

RULE CHANGE 2022(17)
UNAUTHORIZED PRACTICE OF LAW RULES

Rules 228, 229, 230, 231, 232, 232.1, 232.2, 232.3, 232.4, 232.5, 232.6, 232.7, 232.8, 232.9, 232.10, 232.11, 232.12, 232.13, 232.14, 232.15, 232.16, 232.17, 232.18, 232.19, 232.20, 232.21, 232.22, 232.23, 232.24, 232.25, 232.26, 232.27, 232.28, 232.29, 232.30, 234, 235, 236, 237, 238, 239, 240, 240.1, and 240.2

Rule 228. ~~Jurisdiction~~Reserved.

~~The Supreme Court of Colorado, in the exercise of its exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Colorado, adopts the following rules, which shall govern proceedings concerning the unauthorized practice of law.~~

Rule 229. ~~Legal Regulation Committee~~ Reserved.

~~(a) Legal Regulation Committee. The Legal Regulation Committee (Regulation Committee) is a permanent committee of the Supreme Court. See C.R.C.P. 251.2.~~

~~(b) Powers and Duties. In addition to the powers and duties set forth in C.R.C.P. 251.2, the Regulation Committee is authorized and empowered to act in accordance with this rule by:~~

~~(1) Requesting investigations as authorized by Chapter 19, Unauthorized Practice of Law Rules (“these Rules”);~~

~~(2) Determining whether to authorize filing petitions for injunction or contempt, to authorize entry into stipulations with respondents, to place proceedings in abeyance, to direct further investigation, or to dismiss proceedings with or without conditions, or to make other determinations as authorized by these Rules;~~

~~(3) Reviewing dismissals by the Regulation Counsel under these Rules; and~~

~~(4) Recommending to the Advisory Committee proposed changes to these Rules.~~

~~(c) Disqualification. Regulation Committee members must refrain from taking part in a proceeding under this rule in which a judge, similarly situated, would be required to abstain. A Regulation Committee member must also refrain from making determinations under C.R.C.P. 232.5 where a lawyer associated with the member’s law firm is in any way connected with the matter pending before the Regulation Committee.~~

~~(d) Special Counsel. If the Regulation Counsel has been disqualified or if other circumstances so warrant, the Regulation Committee or its Chair may appoint special counsel to conduct or assist with investigations and prosecutions in accordance with these Rules.~~

Rule 230. ~~Committee Jurisdiction~~Reserved.

~~(a) The Committee shall have jurisdiction over and inquire into and consider complaints or reports made by any person, including Regulation Counsel, or other entities alleging the unauthorized practice of law. Moreover, the Committee, on its own motion, may inquire into any matter pertaining to the unauthorized practice of law.~~

~~(b) Nothing contained in these rules shall be construed as a limitation upon the authority or jurisdiction of any court or judge thereof to punish for contempt any person or legal entity not having a license from this court who practices law or attempts or purports to practice law in any matter which comes within the jurisdiction of that court nor shall these rules be construed as a limitation upon any civil remedy or criminal proceeding which may otherwise exist with respect to the unauthorized practice of law.~~

Rule 231. ~~Regulation Counsel; Duties and Powers~~ Reserved.

~~Regulation Counsel, appointed by the Supreme Court pursuant to C.R.C.P. 251.3, shall have the following duties and powers, in addition to those set forth in C.R.C.P. 251.3:~~

~~(a)(1) To investigate and to assist with the investigation of all matters within the jurisdiction of the Committee, upon the request and at the direction of members of the Committee; to dismiss allegations as provided in C.R.C.P. 232.5(e); and to report to the Committee as provided in C.R.C.P. 232.5(d).~~

~~(2) To prepare and prosecute, or assist in the preparation and prosecution of, civil injunction proceedings as provided in C.R.C.P. 234 to 237. (3) To prepare and prosecute, or assist in the preparation and prosecution of, contempt proceedings as provided in C.R.C.P. 238 and 239.~~

~~(b) To maintain records in the office of the Committee, in an appropriately cataloged manner, of all matters coming within the jurisdiction of the Committee.~~

~~(c) To provide facilities for the administration of proceedings under these rules and for receiving and filing all requests of investigation and all complaints concerning matters within the jurisdiction of the Committee.~~

~~(d) To employ such staff, including investigative and clerical personnel, subject to approval of the Committee, as may be necessary to carry out the duties under these rules.~~

~~(e) To perform such other duties as the Chair or the Supreme Court may require.~~

Rule 232. Rules Governing Unauthorized Practice of Law Proceedings

Preamble

In prohibiting the unauthorized practice of law in Colorado in the public interest, the supreme court's regulatory and policy objectives include:

(1) Protecting the public by ensuring that persons who assist others in their legal affairs have sufficient competence to avoid harming the liberty interests and property rights of those they assist;

(2) Safeguarding the system of justice and avoiding the waste of limited judicial resources by ensuring that only qualified persons assist others before tribunals;

(3) Educating the public about the activities that constitute the unauthorized practice of law; and

(4) Providing the public with access to the justice system at a reasonable cost by permitting nonlawyers to provide legal representation of limited scope in certain circumstances.

Part I. Terminology and Jurisdiction

Rule 232.1. Terminology

For purposes of this rule, the following definitions and abbreviations apply:

“Advisory Committee” refers to the Supreme Court Advisory Committee on the Practice of Law, as identified in C.R.C.P. 232.4.

“Civil injunction” and derivatives of that term generally refer to a proceeding brought under C.R.C.P. 232.14 through C.R.C.P. 232.20 to enjoin a respondent from the unauthorized practice of law.

“Complaining witness” means a person who submits a request for investigation to the Regulation Counsel under C.R.C.P. 232.9(a)(1).

“Contempt” refers to a proceeding brought under C.R.C.P. 232.22 through C.R.C.P. 232.24 to hold in contempt a respondent who is alleged to have engaged in the unauthorized practice of law in contravention of a previous injunction.

“Costs” are those costs made available in civil cases and may include travel expenses incurred by witnesses, fees for court reporters, and fees for expert witnesses. “Costs” may also include expenses incurred during an investigation.

“Exercise of legal judgment” and derivatives of that phrase mean the application of actual or purported knowledge or understanding of the law, beyond that of the ordinary citizen, to a particular set of facts.

“Expunge” and “expungement” refer to the destruction of all files, records, and other items of any type in a given proceeding.

“Including” means including but not limited to.

“Injunction,” “enjoin,” and derivatives of those terms refer to a court order prohibiting a nonlawyer from engaging in the unauthorized practice of law.

“Mail” and “mailing” means the sending of a document or other item through the U.S. Postal Service, through a commercial delivery service, or by electronic means.

“Notice,” “notify,” and derivatives of those terms are addressed in C.R.C.P. 232.29.

“Nonlawyer” means a person who is not licensed, authorized, or otherwise certified to practice law in any jurisdiction in the United States, including a disbarred lawyer.

“Person” includes an individual, a trust, or an entity, which includes a firm, association, corporation, partnership, or limited liability company.

“Proceeding” means any investigative or judicial proceeding under C.R.C.P. 232, including preliminary investigations under C.R.C.P. 232.9.

“Regulation Committee” refers to the Legal Regulation Committee, as identified in C.R.C.P. 232.5.

“Regulation Counsel” refers to the Attorney Regulation Counsel, as identified in C.R.C.P. 232.6.

“Respondent” means a nonlawyer in a civil injunctive or contempt proceeding under this rule.

“Restitution” means the return of fees, money, or other things of value that were paid or entrusted to a nonlawyer in exchange for performing or promising to perform prohibited UPL activities.

“Supreme court” refers to the Colorado Supreme Court.

“This rule” means all sections of C.R.C.P. 232.

“This section” means a single section of this rule, for example C.R.C.P. 232.2.

“This subsection” means a portion of a section of this rule, for example C.R.C.P. 232.2(a) or C.R.C.P. 232.2(b)(1).

“Tribunal” means a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when, after the party or parties are given the opportunity to present evidence or legal argument, a neutral official renders a binding legal judgment directly affecting a party’s interests in a particular matter.

“UPL” means “unauthorized practice of law,” as set forth in C.R.C.P. 232.2(b)-(c).

Rule 232.2. Jurisdiction and Prohibited UPL Activities

(a) Jurisdiction. Jurisdiction exists under this rule over any nonlawyer who engages or attempts to engage in the practice of law in Colorado. The practice of law occurs “in Colorado” if the nonlawyer takes the actions at issue within the geographic boundaries of Colorado, if the recipient of legal services was in Colorado at the time of the actions, or if the actions involve a tribunal located in Colorado.

(b) Prohibition on the Unauthorized Practice of Law. Unless authorized by supreme court case law, federal law, tribal law, or other valid law, a nonlawyer may not engage in the practice of law. “Practice of law” includes the following:

(1) Protecting, defending, or enforcing the legal rights or duties of another person;

(2) Representing another person before any tribunal or, on behalf of another person, drafting pleadings or other papers for any proceeding before any tribunal;

(3) Counseling, advising, or assisting another person in connection with that person’s legal rights or duties;

(4) Exercising legal judgment in preparing legal documents for another person; and

(5) Any other activity the supreme court determines to constitute the practice of law.

(c) Prohibited Activities. The unauthorized practice of law by a nonlawyer includes the following:

(1) Exercising legal judgment to advise another person about the legal effect of a proposed action or decision;

(2) Exercising legal judgment to advise another person about legal remedies or possible courses of legal action available to that person;

(3) Exercising legal judgment to select a legal document for another person or to prepare a legal document for another person, other than solely as a typist or scrivener;

(4) Exercising legal judgment to represent or advocate for another person in a negotiation, settlement conference, mediation, or alternative dispute resolution proceeding;

(5) Exercising legal judgment to represent or advocate for another person in a hearing, trial, or other legal proceeding before a tribunal;

(6) Advertising or holding oneself out, either directly or impliedly, as an attorney, a lawyer, “Esquire,” a legal consultant, or a legal advocate, or in any other manner that conveys capability or authorization to provide unsupervised services involving the exercise of legal judgment;

(7) Owning or controlling a for-profit entity that is not authorized under C.R.C.P. 265 and that provides services involving the exercise of legal judgment;

(8) Soliciting any fees for services involving the exercise of legal judgment;

(9) Owning or controlling a website, application, software, bot, or other technology that interactively offers or provides services involving the exercise of legal judgment; and

(10) Performing any other activity that constitutes the practice of law as set forth in subsection (b) above.

(d) Invalid Defenses. Invalid defenses to civil injunctive or contempt claims under this rule include:

(1) That the respondent was acting pursuant to a power of attorney;

(2) That the respondent did not charge or receive a fee; and

(3) That the respondent, in the course of engaging in an activity prohibited under subsections (c)(1)-(5) or (7)-(10) above, did not hold herself or himself out as authorized to practice law.

(e) No Implied Limitation on Authority or Jurisdiction. Nothing in this rule shall be construed as a limitation on the authority or jurisdiction of any tribunal to punish for contempt a nonlawyer who engages or attempts to engage in the practice of law in Colorado in a matter within the jurisdiction of that tribunal. Nor shall this rule be construed as a limitation on any civil remedy or criminal proceeding that may otherwise exist.

COMMENT

[1] Paraprofessionals, secretaries, investigators, law student interns, bookkeepers, suspended lawyers, and other nonlawyers may properly act under the supervision of lawyers, in accordance with applicable legal authorities. See Colo. RPC 5.3 cmt. 2. In assisting a lawyer to render services requiring the exercise of legal judgment, nonlawyers must act under the direct supervision and control of the lawyer.

[2] Disbarred lawyers are subject to the jurisdiction set forth in both this rule and C.R.C.P. 242.

Part II. Entities

Rule 232.3. Supreme Court

The Colorado Supreme Court (supreme court) exercises exclusive jurisdiction over all matters in Colorado involving the unauthorized practice of law. The supreme court has plenary power to review any determination made in a proceeding under this rule and to enter any order in such a proceeding.

Rule 232.4. Advisory Committee

The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is a permanent committee of the supreme court. See C.R.C.P. 242.3. The Advisory Committee oversees administrative matters under the Rules Governing the Practice of Law, including UPL matters under this rule. The Advisory Committee assists the supreme court in its review of the productivity, effectiveness, and efficiency of the investigation and prosecution of UPL matters. The Advisory Committee recommends to the supreme court proposed changes to this rule.

Rule 232.5. Investigation; Procedure; Subpoenas

~~(a) All matters within the jurisdiction of the Committee shall be referred to the Regulation Counsel who shall either conduct an investigation or, if the Chair concurs, refer the matter to a member of the Committee pursuant to this rule or to an enlisted member of the Bar pursuant to C.R.C.P. 229(d) for investigation. Unless excused by the Regulation Counsel, the complainant shall be required to submit the complaint in writing and subscribe the same.~~

~~(b)(1) Promptly after receiving a written request for investigation or complaint, the Regulation Counsel shall determine whether to proceed with an investigation. In making such determination, the Regulation Counsel may make such inquiry regarding the underlying facts as the Regulation Counsel deems appropriate.~~

~~(2) If the Regulation Counsel determines to proceed with an investigation or refers the matter to a member of the Committee or an enlistee for investigation pursuant to C.R.C.P. 232.5(a), the respondent shall be: notified that the investigation is underway; provided with a copy of the complaint and of the rules governing the investigation; and asked to file with the Regulation Counsel or the person conducting the investigation a written answer to the complaint within 21 days after notice of the investigation is given.~~

~~(c) When the investigation is concluded, the Regulation Counsel shall either dismiss the allegations or report to the Committee for a determination as provided in paragraph (d) of this rule. If the Regulation Counsel dismisses the allegations, the person making the allegations may request review of the Regulation Counsel's decision by the Committee. If such review is~~

~~requested, the Committee shall review the matter and make a determination as provided in paragraph (d). The Committee shall sustain the dismissal unless it finds that the Regulation Counsel's action constituted an abuse of discretion. If the Committee sustains a dismissal, it shall furnish the person making the allegations with a written explanation of its decision.~~

~~(d) If, after conducting an investigation, the Regulation Counsel believes that the Committee should authorize an informal disposition, civil injunction proceedings, or contempt proceedings, the Regulation Counsel shall submit a report of the investigation and a recommendation to the Committee. The Committee shall then decide whether to:~~

~~(1) dismiss the matter; provided that the dismissal may be either with or without a finding of the unauthorized practice of law, and the letter of dismissal may contain cautionary language if appropriate; and provided that the person making the allegation shall be furnished a written explanation of the Committee's decision;~~

~~(2) conduct further investigation;~~

~~(3) enter into an informal disposition with the respondent consisting of a written agreement by the respondent to refrain from the conduct in question, to refund any fees collected, to make restitution and/or to pay a fine that may range from \$100 to \$250 per incident; such informal dispositions are to be encouraged;~~

~~(4) commence civil injunction proceedings as provided in C.R.C.P. 234 to 237; or~~

~~(5) commence contempt proceedings as provided in C.R.C.P. 238 and 239.~~

~~(e) At least three Committee members must be present for the Committee to act upon said reports, findings, and recommendations.~~

~~(f) In connection with an investigation of the unauthorized practice of law, the Chair or the Regulation Counsel may issue subpoenas to compel the attendance of respondents and other witnesses or to compel the production of books, papers, documents, or other evidence. All such subpoenas are subject to the provisions of C.R.C.P. 45.~~

~~(g) Any person subpoenaed to appear and give testimony, or to produce books or records, who refuses to appear and give testimony, or to produce the books or records; and any person having been sworn to testify and who refuses to answer any proper questions, may be cited for contempt of the Supreme Court, as provided in C.R.C.P. 107.~~

~~(h) Any person investigating a matter pursuant to these rules shall have the power to administer oaths and affirmations, and to take and have transcribed the testimony and evidence of witnesses.~~

~~(i) Any person who knowingly 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, as provided in C.R.C.P. 107.~~

Rule 232.5 Legal Regulation Committee

(a) Legal Regulation Committee. The Legal Regulation Committee (Regulation Committee) is a permanent committee of the supreme court. See C.R.C.P. 242.4.

(b) Powers and Duties. In addition to the powers and duties set forth in C.R.C.P. 242.4, the Regulation Committee is authorized and empowered to act in accordance with this rule by:

(1) Requesting investigations under C.R.C.P. 232.9(a);

(2) Determining under C.R.C.P. 232.12(a) whether to authorize filing petitions for injunction or contempt, to authorize stipulations with respondents, to place proceedings in abeyance, to direct further investigation, or to dismiss proceedings with or without conditions;

(3) Reviewing dismissals by the Regulation Counsel under C.R.C.P. 232.11(b); and

(4) Recommending to the Advisory Committee proposed changes to C.R.C.P. 232.

(c) Disqualification. Regulation Committee members must refrain from taking part in a proceeding under this rule in which a judge, similarly situated, would be required to disqualify. A Regulation Committee member must also refrain from making determinations under C.R.C.P. 232.12 where a lawyer associated with the member's law firm is in any way connected with the matter pending before the Regulation Committee.

(d) Special Counsel. If the Regulation Counsel has been disqualified or if other circumstances so warrant, the Regulation Committee or its Chair may appoint special counsel to conduct or to assist with investigations and prosecutions in accordance with C.R.C.P. 232.6(c).

Rule 232.6. Attorney Regulation Counsel

(a) Attorney Regulation Counsel. The supreme court appoints an Attorney Regulation Counsel (Regulation Counsel). See C.R.C.P. 242.5.

(b) Powers and Duties. In addition to the powers and duties set forth in C.R.C.P. 242.5, the Regulation Counsel is authorized and empowered to act in accordance with this rule, under a budget approved by the supreme court, by:

(1) Maintaining and supervising a permanent, central office for the filing and processing of requests for investigation under this rule;

(2) Conducting investigations, dismissing matters, and requesting that the Regulation Committee take action;

(3) Prosecuting civil injunction and contempt actions as provided by this rule;

(4) Negotiating stipulations of pending matters;

(5) Maintaining records of matters before the Regulation Committee under this rule; and

(6) Performing such other duties as the supreme court may direct.

(c) Special Counsel. Special counsel appointed under C.R.C.P. 232.5(d) must act in accordance with this rule. When a special counsel is appointed, the special counsel is empowered in that proceeding to take all actions that fall within the scope of the appointment and are normally entrusted to the Regulation Counsel.

(d) Former Regulation Counsel. Former Regulation Counsel or a former member of the Regulation Counsel's staff must not represent anyone in a proceeding that was pending under this rule during that person's term of service.

COMMENT

C.R.C.P. 232.6(d) is intended to have a broader reach than Colo. RPC 1.11(a).

Rule 232.7. Presiding Disciplinary Judge

(a) Presiding Disciplinary Judge. The supreme court appoints one or more Presiding Disciplinary Judges. See C.R.C.P. 242.6.

(b) Powers and Duties of the Presiding Disciplinary Judge. In addition to the powers and duties set forth in C.R.C.P. 242.6, the Presiding Disciplinary Judge is authorized and empowered to act in accordance with this rule, under a budget approved by the supreme court, by:

(1) Presiding as a hearing master over proceedings referred by the supreme court under this rule, including by ruling on legal and other issues consistent with the general authority conferred upon courts under the Colorado Rules of Civil Procedure; administering oaths and affirmations in proceedings; and making reports to the supreme court; and

(2) Performing such other duties as the supreme court may direct.

(c) Disqualification. The Presiding Disciplinary Judge must refrain from taking part in a proceeding in which a similarly situated judge would be required to disqualify. No lawyer currently affiliated by employment with the Presiding Disciplinary Judge may represent anyone in a proceeding under this rule so long as the Presiding Disciplinary Judge is serving in that role. If the Presiding Disciplinary Judge has been disqualified, the supreme court will appoint an alternate hearing master in the proceeding. The alternate hearing master is empowered in that proceeding to take all actions normally entrusted to the Presiding Disciplinary Judge, through the office established by the Presiding Disciplinary Judge.

(d) Former Presiding Disciplinary Judges. A former presiding disciplinary judge or a former member of that judge's staff is subject to Colo. RPC 1.12. For purposes of this subsection, a "matter" includes substantially related proceedings.

Rule 232.8. Immunity

(a) Prohibition Against Lawsuit Based on Proceeding Under this Rule. A respondent may not institute a civil lawsuit against any person based on a request for investigation, testimony in a proceeding under this rule, or other written or oral communications made in a proceeding under this rule to entities identified in C.R.C.P. 232.3 through C.R.C.P. 232.7 and C.R.C.P. 232.22 or to individuals working or volunteering on behalf of those entities.

(b) Immunity for Entities Described in this Rule. The entities identified in C.R.C.P. 232.3 through C.R.C.P. 232.7 and C.R.C.P. 232.22 and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Part III. Investigation of Injunctive and Contempt Matters

Rule 232.9. Request for Investigation

(a) Requesting an Investigation. Requests for investigation, which cannot be made anonymously, may be made:

(1) By any person and directed to the Regulation Counsel;

(2) By a judge of any court of record and directed to the Regulation Counsel;

(3) By the Regulation Committee on its own motion and directed to the Regulation Counsel; or

(4) By the Regulation Counsel.

(b) Preliminary Investigation.

(1) On receiving a request for investigation under subsection (a) above, the Regulation Counsel must conduct a preliminary investigation to decide:

(A) Whether jurisdiction exists under this rule and whether an allegation has been made that, if proved, would constitute grounds to find that the respondent engaged in the unauthorized practice of law; and

(B) Whether to formally investigate the matter under C.R.C.P. 232.10 or to dismiss the matter with or without an agreement that the respondent will abide by conditions.

(2) The Regulation Counsel's decision under this section 232.9 is an exercise of discretion that may take into account numerous factors, including the availability of admissible and credible evidence to support the allegation, the level of actual or potential injury caused by the alleged conduct, and the likelihood that the alleged conduct will reoccur. The Regulation Counsel's decision under this section 232.9 is final. The Regulation Counsel will inform the complaining witness of the decision. The complaining witness is not entitled to the Regulation Committee's review or appeal of that decision.

Rule 232.10. Formal Investigation of Allegations

(a) Commencement of Investigation.

(1) Initiation. A formal investigation may commence if a decision to investigate is made under C.R.C.P. 232.9(b).

(2) Notice and Response. When the Regulation Counsel commences a formal investigation under this section 232.10, the Regulation Counsel must give the respondent notice of the investigation, the allegations against the respondent, and the UPL rules that may be implicated by the allegations. If requested to do so, the respondent must submit to the Regulation Counsel a written response to the allegations within 21 days.

(b) Procedures for Investigation.

(1) Investigator. A member of the Regulation Counsel's staff, a member of the Regulation Committee, or a special counsel appointed under C.R.C.P. 232.5(d) may act as investigator. The investigator must promptly investigate the allegations, which may include conducting interviews and procuring evidence.

(2) Subpoenas.

(A) Issuance. During an investigation, the Regulation Counsel or the Chair of the Regulation Committee may issue subpoenas to compel the attendance of witnesses, including the respondent, and to compel the production of relevant documents and other evidence.

(B) Standards. Subpoenas issued under this section 232.10 and challenges thereto are subject to C.R.C.P. 45. Challenges to subpoenas must be directed to the supreme court, which may refer the matter to the Presiding Disciplinary Judge.

(c) Results of Investigation. After an investigation by the Regulation Counsel's staff, the Regulation Counsel must make a determination under C.R.C.P. 232.11. After an investigation conducted by an investigator who is not a member of the Regulation Counsel's staff, the investigator will submit a written report of investigation and recommendation to the Regulation Committee for a determination under C.R.C.P. 232.12.

COMMENT

For purposes of C.R.C.P. 45 a respondent subject to an investigation is considered a party, but a complaining witness is not considered a party.

Rule 232.11. Determination by Regulation Counsel

(a) Conclusion of Investigation. At the end of a formal investigation, the Regulation Counsel, using discretion, will take one of the following actions:

(1) Request that the Regulation Committee authorize the Regulation Counsel to file a petition for injunction under C.R.C.P. 232.15;

(2) Request that the Regulation Committee authorize the Regulation Counsel to file a petition for contempt under C.R.C.P. 232.23, if a civil injunction has already been issued against the respondent;

(3) Request that the Regulation Committee authorize the Regulation Counsel to enter into a stipulation with the respondent under C.R.C.P. 232.17;

(4) Request that the Regulation Committee place the matter in abeyance; or

(5) Dismiss the matter with or without an agreement by the respondent to abide by conditions.

(b) Regulation Committee Review of Dismissal by Regulation Counsel. If the Regulation Counsel dismisses a matter at the end of a formal investigation, the Regulation Counsel must promptly notify the complaining witness and the respondent. If the complaining witness submits a request within 35 days of the notice, the Regulation Committee must review the Regulation Counsel's decision. If the Regulation Committee finds in such a review that the Regulation Counsel's decision to dismiss the allegations was not an abuse of discretion, the Regulation Committee must sustain the dismissal and provide the complaining witness with a written explanation of its decision. If the Regulation Committee finds that the Regulation Counsel's decision was an abuse of discretion, the Regulation Committee must take action in accordance with C.R.C.P. 232.12(a)-(b).

Rule 232.12. Determination by Regulation Committee

(a) Action by Regulation Committee. On receiving a request from the Regulation Counsel under C.R.C.P. 232.11(a) or a recommendation from another investigator under C.R.C.P. 232.10(c), the Regulation Committee must determine whether there is reasonable cause to believe that the respondent engaged in the unauthorized practice of law and, using its discretion and evaluating the considerations listed in subsection (b) below, will take one of the following actions:

(1) Authorize the Regulation Counsel to file a petition for injunction;

(2) Authorize the Regulation Counsel to file a petition for contempt, if a civil injunction has already been issued against the respondent;

(3) Authorize the Regulation Counsel to enter into a stipulation with the respondent under C.R.C.P. 232.17;

(4) Place the matter in abeyance;

(5) Direct further investigation;

(6) Enter into an informal disposition of the matter consisting of a written agreement by the respondent to refrain from the conduct in question and, if applicable, to make restitution; or

(7) Dismiss the matter, with or without the respondent's agreement to abide by conditions, and with or without a finding that the respondent engaged in the unauthorized practice of law.

(b) Considerations in Taking Action. In making a determination under subsection (a) above, considerations for the Regulation Committee include:

(1) Whether it is reasonable to believe that the Regulation Counsel can prove the respondent engaged in the unauthorized practice of law or contemptuous conduct, as applicable;

(2) The level of actual or potential injury caused by the alleged conduct; and

(3) Whether the conduct is part of a sustained pattern or is likely to reoccur.

(c) Notice to Complaining Witness. Within 28 days after the Regulation Committee's decision to authorize the filing of a petition, to authorize a stipulation, or to dismiss a matter, the Regulation Counsel must notify the complaining witness of the decision.

COMMENT

Stipulations under C.R.C.P. 232.12(a)(3), informal dispositions under C.R.C.P. 232.12(a)(6), and dismissals with the respondent's agreement to abide by conditions under C.R.C.P. 232.12(a)(7) are encouraged.

Rule 232.13. Interim Injunction

(a) Overview. Although respondents can be permanently enjoined from the unauthorized practice of law only under the civil injunction procedures set forth in C.R.C.P. 232.14 through C.R.C.P. 232.20, the supreme court may temporarily enjoin a respondent from the unauthorized practice of law while a civil injunction proceeding is pending against the respondent if there is reasonable cause to believe that the respondent is causing substantial public or private harm by engaging in a sustained pattern of UPL activities.

(b) Procedure.

(1) Initiation. To initiate a proceeding under this section 232.13, the Regulation Counsel, with the concurrence of the Chair or Vice-Chair of the Regulation Committee, must file a petition with the supreme court alleging that a respondent is engaging in a sustained pattern of the unauthorized practice of law that is causing substantial public or private harm. The petition must be supported by an affidavit setting forth facts sufficient to give rise to reasonable cause to believe that the alleged conduct occurred. The Regulation Counsel must serve a copy of the petition and affidavit on the respondent. Service of process is sufficient when made in accordance with C.R.C.P. 4. Proof of service must be made as provided in C.R.C.P. 4(h).

(2) Response. The respondent must file a response within 14 days after service.

(3) Hearing. If the respondent responds to the petition, either party may request a hearing. The supreme court may refer the matter to the Presiding Disciplinary Judge for resolution of contested factual matters and a hearing, for which subpoenas may be issued under C.R.C.P. 45. A hearing will take place within 14 days of the order of referral.

(4) Report. Within 7 days after any hearing, or as soon as practicable if no hearing is held, the Presiding Disciplinary Judge will submit to the supreme court a report setting forth findings of fact, conclusions of law, and a recommendation as to an interim injunction.

(5) Decision. After considering the petition, any response, and any report from the Presiding Disciplinary Judge, the supreme court may issue an interim injunction; deny the petition; or issue any other appropriate order.

(6) Subsequent Civil Injunction Proceeding.

(i) Filing of Petition. When the supreme court issues an interim injunction and a petition has not already been filed under C.R.C.P. 232.15 based on the same conduct, the Regulation Counsel must promptly file a petition against the respondent under C.R.C.P. 232.15. C.R.C.P. 232.12 does not apply to such proceedings. The proceeding will then go forward as otherwise provided in this rule.

(ii) Accelerated Disposition. A respondent subject to an interim injunction under this section 232.13 may exercise the right to an accelerated disposition of the civil injunction proceeding by filing a notice to that effect with the Presiding Disciplinary Judge. The matter then must proceed without appreciable delay.

(iii) Termination of Interim Injunction. An interim injunction under this section 232.13 terminates on resolution of a civil injunctive proceeding based on the same underlying conduct, or as the supreme court otherwise may order.

Part IV. Civil Injunction Proceedings

Rule 232.14. Overview of Civil Injunction Proceedings

Civil injunction proceedings are brought by the Regulation Counsel to enjoin a respondent from the unauthorized practice of law. The Regulation Counsel files a petition for a civil injunction with the supreme court, which may refer the matter to the Presiding Disciplinary Judge to serve as a hearing master. The Presiding Disciplinary Judge will prepare a report to the supreme court. A respondent found to have engaged in the unauthorized practice of law may be enjoined from the unauthorized practice of law; ordered to pay restitution; assessed costs of the proceeding; and fined between \$250 and \$1500 for each incident of the unauthorized practice of law.

Rule 232.15. Initiation of Civil Injunction Proceeding

(a) Petition.

(1) Filing. If the Regulation Committee authorizes a civil injunction proceeding against a respondent, the Regulation Counsel must file a petition with the supreme court in the name of the People of the State of Colorado, unless a stipulation to injunction is filed with the supreme court under C.R.C.P. 232.17.

(2) Contents. The petition must set forth the factual allegations and the charges with sufficient particularity to identify the alleged activities that may constitute the unauthorized practice of law. The petition must request specific relief, including an order of injunction and an order and entry of judgment as to restitution, costs of the proceeding, and a fine between \$250 and \$1500 for each incident of the unauthorized practice of law.

(b) Show Cause. On receiving the petition, the supreme court may order the respondent to show cause why the respondent should not be enjoined from the unauthorized practice of law by filing an answer to the petition. The Regulation Counsel must serve on the respondent the order and a copy of the petition. Service of process must be made in accordance with C.R.C.P. 4. Proof of service must be made in accordance with C.R.C.P. 4(h).

(c) Answer to Petition. The respondent must file an answer to the petition with the supreme court within 21 days after service of the show cause order. The answer must specifically admit or deny each allegation in the petition as provided in C.R.C.P. 8(b).

(d) Referral. After an answer is filed or the time for filing an answer has passed, the supreme court may refer the matter to the Presiding Disciplinary Judge as hearing master for findings of fact, conclusions of law, and recommendations. Subject to any limitations in the order of

reference, the Presiding Disciplinary Judge may exercise in the proceeding the powers generally reposed in a court under the Colorado Rules of Civil Procedure.

Rule 232.16. Initiation of Case Before Presiding Disciplinary Judge

(a) Procedure When Answer Is Filed.

(1) Scheduling Conference. On receiving a referral from the supreme court in a case in which the respondent has filed an answer to the petition, the Presiding Disciplinary Judge will set a scheduling conference, which normally should be held within 28 days of the referral. At the conference, the Presiding Disciplinary Judge will schedule the hearing, set prehearing deadlines, and address matters relevant to the hearing. If the parties waive the conference, the Presiding Disciplinary Judge may exercise discretion to schedule the hearing and set prehearing deadlines without an in-person scheduling conference.

(2) Notice. After the hearing is scheduled, the Presiding Disciplinary Judge will issue to the parties a notice designating the date, time, and place of the hearing. The notice also must state that the respondent is entitled to be represented by counsel at the respondent's own expense, to present evidence and testimony, and to cross-examine witnesses.

(b) Procedure When No Answer Is Filed.

(1) Order Directing Answer. On receiving a referral from the supreme court in a case in which the respondent has not filed an answer to the petition, the Presiding Disciplinary Judge will direct the respondent to file an answer.

(2) Entry of Default. If the respondent does not timely file an answer, the Regulation Counsel will move for entry of default under C.R.C.P. 55(a). If the Presiding Disciplinary Judge enters default, the allegations and charges in the petition will be deemed admitted.

(3) Default Judgment. After entry of default, the Regulation Counsel will move for default judgment under C.R.C.P. 55(b). If the Presiding Disciplinary Judge grants default judgment, the Presiding Disciplinary Judge will submit a report to the supreme court under C.R.C.P. 232.20.

Rule 232.17. Stipulation to Injunction

(a) Overview. The Regulation Counsel and a respondent may, any time before a civil injunction hearing is held, enter into a public stipulation to injunction.

(b) Contents. A stipulation to injunction must be sworn or affirmed by the respondent, notarized, and contain:

(1) An admission that the respondent engaged in the unauthorized practice of law and the factual basis for that admission;

(2) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the respondent is fully aware of the implications of the admission;

(3) The respondent's agreement to entry of an injunction prohibiting the respondent from engaging in the unauthorized practice of law, including the prohibited activities set forth in C.R.C.P. 232.2(c);

(4) A recitation of the prohibited activities set forth in C.R.C.P. 232.2; and

(5) A statement whether the respondent must make restitution or pay costs, and in what amount.

(c) Exemption from Fine. A respondent who stipulates to an injunction under this section 232.17 is exempt from a fine.

(d) Procedure. If the UPL matter has been referred to the Presiding Disciplinary Judge, the stipulation to injunction must be submitted to the Presiding Disciplinary Judge. If the UPL matter has not been referred to the Presiding Disciplinary Judge, the stipulation to injunction must be submitted to the supreme court, which may refer the stipulation to the Presiding Disciplinary Judge. On receiving a stipulation that meets the requirements set forth in subsection (b) above, the Presiding Disciplinary Judge will submit the stipulation and a report to the supreme court under C.R.C.P. 232.20.

Rule 232.18. Prehearing Matters

(a) Dispositive Motions. The Presiding Disciplinary Judge may decide dispositive motions, including those filed under C.R.C.P. 12 and 56. The decision is subject to supreme court review when the Presiding Disciplinary Judge submits a report to the supreme court under C.R.C.P. 232.20.

(b) Discovery.

(1) Scope. C.R.C.P. 26 applies where not inconsistent with this rule. C.R.C.P. 16 does not apply to proceedings under this rule.

(2) Disclosures. Disclosures are due no later than 28 days after the answer is filed.

(A) Each party must disclose:

(i) The name and, if known, the address, telephone number, and email address of each individual likely to have discoverable information relevant to the claims and defenses of any party and a brief description of the specific information that each such individual is known or believed to possess;

(ii) A listing, together with a copy or a description by category, of the subject matter and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the claims and defenses of any party; and

(iii) A statement as to whether the party plans to use expert witnesses and, if so, the experts' fields of expertise.

(B) The Regulation Counsel must disclose fines requested and a computation of any restitution sought.

(3) Expert Witnesses. The parties must exchange expert witness reports, if any, at least 56 days (8 weeks) before the hearing, or as otherwise ordered by the Presiding Disciplinary Judge. A report must contain the elements required by the applicable Colorado Rules of Civil Procedure.

(4) Limitations. Except by order of the Presiding Disciplinary Judge for good cause shown, and subject to the proportionality factors in C.R.C.P. 26(b)(1), discovery is limited as follows:

(A) The Regulation Counsel may take one deposition of the respondent and of two other persons in addition to depositions of experts as provided in C.R.C.P. 26. The respondent may take three depositions in addition to depositions of experts as provided in C.R.C.P. 26. Depositions are generally governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45, unless otherwise inconsistent with this rule. A record must be made of depositions.

(B) Written interrogatories, requests for production of documents, and requests for admission are governed by C.R.C.P. 26(b)(2), 33, 34, and 36, unless otherwise inconsistent with this rule.

(C) Interview notes created as part of the preliminary investigation under C.R.C.P. 232.9 are deemed to be prepared in anticipation of litigation or for trial under the work product doctrine.

(5) Modifying the Scope of Discovery. The Presiding Disciplinary Judge may modify discovery limitations in accordance with C.R.C.P. 26(b)(2)(F).

(6) Supplementation of Discovery. A party must supplement disclosures, responses, and expert reports and statements in accordance with C.R.C.P. 26(e).

(7) Sanctions. Under C.R.C.P. 37, the Presiding Disciplinary Judge may compel discovery and impose sanctions for failure to comply with discovery obligations.

(c) Subpoenas. The clerk of the Presiding Disciplinary Judge must issue a subpoena under C.R.C.P. 45(a)(2), signed but otherwise in blank, to a party who requests it. That party must complete it before service. A lawyer who has entered an appearance in the case also may issue, complete, and sign a subpoena as an officer of the court. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge. The Presiding Disciplinary Judge may hold in contempt under C.R.C.P. 45(f) any person who fails or refuses, without adequate excuse, to comply with a subpoena.

COMMENT

Although C.R.C.P. 232.18 allows for discovery consistent with civil practice under C.R.C.P. 26, the supreme court adopts this provision with the expectation that in many UPL cases the parties will not need to make use of the full scope of allowable discovery.

Rule 232.19. Civil Injunction Hearings

(a) Location. Civil injunction hearings are normally held in the courtroom of the Presiding Disciplinary Judge. The Presiding Disciplinary Judge may exercise discretion to hold a hearing in another location that is convenient for the parties and witnesses.

(b) Admissibility of Evidence. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the respondent has a fair opportunity to rebut hearsay evidence.

(c) No Jury Trial. The Presiding Disciplinary Judge presides over civil injunction hearings and is the sole factfinder. Hearings are not held before a jury.

(d) Burden of Proof. The Regulation Counsel bears the burden of proof in civil injunction proceedings by a preponderance of the evidence.

(e) Record. The Presiding Disciplinary Judge must make a record of all hearings.

Rule 232.20. Report to Supreme Court, Objections, and Decision

(a) Report of Presiding Disciplinary Judge. After a hearing or as otherwise provided in this rule, the Presiding Disciplinary Judge must report in writing to the supreme court, setting forth findings of fact, conclusions of law, and recommendations for a final disposition of the case.

When submitting a report to the supreme court, the clerk of the Presiding Disciplinary Judge must transmit the record of the entire proceeding to the supreme court and mail a copy of the report to each party.

(b) When No Objections Are Filed. If neither party files a notice of objections, the case will stand submitted upon the filed report.

(c) When Objections Are Filed.

(1) Notice of Objections. Any notice of objections to the report must be filed with the supreme court no more than 28 days after copies of the report were mailed to the parties.

(2) Content. Except as otherwise provided by this rule and to the extent practicable, the notice of objections must summarize the factual and legal bases of the objections.

(3) Transcript.

(A) Objecting Party's Request for Transcript. If a notice of objections is filed, the objecting party may request that the court reporter or a transcriber, if the proceeding was recorded by mechanical or electronic means, prepare a full transcript of the proceeding or any portion that the objecting party deems necessary for the consideration of the case. The objecting party must submit its request for a transcript no more than 14 days after filing the notice of objections. Within the same timeframe, the objecting party must file with the supreme court and serve on the opposing party under C.R.C.P. 5 either a designation of those portions of the transcript that the party wishes added to the record before the supreme court or a statement that the party does not wish to designate any portions of the transcript.

(B) Opposing Party's Request for Transcript. The opposing party must, within 14 days after service of the designation or statement under subsection (A) above, file with the supreme court, submit to the court reporter or transcriber, and serve under C.R.C.P. 5 either a cross-designation of any portions of the transcript the party deems necessary for proper consideration of the case or a statement that the party does not wish to designate any portions of the transcript.

(C) Expense of Preparing Transcript. The objecting party is responsible for the expense of preparing a transcript if the objecting party designates any portion of the transcript. If the objecting party does not designate any portion of the transcript but the opposing party designates at least some portion thereof, the opposing party is responsible for the expense of preparing the transcript.

(D) Preparation and Filing of Transcript. Unless the requesting party has failed to adequately arrange to pay for the transcript, the reporter or transcriber must prepare the transcript and file it, properly certified, with the supreme court within 63 days (9 weeks) after the filing of the notice of objections.

(4) Briefs. An objecting party must file an opening brief no more than 28 days after the later of the filing of the transcript or the filing of the opposing party's statement declining to designate portions of the transcript. The opposing party must file an answer brief no more than 28 days after the filing of the objecting party's opening brief. The objecting party must file a reply brief, if any, no more than 14 days after the filing of the answer brief.

(d) Amicus Curiae Brief. A brief of an amicus curiae may be filed only by leave of the supreme court or at the request of the supreme court. The brief may be conditionally filed with the motion for leave. A motion for leave must identify the interest of the amicus curiae and must state the reasons why an amicus curiae brief is desirable. An amicus curiae must file its brief within the time allowed the party whose position the amicus brief supports unless the supreme court for good cause shown grants leave for later filing, in which event the supreme court will specify when an opposing party may answer.

(e) Supreme Court Decision. The supreme court may adopt, modify, or reject the Presiding Disciplinary Judge's report and will determine as a matter of law whether the respondent engaged in the unauthorized practice of law. If the supreme court finds that the respondent engaged in the unauthorized practice of law, the supreme court may enjoin the respondent from further unauthorized practice of law and make further appropriate orders including orders of restitution, costs, and fines. The clerk of the supreme court must mail a copy of the order to each party.

(f) No Limitation on Authority to Issue Injunction. Nothing in this rule shall be construed to limit the power of the supreme court, upon proper application, to issue an injunction at any stage of a proceeding in order to prevent public harm.

Rule 232.21. Collection of Restitution

(a) Notice of Intent and Withdrawal of Notice. A person in whose name a restitution order has been entered under this rule has the right to pursue collection of the amount of restitution owed to that person. A person who wishes to collect restitution under this section must first deliver to the clerk of the supreme court a notice of intent to pursue collection. On receiving such a notice, the supreme court and the Regulation Counsel will cease all attempts to collect the restitution amounts due to that person. A person may withdraw a notice of intent to pursue collection of restitution by filing a notice of withdrawal with the clerk of the supreme court. The notice must state the amount, if any, of restitution collected. On receiving a notice of withdrawal, the

supreme court and the Regulation Counsel may resume pursuing collection of restitution under this section.

(b) Procedure. A person who has filed a notice of intent to pursue collection of restitution may request that the supreme court issue any of the following without cost:

(1) One or more certified copies of the transcript for the order for restitution, which may be recorded with a clerk and recorder or with the secretary of state;

(2) An order that a portion of the respondent's earnings be withheld under C.R.S. section 16-18.5-105(3)(b); and

(3) A writ of execution, writ of attachment, or other civil process to collect on a judgment under article 52 of title 13, C.R.S.

Part V. Contempt Proceedings

Rule 232.22. Overview of Contempt Proceedings

Contempt proceedings are brought by the Regulation Counsel to hold in contempt a respondent who is alleged to have violated an existing injunction prohibiting the respondent from engaging in the unauthorized practice of law. The Regulation Counsel files a petition for contempt with the supreme court, which may refer the matter to a special master to preside over the contempt proceeding. The special master will conduct an indirect contempt proceeding under C.R.C.P. 107 unless otherwise provided in this rule. The special master will then prepare a report to the supreme court. A respondent found to have acted in contempt of an injunction may be subject to a sentence of imprisonment not to exceed six months, restitution, a fine of \$2,000 to \$10,000 per incident, and assessment of costs as allowed by law. A respondent found to have also failed to pay ordered fines, costs, or restitution may be subject to remedial sanctions within a contempt proceeding.

Rule 232.23. Petition for Contempt

(a) Petition.

(1) Filing. If the Regulation Committee authorizes an indirect contempt proceeding against a respondent, the Regulation Counsel must file a petition with the supreme court in the name of the People of the State of Colorado.

(2) Contents. The petition must set forth the factual allegations and charges in plain language and with sufficient particularity to identify the alleged activities that constitute contempt. The petition must request specific relief and request issuance of a contempt citation and an order to show cause why the respondent should not be held in contempt. The petition must be supported by an affidavit that gives rise to reasonable cause to believe that indirect contempt has been committed.

(b) Determination. On receiving the petition, the supreme court may:

(1) Appoint a special master and refer the matter to the special master to preside over the contempt proceeding in a county convenient to the participants. The special master must be an active or senior judge of a court of record, must not have any conflicts of interest, and must be able to serve diligently and impartially. If the supreme court refers the matter to a special master, the supreme court will instruct the special master to issue an order to show cause and a citation for contempt and will direct the special master to prepare a report at the conclusion of the proceeding containing findings of fact, conclusions of law, and recommendations.

(2) Issue under C.R.C.P. 232.15(b) a show cause order in a civil injunctive proceeding to be governed by C.R.C.P. 232.14 through C.R.C.P. 232.20; or

(3) Dismiss the petition.

(c) Issuance of Citation. On receiving the referral from the supreme court, the special master will issue a citation ordering the respondent to appear at a designated date, time, and place to show cause why the respondent should not be held in indirect contempt for the unauthorized practice of law. The special master also may direct the respondent to respond in writing to the show cause order by filing an answer to the petition. Depending on the requested relief in the petition, the citation must state that a fixed sentence of imprisonment not to exceed six months, restitution, an unconditional fine of \$2,000 to \$10,000 per incident, and assessment of allowable costs may be imposed. The Regulation Counsel must serve on the respondent the order, the citation, and a copy of the petition. Service of process must be made in accordance with C.R.C.P. 4. Proof of service must be made in accordance with C.R.C.P. 4(h).

(d) Procedure If Respondent Fails to Appear.

(1) Issuance of Warrant. If the respondent has been served with the citation and fails to appear before the special master at the time and place designated in the citation or at any time thereafter that the special master directs, the special master may make appropriate findings and issue a warrant for the respondent's arrest.

(2) Contents of Warrant. The warrant must fix the time and place for the respondent's production before the special master. The warrant must also state the amount of bail required.

(3) Bond. If the respondent fails to make bond, the sheriff must keep the respondent in custody and produce the respondent before the special master at the time and place fixed by the warrant. The respondent must be discharged if the sheriff or a clerk for the judicial district in which the contempt proceeding is held receives and approves of a bond directing the respondent to appear at the date, time, and place designated in the warrant, and at any time thereafter that the special master directs, or pay the sum specified. If the respondent fails to appear at the time designated in the warrant, or at any time thereafter that the special master directs, the bond may be forfeited on proper notice to the surety, if any. To the extent the aggrieved party has suffered damages because of the contempt, the bond may be paid to the aggrieved party.

Rule 232.24. Contempt Proceeding, Report, Objections, and Collections

(a) Prosecuting Authority. The Regulation Counsel will prosecute the contempt proceeding.

(b) Contempt Procedures. A respondent in a contempt proceeding must be afforded all procedural protections set forth in C.R.C.P. 107 and applicable law.

(1) First Appearance. The respondent must attend a first appearance. At the first appearance, the special master must advise the respondent of the respondent's rights under C.R.C.P. 107(d) and set the matter for a contempt hearing.

(2) Contempt Hearing. The contempt hearing will go forward under C.R.C.P. 107. Subject to any limitations in the order of reference, the special master may exercise in the proceeding the powers generally reposed in a court under the Colorado Rules of Civil Procedure, including C.R.C.P. 107.

(c) Report to Supreme Court, Objections, and Decision.

(1) Report of the Special Master. After a hearing the special master must report in writing to the supreme court, setting forth findings of fact, conclusions of law, and recommendations for remedial and/or punitive sanctions and the terms of those sanctions, including whether the sanctions should be bifurcated. If the special master recommends a sanction, the special master must, before issuing a report, afford the respondent the right to make a statement in mitigation under C.R.C.P. 107(b) or C.R.C.P. 107(d)(1), as applicable. Under C.R.C.P. 107(e), if the special master recommends both remedial and punitive sanctions, appropriate procedures must be followed as to each type of sanction, and findings must be made to support the adjudication of both types of sanctions. When submitting a report to the supreme court, the special master must transmit the record of the entire proceeding to the supreme court and mail a copy of the report to each party.

(2) Objections. Objections to the special master's report are governed by C.R.C.P. 232.20(b)-(d).

(3) Supreme Court Decision. The supreme court may adopt, modify, or reject the special master's report and will determine as a matter of law whether the respondent engaged in contemptuous conduct that was offensive to the authority and the dignity of the supreme court. If the supreme court finds that the respondent engaged in contemptuous conduct, the supreme court may impose a fixed sentence of imprisonment not to exceed six months, restitution, an unconditional fine of \$2,000 to \$10,000 per incident, or assessment of costs as allowed by law, or any combination thereof under C.R.C.P. 107(e). If the supreme court finds contemptuous conduct but does not impose imprisonment, the supreme court will impose a fine between \$2,000 and \$10,000 for each incident of contempt, payable to the supreme court, and may order restitution or assessment of costs as allowed by law. The supreme court may also order related remedial sanctions. The clerk of the supreme court must mail a copy of the order to each party and to the special master.

(4) Remand to Special Master. If the supreme court finds that the respondent engaged in contemptuous conduct and concludes that a sentence of imprisonment is appropriate, the supreme court will remand the matter to the special master with instructions to issue the mittimus and to take the respondent into custody in accordance with the procedures of that court of record.

(d) Collection of Restitution.

(1) Notice of Intent and Withdrawal of Notice. A person in whose name a restitution order has been entered under this rule has the right to pursue collection of the amount of restitution owed to that person. A person who wishes to collect restitution under this subsection must first deliver to the clerk of the supreme court a notice of intent to pursue collection. On receiving such a notice, the supreme court and the Regulation Counsel will cease all attempts to collect the restitution amounts due to that person. A person may withdraw a notice of intent to pursue collection of restitution by filing a notice of withdrawal with the clerk of the supreme court. The notice must state the amount, if any, of restitution collected. On receiving a notice of withdrawal, the supreme court and the Regulation Counsel may resume pursuing collection of restitution under this section.

(2) Procedure. A person who has filed a notice of intent to pursue collection of restitution may request that the supreme court issue any of the following without cost:

(A) One or more certified copies of the transcript for the order for restitution, which may be recorded with a clerk and recorder or with the secretary of state;

(B) An order that a portion of the respondent's earnings be withheld under C.R.S. section 16-18.5-105(3)(b); and

(C) A writ of execution, writ of attachment, or other civil process to collect on a judgment under article 52 of title 13, C.R.S.

(e) Enforcement of Punitive Sanctions. The Regulation Counsel may pursue a subsequent contempt citation with the supreme court if the respondent fails to pay the fine imposed as a punitive sanction. In such instances, the Regulation Counsel may pursue the contempt citation without authorization of the Regulation Committee.

Part VI. General Provisions

Rule 232.25. Applicable Rules

The Colorado Rules of Civil Procedure apply in civil injunction and contempt proceedings when not inconsistent with this rule.

Rule 232.26. Rule of Limitation

Injunctions, stipulations to injunction, and findings of contempt may not be based on conduct reported more than five years after the date the conduct is discovered or reasonably should have been discovered. But there is no rule of limitation where the allegations involve fraud or where the respondent is alleged to have concealed the conduct.

Rule 232.27. Representation of Closely Held Entities

An officer of a closely held entity may represent that entity in proceedings under this rule if the amount requested in restitution does not exceed the amount set by the statute governing closely held entity representation, C.R.S. section 13-1-127. The officer may be required to provide evidence of the officer's authority to appear on behalf of the closely held entity.

Rule 232.28. Access to Information

(a) Public Information. Unless otherwise provided in this rule, all files and records relating to any phase of a civil injunction or contempt proceeding are available to the public after:

- (1) A petition for injunction is filed with the supreme court under C.R.C.P. 232.15;
- (2) A petition for contempt is filed with the supreme court under C.R.C.P. 232.23;
- (3) A stipulation to injunction is filed under C.R.C.P. 232.17 before the filing of a petition; or
- (4) An interim injunction is imposed under C.R.C.P. 232.13 before the filing of a petition.

(b) Confidential Information. The following types of information are confidential and are not available to the public:

- (1) Files and records of a proceeding in which none of the four events set forth in subsection (a) above has occurred, unless the respondent has waived confidentiality;
- (2) Files and records of any proceeding that was dismissed before a petition was filed, unless the respondent has waived confidentiality;

(3) Interview notes made during a preliminary investigation under C.R.C.P. 232.9;

(4) The work product, deliberations, privileged communications, and internal communications of the Office of the Attorney Regulation Counsel, the Advisory Committee, the Regulation Committee, the Office of the Presiding Disciplinary Judge, the special master to which a contempt matter is referred, and the supreme court;

(5) Information subject to a protective order under subsection (d) below or other applicable rules; and

(6) Information otherwise made confidential under this rule.

(c) Subpoenaed Records. If the Regulation Counsel is served with a valid subpoena, the Regulation Counsel shall not permit access to files or records or furnish documents that are confidential as provided by this rule unless the supreme court orders otherwise.

(d) Protective Orders. On motion of any person and on a showing of good cause, a protective order may be entered restricting the disclosure of specific information to protect a complaining witness, another witness, a third party, or a respondent from annoyance, embarrassment, oppression, or undue burden or expense. A protective order may direct that a proceeding, including a hearing, be conducted so as to preserve the confidentiality of certain information.

(e) Exceptions to Confidentiality During an Investigation.

(1) Before the filing of a petition, the Regulation Counsel may, to conduct the investigation, disclose information to a complaining witness or to another third party.

(2) Before the filing of a petition, the Regulation Counsel may disclose the existence, subject matter, status, and resolution, if any, of an investigation if:

(A) The respondent has waived confidentiality;

(B) The respondent has been convicted of a crime related to the UPL allegations, such as impersonation of an attorney;

(C) The investigation is based on allegations that have become generally known to the public;

(D) The disclosure is necessary to protect the public or the administration of justice; or

(E) A petition for interim injunction based on the investigation has been filed under C.R.C.P. 232.13.

(f) Request for Confidential Information.

(1) Release With Notice.

(A) The Regulation Counsel may, on request, release information that is confidential under subsection (b) above to the following types of agencies:

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

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

(iii) A lawyer or judicial discipline enforcement agency;

(iv) An agency authorized to investigate criminal conduct or a consumer protection agency;

(v) An agency authorized to investigate allegations of unauthorized practice of law; or

(vi) A tribunal with which the respondent has had previous contact.

(B) When the Regulation Counsel releases confidential information under this subsection (f)(1), the Regulation Counsel must send to the respondent's last-known address contemporaneous notice and a copy of the information released.

(2) Release Without Notice.

(A) The Regulation Counsel may release confidential information without notifying the respondent if an agency listed in subsection (f)(1)(A) above requests the information and certifies that:

(i) The request is made in furtherance of an ongoing investigation of the respondent;

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

(iii) Disclosing to the respondent the existence of the investigation would seriously prejudice that investigation.

(B) A certification made under subsection (f)(2)(A) above will be deemed confidential.

(g) Response to False or Misleading Statement and Defense to Civil Suit. The Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a proceeding under this rule or to defend against litigation in which the Regulation Counsel is a named defendant.

(h) Disclosure by Persons and Entities Other Than Entities Defined in This Rule. Unless otherwise ordered, nothing in this rule prohibits the complaining witness, any other witness, or the respondent from disclosing the existence of a proceeding under this rule, from disclosing any documents or correspondence provided to those persons, or from providing testimony related to a proceeding under this rule.

(i) Duty of Officials and Employees. All officials, employees, and volunteers within the supreme court, the Advisory Committee, the Regulation Committee, the Office of the Attorney Regulation Counsel, the Office of the Presiding Disciplinary Judge, and courts of record from which a special master has been appointed have an ongoing duty to maintain the confidentiality mandated by this rule.

(j) Public List of Those Enjoined or Held in Contempt. The Regulation Counsel must maintain a public list of persons who have been enjoined or held in contempt under this rule. The Regulation Counsel must also make public the reports adopted by the supreme court.

Rule 232.29. Notice

Except as otherwise provided by this rule, notice must be in writing. Notice must be sent to the last-known mailing address of the recipient, unless the recipient consents to receiving notice by email. Notice is deemed effective the date notice is placed in the mail; placed in the custody of a delivery service; or emailed, if the recipient has consented to notice by email.

Rule 232.30. Expungement

(a) Records Subject to Expungement. Except for records relating to proceedings that have become public under C.R.C.P. 232.28 or records relating to proceedings that result in agreements under C.R.C.P. 232.12(a)(6), all records relating to proceedings that were dismissed must be expunged from the files of the Regulation Committee and the Regulation Counsel five years after the end of the calendar year in which the dismissal occurred.

(b) Effect of Expungement. The Regulation Committee and the Regulation Counsel must respond to any general or specific inquiry concerning the existence of a proceeding the records of which have been expunged by stating that no record of a proceeding exists.

(c) Extension of Time to Retain Records. The Regulation Counsel may apply in writing to the Regulation Committee for permission to retain files and records that would otherwise be expunged under this section 232.30 for an additional period of time not to exceed three years. After giving the respondent in question notice and an opportunity to respond in writing, the Regulation Committee may grant the request on a finding of good cause. Through the same procedure, the Regulation Committee may grant additional extensions.

Rule 233. [NO CHANGE]

Rule 234. ~~Civil Injunction Proceedings; General~~Reserved.

~~(a) If the Committee determines that civil injunction proceedings shall be instituted against a respondent, such proceedings may be commenced in the name of the People of the State of Colorado by a petition filed in the Supreme Court by the Regulation Counsel or by a member of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.~~

~~(b) The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include, without limitation, injunction, refund, restitution, a fine, and assessment of costs of the proceeding.~~

~~(c) The Supreme Court, upon consideration of the petition so filed, may issue its order directed to the respondent commanding the respondent to show cause why the respondent should not be enjoined from the alleged unauthorized practice of law, and further requiring the respondent to file with the Supreme Court within 21 days after service of the petition and show cause order, a written answer admitting or denying the matter stated in the petition. The show cause order, together with a copy of the petition, shall be served upon the respondent. Service of process shall be sufficient when made either personally upon the respondent or by certified mail sent to the respondent's last known address.~~

~~(d) If no response or defense is filed within the time permitted, the Supreme Court, upon its motion or upon motion of any party, shall decide the case, granting such relief and issuing such other orders as may be appropriate.~~

~~(e) If a response or defense raises no genuine issue of material fact, any party by motion may request a judgment on the pleadings and the Supreme Court may decide the case as a matter of law, granting such relief and issuing such orders as may be appropriate.~~

~~(f) Upon the Supreme Court's motion or upon motion of any party, questions of fact raised in proceedings under this rule shall be referred to a hearing master for determination.~~

Rule 235. Civil Injunction Proceedings; Hearing Master, Powers, Procedure Reserved.

~~(a) Civil injunction proceedings before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.~~

~~(b) The People of the State of Colorado may be represented in proceedings before the hearing master by the Regulation Counsel, or by a member of the Bar appointed pursuant to Rule 234. Upon receipt of the order of reference, the hearing master shall set a date, time, and place for a first meeting of the parties which shall be within 28 days after the date notice thereof is given and notify the parties accordingly. At such meeting, a date, time, and place for hearing shall be set, and any matters which may expedite the proceedings shall be considered. A complete record of this meeting shall be made unless jointly waived by the parties. After the first meeting, the hearing master shall issue a notice of hearing to the parties. The notice shall be in writing and shall designate the date, time, and place 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 giving of notice shall be sufficient when made by certified mail sent to the respondent at the respondent's last known address.~~

~~(c) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas which shall run in the name of the Supreme Court and may be issued by the hearing master or Clerk of the Supreme Court upon the request of a party. All such subpoenas shall be subject to the provisions of C.R.C.P. 45. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly.~~

~~(d) The Colorado Rules of Civil Procedure shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "Court" under the Colorado Rules of Civil Procedure. At all hearings before a hearing master witnesses shall be sworn and a complete record made of all proceedings had and testimony taken.~~

Rule 236. Civil Injunction Proceedings; Report of Hearing Master; Objections Reserved.

~~(a) After the hearing, the hearing master shall report in writing to the Supreme Court in accordance with the order of reference, setting forth findings of fact, conclusions of law, and recommendations for final disposition of the case. If the hearing master makes a finding of unauthorized practice of law in the report, then the hearing master shall also recommend that a fine be imposed for each incident of unauthorized practice of law; the minimum fine for each incident shall be not less than \$250 and not more than \$1000. A report from the Presiding Disciplinary Judge approving the parties' stipulation to injunction, may be exempt from a fine. Promptly after the report is filed with the Supreme Court, the Clerk shall mail copies thereof to all parties.~~

~~(b) Objections to the report of the hearing master may be filed with the Supreme Court by any party, within 28 days after copies of the report have been mailed to the parties.~~

~~(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.~~

~~(d) If objections are filed, the objecting party shall within 14 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court.~~

~~The opposing party may within 14 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof.~~

~~The reporter shall prepare the transcript and file it, properly certified, with the Supreme Court within 63 days (9 weeks) after the filing of the objections.~~

~~(e) An objecting party shall have 28 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 28 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 14 days after the filing of the answer brief within which to file a reply brief.~~

~~(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.~~

Rule 237. Civil Injunction Proceedings; Determination by Court Reserved.

~~(a) After review of the report of the hearing master, together with any objections and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law, and make such further orders as it may deem appropriate, including restitution and the assessment of costs.~~

~~(b) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.~~

Rule 238. Contempt Proceedings; General Reserved.

~~(a) If the Committee determines that contempt proceedings shall be instituted against a respondent, such proceedings shall be commenced in the name of the People of the State of Colorado by a petition filed in the Supreme Court by the Regulation Counsel or by a member of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.~~

~~(b) The petition shall allege facts indicating that the respondent is engaged in the unauthorized practice of law and shall contain a prayer for the issuance of a contempt citation.~~

~~(c) Upon the filing of a petition, the Supreme Court may issue a citation directing the respondent to show cause why he should not be held in contempt of the Supreme Court for the unauthorized practice of law, or the Supreme Court may, in the alternative, issue a show cause order in civil injunctive proceedings which shall be governed by Rules 234 to 237. If a citation is issued, the citation shall state that a fine of not less than \$2000 per incident or imprisonment may be imposed to vindicate the dignity of the Supreme Court.~~

~~(d) If a contempt citation is issued, it shall be served upon the respondent, together with a copy of the petition, as provided in Rule 4, C.R.C.P., and the citation shall specify the time for response. If a response is filed, the Supreme Court shall appoint a hearing master who shall set a date, time, and place for the appearance of the respondent, and shall give notice thereof. The notice shall be in writing. The notice shall designate the date, time, and place of the appearance. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the appearance, to cross-examine witnesses, and to present evidence in the respondent's own behalf. The giving of notice shall be sufficient when made by certified mail sent to the respondent at the respondent's last known address.~~

~~(e) Proceedings for the hearing of a contempt citation before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.~~

~~(f) If the respondent has been served with a citation and fails to respond to the citation or appear before the hearing master at the time and place designated in the notice issued by the hearing master, a warrant for the arrest of the respondent may be issued by the hearing master without prior approval of the Supreme Court. The warrant shall fix the time and place for the production of the respondent before the hearing master. The hearing master shall direct by endorsement on the warrant the amount of bail required, and the respondent shall be discharged upon the delivery to and approval by the sheriff or the Clerk of the Supreme Court of a written undertaking executed by a sufficient surety, to the effect that the respondent will appear at the time and place designated in the warrant and at any time thereafter to which the hearing on the citation may be continued, or pay the sum specified. Any funds surrendered as bail shall be deposited with the~~

~~Clerk of the Supreme Court or with the Clerk of the District court in the county where the proceedings are to be held. If the respondent fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the undertaking may be forfeited upon order of the hearing master. If the respondent fails to make bond, the sheriff shall keep the respondent in custody and produce the respondent before the hearing master at the time and place fixed by the warrant.~~

~~(g) At all hearings before the hearing master, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken. The citation shall be prosecuted by the Regulation Counsel of the State of Colorado or by such duly licensed and registered members of the Bar as may be designated by this Court.~~

~~(h) The Colorado Rules of Civil Procedure shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "court" under the Colorado Rules of Civil Procedure.~~

~~(i) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas in the name of the Supreme Court, which may be issued by the hearing master or Clerk of the Supreme Court upon the request of a party. All such subpoenas shall be subject to the provisions of C.R.C.P. 45. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly. The parties shall have the right to be present at all times during the hearings before the hearing master and to examine and cross-examine witnesses.~~

Rule 239. Contempt Determination by Court Proceedings; Report of Hearing Master; Objections Reserved.

(a) After the conclusion of the hearing, the hearing master shall report in writing to the Supreme Court, setting forth the hearing master's findings of fact, conclusions of law, and, upon a finding of contempt, recommendations for punishment. If the matter proceeds to trial and the hearing master makes a finding of contempt but does not recommend imprisonment, then the hearing master shall recommend that a fine be imposed for each incident of contempt; the minimum fine for each incident shall be not less than \$2000 and not more than \$5000. Promptly after the report is filed with the Supreme Court, the Clerk of the Supreme Court shall mail copies thereof to the parties.

(b) Objections to the report of the hearing master may be filed with the Supreme Court by either party within 28 days after the filing of the report.

(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.

(d) If objections are filed, the objecting party shall within 14 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court. The opposing party may within 14 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof. The reporter shall prepare the transcript and file it, properly certified, with the Supreme Court within 63 days (9 weeks) after the filing of the objections.

(e) An objecting party shall have 28 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 28 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 14 days after the filing of the answer brief within which to file a reply brief.

(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time

~~allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.~~

~~(g) After review of the report of the hearing master any objections thereto and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine whether the respondent is guilty of contempt of the Supreme Court and shall, by order, prescribe the punishment therefor, including the assessment of costs, expenses and reasonable attorney's fees.~~

~~(h) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of contempt proceedings in order to prevent public harm, or to limit the power of the Supreme Court to issue an injunction in lieu of or in addition to the imposition of a fine or any other remedy under these rules.~~

Rule 240. General Provisions; Qualifications of Hearing Master; Access to Information Concerning Proceedings Under these Rules Reserved.

~~(a) A hearing master to whom matters are referred pursuant to these rules shall be a person who is duly licensed to practice law in Colorado.~~

~~(b) All civil injunction proceedings and contempt proceedings filed in the Supreme Court pursuant to Rules 234 and 238, including proceedings before a hearing master, shall be public proceedings.~~

~~(c) Except as otherwise provided by these rules or by order of the Supreme Court, all proceedings conducted pursuant to these rules shall be confidential, and the files and records of the Committee shall be confidential and shall not be made public.~~

~~Except as otherwise provided by these rules, any person who wishes to disclose or to make public the pendency, subject matter, or status of proceedings which are otherwise confidential or to disclose or to make public the files and records of the Committee which are otherwise confidential or to gain access to the files and records of the Committee which are otherwise confidential shall file a petition with the Supreme Court setting forth the specific reasons why the existence of the particular proceedings should not remain confidential or the specific reasons why the disclosure of particular files and records or access to them should be permitted.~~

~~Upon final determination of any proceedings conducted pursuant to these rules, notice of the disposition of the matter shall be given by Regulation Counsel or the Clerk of the Supreme Court to the respondent, the complainant, and their counsel of record. Any person having received notice that a written agreement has been entered pursuant to C.R.C.P. 232.5(d)(3) shall treat such information as confidential and shall not disclose such information to anyone, except by order of the Supreme Court. Any person who makes a disclosure other than as permitted by these rules or by order of the Supreme Court may be subject to punishment for contempt of the Supreme Court.~~

~~(d) Exceptions to Confidentiality. The pendency, subject matter, and status of the proceedings conducted pursuant to these rules may be disclosed by the Committee or Regulation Counsel to:~~

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

~~(2) An entity authorized to investigate the qualifications of judicial candidates;~~

~~(3) A lawyer discipline enforcement agency;~~

~~(4) Any person or agency requesting such information, provided that the respondent has waived confidentiality and the request is within the scope of the waiver;~~

~~(5) An enlistee who, pursuant to Rule 229(d), was enlisted to assist the Committee;~~

~~(6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States; or~~

~~(7) Any person or agency, provided the proceeding is predicated either upon allegations that have become generally known to the public through printed or broadcast news accounts or upon acts of the respondent which are public or generally known.~~

~~(d.5) Access to the files and records of the Committee may be granted by the Committee or the Regulation Counsel, provided a request for disclosure or access is made in writing by:~~

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

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

~~(3) An agency authorized to investigate allegations of unauthorized practice of law;~~

~~(4) An entity authorized to investigate the qualifications of judicial candidates;~~

~~(5) A lawyer discipline enforcement agency;~~

~~(6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States; or~~

~~(7) A state or federal judicial or administrative court or agency with which the respondent has had previous contact. If the Regulation Counsel discloses confidential information to a judicial nominating commission of the State of Colorado or grants a judicial nominating commission access thereto, the Regulation Counsel shall give written notice to the respondent that specified confidential information has been so disclosed or that access has been granted.~~

~~(e) Repealed.~~

Rule 240.1. Immunity Reserved.

~~Persons performing official duties under the provisions of this chapter, including but not limited to members of the Committee and its staff; the Regulation Counsel and the Regulation Counsel's staff; the members of the Bar and enlistees working under the direction of the Committee; and the hearing masters, shall be immune from suit for all conduct in the course and scope of their official duties.~~

Rule 240.2. Expunction of Records Reserved.

~~(a) Expunction—Self-Executing. Except for records relating to proceedings that have 1) become public pursuant to C.R.C.P 234, et seq., 2) resulted in a finding of unauthorized practice of law, or 3) resulted in agreements, all records relating to proceedings that were dismissed without a finding of unauthorized practice of law shall be expunged from the files of the committee, the Presiding Disciplinary Judge, and Regulation Counsel three years after the end of the year in which the 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, the 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 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 respondent 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 respondent 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 with no finding of unauthorized practice of law and that the record of the proceeding was expunged pursuant to this Rule. After a response is provided and is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged needs be made.~~

~~(e) Retention of Records. Upon written application to the committee, for good cause and with written notice to the respondent in question and opportunity to such respondent 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 228. Reserved.

Rule 229. Reserved.

Rule 230. Reserved.

Rule 231. Reserved.

Rule 232. Rules Governing Unauthorized Practice of Law Proceedings

Preamble

In prohibiting the unauthorized practice of law in Colorado in the public interest, the supreme court's regulatory and policy objectives include:

- (1) Protecting the public by ensuring that persons who assist others in their legal affairs have sufficient competence to avoid harming the liberty interests and property rights of those they assist;
- (2) Safeguarding the system of justice and avoiding the waste of limited judicial resources by ensuring that only qualified persons assist others before tribunals;
- (3) Educating the public about the activities that constitute the unauthorized practice of law; and
- (4) Providing the public with access to the justice system at a reasonable cost by permitting nonlawyers to provide legal representation of limited scope in certain circumstances.

Part I. Terminology and Jurisdiction

Rule 232.1. Terminology

For purposes of this rule, the following definitions and abbreviations apply:

“Advisory Committee” refers to the Supreme Court Advisory Committee on the Practice of Law, as identified in C.R.C.P. 232.4.

“Civil injunction” and derivatives of that term generally refer to a proceeding brought under C.R.C.P. 232.14 through C.R.C.P. 232.20 to enjoin a respondent from the unauthorized practice of law.

“Complaining witness” means a person who submits a request for investigation to the Regulation Counsel under C.R.C.P. 232.9(a)(1).

“Contempt” refers to a proceeding brought under C.R.C.P. 232.22 through C.R.C.P. 232.24 to hold in contempt a respondent who is alleged to have engaged in the unauthorized practice of law in contravention of a previous injunction.

“Costs” are those costs made available in civil cases and may include travel expenses incurred by witnesses, fees for court reporters, and fees for expert witnesses. “Costs” may also include expenses incurred during an investigation.

“Exercise of legal judgment” and derivatives of that phrase mean the application of actual or purported knowledge or understanding of the law, beyond that of the ordinary citizen, to a particular set of facts.

“Expunge” and “expungement” refer to the destruction of all files, records, and other items of any type in a given proceeding.

“Including” means including but not limited to.

“Injunction,” “enjoin,” and derivatives of those terms refer to a court order prohibiting a nonlawyer from engaging in the unauthorized practice of law.

“Mail” and “mailing” means the sending of a document or other item through the U.S. Postal Service, through a commercial delivery service, or by electronic means.

“Notice,” “notify,” and derivatives of those terms are addressed in C.R.C.P. 232.29.

“Nonlawyer” means a person who is not licensed, authorized, or otherwise certified to practice law in any jurisdiction in the United States, including a disbarred lawyer.

“Person” includes an individual, a trust, or an entity, which includes a firm, association, corporation, partnership, or limited liability company.

“Proceeding” means any investigative or judicial proceeding under C.R.C.P. 232, including preliminary investigations under C.R.C.P. 232.9.

“Regulation Committee” refers to the Legal Regulation Committee, as identified in C.R.C.P. 232.5.

“Regulation Counsel” refers to the Attorney Regulation Counsel, as identified in C.R.C.P. 232.6.

“Respondent” means a nonlawyer in a civil injunctive or contempt proceeding under this rule.

“Restitution” means the return of fees, money, or other things of value that were paid or entrusted to a nonlawyer in exchange for performing or promising to perform prohibited UPL activities.

“Supreme court” refers to the Colorado Supreme Court.

“This rule” means all sections of C.R.C.P. 232.

“This section” means a single section of this rule, for example C.R.C.P. 232.2.

“This subsection” means a portion of a section of this rule, for example C.R.C.P. 232.2(a) or C.R.C.P. 232.2(b)(1).

“Tribunal” means a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when, after the party or parties are given the opportunity to present evidence or legal argument, a neutral official renders a binding legal judgment directly affecting a party’s interests in a particular matter.

“UPL” means “unauthorized practice of law,” as set forth in C.R.C.P. 232.2(b)-(c).

Rule 232.2. Jurisdiction and Prohibited UPL Activities

(a) Jurisdiction. Jurisdiction exists under this rule over any nonlawyer who engages or attempts to engage in the practice of law in Colorado. The practice of law occurs “in Colorado” if the nonlawyer takes the actions at issue within the geographic boundaries of Colorado, if the recipient of legal services was in Colorado at the time of the actions, or if the actions involve a tribunal located in Colorado.

(b) Prohibition on the Unauthorized Practice of Law. Unless authorized by supreme court case law, federal law, tribal law, or other valid law, a nonlawyer may not engage in the practice of law. “Practice of law” includes the following:

- (1) Protecting, defending, or enforcing the legal rights or duties of another person;
- (2) Representing another person before any tribunal or, on behalf of another person, drafting pleadings or other papers for any proceeding before any tribunal;
- (3) Counseling, advising, or assisting another person in connection with that person’s legal rights or duties;
- (4) Exercising legal judgment in preparing legal documents for another person; and
- (5) Any other activity the supreme court determines to constitute the practice of law.

(c) Prohibited Activities. The unauthorized practice of law by a nonlawyer includes the following:

- (1) Exercising legal judgment to advise another person about the legal effect of a proposed action or decision;
- (2) Exercising legal judgment to advise another person about legal remedies or possible courses of legal action available to that person;
- (3) Exercising legal judgment to select a legal document for another person or to prepare a legal document for another person, other than solely as a typist or scrivener;
- (4) Exercising legal judgment to represent or advocate for another person in a negotiation, settlement conference, mediation, or alternative dispute resolution proceeding;
- (5) Exercising legal judgment to represent or advocate for another person in a hearing, trial, or other legal proceeding before a tribunal;

(6) Advertising or holding oneself out, either directly or impliedly, as an attorney, a lawyer, “Esquire,” a legal consultant, or a legal advocate, or in any other manner that conveys capability or authorization to provide unsupervised services involving the exercise of legal judgment;

(7) Owning or controlling a for-profit entity that is not authorized under C.R.C.P. 265 and that provides services involving the exercise of legal judgment;

(8) Soliciting any fees for services involving the exercise of legal judgment;

(9) Owning or controlling a website, application, software, bot, or other technology that interactively offers or provides services involving the exercise of legal judgment; and

(10) Performing any other activity that constitutes the practice of law as set forth in subsection (b) above.

(d) Invalid Defenses. Invalid defenses to civil injunctive or contempt claims under this rule include:

(1) That the respondent was acting pursuant to a power of attorney;

(2) That the respondent did not charge or receive a fee; and

(3) That the respondent, in the course of engaging in an activity prohibited under subsections (c)(1)-(5) or (7)-(10) above, did not hold herself or himself out as authorized to practice law.

(e) No Implied Limitation on Authority or Jurisdiction. Nothing in this rule shall be construed as a limitation on the authority or jurisdiction of any tribunal to punish for contempt a nonlawyer who engages or attempts to engage in the practice of law in Colorado in a matter within the jurisdiction of that tribunal. Nor shall this rule be construed as a limitation on any civil remedy or criminal proceeding that may otherwise exist.

COMMENT

[1] Paraprofessionals, secretaries, investigators, law student interns, bookkeepers, suspended lawyers, and other nonlawyers may properly act under the supervision of lawyers, in accordance with applicable legal authorities. See Colo. RPC 5.3 cmt. 2. In assisting a lawyer to render services requiring the exercise of legal judgment, nonlawyers must act under the direct supervision and control of the lawyer.

[2] Disbarred lawyers are subject to the jurisdiction set forth in both this rule and C.R.C.P. 242.

Part II. Entities

Rule 232.3. Supreme Court

The Colorado Supreme Court (supreme court) exercises exclusive jurisdiction over all matters in Colorado involving the unauthorized practice of law. The supreme court has plenary power to review any determination made in a proceeding under this rule and to enter any order in such a proceeding.

Rule 232.4. Advisory Committee

The Supreme Court Advisory Committee on the Practice of Law (Advisory Committee) is a permanent committee of the supreme court. See C.R.C.P. 242.3. The Advisory Committee oversees administrative matters under the Rules Governing the Practice of Law, including UPL matters under this rule. The Advisory Committee assists the supreme court in its review of the productivity, effectiveness, and efficiency of the investigation and prosecution of UPL matters. The Advisory Committee recommends to the supreme court proposed changes to this rule.

Rule 232.5 Legal Regulation Committee

(a) Legal Regulation Committee. The Legal Regulation Committee (Regulation Committee) is a permanent committee of the supreme court. See C.R.C.P. 242.4.

(b) Powers and Duties. In addition to the powers and duties set forth in C.R.C.P. 242.4, the Regulation Committee is authorized and empowered to act in accordance with this rule by:

(1) Requesting investigations under C.R.C.P. 232.9(a);

(2) Determining under C.R.C.P. 232.12(a) whether to authorize filing petitions for injunction or contempt, to authorize stipulations with respondents, to place proceedings in abeyance, to direct further investigation, or to dismiss proceedings with or without conditions;

(3) Reviewing dismissals by the Regulation Counsel under C.R.C.P. 232.11(b); and

(4) Recommending to the Advisory Committee proposed changes to C.R.C.P. 232.

(c) Disqualification. Regulation Committee members must refrain from taking part in a proceeding under this rule in which a judge, similarly situated, would be required to disqualify. A Regulation Committee member must also refrain from making determinations under C.R.C.P. 232.12 where a lawyer associated with the member's law firm is in any way connected with the matter pending before the Regulation Committee.

(d) Special Counsel. If the Regulation Counsel has been disqualified or if other circumstances so warrant, the Regulation Committee or its Chair may appoint special counsel to conduct or to assist with investigations and prosecutions in accordance with C.R.C.P. 232.6(c).

Rule 232.6. Attorney Regulation Counsel

(a) Attorney Regulation Counsel. The supreme court appoints an Attorney Regulation Counsel (Regulation Counsel). See C.R.C.P. 242.5.

(b) Powers and Duties. In addition to the powers and duties set forth in C.R.C.P. 242.5, the Regulation Counsel is authorized and empowered to act in accordance with this rule, under a budget approved by the supreme court, by:

(1) Maintaining and supervising a permanent, central office for the filing and processing of requests for investigation under this rule;

(2) Conducting investigations, dismissing matters, and requesting that the Regulation Committee take action;

(3) Prosecuting civil injunction and contempt actions as provided by this rule;

(4) Negotiating stipulations of pending matters;

(5) Maintaining records of matters before the Regulation Committee under this rule; and

(6) Performing such other duties as the supreme court may direct.

(c) Special Counsel. Special counsel appointed under C.R.C.P. 232.5(d) must act in accordance with this rule. When a special counsel is appointed, the special counsel is empowered in that proceeding to take all actions that fall within the scope of the appointment and are normally entrusted to the Regulation Counsel.

(d) Former Regulation Counsel. Former Regulation Counsel or a former member of the Regulation Counsel's staff must not represent anyone in a proceeding that was pending under this rule during that person's term of service.

COMMENT

C.R.C.P. 232.6(d) is intended to have a broader reach than Colo. RPC 1.11(a).

Rule 232.7. Presiding Disciplinary Judge

(a) Presiding Disciplinary Judge. The supreme court appoints one or more Presiding Disciplinary Judges. See C.R.C.P. 242.6.

(b) Powers and Duties of the Presiding Disciplinary Judge. In addition to the powers and duties set forth in C.R.C.P. 242.6, the Presiding Disciplinary Judge is authorized and empowered to act in accordance with this rule, under a budget approved by the supreme court, by:

(1) Presiding as a hearing master over proceedings referred by the supreme court under this rule, including by ruling on legal and other issues consistent with the general authority conferred upon courts under the Colorado Rules of Civil Procedure; administering oaths and affirmations in proceedings; and making reports to the supreme court; and

(2) Performing such other duties as the supreme court may direct.

(c) Disqualification. The Presiding Disciplinary Judge must refrain from taking part in a proceeding in which a similarly situated judge would be required to disqualify. No lawyer currently affiliated by employment with the Presiding Disciplinary Judge may represent anyone in a proceeding under this rule so long as the Presiding Disciplinary Judge is serving in that role. If the Presiding Disciplinary Judge has been disqualified, the supreme court will appoint an alternate hearing master in the proceeding. The alternate hearing master is empowered in that proceeding to take all actions normally entrusted to the Presiding Disciplinary Judge, through the office established by the Presiding Disciplinary Judge.

(d) Former Presiding Disciplinary Judges. A former presiding disciplinary judge or a former member of that judge's staff is subject to Colo. RPC 1.12. For purposes of this subsection, a "matter" includes substantially related proceedings.

Rule 232.8. Immunity

(a) Prohibition Against Lawsuit Based on Proceeding Under this Rule. A respondent may not institute a civil lawsuit against any person based on a request for investigation, testimony in a proceeding under this rule, or other written or oral communications made in a proceeding under this rule to entities identified in C.R.C.P. 232.3 through C.R.C.P. 232.7 and C.R.C.P. 232.22 or to individuals working or volunteering on behalf of those entities.

(b) Immunity for Entities Described in this Rule. The entities identified in C.R.C.P. 232.3 through C.R.C.P. 232.7 and C.R.C.P. 232.22 and all individuals working or volunteering on behalf of those entities are immune from civil suit for conduct in the course of fulfilling their official duties under this rule.

Part III. Investigation of Injunctive and Contempt Matters

Rule 232.9. Request for Investigation

(a) Requesting an Investigation. Requests for investigation, which cannot be made anonymously, may be made:

- (1) By any person and directed to the Regulation Counsel;
- (2) By a judge of any court of record and directed to the Regulation Counsel;
- (3) By the Regulation Committee on its own motion and directed to the Regulation Counsel; or
- (4) By the Regulation Counsel.

(b) Preliminary Investigation.

(1) On receiving a request for investigation under subsection (a) above, the Regulation Counsel must conduct a preliminary investigation to decide:

(A) Whether jurisdiction exists under this rule and whether an allegation has been made that, if proved, would constitute grounds to find that the respondent engaged in the unauthorized practice of law; and

(B) Whether to formally investigate the matter under C.R.C.P. 232.10 or to dismiss the matter with or without an agreement that the respondent will abide by conditions.

(2) The Regulation Counsel's decision under this section 232.9 is an exercise of discretion that may take into account numerous factors, including the availability of admissible and credible evidence to support the allegation, the level of actual or potential injury caused by the alleged conduct, and the likelihood that the alleged conduct will reoccur. The Regulation Counsel's decision under this section 232.9 is final. The Regulation Counsel will inform the complaining witness of the decision. The complaining witness is not entitled to the Regulation Committee's review or appeal of that decision.

Rule 232.10. Formal Investigation of Allegations

(a) Commencement of Investigation.

(1) Initiation. A formal investigation may commence if a decision to investigate is made under C.R.C.P. 232.9(b).

(2) Notice and Response. When the Regulation Counsel commences a formal investigation under this section 232.10, the Regulation Counsel must give the respondent notice of the investigation, the allegations against the respondent, and the UPL rules that may be implicated by the allegations. If requested to do so, the respondent must submit to the Regulation Counsel a written response to the allegations within 21 days.

(b) Procedures for Investigation.

(1) Investigator. A member of the Regulation Counsel's staff, a member of the Regulation Committee, or a special counsel appointed under C.R.C.P. 232.5(d) may act as investigator. The investigator must promptly investigate the allegations, which may include conducting interviews and procuring evidence.

(2) Subpoenas.

(A) Issuance. During an investigation, the Regulation Counsel or the Chair of the Regulation Committee may issue subpoenas to compel the attendance of witnesses, including the respondent, and to compel the production of relevant documents and other evidence.

(B) Standards. Subpoenas issued under this section 232.10 and challenges thereto are subject to C.R.C.P. 45. Challenges to subpoenas must be directed to the supreme court, which may refer the matter to the Presiding Disciplinary Judge.

(c) Results of Investigation. After an investigation by the Regulation Counsel's staff, the Regulation Counsel must make a determination under C.R.C.P. 232.11. After an investigation conducted by an investigator who is not a member of the Regulation Counsel's staff, the investigator will submit a written report of investigation and recommendation to the Regulation Committee for a determination under C.R.C.P. 232.12.

COMMENT

For purposes of C.R.C.P. 45 a respondent subject to an investigation is considered a party, but a complaining witness is not considered a party.

Rule 232.11. Determination by Regulation Counsel

(a) Conclusion of Investigation. At the end of a formal investigation, the Regulation Counsel, using discretion, will take one of the following actions:

(1) Request that the Regulation Committee authorize the Regulation Counsel to file a petition for injunction under C.R.C.P. 232.15;

(2) Request that the Regulation Committee authorize the Regulation Counsel to file a petition for contempt under C.R.C.P. 232.23, if a civil injunction has already been issued against the respondent;

(3) Request that the Regulation Committee authorize the Regulation Counsel to enter into a stipulation with the respondent under C.R.C.P. 232.17;

(4) Request that the Regulation Committee place the matter in abeyance; or

(5) Dismiss the matter with or without an agreement by the respondent to abide by conditions.

(b) Regulation Committee Review of Dismissal by Regulation Counsel. If the Regulation Counsel dismisses a matter at the end of a formal investigation, the Regulation Counsel must promptly notify the complaining witness and the respondent. If the complaining witness submits a request within 35 days of the notice, the Regulation Committee must review the Regulation Counsel's decision. If the Regulation Committee finds in such a review that the Regulation Counsel's decision to dismiss the allegations was not an abuse of discretion, the Regulation Committee must sustain the dismissal and provide the complaining witness with a written explanation of its decision. If the Regulation Committee finds that the Regulation Counsel's decision was an abuse of discretion, the Regulation Committee must take action in accordance with C.R.C.P. 232.12(a)-(b).

Rule 232.12. Determination by Regulation Committee

(a) Action by Regulation Committee. On receiving a request from the Regulation Counsel under C.R.C.P. 232.11(a) or a recommendation from another investigator under C.R.C.P. 232.10(c), the Regulation Committee must determine whether there is reasonable cause to believe that the respondent engaged in the unauthorized practice of law and, using its discretion and evaluating the considerations listed in subsection (b) below, will take one of the following actions:

(1) Authorize the Regulation Counsel to file a petition for injunction;

(2) Authorize the Regulation Counsel to file a petition for contempt, if a civil injunction has already been issued against the respondent;

(3) Authorize the Regulation Counsel to enter into a stipulation with the respondent under C.R.C.P. 232.17;

(4) Place the matter in abeyance;

(5) Direct further investigation;

(6) Enter into an informal disposition of the matter consisting of a written agreement by the respondent to refrain from the conduct in question and, if applicable, to make restitution; or

(7) Dismiss the matter, with or without the respondent's agreement to abide by conditions, and with or without a finding that the respondent engaged in the unauthorized practice of law.

(b) Considerations in Taking Action. In making a determination under subsection (a) above, considerations for the Regulation Committee include:

(1) Whether it is reasonable to believe that the Regulation Counsel can prove the respondent engaged in the unauthorized practice of law or contemptuous conduct, as applicable;

(2) The level of actual or potential injury caused by the alleged conduct; and

(3) Whether the conduct is part of a sustained pattern or is likely to reoccur.

(c) Notice to Complaining Witness. Within 28 days after the Regulation Committee's decision to authorize the filing of a petition, to authorize a stipulation, or to dismiss a matter, the Regulation Counsel must notify the complaining witness of the decision.

COMMENT

Stipulations under C.R.C.P. 232.12(a)(3), informal dispositions under C.R.C.P. 232.12(a)(6), and dismissals with the respondent's agreement to abide by conditions under C.R.C.P. 232.12(a)(7) are encouraged.

Rule 232.13. Interim Injunction

(a) Overview. Although respondents can be permanently enjoined from the unauthorized practice of law only under the civil injunction procedures set forth in C.R.C.P. 232.14 through C.R.C.P. 232.20, the supreme court may temporarily enjoin a respondent from the unauthorized practice of law while a civil injunction proceeding is pending against the respondent if there is reasonable cause to believe that the respondent is causing substantial public or private harm by engaging in a sustained pattern of UPL activities.

(b) Procedure.

(1) Initiation. To initiate a proceeding under this section 232.13, the Regulation Counsel, with the concurrence of the Chair or Vice-Chair of the Regulation Committee, must file a petition with the supreme court alleging that a respondent is engaging in a sustained pattern of the unauthorized practice of law that is causing substantial public or private harm. The petition must be supported by an affidavit setting forth facts sufficient to give rise to reasonable cause to believe that the alleged conduct occurred. The Regulation Counsel must serve a copy of the petition and affidavit on the respondent. Service of process is sufficient when made in accordance with C.R.C.P. 4. Proof of service must be made as provided in C.R.C.P. 4(h).

(2) Response. The respondent must file a response within 14 days after service.

(3) Hearing. If the respondent responds to the petition, either party may request a hearing. The supreme court may refer the matter to the Presiding Disciplinary Judge for resolution of contested factual matters and a hearing, for which subpoenas may be issued under C.R.C.P. 45. A hearing will take place within 14 days of the order of referral.

(4) Report. Within 7 days after any hearing, or as soon as practicable if no hearing is held, the Presiding Disciplinary Judge will submit to the supreme court a report setting forth findings of fact, conclusions of law, and a recommendation as to an interim injunction.

(5) Decision. After considering the petition, any response, and any report from the Presiding Disciplinary Judge, the supreme court may issue an interim injunction; deny the petition; or issue any other appropriate order.

(6) Subsequent Civil Injunction Proceeding.

(i) Filing of Petition. When the supreme court issues an interim injunction and a petition has not already been filed under C.R.C.P. 232.15 based on the same conduct, the Regulation Counsel must promptly file a petition against the respondent under C.R.C.P. 232.15. C.R.C.P. 232.12 does not apply to such proceedings. The proceeding will then go forward as otherwise provided in this rule.

(ii) Accelerated Disposition. A respondent subject to an interim injunction under this section 232.13 may exercise the right to an accelerated disposition of the civil injunction proceeding by filing a notice to that effect with the Presiding Disciplinary Judge. The matter then must proceed without appreciable delay.

(iii) Termination of Interim Injunction. An interim injunction under this section 232.13 terminates on resolution of a civil injunctive proceeding based on the same underlying conduct, or as the supreme court otherwise may order.

Part IV. Civil Injunction Proceedings

Rule 232.14. Overview of Civil Injunction Proceedings

Civil injunction proceedings are brought by the Regulation Counsel to enjoin a respondent from the unauthorized practice of law. The Regulation Counsel files a petition for a civil injunction with the supreme court, which may refer the matter to the Presiding Disciplinary Judge to serve as a hearing master. The Presiding Disciplinary Judge will prepare a report to the supreme court. A respondent found to have engaged in the unauthorized practice of law may be enjoined from the unauthorized practice of law; ordered to pay restitution; assessed costs of the proceeding; and fined between \$250 and \$1500 for each incident of the unauthorized practice of law.

Rule 232.15. Initiation of Civil Injunction Proceeding

(a) Petition.

(1) Filing. If the Regulation Committee authorizes a civil injunction proceeding against a respondent, the Regulation Counsel must file a petition with the supreme court in the name of the People of the State of Colorado, unless a stipulation to injunction is filed with the supreme court under C.R.C.P. 232.17.

(2) Contents. The petition must set forth the factual allegations and the charges with sufficient particularity to identify the alleged activities that may constitute the unauthorized practice of law. The petition must request specific relief, including an order of injunction and an order and entry of judgment as to restitution, costs of the proceeding, and a fine between \$250 and \$1500 for each incident of the unauthorized practice of law.

(b) Show Cause. On receiving the petition, the supreme court may order the respondent to show cause why the respondent should not be enjoined from the unauthorized practice of law by filing an answer to the petition. The Regulation Counsel must serve on the respondent the order and a copy of the petition. Service of process must be made in accordance with C.R.C.P. 4. Proof of service must be made in accordance with C.R.C.P. 4(h).

(c) Answer to Petition. The respondent must file an answer to the petition with the supreme court within 21 days after service of the show cause order. The answer must specifically admit or deny each allegation in the petition as provided in C.R.C.P. 8(b).

(d) Referral. After an answer is filed or the time for filing an answer has passed, the supreme court may refer the matter to the Presiding Disciplinary Judge as hearing master for findings of fact, conclusions of law, and recommendations. Subject to any limitations in the order of

reference, the Presiding Disciplinary Judge may exercise in the proceeding the powers generally reposed in a court under the Colorado Rules of Civil Procedure.

Rule 232.16. Initiation of Case Before Presiding Disciplinary Judge

(a) Procedure When Answer Is Filed.

(1) Scheduling Conference. On receiving a referral from the supreme court in a case in which the respondent has filed an answer to the petition, the Presiding Disciplinary Judge will set a scheduling conference, which normally should be held within 28 days of the referral. At the conference, the Presiding Disciplinary Judge will schedule the hearing, set prehearing deadlines, and address matters relevant to the hearing. If the parties waive the conference, the Presiding Disciplinary Judge may exercise discretion to schedule the hearing and set prehearing deadlines without an in-person scheduling conference.

(2) Notice. After the hearing is scheduled, the Presiding Disciplinary Judge will issue to the parties a notice designating the date, time, and place of the hearing. The notice also must state that the respondent is entitled to be represented by counsel at the respondent's own expense, to present evidence and testimony, and to cross-examine witnesses.

(b) Procedure When No Answer Is Filed.

(1) Order Directing Answer. On receiving a referral from the supreme court in a case in which the respondent has not filed an answer to the petition, the Presiding Disciplinary Judge will direct the respondent to file an answer.

(2) Entry of Default. If the respondent does not timely file an answer, the Regulation Counsel will move for entry of default under C.R.C.P. 55(a). If the Presiding Disciplinary Judge enters default, the allegations and charges in the petition will be deemed admitted.

(3) Default Judgment. After entry of default, the Regulation Counsel will move for default judgment under C.R.C.P. 55(b). If the Presiding Disciplinary Judge grants default judgment, the Presiding Disciplinary Judge will submit a report to the supreme court under C.R.C.P. 232.20.

Rule 232.17. Stipulation to Injunction

(a) Overview. The Regulation Counsel and a respondent may, any time before a civil injunction hearing is held, enter into a public stipulation to injunction.

(b) Contents. A stipulation to injunction must be sworn or affirmed by the respondent, notarized, and contain:

(1) An admission that the respondent engaged in the unauthorized practice of law and the factual basis for that admission;

(2) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the respondent is fully aware of the implications of the admission;

(3) The respondent's agreement to entry of an injunction prohibiting the respondent from engaging in the unauthorized practice of law, including the prohibited activities set forth in C.R.C.P. 232.2(c);

(4) A recitation of the prohibited activities set forth in C.R.C.P. 232.2; and

(5) A statement whether the respondent must make restitution or pay costs, and in what amount.

(c) Exemption from Fine. A respondent who stipulates to an injunction under this section 232.17 is exempt from a fine.

(d) Procedure. If the UPL matter has been referred to the Presiding Disciplinary Judge, the stipulation to injunction must be submitted to the Presiding Disciplinary Judge. If the UPL matter has not been referred to the Presiding Disciplinary Judge, the stipulation to injunction must be submitted to the supreme court, which may refer the stipulation to the Presiding Disciplinary Judge. On receiving a stipulation that meets the requirements set forth in subsection (b) above, the Presiding Disciplinary Judge will submit the stipulation and a report to the supreme court under C.R.C.P. 232.20.

Rule 232.18. Prehearing Matters

(a) Dispositive Motions. The Presiding Disciplinary Judge may decide dispositive motions, including those filed under C.R.C.P. 12 and 56. The decision is subject to supreme court review when the Presiding Disciplinary Judge submits a report to the supreme court under C.R.C.P. 232.20.

(b) Discovery.

(1) Scope. C.R.C.P. 26 applies where not inconsistent with this rule. C.R.C.P. 16 does not apply to proceedings under this rule.

(2) Disclosures. Disclosures are due no later than 28 days after the answer is filed.

(A) Each party must disclose:

(i) The name and, if known, the address, telephone number, and email address of each individual likely to have discoverable information relevant to the claims and defenses of any party and a brief description of the specific information that each such individual is known or believed to possess;

(ii) A listing, together with a copy or a description by category, of the subject matter and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the claims and defenses of any party; and

(iii) A statement as to whether the party plans to use expert witnesses and, if so, the experts' fields of expertise.

(B) The Regulation Counsel must disclose fines requested and a computation of any restitution sought.

(3) Expert Witnesses. The parties must exchange expert witness reports, if any, at least 56 days (8 weeks) before the hearing, or as otherwise ordered by the Presiding Disciplinary Judge. A report must contain the elements required by the applicable Colorado Rules of Civil Procedure.

(4) Limitations. Except by order of the Presiding Disciplinary Judge for good cause shown, and subject to the proportionality factors in C.R.C.P. 26(b)(1), discovery is limited as follows:

(A) The Regulation Counsel may take one deposition of the respondent and of two other persons in addition to depositions of experts as provided in C.R.C.P. 26. The respondent may take three depositions in addition to depositions of experts as provided in C.R.C.P. 26. Depositions are generally governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45, unless otherwise inconsistent with this rule. A record must be made of depositions.

(B) Written interrogatories, requests for production of documents, and requests for admission are governed by C.R.C.P. 26(b)(2), 33, 34, and 36, unless otherwise inconsistent with this rule.

(C) Interview notes created as part of the preliminary investigation under C.R.C.P. 232.9 are deemed to be prepared in anticipation of litigation or for trial under the work product doctrine.

(5) Modifying the Scope of Discovery. The Presiding Disciplinary Judge may modify discovery limitations in accordance with C.R.C.P. 26(b)(2)(F).

(6) Supplementation of Discovery. A party must supplement disclosures, responses, and expert reports and statements in accordance with C.R.C.P. 26(e).

(7) Sanctions. Under C.R.C.P. 37, the Presiding Disciplinary Judge may compel discovery and impose sanctions for failure to comply with discovery obligations.

(c) Subpoenas. The clerk of the Presiding Disciplinary Judge must issue a subpoena under C.R.C.P. 45(a)(2), signed but otherwise in blank, to a party who requests it. That party must complete it before service. A lawyer who has entered an appearance in the case also may issue, complete, and sign a subpoena as an officer of the court. Challenges to subpoenas must be directed to the Presiding Disciplinary Judge. The Presiding Disciplinary Judge may hold in contempt under C.R.C.P. 45(f) any person who fails or refuses, without adequate excuse, to comply with a subpoena.

COMMENT

Although C.R.C.P. 232.18 allows for discovery consistent with civil practice under C.R.C.P. 26, the supreme court adopts this provision with the expectation that in many UPL cases the parties will not need to make use of the full scope of allowable discovery.

Rule 232.19. Civil Injunction Hearings

(a) Location. Civil injunction hearings are normally held in the courtroom of the Presiding Disciplinary Judge. The Presiding Disciplinary Judge may exercise discretion to hold a hearing in another location that is convenient for the parties and witnesses.

(b) Admissibility of Evidence. The Presiding Disciplinary Judge may receive any evidence with probative value regardless of its admissibility under the rules of evidence if the respondent has a fair opportunity to rebut hearsay evidence.

(c) No Jury Trial. The Presiding Disciplinary Judge presides over civil injunction hearings and is the sole factfinder. Hearings are not held before a jury.

(d) Burden of Proof. The Regulation Counsel bears the burden of proof in civil injunction proceedings by a preponderance of the evidence.

(e) Record. The Presiding Disciplinary Judge must make a record of all hearings.

Rule 232.20. Report to Supreme Court, Objections, and Decision

(a) Report of Presiding Disciplinary Judge. After a hearing or as otherwise provided in this rule, the Presiding Disciplinary Judge must report in writing to the supreme court, setting forth findings of fact, conclusions of law, and recommendations for a final disposition of the case.

When submitting a report to the supreme court, the clerk of the Presiding Disciplinary Judge must transmit the record of the entire proceeding to the supreme court and mail a copy of the report to each party.

(b) When No Objections Are Filed. If neither party files a notice of objections, the case will stand submitted upon the filed report.

(c) When Objections Are Filed.

(1) Notice of Objections. Any notice of objections to the report must be filed with the supreme court no more than 28 days after copies of the report were mailed to the parties.

(2) Content. Except as otherwise provided by this rule and to the extent practicable, the notice of objections must summarize the factual and legal bases of the objections.

(3) Transcript.

(A) Objecting Party's Request for Transcript. If a notice of objections is filed, the objecting party may request that the court reporter or a transcriber, if the proceeding was recorded by mechanical or electronic means, prepare a full transcript of the proceeding or any portion that the objecting party deems necessary for the consideration of the case. The objecting party must submit its request for a transcript no more than 14 days after filing the notice of objections. Within the same timeframe, the objecting party must file with the supreme court and serve on the opposing party under C.R.C.P. 5 either a designation of those portions of the transcript that the party wishes added to the record before the supreme court or a statement that the party does not wish to designate any portions of the transcript.

(B) Opposing Party's Request for Transcript. The opposing party must, within 14 days after service of the designation or statement under subsection (A) above, file with the supreme court, submit to the court reporter or transcriber, and serve under C.R.C.P. 5 either a cross-designation of any portions of the transcript the party deems necessary for proper consideration of the case or a statement that the party does not wish to designate any portions of the transcript.

(C) Expense of Preparing Transcript. The objecting party is responsible for the expense of preparing a transcript if the objecting party designates any portion of the transcript. If the objecting party does not designate any portion of the transcript but the opposing party designates at least some portion thereof, the opposing party is responsible for the expense of preparing the transcript.

(D) Preparation and Filing of Transcript. Unless the requesting party has failed to adequately arrange to pay for the transcript, the reporter or transcriber must prepare the transcript and file it, properly certified, with the supreme court within 63 days (9 weeks) after the filing of the notice of objections.

(4) Briefs. An objecting party must file an opening brief no more than 28 days after the later of the filing of the transcript or the filing of the opposing party's statement declining to designate portions of the transcript. The opposing party must file an answer brief no more than 28 days after the filing of the objecting party's opening brief. The objecting party must file a reply brief, if any, no more than 14 days after the filing of the answer brief.

(d) Amicus Curiae Brief. A brief of an amicus curiae may be filed only by leave of the supreme court or at the request of the supreme court. The brief may be conditionally filed with the motion for leave. A motion for leave must identify the interest of the amicus curiae and must state the reasons why an amicus curiae brief is desirable. An amicus curiae must file its brief within the time allowed the party whose position the amicus brief supports unless the supreme court for good cause shown grants leave for later filing, in which event the supreme court will specify when an opposing party may answer.

(e) Supreme Court Decision. The supreme court may adopt, modify, or reject the Presiding Disciplinary Judge's report and will determine as a matter of law whether the respondent engaged in the unauthorized practice of law. If the supreme court finds that the respondent engaged in the unauthorized practice of law, the supreme court may enjoin the respondent from further unauthorized practice of law and make further appropriate orders including orders of restitution, costs, and fines. The clerk of the supreme court must mail a copy of the order to each party.

(f) No Limitation on Authority to Issue Injunction. Nothing in this rule shall be construed to limit the power of the supreme court, upon proper application, to issue an injunction at any stage of a proceeding in order to prevent public harm.

Rule 232.21. Collection of Restitution

(a) Notice of Intent and Withdrawal of Notice. A person in whose name a restitution order has been entered under this rule has the right to pursue collection of the amount of restitution owed to that person. A person who wishes to collect restitution under this section must first deliver to the clerk of the supreme court a notice of intent to pursue collection. On receiving such a notice, the supreme court and the Regulation Counsel will cease all attempts to collect the restitution amounts due to that person. A person may withdraw a notice of intent to pursue collection of restitution by filing a notice of withdrawal with the clerk of the supreme court. The notice must state the amount, if any, of restitution collected. On receiving a notice of withdrawal, the

supreme court and the Regulation Counsel may resume pursuing collection of restitution under this section.

(b) Procedure. A person who has filed a notice of intent to pursue collection of restitution may request that the supreme court issue any of the following without cost:

(1) One or more certified copies of the transcript for the order for restitution, which may be recorded with a clerk and recorder or with the secretary of state;

(2) An order that a portion of the respondent's earnings be withheld under C.R.S. section 16-18.5-105(3)(b); and

(3) A writ of execution, writ of attachment, or other civil process to collect on a judgment under article 52 of title 13, C.R.S.

Part V. Contempt Proceedings

Rule 232.22. Overview of Contempt Proceedings

Contempt proceedings are brought by the Regulation Counsel to hold in contempt a respondent who is alleged to have violated an existing injunction prohibiting the respondent from engaging in the unauthorized practice of law. The Regulation Counsel files a petition for contempt with the supreme court, which may refer the matter to a special master to preside over the contempt proceeding. The special master will conduct an indirect contempt proceeding under C.R.C.P. 107 unless otherwise provided in this rule. The special master will then prepare a report to the supreme court. A respondent found to have acted in contempt of an injunction may be subject to a sentence of imprisonment not to exceed six months, restitution, a fine of \$2,000 to \$10,000 per incident, and assessment of costs as allowed by law. A respondent found to have also failed to pay ordered fines, costs, or restitution may be subject to remedial sanctions within a contempt proceeding.

Rule 232.23. Petition for Contempt

(a) Petition.

(1) Filing. If the Regulation Committee authorizes an indirect contempt proceeding against a respondent, the Regulation Counsel must file a petition with the supreme court in the name of the People of the State of Colorado.

(2) Contents. The petition must set forth the factual allegations and charges in plain language and with sufficient particularity to identify the alleged activities that constitute contempt. The petition must request specific relief and request issuance of a contempt citation and an order to show cause why the respondent should not be held in contempt. The petition must be supported by an affidavit that gives rise to reasonable cause to believe that indirect contempt has been committed.

(b) Determination. On receiving the petition, the supreme court may:

(1) Appoint a special master and refer the matter to the special master to preside over the contempt proceeding in a county convenient to the participants. The special master must be an active or senior judge of a court of record, must not have any conflicts of interest, and must be able to serve diligently and impartially. If the supreme court refers the matter to a special master, the supreme court will instruct the special master to issue an order to show cause and a citation for contempt and will direct the special master to prepare a report at the conclusion of the proceeding containing findings of fact, conclusions of law, and recommendations.

(2) Issue under C.R.C.P. 232.15(b) a show cause order in a civil injunctive proceeding to be governed by C.R.C.P. 232.14 through C.R.C.P. 232.20; or

(3) Dismiss the petition.

(c) Issuance of Citation. On receiving the referral from the supreme court, the special master will issue a citation ordering the respondent to appear at a designated date, time, and place to show cause why the respondent should not be held in indirect contempt for the unauthorized practice of law. The special master also may direct the respondent to respond in writing to the show cause order by filing an answer to the petition. Depending on the requested relief in the petition, the citation must state that a fixed sentence of imprisonment not to exceed six months, restitution, an unconditional fine of \$2,000 to \$10,000 per incident, and assessment of allowable costs may be imposed. The Regulation Counsel must serve on the respondent the order, the citation, and a copy of the petition. Service of process must be made in accordance with C.R.C.P. 4. Proof of service must be made in accordance with C.R.C.P. 4(h).

(d) Procedure If Respondent Fails to Appear.

(1) Issuance of Warrant. If the respondent has been served with the citation and fails to appear before the special master at the time and place designated in the citation or at any time thereafter that the special master directs, the special master may make appropriate findings and issue a warrant for the respondent's arrest.

(2) Contents of Warrant. The warrant must fix the time and place for the respondent's production before the special master. The warrant must also state the amount of bail required.

(3) Bond. If the respondent fails to make bond, the sheriff must keep the respondent in custody and produce the respondent before the special master at the time and place fixed by the warrant. The respondent must be discharged if the sheriff or a clerk for the judicial district in which the contempt proceeding is held receives and approves of a bond directing the respondent to appear at the date, time, and place designated in the warrant, and at any time thereafter that the special master directs, or pay the sum specified. If the respondent fails to appear at the time designated in the warrant, or at any time thereafter that the special master directs, the bond may be forfeited on proper notice to the surety, if any. To the extent the aggrieved party has suffered damages because of the contempt, the bond may be paid to the aggrieved party.

Rule 232.24. Contempt Proceeding, Report, Objections, and Collections

(a) Prosecuting Authority. The Regulation Counsel will prosecute the contempt proceeding.

(b) Contempt Procedures. A respondent in a contempt proceeding must be afforded all procedural protections set forth in C.R.C.P. 107 and applicable law.

(1) First Appearance. The respondent must attend a first appearance. At the first appearance, the special master must advise the respondent of the respondent's rights under C.R.C.P. 107(d) and set the matter for a contempt hearing.

(2) Contempt Hearing. The contempt hearing will go forward under C.R.C.P. 107. Subject to any limitations in the order of reference, the special master may exercise in the proceeding the powers generally reposed in a court under the Colorado Rules of Civil Procedure, including C.R.C.P. 107.

(c) Report to Supreme Court, Objections, and Decision.

(1) Report of the Special Master. After a hearing the special master must report in writing to the supreme court, setting forth findings of fact, conclusions of law, and recommendations for remedial and/or punitive sanctions and the terms of those sanctions, including whether the sanctions should be bifurcated. If the special master recommends a sanction, the special master must, before issuing a report, afford the respondent the right to make a statement in mitigation under C.R.C.P. 107(b) or C.R.C.P. 107(d)(1), as applicable. Under C.R.C.P. 107(e), if the special master recommends both remedial and punitive sanctions, appropriate procedures must be followed as to each type of sanction, and findings must be made to support the adjudication of both types of sanctions. When submitting a report to the supreme court, the special master must transmit the record of the entire proceeding to the supreme court and mail a copy of the report to each party.

(2) Objections. Objections to the special master's report are governed by C.R.C.P. 232.20(b)-(d).

(3) Supreme Court Decision. The supreme court may adopt, modify, or reject the special master's report and will determine as a matter of law whether the respondent engaged in contemptuous conduct that was offensive to the authority and the dignity of the supreme court. If the supreme court finds that the respondent engaged in contemptuous conduct, the supreme court may impose a fixed sentence of imprisonment not to exceed six months, restitution, an unconditional fine of \$2,000 to \$10,000 per incident, or assessment of costs as allowed by law, or any combination thereof under C.R.C.P. 107(e). If the supreme court finds contemptuous conduct but does not impose imprisonment, the supreme court will impose a fine between \$2,000 and \$10,000 for each incident of contempt, payable to the supreme court, and may order restitution or assessment of costs as allowed by law. The supreme court may also order related remedial sanctions. The clerk of the supreme court must mail a copy of the order to each party and to the special master.

(4) Remand to Special Master. If the supreme court finds that the respondent engaged in contemptuous conduct and concludes that a sentence of imprisonment is appropriate, the supreme court will remand the matter to the special master with instructions to issue the mittimus and to take the respondent into custody in accordance with the procedures of that court of record.

(d) Collection of Restitution.

(1) Notice of Intent and Withdrawal of Notice. A person in whose name a restitution order has been entered under this rule has the right to pursue collection of the amount of restitution owed to that person. A person who wishes to collect restitution under this subsection must first deliver to the clerk of the supreme court a notice of intent to pursue collection. On receiving such a notice, the supreme court and the Regulation Counsel will cease all attempts to collect the restitution amounts due to that person. A person may withdraw a notice of intent to pursue collection of restitution by filing a notice of withdrawal with the clerk of the supreme court. The notice must state the amount, if any, of restitution collected. On receiving a notice of withdrawal, the supreme court and the Regulation Counsel may resume pursuing collection of restitution under this section.

(2) Procedure. A person who has filed a notice of intent to pursue collection of restitution may request that the supreme court issue any of the following without cost:

(A) One or more certified copies of the transcript for the order for restitution, which may be recorded with a clerk and recorder or with the secretary of state;

(B) An order that a portion of the respondent's earnings be withheld under C.R.S. section 16-18.5-105(3)(b); and

(C) A writ of execution, writ of attachment, or other civil process to collect on a judgment under article 52 of title 13, C.R.S.

(e) Enforcement of Punitive Sanctions. The Regulation Counsel may pursue a subsequent contempt citation with the supreme court if the respondent fails to pay the fine imposed as a punitive sanction. In such instances, the Regulation Counsel may pursue the contempt citation without authorization of the Regulation Committee.

Part VI. General Provisions

Rule 232.25. Applicable Rules

The Colorado Rules of Civil Procedure apply in civil injunction and contempt proceedings when not inconsistent with this rule.

Rule 232.26. Rule of Limitation

Injunctions, stipulations to injunction, and findings of contempt may not be based on conduct reported more than five years after the date the conduct is discovered or reasonably should have been discovered. But there is no rule of limitation where the allegations involve fraud or where the respondent is alleged to have concealed the conduct.

Rule 232.27. Representation of Closely Held Entities

An officer of a closely held entity may represent that entity in proceedings under this rule if the amount requested in restitution does not exceed the amount set by the statute governing closely held entity representation, C.R.S. section 13-1-127. The officer may be required to provide evidence of the officer's authority to appear on behalf of the closely held entity.

Rule 232.28. Access to Information

(a) Public Information. Unless otherwise provided in this rule, all files and records relating to any phase of a civil injunction or contempt proceeding are available to the public after:

- (1) A petition for injunction is filed with the supreme court under C.R.C.P. 232.15;
- (2) A petition for contempt is filed with the supreme court under C.R.C.P. 232.23;
- (3) A stipulation to injunction is filed under C.R.C.P. 232.17 before the filing of a petition; or
- (4) An interim injunction is imposed under C.R.C.P. 232.13 before the filing of a petition.

(b) Confidential Information. The following types of information are confidential and are not available to the public:

- (1) Files and records of a proceeding in which none of the four events set forth in subsection (a) above has occurred, unless the respondent has waived confidentiality;
- (2) Files and records of any proceeding that was dismissed before a petition was filed, unless the respondent has waived confidentiality;

- (3) Interview notes made during a preliminary investigation under C.R.C.P. 232.9;
 - (4) The work product, deliberations, privileged communications, and internal communications of the Office of the Attorney Regulation Counsel, the Advisory Committee, the Regulation Committee, the Office of the Presiding Disciplinary Judge, the special master to which a contempt matter is referred, and the supreme court;
 - (5) Information subject to a protective order under subsection (d) below or other applicable rules; and
 - (6) Information otherwise made confidential under this rule.
- (c) Subpoenaed Records. If the Regulation Counsel is served with a valid subpoena, the Regulation Counsel shall not permit access to files or records or furnish documents that are confidential as provided by this rule unless the supreme court orders otherwise.
- (d) Protective Orders. On motion of any person and on a showing of good cause, a protective order may be entered restricting the disclosure of specific information to protect a complaining witness, another witness, a third party, or a respondent from annoyance, embarrassment, oppression, or undue burden or expense. A protective order may direct that a proceeding, including a hearing, be conducted so as to preserve the confidentiality of certain information.
- (e) Exceptions to Confidentiality During an Investigation.
- (1) Before the filing of a petition, the Regulation Counsel may, to conduct the investigation, disclose information to a complaining witness or to another third party.
 - (2) Before the filing of a petition, the Regulation Counsel may disclose the existence, subject matter, status, and resolution, if any, of an investigation if:
 - (A) The respondent has waived confidentiality;
 - (B) The respondent has been convicted of a crime related to the UPL allegations, such as impersonation of an attorney;
 - (C) The investigation is based on allegations that have become generally known to the public;
 - (D) The disclosure is necessary to protect the public or the administration of justice; or

(E) A petition for interim injunction based on the investigation has been filed under C.R.C.P. 232.13.

(f) Request for Confidential Information.

(1) Release With Notice.

(A) The Regulation Counsel may, on request, release information that is confidential under subsection (b) above to the following types of agencies:

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

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

(iii) A lawyer or judicial discipline enforcement agency;

(iv) An agency authorized to investigate criminal conduct or a consumer protection agency;

(v) An agency authorized to investigate allegations of unauthorized practice of law; or

(vi) A tribunal with which the respondent has had previous contact.

(B) When the Regulation Counsel releases confidential information under this subsection (f)(1), the Regulation Counsel must send to the respondent's last-known address contemporaneous notice and a copy of the information released.

(2) Release Without Notice.

(A) The Regulation Counsel may release confidential information without notifying the respondent if an agency listed in subsection (f)(1)(A) above requests the information and certifies that:

(i) The request is made in furtherance of an ongoing investigation of the respondent;

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

(iii) Disclosing to the respondent the existence of the investigation would seriously prejudice that investigation.

(B) A certification made under subsection (f)(2)(A) above will be deemed confidential.

(g) Response to False or Misleading Statement and Defense to Civil Suit. The Regulation Counsel may disclose any information reasonably necessary either to correct false or misleading public statements made during a proceeding under this rule or to defend against litigation in which the Regulation Counsel is a named defendant.

(h) Disclosure by Persons and Entities Other Than Entities Defined in This Rule. Unless otherwise ordered, nothing in this rule prohibits the complaining witness, any other witness, or the respondent from disclosing the existence of a proceeding under this rule, from disclosing any documents or correspondence provided to those persons, or from providing testimony related to a proceeding under this rule.

(i) Duty of Officials and Employees. All officials, employees, and volunteers within the supreme court, the Advisory Committee, the Regulation Committee, the Office of the Attorney Regulation Counsel, the Office of the Presiding Disciplinary Judge, and courts of record from which a special master has been appointed have an ongoing duty to maintain the confidentiality mandated by this rule.

(j) Public List of Those Enjoined or Held in Contempt. The Regulation Counsel must maintain a public list of persons who have been enjoined or held in contempt under this rule. The Regulation Counsel must also make public the reports adopted by the supreme court.

Rule 232.29. Notice

Except as otherwise provided by this rule, notice must be in writing. Notice must be sent to the last-known mailing address of the recipient, unless the recipient consents to receiving notice by email. Notice is deemed effective the date notice is placed in the mail; placed in the custody of a delivery service; or emailed, if the recipient has consented to notice by email.

Rule 232.30. Expungement

(a) Records Subject to Expungement. Except for records relating to proceedings that have become public under C.R.C.P. 232.28 or records relating to proceedings that result in agreements under C.R.C.P. 232.12(a)(6), all records relating to proceedings that were dismissed must be expunged from the files of the Regulation Committee and the Regulation Counsel five years after the end of the calendar year in which the dismissal occurred.

(b) Effect of Expungement. The Regulation Committee and the Regulation Counsel must respond to any general or specific inquiry concerning the existence of a proceeding the records of which have been expunged by stating that no record of a proceeding exists.

(c) Extension of Time to Retain Records. The Regulation Counsel may apply in writing to the Regulation Committee for permission to retain files and records that would otherwise be expunged under this section 232.30 for an additional period of time not to exceed three years. After giving the respondent in question notice and an opportunity to respond in writing, the Regulation Committee may grant the request on a finding of good cause. Through the same procedure, the Regulation Committee may grant additional extensions.

Rule 233. [NO CHANGE]

Rule 234. Reserved.

Rule 235. Reserved.

Rule 236. Reserved.

Rule 237. Reserved.

Rule 238. Reserved.

Rule 239. Reserved.

Rule 240. Reserved.

Rule 240.1. Reserved.

Rule 240.2. Reserved.

Amended and Adopted by the Court, En Banc, December 15, 2022, effective immediately.

By the Court:

**Monica M. Márquez
Justice, Colorado Supreme Court**