

List of Practices of the Attorney Regulation Committee

With additions in **BOLD**, 2-8-07.

1) The Committee requests the Attorney Regulation Counsel to provide information about pending investigations and prior discipline:

a) when information about investigations of one attorney is relevant to the Committee's decision about another lawyer,

b) to assist the Committee in keeping track of the number and length of pending investigations, and,

c) when the existence of investigations and prior private discipline is relevant to the Committee's decision to approve diversion, order the imposition of a private admonition or approve formal proceedings.

2) Requests for Investigation Involving Attorney Regulation Counsel Staff Attorneys

a) When a request for investigation is received relating to such matters and the information received does not appear to constitute a claim of a general unfitness to practice or that the attorney poses a substantial danger to continually engage in misconduct, the matter is referred to the Attorney Regulation Counsel for his review.

b) In such situations, it is the policy of the Attorney Regulation Counsel to defer reviewing the investigation until the underlying Disciplinary Proceeding is resolved. This insures that requests for investigation do not become a vehicle by which parties can undermine speedy resolution of pending disciplinary proceedings.

c) Upon his or her review, the Attorney Regulation Counsel either decides that the matter should be investigated and then make a request to the Colorado Supreme Court for the appointment of a special prosecutor or makes a decision that the request for investigation should be dismissed.

d) If the Attorney Regulation Counsel decides that the request should be dismissed, the person filing the request would be informed and then that person may request that the Attorney Regulation Committee review the dismissal pursuant to C.R.C.P. 251.12. If the Committee disagrees with the dismissal, Regulation Counsel would then request appointment of a special prosecutor

who would investigate and present findings and recommendation to the Committee.

3) Requests for Investigation Involving Attorney Regulation Counsel

a) When a request for investigation is received relating to conduct in an underlying Disciplinary Proceeding and which does not appear to constitute a claim of a general unfitness to practice or that the Attorney Regulation Counsel poses a substantial danger to continually engage in misconduct, the Committee shall defer taking action on the request investigation. Consideration shall be deferred until the underlying Disciplinary Proceeding is resolved in order to insure that requests for investigation do not become a vehicle by which parties can undermine speedy resolution of pending disciplinary proceedings.

b) When consideration of a matter is not deferred, the Committee shall review the matter and decide whether the matter should be investigated independently pursuant to Rule 251.2(b)(1). Upon conclusion of an investigation, the Committee shall proceed pursuant to Rule 251.10(b)(3) and treat the matter as if it was an investigation referred by Attorney Regulation Counsel. If the Committee concludes that a complaint shall be filed, the Chairperson shall request the Colorado Supreme Court to appoint a special prosecutor.

c) If the Committee decides that the request should be dismissed, the person filing the request will be informed by the Committee.

4) In making its determinations pursuant to C.R.C.P. 251.12, the Attorney Regulation Committee will not consider nor be informed whether the person has previously participated in a diversion as an alternative to discipline.

5) The Committee requests that the Office of Attorney Regulation Counsel not dismiss an investigation involving allegations of acts of violence without the approval of the Attorney Regulation Committee.

6) Respondents may file a memo of up to five pages in length in response to a report of investigation. **Neither respondents, nor their counsel, may attend meetings during which the Committee considers reports of investigations or requests for diversions.**

7) In appropriate cases, the Committee can direct Attorney Regulation Counsel to participate in mediation if the respondent is willing to participate.

8) The Office of Attorney Regulation Counsel will regularly report to the Committee the status of any investigation pending longer than eight months.

9) Dismissal of Allegations

It is the practice of the Committee to consider the issuance of a "better practices" letter and dismissal as an alternative to approval of a diversion when the Committee determines that allegations of misconduct are not appropriate for diversion.

10) Review of Diversion Agreements and Investigation Reports

Pursuant to Rule 251.12 and 251.13, the Committee may approve the diversion of a matter. Routinely, matters appropriate for diversion are presented to the Committee by Attorney Regulation Counsel after an agreement has been reached between the parties. Pursuant to the rule, the Committee can approve such an agreement or reject the agreement and direct the filing of a formal complaint. A respondent who has agreed to a diversion is not barred from asserting, in the alternative, that the Committee should dismiss the complaint and issuance a "better practices" letter as an alternative. The Committee will not consider such assertions as weighing against a respondent in deciding whether to accept a proposed diversion. The Committee will consider the issuance of a "better practices" letter as an alternative to a diversion or a formal complaint when the Committee believes that any alleged misconduct was only technical in nature or where the minor nature of the misconduct does not warrant the allocation of the resources necessary to prove the misconduct.

10) It is the practice of the Committee to not reject a diversion agreement in favor of a more severe sanction or condition when matters were initially proposed as diversion agreements at the central intake level.

11) Regulation Counsel has agreed to provide the following Notice to Respondents or Respondent's Counsel when relevant:

Regulation Counsel's Policy of Review: Central Intake Diversion Agreements

Pursuant to C.R.C.P. 251.9 Regulation Counsel commenced an investigation of your conduct. Regulation Counsel determined that the allegations, if proved, would constitute grounds for discipline. Regulation Counsel, however, determined that the matter should be addressed by means of an alternative to discipline (diversion agreement) as provided by C.R.C.P. 251.13.

An offer of diversion made pursuant to C.R.C.P. 251.11 is not subject to review by the Attorney Regulation Committee ("Committee"). If, however, you disagree with Regulation Counsel and believe that the conduct does not warrant a diversion agreement you may seek review of the proposed agreement by the Committee.

Regulation Counsel provides the following optional review policy:

- (a) At the central intake level Regulation Counsel has offered the respondent a diversion pursuant to C.R.C.P. 251.11 and C.R.C.P. 251.13.
- (b) Respondent believes his/her conduct does not warrant diversion and seeks review of the proposed agreement by the Committee.
- (c) The proposed diversion agreement and underlying matter will be transferred from the central intake division to an attorney in the trial division.
- (d) The assigned trial attorney will submit the proposed agreement to the Committee for its review.
- (e) The Committee may determine that the proposed diversion agreement is warranted under the facts and rules or direct that the matter be dismissed with or without conditions.
- (f) It is the stated policy of the committee that such review shall not result in a more severe sanction than the proposed diversion and conditions.

12] C.R.C.P. 251.13(b) states that "misconduct involving family violence" will not "generally . . . be diverted." In considering whether such misconduct constitutes an exception to this "general" prohibition, the Committee will consider, in part:

- a. Whether there is evidence of early entry into a Domestic Violence treatment program,
- b. Whether there is little or minor injury,
- c. Whether there was provocation,
- d. Whether there was a display of immediate remorse,
- e. Whether there was cooperation with authorities,
- f. Whether there was a lack of domestic violence history,

- g. Whether the case only involved non-physical misconduct (trespass, criminal mischief, etc.), and,
- h. If violations of restraining orders are involved, whether they were technical and non-threatening.