or reject the stipulation and order that a hearing be held by a Hearing Board as provided in section (d) of this rule.

[Amendment effective July 1, 1998.]

RULE 251.30. REINSTATEMENT AFTER TRANSFER TO DISABILITY INACTIVE STATUS

(a) Reinstatement Upon Termination of Disability. An attorney who has been transferred to disability inactive status pursuant to C.R.C.P. 251.23 shall be entitled to petition for reinstatement at such time as the Supreme Court, the Appellate Discipline Commission, or the Presiding Disciplinary Judge may direct. The petition shall be filed with the Presiding Disciplinary Judge, and a copy shall be furnished to the Regulation Counsel. Such petition for reinstatement shall be granted upon a showing by clear and convincing evidence that the attorney's disability has been removed and that the attorney is competent to resume the practice of law.

Upon receipt of a petition for reinstatement from disability inactive status, the Presiding Disciplinary Judge may take or direct such action as it deems necessary or proper to determine whether the attorney is again competent to practice law, including but not limited to the issuance of an order for an examination of the attorney by qualified medical experts designated by the Presiding Disciplinary Judge.

In addition, the Presiding Disciplinary Judge may direct that the petitioner reestablish proof of competence and learning in law, including certification by the state board of law examiners of the petitioner's successful completion of the examination for admission to practice law. If the petitioner remains on disability inactive status for five years or longer, reinstatement shall be conditioned upon certification by the state board of law examiners of the petitioner's successful completion, within the previous twelve months, of the examination for admission to practice law and upon a showing by the petitioner of such other proof of professional competence as the Supreme Court, the Appellate Discipline Commission, a Hearing Board, or the Presiding Disciplinary Judge may require; provided, however, that filing a petition for reinstatement within five years of the effective date of the attorney's transfer to disability inactive status tolls the five-year period until such time as the Presiding Disciplinary Judge rules on the petition.

When an attorney has been transferred to disability inactive status by an order in accordance with C.R.C.P. 251.23 and thereafter has been judicially declared to be

competent, the Presiding Disciplinary Judge may dispense with any further evidence of the attorney's return to competence and may direct that the attorney be reinstated upon such terms as are deemed proper and advisable; provided, however, that if a disciplinary proceeding conducted pursuant to these rules and pending against the petitioner was deferred upon the petitioner's transfer to disability inactive status, such proceeding shall be resumed and the petitioner shall not be reinstated pending the final disposition of such proceeding.

(b) Reinstatement Proceedings. The Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, order that reinstatement proceedings identical to those provided for by C.R.C.P. 251.29(d) be conducted.

(c) Compensation of Medical Experts. The Presiding Disciplinary Judge may fix the compensation to be paid to any medical expert appointed by the Presiding Disciplinary Judge pursuant to this rule. The Supreme Court may direct that such compensation be assessed as part of the costs of a proceeding held pursuant to this Rule and that it be paid as such in accordance with law.

(d) Waiver of Doctor-Patient Privilege. For the purposes of any proceedings conducted pursuant to this Rule, the filing of a petition for reinstatement by an attorney who has been transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege between the attorney and any psychiatrist, psychologist, physician, treating professional, or other medical expert who has examined or treated the attorney in connection with his disability. By order of the Supreme Court the attorney may be required to disclose the name of every psychiatrist, psychologist, physician, treating professional, or other medical expert who has examined or treated him in connection with his disability, and to furnish written consent for the disclosure by such persons of any information and records pertaining to such examination or treatment requested by the Supreme Court.

RULE 251.31. ACCESS TO INFORMATION CONCERNING PROCEEDINGS UNDER THESE RULES

(a) Availability of Information. Except as otherwise provided by these rules, all records, except the work product, deliberations and internal communications of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, the Hearing Boards, the Appellate Discipline Commission, and the Supreme Court shall be available to the public after the committee determines that reasonable cause to believe grounds for discipline exists and the Regulation Counsel files and serves a complaint as provided in C.R.C.P. 251.14, unless the complainant or the respondent obtains a protective order.

Unless otherwise ordered by the Supreme Court, the Presiding Disciplinary Judge, or the Appellate Discipline Commission, nothing in these rules shall prohibit the complaining witness, the attorney, or any other witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(b) Confidentiality. Before the filing and service of a complaint as provided in C.R.C.P. 251.14, the proceedings are confidential within the Office of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, the Appellate Discipline Commission and the Supreme Court, except that the pendency, subject matter, and status of an investigation may be disclosed by the Regulation Counsel if:

(1) The respondent has waived confidentiality;

(2) The proceeding is based upon allegations that include either the conviction of a crime or discipline imposed by a foreign jurisdiction;

(3) The proceeding is based on allegations that have become generally known to the public; or,

(4) There is a need to notify another person or organization, including the fund for client protection, to protect the public, the administration of justice, or the legal profession.

(c) Public Proceedings. When the committee determines that reasonable cause to believe that grounds for discipline exists and the Regulation Counsel files and serves a complaint as provided in C.R.C.P. 251.14, or when a petition for reinstatement or readmission is filed, the proceeding is public except for :

(1) The deliberations of the Presiding Disciplinary Judge, the Hearing Board, the Appellate Discipline Commission, or the Supreme Court; and,

(2) Information with respect to which a protective order has been issued.

(d) Proceedings Alleging Disability. In disability proceedings, all orders transferring an attorney to or from disability inactive status shall be matters of public record, but otherwise, disability proceedings shall be confidential and shall not be made public, except by order of the Supreme Court, the Appellate Discipline Commission, the Presiding Disciplinary Judge or a Hearing Board.

(e) Protective Orders. To protect the interests of a complainant, witness, third party, or respondent, the Presiding Disciplinary Judge, or a Hearing Board, may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(f) Disclosure to Law Firms. When the Regulation Counsel obtains an order transferring the attorney to disability inactive status or immediately suspending the attorney, or is authorized to file a complaint as provided by C.R.C.P. 251.12, the attorney shall make written disclosure to the attorney's current firm and, if different, to the attorney's law firm at the time of the act or omission giving rise to the matter, of the fact that the order has been obtained or that a disciplinary proceeding as provided for in these rules has been commenced. The disclosures shall be made within fifteen days of the date of the order or of the date the Regulation Counsel notified the attorney that a disciplinary proceeding has been commenced.

(g) Pending Investigations. Except as provided by subsection (b) of this rule or when the attorney waives confidentiality, the Regulation Counsel shall treat as confidential proceedings pending with the Regulation Counsel or before the committee.

(h) Cases Dismissed. Except as provided by subsection (b) of this rule or when the attorney waives confidentiality, the Regulation Counsel shall treat as confidential proceedings that have been dismissed.

(i) Private Admonitions. Any public proceeding in which a private admonition is imposed as provided by C.R.C.P. 251.6 shall be public, as follows: the fact that private admonition is imposed shall be public information, but the private admonition itself shall not be disclosed.

(j) Production of Records Pursuant to Subpoena. The Regulation Counsel and counsel for the Appellate Discipline Commission, pursuant to a valid subpoena, shall not permit access to files or records or furnish documents that are confidential as provided by these rules unless the Supreme Court orders otherwise. When counsel is permitted to disclose confidential documents contained in files or confidential records, a reasonable fee may be charged for identification of and photocopying the documents and records.

(k) Response to False or Misleading Statement. If public statements that are false or misleading are made about any disciplinary or disability case, the Regulation Counsel or Counsel for the Appellate Discipline Commission may disclose any information necessary to correct the false or misleading statements.

(l) Request for Nonpublic Information. A request for nonpublic information other than that authorized for disclosure under subsection (b) of this Rule shall be denied unless the request is from:

(1) An agency authorized to investigate the qualifications of persons for admission to practice law;

(2) An agency authorized to investigate the qualifications of persons for government employment;

(3) An attorney discipline enforcement agency;

(4) A criminal justice agency; or,

(5) An agency authorized to investigate the qualifications of judicial candidates. If a judicia
confidential information has been so disclosed.

(m) Notice to the Attorney. Except as provided in subsection (l)(5) of this Rule, if the Regulation Counsel or the Appellate Discipline Commission is permitted to provide nonpublic information requested, and if the attorney has not signed a waiver permitting the requesting agency to obtain nonpublic information, the attorney shall be notified in writing at his or her last known address of that information which has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the attorney that the information shall be released at the end of twenty days following mailing of the notice unless the attorney objects to the disclosure. If the attorney timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains an order from the Supreme Court requiring its release.

(n) Release Without Notice. If an agency otherwise authorized by subsection (l) of this rule has not obtained a waiver from the attorney to obtain nonpublic information, and requests that the information be released without giving notice to the attorney, the requesting agency shall certify that:

(1) The request is made in furtherance of an ongoing investigation into misconduct by the attorney;

(2) The information is essential to that investigation; and

(3) Disclosure of the existence of the investigation to the attorney would seriously prejudice that investigation.

(o) Notice to National Regulatory Data Bank. The Regulation Counsel shall transmit notice of all public discipline imposed against an attorney, transfers to or from disability inactive status, and reinstatements to the National Regulatory Data Bank maintained by the American Bar Association.

(p) Duty of Officials and Employees. All officials and employees within the Office of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, the Appellate Discipline Commission, and the Supreme Court shall conduct themselves so as to maintain the confidentiality mandated by this rule.

(q) Evidence of Crime. Nothing in these rules except for the admission of past misconduct protected by C.R.C.P. 251.13(j) shall be construed to preclude any person from giving information or testimony to authorities authorized to investigate criminal activity.

RULE 251.32. GENERAL PROVISIONS

(a) Quorum. A majority of the members of the committee, a Hearing Board, or the Appellate Discipline Commission shall constitute a quorum of such body, and the action of a majority of those present and comprising such a quorum shall be the action of the committee, Hearing Board, or the Appellate Discipline Commission.

(b) Notice and Service of Process. Except as may be otherwise provided by these Rules or by order of the Supreme Court, notice shall be in writing, and the giving of notice and service of process shall be sufficient when made either personally upon the attorney or by certified mail, sent to the attorney at both the attorney's last known address as provided by the attorney pursuant to C.R.C.P. 227 and such later address as may be known to the person effecting service.

If the attorney is not licensed to practice law in this state but was specially admitted by a court of this state for a particular proceeding, notice and service shall be effected as provided in this subsection, and if service is by certified mail, it shall be made to the attorney's last known address.

(c) Number of Copies Filed. Unless otherwise provided in these rules, in all cases where a party files documents with the Supreme Court, the Appellate Discipline Commission, the Presiding Disciplinary Judge or a Hearing Board, the committee, or the Regulation Counsel, an original and three copies must be filed.

(d) Costs.

(1) Disciplinary Proceedings. In all cases where discipline is imposed by the Hearing Board, it may assess against the respondent all or any part of the costs incurred in connection with the disciplinary proceedings. If the Supreme Court or the Appellate Discipline Commission imposes discipline, the Supreme Court or the Appellate Discipline Commission may also assess against the respondent all or any part

of the costs of the proceedings. If the committee imposes discipline as provided by these rules, it may also assess against the respondent all or any part of the costs of the proceedings.

(2) Reinstatement and Readmission Proceedings After Discipline. An attorney who petitions for reinstatement from a suspension or readmission after disbarment must bear the cost of such proceedings, as required by C.R.C.P. 251.29(i).

(3) Disability Proceedings. The Presiding Disciplinary Judge, a Hearing Board, the Appellate Discipline Commission, or the Supreme Court, in its discretion, may order the attorney to bear the cost of all or any part of the disability proceedings, including the cost of any examinations ordered.

(4) Reinstatement Proceedings After Transfer to Disability Inactive Status. The Presiding Disciplinary Judge, a Hearing Board, the Appellate Discipline Commission, or the Supreme Court, in its discretion, may order an attorney who petitions for reinstatement after transfer to disability inactive status to pay the cost of all or any part of the proceedings conducted pursuant to C.R.C.P. 251.30, including the cost of any examinations ordered.

(e) Immunity. Testimony given in disciplinary proceedings or communications relating to attorney misconduct, lack of professionalism or disability made to the Supreme Court, the Appellate Discipline Commission, counsel for the Appellate Discipline Commission, the committee, the Regulation Counsel, the Presiding Disciplinary Judge, members of the Hearing Board, mediators acting pursuant to C.R.C.P. 251.3(c)(11), or monitors enlisted to assist with probation or diversion, as authorized by C.R.C.P. 251.13, shall be absolutely privileged and no lawsuit shall be predicated thereon. If the matter is confidential as provided in these rules, and if the person who testified or communicated does not maintain confidentiality, then the testimony or communications shall be qualifiedly privileged, such that an action may lie against the person whose testimony or communications were made in bad faith or with reckless disregard of their truth or falsity. Persons performing official duties under the provisions of this Chapter, including but not limited to members of the Appellate Discipline Commission, counsel for the Appellate Discipline Commission and staff, the Presiding Disciplinary Judge and staff, members of the Hearing Board, the committee, the Regulation Counsel and staff, mediators appointed by the Supreme Court pursuant to C.R.C.P. 251.3(c)(11), monitors enlisted to assist with diversion as authorized by C.R.C.P. 251.13, members of the Bar working in connection with disciplinary proceedings or under the direction of the Appellate Discipline Commission, the Presiding Disciplinary Judge, the Committee, and health care professionals working in connection with disciplinary proceedings shall be immune from suit for all conduct in the course of their official duties.

(f) Termination of Proceedings. No disciplinary or disability proceeding may be terminated except as provided by these Rules.

(g) Pending Litigation. All disciplinary proceedings which involve complaints with material allegations substantially similar to the material allegations of a criminal prosecution pending against the respondent may in the discretion of the committee, the

Presiding Disciplinary Judge, a Hearing Board, or the Appellate Discipline Commission be deferred until the conclusion of such prosecution.

Disciplinary proceedings involving complaints with material allegations which are substantially similar to those made against the respondent in pending civil litigation may in the discretion of the committee, the Presiding Disciplinary Judge, a Hearing Board, or the Appellate Discipline Commission be deferred until the conclusion of such litigation. If the disciplinary proceeding is deferred pending the conclusion of civil litigation, the respondent shall make all reasonable efforts to obtain a prompt trial and final disposition of the pending litigation. If the respondent fails to take steps to assure a prompt disposition of the civil litigation, the disciplinary proceeding may be immediately resumed.

The acquittal of a respondent on criminal charges or a verdict or judgment in the respondent's favor in civil litigation involving substantially similar material allegations shall not alone justify the termination of disciplinary proceedings pending against the respondent upon the same material allegations.

(h) Protective Appointment of Counsel. When an attorney has been transferred to disability inactive status; or when an attorney has disappeared; or when an attorney has died; or when an attorney has been suspended or disbarred and there is evidence that the attorney has not complied with the provisions of C.R.C.P. 251.28, and no partner, executor, or other responsible party capable of conducting the attorney's affairs is known to exist, the chief judge of any judicial district in which the attorney maintained his office, upon the request of the Regulation Counsel, shall appoint legal counsel to inventory the files of the attorney in question and to take any steps necessary to protect the interests of the attorney in question and the attorney's clients. Counsel appointed pursuant to this Rule shall not disclose any information contained in the files so inventoried without the consent of the client to whom such files relate, except as necessary to carry out the order of the court that appointed the counsel to make such inventory.

(i) Statute of Limitations. A request for investigation against an attorney shall be filed within five years of the time that the complainant discovers or reasonably should have discovered the misconduct. There shall be no statute of limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment by the attorney.

RULE 251.33. EXPUNCTION OF RECORDS

(a) Expunction — Self-Executing. Except for records relating to proceedings that have become public pursuant to C.R.C.P. 251.31, all records relating to proceedings conducted pursuant to these Rules, which proceedings were dismissed, shall be expunged from the files of the committee, the Presiding Disciplinary Judge, the Appellate Discipline Commission, and Regulation Counsel three years after the end of the year in which dismissal occurred.

(b) Definition. The terms "expunge" and "expunction" shall mean the destruction of all records or other evidence of any type, including but not limited to,

the request for investigation, the response, Investigator's notes, and the report of investigation.

(c) Notice to Respondent. If proceedings conducted pursuant to these Rules (or their predecessor) were commenced, the attorney in question shall be given prompt written notice of the expunction.

(d) Effect of Expunction. After expunction, the proceedings shall be deemed never to have occurred. Upon either general or specific inquiry concerning the existence of proceedings which have been expunged, the committee or the Regulation Counsel shall respond by stating that no record of the proceedings exists. The attorney in question may properly respond to any general inquiry about proceedings which have been expunged by stating that no record of the proceedings exists. The attorney in question may properly respond to any inquiry requiring reference to a specific proceeding which has been expunged by stating only that the proceeding was dismissed and that the record of the proceeding was expunged pursuant to this Rule. After a response as provided in this Rule is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged need be made.

(e) Retention of Records. Upon written application to the committee, for good cause and with written notice to the attorney in question and opportunity to such attorney to be heard, the Regulation Counsel may request that records which would otherwise be expunged under this Rule be retained for such additional period of time not to exceed three years as the committee deems appropriate. The Regulation Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted.

RULE 251.34. ADVISORY COMMITTEE

(a) Advisory Committee. The Supreme Court Advisory Committee is hereby established. The Advisory Committee shall serve as a permanent committee of the Supreme Court.

(1) Members. The Advisory Committee shall be composed of the chair and vice-chair of the Attorney Regulation Committee and the chair of the Appellate Discipline Commission. Two Supreme Court justices who serve as liaison to the attorney regulation system, two members of the Bar, and a member of the public shall also serve as members of the Advisory Committee. Diversity shall be a consideration in making the appointments.

The members of the Advisory Committee shall serve at the pleasure of the Supreme Court and may be dismissed from the Advisory Committee at any time by order of the Supreme Court. A member of the Advisory Committee may resign at any time.

(2) Vacancy. In the event of a vacancy on the Advisory Committee, the Supreme Court shall fill the vacancy to serve at the pleasure of the Supreme Court.

(3) Chair. The court shall appoint a member of the Advisory Committee to serve as its chair. The chair shall exercise overall supervisory control of the Advisory Committee.

(4) Reimbursement Of Advisory Committee Members. The members of the Advisory Committee shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) Powers and Duties of the Advisory Committee. The Advisory Committee shall be authorized and empowered to act in accordance with these Rules and to:

(1) Assist the Supreme Court in making appointments as described in these Rules;

(2) Oversee the management committee in the coordination of administrative matters within all programs of the attorney regulation system. The management committee shall be composed of the Clerk of the Supreme Court, who shall serve as its chair, the Regulation Counsel, and counsel for the Appellate Discipline Commission. The management committee's functions are limited to considering administrative matters and staffing the Advisory Committee;

(3) Review the productivity, effectiveness, and efficiency of the Court's attorney regulation system including that of the Presiding Disciplinary Judge and peer assistance programs and report its findings to the Supreme Court;

(4) Review the resources of the system for the purpose of making recommendations to the Supreme Court;

(5) Periodically report to the Supreme Court on the operation of the Advisory Committee;

(6) Recommend to the Supreme Court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings;

(7) Adopt such practices as may from time to time become necessary to govern the internal operation of the Advisory Committee as approved by the Supreme Court.

(8) Assist the Supreme Court in such matters as the court may direct; and

(9) Select an administering entity; and

(10) Select one or more peer health assistance programs as designated providers.

The administering entity referred to herein shall be a qualified non-profit entity that is qualified under Section 501(c) of the federal "Internal Revenue Code of 1986," as amended. The administering entity shall distribute the funds collected, less expenses, to the approved designated provider, as directed by the Advisory Committee; and provide an annual accounting to the Advisory Committee of all amounts collected, expenses incurred, and amounts disbursed. The administering entity may recover the actual administrative costs incurred in performing its duties under this rule in an amount not to exceed two percent of the total amount collected.

To be eligible for designation by the Advisory Committee, an attorneys' peer health assistance program shall provide for the education of attorneys with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary; offer assistance to an attorney in identifying physical, emotional, or psychological problems; evaluate the extent of physical, emotional, or psychological problems and refer the attorney for appropriate treatment;

monitor the status of an attorney who has been referred for treatment; provide counseling and support for the attorney and for the family of any attorney referred for treatment; agree to receive referrals from the Advisory Committee or the Regulation Counsel; and agree to make their services available to all licensed Colorado attorneys.

Nothing in this rule shall be construed to create any liability on the Advisory Committee, the administering entity, or the Supreme Court for the actions of the Advisory Committee in funding peer assistance programs, and no civil action may be brought or maintained against the committee, the administering entity, the committee-selected peer assistance program, or the supreme court for an injury alleged to have been the result of the activities of any committee-selected peer assistance program or the result of an act or omission of an attorney participating in or referred by a committee-selected peer assistant program.

(10) Adopt such practices as may from time to time become necessary to govern the internal operation of the Advisory Committee as approved by the Supreme Court.
[Amendment effective July 1, 1998.]

RULE 252. COLORADO RULES OF PROCEDURE REGARDING ATTORNEYS' FUND FOR CLIENT PROTECTION

RULE 252.1. PURPOSE AND SCOPE

(a) The purpose of the Colorado Attorneys' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by mitigating losses caused by the dishonest conduct of attorneys admitted and licensed to practice law in the courts of this state occurring in the course of attorney-client or court-appointed fiduciary relationship between the attorney and the claimant.

RULE 252.2. ESTABLISHMENT

(a) There is established the Colorado Attorneys' Fund for Client Protection to mitigate claimants for losses caused by dishonest conduct committed by attorneys admitted to practice in this state.

(b) There is established, under the supervision of the Supreme Court of Colorado, the Colorado Attorneys' Fund for Client Protection Board of Trustees, which shall receive, hold, manage and disburse from the fund such funds as may from time to time be allocated to the fund.

(c) These Rules shall be effective for claims filed with the board on or after July 1, 1999, and the Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.

RULE 252.3. FUNDING

(a) The Supreme Court shall provide for funding by the attorneys of the state through the attorney registration fee established in C.R.C.P. 227(A)(1)(a) and (c).

(b) An attorney whose dishonest conduct has resulted in any payment by the fund to a claimant shall make restitution to the fund including interest and the expense incurred by the fund in processing the claim and pursuing restitution. An attorney's failure to make full restitution may be cause for additional discipline or denial of an application for reinstatement or readmission.

RULE 252.4. FUNDS

All money or other assets of the fund shall constitute a trust and shall be held in the name of the fund, subject to the direction of the Board.

RULE 252.5. COMPOSITION AND OFFICERS OF THE BOARD

(a) The Board of Trustees shall consist of five attorneys and two public members appointed by the Supreme Court for initial terms as follows:

(1) Two attorneys for one year;
(2) One public member for two years;
(3) Two attorneys for two years;
(4) One public member for three years; and
(5) One attorney for three years.

Subsequent appointments shall be for a term of three years. Members of the Board shall be eligible to serve no more than two consecutive terms.

(b) Trustees shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

(c) Vacancies shall be filled by appointment by the Supreme Court for any unexpired terms.

(d) The Board shall select a chairperson, secretary, treasurer and such other officers as the Board deems appropriate.

(e) The treasurer and any other officer designated to endorse and execute checks and other financial instruments of the fund shall be bonded in such manner and amount as the Board shall determine.

RULE 252.6. BOARD MEETINGS

(a) The Board shall meet as frequently as necessary to conduct the business of the fund and to process claims in a timely manner.

(b) The chairperson shall call a meeting at any reasonable time or upon the request of at least two trustees.

(c) A quorum for any meeting of the Board shall be four trustees.

(d) Minutes of meetings shall be taken and permanently maintained by the secretary.

RULE 252.7. DUTIES AND RESPONSIBILITIES OF THE BOARD

(a) The Board shall have the following duties and responsibilities:

(1) To receive, and in its sole discretion evaluate, investigate, determine and pay claims;

(2) To promulgate rules of procedure not inconsistent with these rules;

(3) In its discretion, if warranted and prudent, to fix a maximum amount of payment per claim payable from the fund and/or of the aggregate amount which may be paid because of the dishonest conduct of any one attorney;

(4) To solicit and receive funds from donations and other sources in addition to annual attorney registration fees;

(5) To invest prudently such portions of the funds as may not be needed currently to pay losses;

(6) To provide a full report annually to the Supreme Court and to make other reports as necessary;

(7) To publicize its activities to the public and the Bar;

(8) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary;

(9) To pursue claims for restitution to which the Fund is entitled;

(10) To engage in studies and programs for client protection and prevention of dishonest conduct by attorneys; and

(11) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the fund.

(b) Regulation Counsel shall assist the Board in the effective and efficient performance of its functions, including but not limited to investigation of claims.

RULE 252.8. CONFLICT OF INTEREST

(a) A Trustee who has or has had an attorney-client relationship or a financial relationship with a claimant or attorney who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or attorney.

(b) A Trustee with a past or present relationship, other than as provided in section (a), with a claimant or the attorney who is the subject of the claim, shall either voluntarily abstain from participating or disclose such relationship to the Board and, if the Board deems appropriate, that Trustee shall not participate in any proceeding relating to such claim.

RULE 252.9. IMMUNITY

The Trustees, employees and agents of the Board shall be absolutely immune from civil liability for all acts performed in the course of their official duties. Absolute immunity shall also extend to claimants and attorneys who assist claimants for all communications to the fund.

RULE 252.10. ELIGIBLE CLAIMS

(a) The loss must be caused by the dishonest conduct of the attorney and shall have arisen out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the attorney and the claimant.

(b) The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the attorney.

(c) As used in these rules, "dishonest conduct" means one or more wrongful acts committed by an attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct; and

(2) The borrowing of money from a client without intention to repay it, or with disregard of the attorney's inability or reasonably anticipated inability to repay it.

(d) Except as provided by section (e) of this rule, the following losses shall not be eligible:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of attorney(s) causing the losses;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the attorney;

(5) Losses incurred by any governmental entity or agency;

(6) Losses arising from the activities of an attorney not having an office or residence in Colorado where those activities do not have substantial contacts with Colorado; and,

(7) Interest on the loss or any type of consequential damages or punitive damages or costs.

(e) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim which would otherwise be excluded under these rules.

(f) In cases where it appears that there will be unjust enrichment or multiple recovery or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

RULE 252.11. PROCEDURES FOR FILING CLAIMS

(a) The Board shall prepare and approve a form for claiming reimbursement and shall designate the place and manner for filing a claim.

(b) The claimant must agree to cooperate with the Board in reference to the claim and in reference to civil actions which may be brought in the name of the Board pursuant to a subrogation and assignment clause which shall also be contained within the claim;

(c) The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence to support the claim.

RULE 252.12. PROCEDURES FOR PROCESSING CLAIMS

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that, unless additional facts to support eligibility are submitted to the Fund, the claim file shall be closed.

(b) A certified copy of an order disciplining an attorney for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be conclusive evidence that the attorney committed such dishonest act or conduct.

(c) Regulation Counsel shall be promptly notified of the claim and requested to furnish a report of its investigation, if any, on the matter to the Board. The Regulation Counsel shall allow the Fund's representatives access to its records during an investigation of a claim. The Board shall evaluate whether the investigation is complete and determine whether the Board should conduct additional investigation or await the conclusion of any disciplinary investigation or proceeding involving the same act or conduct that is alleged in the claim.

(d) The Board may conduct its own investigation when it deems it appropriate and may seek and obtain the assistance of the Regulation Counsel, the Attorney Regulation Committee, the Board of Law Examiners, the Board of Continuing Legal Education, and the Attorney Registration Office, irrespective of any confidentiality requirements of those offices, subject to rule 252.15.

(e) The Board or an individual trustee or counsel designated to act on behalf of the trustees, upon determining that any person has knowledge or is in possession or custody of books, papers, documents or other objects relevant to the disposition of a claim, may issue a subpoena requiring such person to appear and testify or to produce such books, papers, documents or other objects before the Board or counsel designated to act on behalf of the trustees, at the time and place specified therein. Subpoenas shall be subject to the provisions of C.R.C.P. 45.

(f) If any person, without adequate excuse, shall fail to obey a subpoena, the Board or an individual trustee or counsel designated to act on their behalf, may file with the Supreme Court a verified statement setting forth the facts establishing such disobedience, and the Court may then, in its discretion, institute contempt proceedings. If such person is found guilty of contempt, the Court may compel payment of the costs of the contempt proceedings to be taxed by the Court.

(g) If, by the completion of the investigation, the attorney or the attorney's representative has not been notified of the claim and given an opportunity to respond to the claim, a copy of the claim shall be served upon the attorney, or the attorney's representative. The attorney or representative shall have 20 days in which to respond.

(h) The Board may request that testimony be presented to complete the record. Upon request, the claimant or attorney, or their representatives, will be given an opportunity to be heard.

(I) The Board may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline or other purposes.

(j) When the record is complete, the claim shall be determined on the basis of all available evidence, and notice shall be given to the claimant and the attorney of the Board's determination and the reasons therefor. The approval or denial of a claim shall require the affirmative votes of at least four trustees. Payment of a claim may be made in a lump sum or in installments in the discretion of the Board.

(k) Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings.

(l) The Board shall determine the order and manner of payment and pay all approved claims, but unless the Board directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the claim if the attorney disputes the pertinent allegations.

(m) Both the claimant and the attorney shall be advised of the status of the Board's consideration of the claim and shall be informed of the final determination.

(n) The claimant may request in writing reconsideration within 30 days of the denial or determination of the amount of a claim. If the claimant fails to make a request or the request is denied, the decision of the Board is final.

RULE 252.13. REIMBURSEMENT FROM FUND IS A MATTER OF GRACE

No person shall have the legal right to payment from the fund whether as claimant, third-party beneficiary, or otherwise. The decisions and actions of the Board of Trustees are not reviewable on any ground in any court or other tribunal.

RULE 252.14. RESTITUTION AND SUBROGATION

(a) An attorney whose dishonest conduct results in payment to a claimant shall be liable to the Fund for restitution; and the Board may bring such action as it deems advisable to enforce such obligation, including costs of such action.

(b) As a condition of payment, a claimant shall be required to provide the fund with a transfer of the claimant's rights up to the amount paid by the Fund against the

attorney, the attorney's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the Board as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unpaid losses.

(d) In the event that the claimant commences an action to recover unpaid losses against the attorney or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the Board undertakes to achieve restitution for the Fund.

RULE 252.15. CONFIDENTIALITY

(a) The Board and its agents shall keep claims, proceedings and reports involving claims for reimbursement confidential until the Board authorizes reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement, and the name of the attorney. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

(b) This rule shall not be construed to deny access to relevant information by the Regulation Counsel or other professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of the attorney or the claimant.

RULE 252.16. COMPENSATION FOR REPRESENTING CLAIMANTS

No attorney shall accept any payment for prosecuting a claim to the Fund on behalf of a claimant, unless such payment has been approved by the Board.