

Rule Change #2000(20)

**The Colorado Rules of Civil Procedure
Chapter 20. Colorado Rules of Procedure Regarding
Attorney Discipline and Disability Proceedings,
Colorado Attorneys' Fund for Client Protection,
and Mandatory Continuing Legal Education and Judicial Education**

The following rules are amended as of September 1, 2000:

- Rule 251.2. Attorney Regulation Committee
- Rule 251.13. Alternatives to Discipline
- Rule 251.16. Presiding Disciplinary Judge
- Rule 251.23. Disability Inactive Status
- Rule 251.27. Proceedings Before the Supreme Court
- Rule 251.28. Required Action After Disbarment, Suspension, or Transfer to Disability Inactive Status
- Rule 251.30. Reinstatement After Transfer to Disability Inactive Status
- Rule 251.31. Access to Information Concerning Proceedings Under These Rules
- Rule 251.32. General Provisions
- Rule 251.33. Expunction of Records
- Rule 251.34. Advisory Committee

The following rules are repealed as of September 1, 2000:

- Rule 251.24. Appellate Discipline Commission
- Rule 251.25. Counsel For The Appellate Discipline Commission
- Rule 251.26. Proceedings Before the Appellate Discipline Commission

Adopted and Ordered by the Court, En Banc, September 12, 2000.

BY THE COURT:

**Rebecca Love Kourlis
Justice, Colorado Supreme Court**

Rule 251.2. Attorney Regulation Committee

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

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

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

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

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

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

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

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

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

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

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

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

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

~~the Appellate Discipline Commission~~ or the Supreme Court as long as the member is serving on the committee.

(d) Disqualification. Members of the committee shall not represent an attorney in any matter as provided in these Rules during their terms of service. Former members of the committee shall not represent an attorney in any matter that was being investigated or prosecuted as provided in these rules during their terms of service.

Rule 251.13. Alternatives to Discipline

(a) Referral to Program. The Regulation Counsel, the committee, the Presiding Disciplinary Judge, a Hearing Board, ~~the Appellate Discipline Commission,~~ or the Supreme Court may offer diversion to the alternatives to discipline program to the attorney. The alternatives to discipline program may include, but is not limited to, diversion or other programs such as mediation, fee arbitration, law office management assistance, evaluation and treatment through the attorneys' peer assistance program, evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or accounting procedures, continuing legal education, ethics school, the multistate professional responsibility examination, or any other program authorized by the Court

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

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

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

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

(4) The misconduct involves family violence;

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

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

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

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

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

(c) Diversion Agreement. If an attorney agrees to an offer of diversion as provided by this rule, the terms of the diversion shall be set forth in a written agreement. If the agreement is entered prior to a determination to proceed is made pursuant to C.R.C.P. 251.9, the agreement shall be between the attorney and Regulation Counsel. If diversion is offered and entered after a determination to proceed is made pursuant to C.R.C.P. 251.9 but before authorization to file a complaint, the diversion agreement between the attorney and Regulation Counsel shall be submitted to the committee for consideration. If the committee rejects the diversion agreement, the matter shall proceed as otherwise provide by these Rules. If diversion is offered and entered after a complaint has been filed pursuant to C.R.C.P. 251.14, the diversion agreement shall be submitted to the Presiding Disciplinary Judge, ~~Appellate Discipline Commission~~, or Supreme Court, whichever body before which the matter is pending for consideration. If the diversion agreement is rejected, the matter shall proceed as provide by these Rules.

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

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

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

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

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

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

(2) If Regulation Counsel has reason to believe that the attorney has breached the diversion agreement after a determination to proceed has been made, then the matter shall be

referred to the Presiding Disciplinary Judge, ~~Appellate Discipline Commission~~, or Supreme Court, whichever body approved the ~~division-diversion~~ agreement, with an opportunity for the attorney to respond. The Regulation Counsel will have the burden by a preponderance of the evidence to establish the materiality of the breach, and the attorney will have the burden by a preponderance of the evidence to establish justification for the breach. If after consideration of the information presented by the Regulation Counsel and the attorney's response, if any, it is determined that the breach was material without justification, the agreement will be terminated and the matter will proceed as provided for by these rules. If a breach is established but determined to be not material or to be with justification, the diversion agreement may be modified in light of the breach. If no breach is found, the matter shall proceed pursuant to the terms of the original diversion agreement.

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

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

(i) Confidentiality. All the files and records resulting from the diversion of a matter shall be made public except by order of the Supreme Court. Information of misconduct admitted by the attorney to a treatment provider or a monitor while in a diversion program is confidential if the misconduct occurred before the attorney's entry into a diversion program.

Rule 251.16. Presiding Disciplinary Judge

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

(b) Qualifications. The Presiding Disciplinary Judge shall be an attorney, duly admitted to the Bar of Colorado, with ~~less~~ more than five years experience in the practice of law. The Presiding Disciplineary Judge, while serving in that capacity, may hold any other public office.

(c) Powers and Duties of the Presiding Disciplinary Judge.

The Presiding Disciplinary Judge shall be authorized and empowered to act in accordance with these Rules and to:

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

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

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

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

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

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

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

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

(e) Disqualification. Presiding Disciplinary Judges shall not represent an attorney in any matter as provided in these Rules during their terms of service. Former presiding disciplinary judges shall not represent an attorney in any matter that was being investigated or prosecuted as provided in these rules during their terms of service.

Rule 251.23. Disability Inactive Status

(a) Disability Inactive Status. Where it is shown that an attorney is unable to fulfill professional responsibilities competently because of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, the attorney shall be transferred to disability inactive status. During such time as an attorney is on disability inactive status the attorney shall not engage in the practice of law.

Proceedings instituted against an attorney pursuant to this Rule are disability proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a violation of the attorney's oath. The pendency of proceedings

provided for by this Rule shall not defer or abate other proceedings conducted pursuant to these Rules, unless after a hearing the Presiding Disciplinary Judge determines that the attorney, is unable to assist in the defense of those other proceedings because of the disability. If such other proceedings are deferred, then the deferral shall continue until such time as the attorney is found to be eligible for reinstatement as provided by C.R.C.P. 251.30.

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

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

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

(d) Procedure When Attorney During Course of Proceedings Alleges a Disability that Impairs the Attorney's Ability to

Defend Himself. If in the course of proceedings conducted pursuant to these Rules the lawyer alleges disability by reason of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, that impairs the attorney's ability to defend ~~himself~~ adequately in such proceedings, such proceedings shall be suspended and the Presiding Disciplinary Judge shall enter an order transferring the attorney to disability inactive status and order a medical examination of the attorney. Upon review of the report of the medical examination and other relevant information, the Presiding Disciplinary Judge may do any of the following:

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

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

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

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

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

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

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

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

~~Rule 251.24. Appellate Discipline Commission~~

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

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

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

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

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

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

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

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

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

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

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

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

~~**(d) Disqualification.** Members of the of the Appellate Discipline Commission shall not represent an attorney in any matter as provided in these Rules during their terms of service. Former members of the commission shall not represent an attorney in any matter that was being investigated or prosecuted as provided in these rules during their terms of service.~~

~~Rule 251.24 was repealed by order of the supreme court, effective September 1, 2000.~~

~~Rule 251.25. Counsel For The Appellate Discipline Commission~~

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

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

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

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

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

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

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

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

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

Rule 251.25 was repealed by order of the supreme court, effective September 1, 2000.

~~Rule 251.26. Proceedings Before the Appellate Discipline Commission~~

~~(a) Standard of Review.~~ All disciplinary and disability proceedings filed with the Appellate Discipline Commission as herein provided shall be conducted in the name of the People of the State of Colorado titled "IN THE MATTER OF [the name of the ATTORNEY RESPONDENT]" and shall be prosecuted by the Regulation Counsel.

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

~~The matter shall be docketed as:~~

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

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

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

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

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

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

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed with the Presiding Disciplinary Judge by any party pursuant to the Colorado Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (f) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion under C.R.C.P. 52 or 59, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) granting or denying a motion under C.R.C.P. 59, to alter or amend the judgment; (3) denying a motion for a new hearing under C.R.C.P. 59; (4) expiration of an extension of time granted by the Presiding Disciplinary Judge to file motion(s) for

~~post-hearing relief under C.R.C.P. 59, where no motion is filed. The Hearing Board shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the Appellate Discipline Commission shall be stayed. If the decision is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the decision.~~

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

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

~~**(h) Record on Appeal -- Composition.**~~

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

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

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

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

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

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

~~the court reporter for payment of the transcription costs. Within thirty days of the transmittal of the court reporter's cost estimate to the pro se party of counsel, the court reporter shall file with the Presiding Disciplinary Judge and the Appellate Discipline Commission a statement of: (1) the date the court reporter's estimate was provided and the date on which the reporter received full payment of the estimate, or (2) the schedule of payments approved by the Presiding Disciplinary Judge under a good cause extension, or (3) that the cost of the transcript will be paid from public funds. Each party shall advance the cost of preparing that part of the record designated by such party except as otherwise ordered by the Presiding Disciplinary Judge for good cause shown.~~

~~**(j) Transmission of the Record.**~~

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

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

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

~~(3) Temporary Retention Of Record By The Presiding Disciplinary Judge For Use In Preparing Appellate Papers. Notwithstanding the provisions of this rule, the parties may stipulate, or the Presiding Disciplinary Judge on motion of any party may order, that the record shall temporarily be retained by the Presiding Disciplinary Judge for use by the parties in preparing appellate papers. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by complying with the provisions of this rule and by presenting to the Appellate Discipline Commission a partial~~

~~record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if the appellant is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the Appellate Discipline Commission may order, the appellant shall request the Presiding Disciplinary Judge to transmit the record.~~

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

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

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

~~**(k) Docketing the Appeal.**~~

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

~~(2) Leave To Proceed On Appeal In Forma Pauperis From Hearing Board To Appellate Discipline Commission. A party to an~~

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

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

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

~~**(1) General Provisions.** Except as otherwise provided in these rules, and to the extent practicable, appeals shall be conducted in conformity with the general provisions found in C.A.R. 25, 26, 27, 28, 29, 31, 32, 34, 36, 38, 39, 42, and 45.~~

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

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

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

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

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

Rule 251.26 was repealed by order of the supreme court, effective September 1, 2000.

Rule 251.27. Proceedings Before the Supreme Court

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

(b) Standard of Review. All disciplinary and disability proceedings filed in the Supreme Court as herein provided shall be conducted in the name of the People of the State of Colorado titled "IN THE MATTER OF [the name of the ATTORNEY-RESPONDENT]" and shall be prosecuted by the Regulation Counsel.

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

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

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

IN THE MATTER OF [the name of the ATTORNEY-RESPONDENT]

(c) Appeal--How Taken. An appeal from a Hearing Board to the Supreme Court shall be taken by filing a notice of appeal with the Supreme Court within the time set forth in this Rule. Upon the filing of the notice of appeal, the Supreme Court shall have the exclusive jurisdiction over the appeal and procedures concerning the appeal unless otherwise specified by these Rules. An advisory copy of the notice of appeal shall be served on the

Presiding Disciplinary Judge within the time for its filing in the Supreme Court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is a ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. Content of the notice of appeal shall not be deemed jurisdictional.

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

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

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

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

The running of the time for filing a notice of appeal is terminated as to both parties by a timely motion filed with the Presiding Disciplinary Judge by either party pursuant to the Colorado Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (g) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion under C.R.C.P. 52 or 59, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) granting or denying a motion under C.R.C.P. 59, to alter or amend the judgment; (3) denying a motion for a new hearing under C.R.C.P. 59; (4) expiration of an extension of time granted by the Presiding Disciplinary Judge to file motion(s) for post-hearing relief under C.R.C.P. 59, where no motion is filed. The Hearing Board shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the Supreme Court shall be stayed. If the decision is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the decision.

Upon a showing of excusable neglect, the Supreme Court may extend the time for filing the notice of appeal by a party for a period not to exceed thirty days from the expiration of the time

otherwise prescribed by this section (g). Such an extension may be granted before or after the time otherwise prescribed by this section (g) has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the Supreme Court shall deem appropriate.

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

(i) Record on Appeal--Composition.

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

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

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

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

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

(j) Record of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Record is Ordered; Costs. Within ten days after filing the notice of appeal, the appellant shall file with the Presiding Disciplinary Judge and with the clerk of the Supreme Court either: (1) a statement that no portions of the record other than those numerated in section (i) are desired or (2) a detailed designation of record, setting forth specifically those portions of the record to be included and all dates of proceedings for which transcripts are requested and the name(s)

of the court reporter(s) who reported the proceedings that the appellant directs to be included in the record. The appellant shall serve a copy of the designation of record on each court reporter listed therein. If the appellant contends that a finding or conclusion is not supported by the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall include in the designation of record a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be presented on appeal. If the appellee deems it necessary to include a transcript of other proceedings or other parts of the record, the appellee shall, within ten days after the service of the statement or the appellant's designation of the record, file with the Presiding Disciplinary Judge and the Supreme Court, and serve on the appellant and on any court reporter who reported proceedings of which the appellee desires an additional transcript, a designation of the additional items to be included. Service on any court reporter of the appellant's designation of record or the appellee's additional designation of record shall constitute a request for transcription of the specified proceedings. Within fourteen days after service of any such designation of record, each such court reporter shall provide in writing to all counsel in the appeal: (1) the estimated number of pages to be transcribed; (2) the estimated completion date; and (3) the estimated cost of transcription. Within twenty days after receiving the reporter's estimate, the designating party shall deposit the full amount of such estimate with the court reporter. For good cause shown, within said twenty days and upon the agreement of the court reporter, the Presiding Disciplinary Judge may order a payment schedule extending the time for payment. When the cost of the transcription will be paid by public funds, the public entity shall make arrangements with the court reporter for payment of the transcription costs. Within thirty days of the transmittal of the court reporter's cost estimate to the pro se party or counsel, the court reporter shall file with the Presiding Disciplinary Judge and Supreme Court a statement of: (1) the date the court reporter's estimate was provided and the date on which the reporter received full payment of the estimate; or (2) the schedule of payments approved by the Presiding Disciplinary Judge under a good cause extension; or (3) that the cost of the transcript will be paid from public funds. Each party shall advance the cost of preparing that part of the record designated by such party except as otherwise ordered by the Presiding Disciplinary Judge for good cause shown.

(k) Transmission of the Record.

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

to enable the Presiding Disciplinary Judge to assemble and transmit the record.

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

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

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

(4) Extension Of Time For Transmission Of The Record; Reduction Of Time. The Supreme Court for good cause shown may extend the time for transmitting the record. A request for extension must be made within the time originally prescribed or within an extension previously granted. Any request for extension of the period of time based upon the reporter's inability to complete the transcript shall be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared, and the date by which the transcript can be completed and a statement by the court reporter that all payments due have been made. Failure to pay for the transcript in accordance with C.R.C.P. 251.27(j) is grounds for denial of a motion for extension. The Supreme Court may direct the Presiding

Disciplinary Judge to expedite the preparation and transmittal of the record on appeal and, upon motion or sua sponte, take other appropriate action regarding preparation and completion of the record.

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

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

(1) Docketing the Appeal.

(1) Filing. At the time of the filing of the notice of appeal or the time of filing any documents with the Supreme Court before the filing of the notice of appeal, the Appellant shall pay to the clerk of the Supreme Court a docket fee of \$150 and the clerk shall enter the appeal upon the docket. The party appealing shall docket the case as provided in section (b) of this Rule.

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

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

(3) Filing Of The Record. Upon receipt of the record or papers authorized to be filed in lieu of the record under the

provisions of subsections (k)(3) and (k)(6) of this rule following timely transmittal, the clerk of the Supreme Court shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

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

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

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

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

~~— (ii) The Appellate Discipline Commission case number;~~

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

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

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

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

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

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

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

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

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

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

Rule 251.28. Required Action After Disbarment, Suspension, or Transfer to Disability Inactive Status

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

(b) Notice to Clients in Pending Matters. An attorney against whom an order of disbarment, suspension, or transfer to disability inactive status has been entered shall promptly notify in writing by certified mail each client whom the attorney represents in a matter still pending of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of such order, and advising such clients to seek legal services elsewhere. In addition, the attorney shall deliver to each client all papers and property to which the client is entitled. An attorney who has been suspended as provided in the rules governing attorney registration or continuing legal education need not comply with the requirements of this subsection if the attorney has sought reinstatement as provided by the rules governing attorney registration or continuing legal education and reasonably believes that reinstatement will occur within fifteen days of the date of the order of suspension. If the attorney is not reinstated within those fifteen days, then the attorney must comply with this subsection.

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

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

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

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

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

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

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

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

In addition, the attorney shall continue to file a registration statement in accordance with C.R.C.P. 227 for a period of five years following the effective date of the order listing the attorney's residence or other address where communications may thereafter be directed to the attorney; provided, however, that the annual registration fee need not be paid during such five-year period unless and until the attorney is reinstated. Upon reinstatement the attorney shall pay the annual registration fee for the year in which reinstatement occurs.

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

(f) Notice of Order to the Courts. The Presiding Disciplinary Judge, ~~the clerk of the Appellate Discipline Commission,~~ or the clerk of the Supreme Court shall promptly transmit notice of the final order of disbarment, suspension, or

transfer to disability inactive status to all courts in this state. The chief judge of each judicial district may make such further orders pursuant to C.R.C.P. 251.32(h) or otherwise as the Chief Judge deems necessary to protect the rights of clients of the attorney.

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

Rule 251.29. Readmission and Reinstatement After Discipline

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

(b) Reinstatement After Suspension. Unless otherwise provided by the Supreme Court, ~~the Appellate Discipline Commission~~, a Hearing Board, or the Presiding Disciplinary Judge in the order of suspension, an attorney who has been suspended for a period of one year or less shall be reinstated by order of the Presiding Disciplinary Judge, provided the attorney files an affidavit with the Regulation Counsel within 30 days prior to the expiration of the period of suspension, stating that the attorney has fully complied with the order of suspension and with all applicable provisions of this chapter. Upon receipt of the attorney's affidavit that has been timely filed, the Regulation Counsel shall notify the Presiding Disciplinary Judge of the attorney's compliance with this rule. Upon receipt of the notice, the Presiding Disciplinary Judge shall issue an order reinstating the attorney. The order shall become effective upon the expiration of the period of suspension. If the attorney fails to file the required affidavit within the time specified, the attorney must seek reinstatement pursuant to section (c) of this Rule; provided, however, that a suspended attorney who fails to file a timely affidavit may obtain leave of the Presiding Disciplinary Judge to file an affidavit upon showing that the

attorney's failure to file the affidavit was the result of mistake, inadvertence, surprise, or excusable neglect. An attorney reinstated pursuant to this section shall not be required to show proof of rehabilitation.

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

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

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

The petition for reinstatement must set forth:

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

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

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

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

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

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

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

The Regulation Counsel shall submit an answer to the petition. Thereafter, the petition for reinstatement shall be

reviewed in procedures identical to those outlined by these Rules governing hearings of complaints.

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

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

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

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

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

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

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

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

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

reject the stipulation and order that a hearing be held by a Hearing Board as provided in section (d) of this rule.

Rule 251.30. Reinstatement After Transfer to Disability Inactive Status

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

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

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

When an attorney has been transferred to disability inactive status by an order in accordance with C.R.C.P. 251.23 and thereafter has been judicially declared to be competent, the Presiding Disciplinary Judge may dispense with any further evidence of the attorney's return to competence and may direct that the attorney be reinstated upon such terms as are deemed proper and advisable; provided, however, that if a disciplinary proceeding conducted pursuant to these rules and pending against the petitioner was deferred upon the petitioner's transfer to disability inactive status, such proceeding shall be resumed and the petitioner shall not be reinstated pending the final disposition of such proceeding.

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

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

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

Rule 251.31. Access to Information Concerning Proceedings Under These Rules

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

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

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

- (1) The respondent has waived confidentiality;
- (2) The proceeding is based upon allegations that include either the conviction of a crime or discipline imposed by a foreign jurisdiction;
- (3) The proceeding is based on allegations that have become generally known to the public; or,
- (4) There is a need to notify another person or organization, including the fund for client protection, to protect the public, the administration of justice, or the legal profession.

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

- (1) The deliberations of the Presiding Disciplinary Judge, the Hearing Board, ~~the Appellate Discipline Commission~~, or the Supreme Court; and,
- (2) Information with respect to which a protective order has been issued.

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

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

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

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

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

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

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

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

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

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

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

(3) An attorney discipline enforcement agency;

(4) A criminal justice agency; or,

(5) An agency authorized to investigate the qualifications of judicial candidates. If a judicial nominating commission of the State of Colorado requests the information it shall be furnished promptly and the Regulation Counsel shall give written notice to the attorney that specified confidential information has been so disclosed.

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

confidential unless the requesting agency obtains an order from the Supreme Court requiring its release.

(n) Release Without Notice. If an agency otherwise authorized by subsection (1) of this rule has not obtained a waiver from the attorney to obtain nonpublic information, and requests that the information be released without giving notice to the attorney, the requesting agency shall certify that:

- (1) The request is made in furtherance of an ongoing investigation into misconduct by the attorney;
- (2) The information is essential to that investigation; and
- (3) Disclosure of the existence of the investigation to the attorney would seriously prejudice that investigation.

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

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

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

Rule 251.32. General Provisions

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

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

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

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

When documents are filed with the Supreme Court, an original and ten copies must be filed.

(d) Costs.

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

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

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

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

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

disciplinary proceedings or under the direction of the ~~Appellate Discipline Commission~~, Presiding Disciplinary Judge, or the ~~Committee~~; and health care professionals working in connection with disciplinary proceedings shall be immune from suit for all conduct in the course of their official duties.

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

(g) Pending Litigation. All disciplinary proceedings which involve complaints with material allegations substantially similar to the material allegations of a criminal prosecution pending against the respondent may in the discretion of the committee, the Presiding Disciplinary Judge, or a Hearing Board, ~~or the Appellate Discipline Commission~~ be deferred until the conclusion of such prosecution.

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

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

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

(i) Statute of Limitations. A request for investigation against an attorney shall be filed within five years of the time that the complaining witness discovers or reasonably should have discovered the misconduct. There shall be no statute of limitations for misconduct alleging fraud, conversion, or

conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment by the attorney.

Rule 251.33. Expunction of Records

(a) Expunction - Self-Executing. Except for records relating to proceedings that have become public pursuant to C.R.C.P. 251.31, all records relating to proceedings conducted pursuant to these Rules, which proceedings were dismissed, shall be expunged from the files of the committee, the Presiding Disciplinary Judge, ~~the Appellate Discipline Commission,~~ and Regulation Counsel three years after the end of the year in which 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, 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 attorney in question may properly respond to any general inquiry about proceedings which have been expunged by stating that no record of the proceedings exists. The attorney in question may properly respond to any inquiry requiring reference to a specific proceeding which has been expunged by stating only that the proceeding was dismissed and that the record of the proceeding was expunged pursuant to this Rule. After a response as provided in this Rule is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged need be made.

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

Rule 251.34. Advisory Committee

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

(1) Members. The Advisory Committee shall be composed of the chair and vice-chair of the Attorney Regulation Committee ~~and the chair of the Appellate Discipline Commission.~~ Two Supreme

Court justices who serve as liaison to the attorney regulation system, ~~four~~three members of the Bar, and a member of the public shall also serve as members of the Advisory Committee. Diversity shall be a consideration in making the appointments.

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

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

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

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

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

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

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

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

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

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

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

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

(8) Select an administering entity; and

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

The administering entity referred to herein shall be a qualified non-profit entity that is qualified under Section 501(c) of the federal "Internal Revenue Code of 1986," as amended. The administering entity shall distribute the funds collected, less expenses, to the approved designated provider, as directed by the Advisory Committee; and provide an annual accounting to the Advisory Committee of all amounts collected,

expenses incurred, and amounts disbursed. The administering entity may recover the actual administrative costs incurred in performing its duties under this rule in an amount not to exceed two percent of the total amount collected.

To be eligible for designation by the Advisory Committee, an attorney's peer health assistance program shall provide for the education of attorneys with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary; offer assistance to an attorney in identifying physical, emotional, or psychological problems; evaluate the extent of physical, emotional, or psychological problems and refer the attorney for appropriate treatment; monitor the status of an attorney who has been referred for treatment; provide counseling and support for the attorney and for the family of any attorney referred for treatment; agree to receive referrals from the Advisory Committee or the Regulation Counsel; and agree to make their services available to all licensed Colorado attorneys.

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

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