

**Law School for Journalists**  
**Attorney Regulation & Discipline**  
**Thursday, July 19, 8:30 a.m.**

**Panel:**

Judge William Lucero, Presiding Disciplinary Judge  
John Gleason, Colorado Supreme Court Office of Attorney Regulation Counsel

**Agenda:**

8:15 to 8:30 a.m.      Meet and Greet

8:30 to 8:35 a.m.      Introductions

8:35 to 10:00 a.m.    Attorney Regulation and Discipline  
Discussion and Q&A

**Overview:**

Becoming a licensed attorney requires many years of difficult studies and successful completion of a grueling state-administered bar exam. The Colorado Supreme Court has established high standards of ethics for attorneys. The standards are contained in the Court rules and the Colorado Rules of Professional Conduct (**Volume 12 Colorado Revised Statutes Chapter 20** and the **Appendix to Chapters 18–20**).

The Court also has established procedures regarding the investigation of alleged unethical conduct. The procedures are designed to provide a thorough and objective review of the attorney's conduct, and to resolve the matter in a way that is fair to the complainant and to the attorney.

To administer the procedures, the Colorado Supreme Court has appointed an Office of Attorney Regulation Counsel; a nine-member Attorney Regulation Committee, composed of attorneys and lay persons; and an Office of the Presiding Disciplinary Judge. (**No tax dollars are used to fund the attorney regulation process.**)

When attorneys enter the practice of law, they take an oath to uphold the law and to follow the standards of ethics established by the Colorado Supreme Court. An attorney who violates the law and/or those standards is subject to discipline. In cases involving minor misconduct, an attorney may be admonished, censured or placed in a diversion program. In serious matters, attorneys face suspension of their license to practice law or disbarment.

The Office of Attorney Regulation Counsel receives many requests for investigation regarding conduct that does not constitute a violation of the standards of ethics. For example, attorneys who have honest disagreements with their clients about how a case should be handled — or should have been handled — have not engaged in ethical misconduct. Similarly, an error in judgment is not necessarily unethical conduct.

Attorneys, like everyone else, make mistakes. Only if the mistake constitutes gross negligence will it be a cause for discipline.

Except for unusual circumstances, a disagreement over legal fees is not evidence of misconduct. Persons having fee disputes usually will be referred to a voluntary committee of the Colorado Bar Association that arbitrates fee disputes. The CBA committee will attempt to help the parties reach a fair settlement of the problem.

Finally, there are situations that a client may find most annoying, but that do not constitute unethical conduct. An example would be the attorney's failure to explain fully what is going to happen in the client's case, or the attorney's failure to respond to each of the client's telephone calls. Nonetheless, the Office of Attorney Regulation Counsel is anxious to see that attorneys avoid these situations. The office will suggest steps that attorneys can take to prevent the recurrence of communication problems.

**Who can be investigated:**

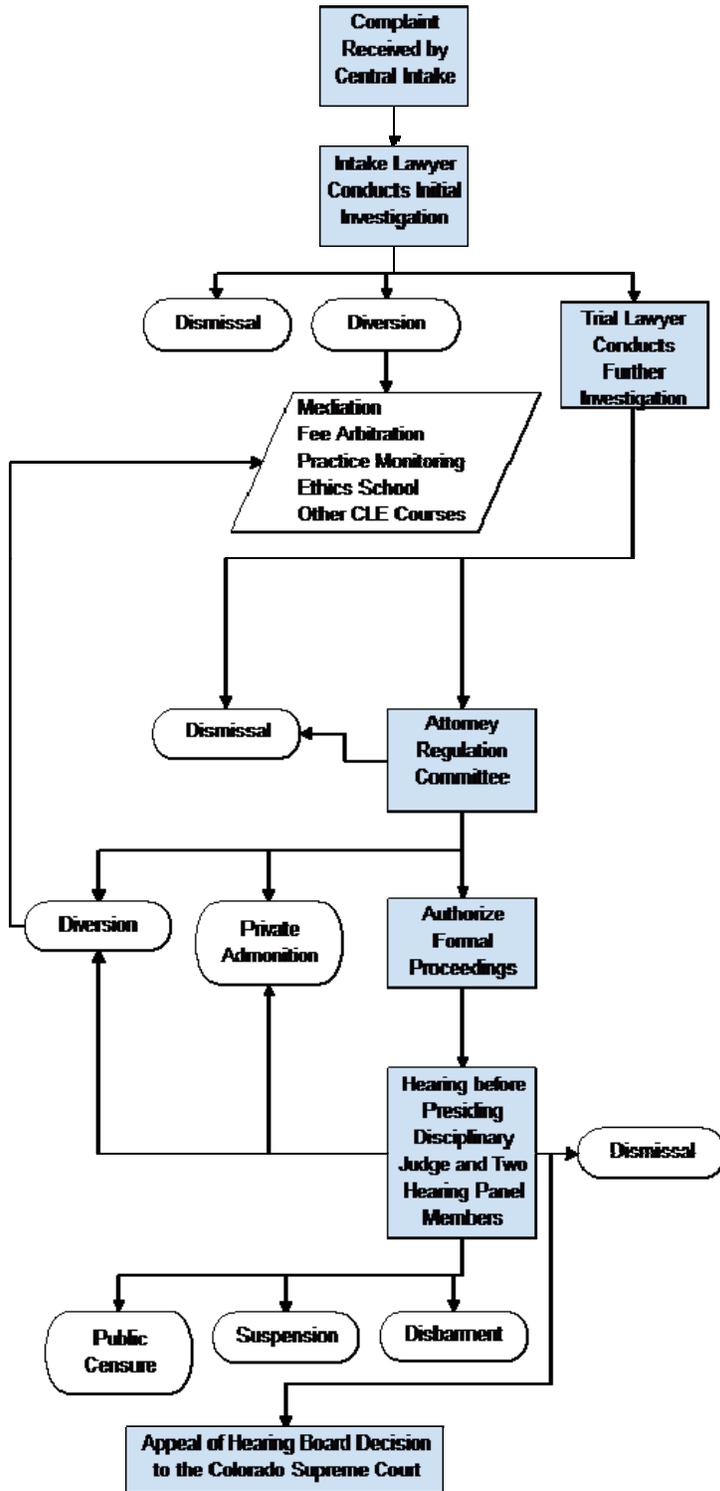
The Colorado Supreme Court Office of Attorney Regulation Counsel is authorized to investigate allegations of misconduct by:

1. Colorado Licensed Attorneys
2. Colorado Magistrates
3. Colorado Licensed Attorneys Serving as Municipal Court Judges
4. Allegations of the Unauthorized Practice of Law
5. Matters Related to an Applicant for Admission to the Colorado Bar
6. Matters Related to the Colorado Attorneys' Fund For Client Protection.

**Office of the Presiding Disciplinary Judge**  
**Judge William Lucero**

In 1999, the Colorado Supreme Court adopted a series of changes to the attorney regulation system, including the establishment of the Office of the Presiding Disciplinary Judge, pursuant to Colorado Rules of Civil Procedure ("C.R.C.P") 251.16. The Court also made extensive revisions to the rules governing the disciplinary process, repealing C.R.C.P. 241 et seq. and replacing those with C.R.C.P. 251 et seq. The Presiding Disciplinary Judge presides over attorney regulation proceedings and issues orders together with a two-member hearing board at trials and hearings. The opinions of the Presiding Disciplinary Judge and hearing board are final orders in that case and may be appealed to the Supreme Court in accordance with C.R.C.P. 251.27. Although the decisions of the Hearing Board are final orders in the case in which they are issued, they do not serve as *stare decisis* precedent for future cases nor constitute the law of the jurisdiction.

The complaint process:



## **Rules of Professional Conduct:**

- C.R.C.P. Chapter 20 Colorado rules of procedure regarding attorney discipline & disability proceedings, Colorado attorneys' fund for client protection, and mandatory continuing legal education.
- 251.1 Discipline and Disability
  - 251.2 Attorney Regulation Committee
  - 251.3 Attorney Regulation Counsel
  - 251.4 Duty of Judge to Report Misconduct or Disability
  - 251.5 Grounds for Discipline
  - 251.6 Forms of Discipline
  - 251.7 Probation
  - 251.8 Immediate Suspension
  - 251.9 Request for Investigation
  - 251.10 Investigation of Allegations
  - 251.11 Determination by the Regulation Counsel
  - 251.12 Determination by the Committee
  - 251.13 Alternatives to Discipline
  - 251.14 Complaint
  - 251.15 Answer – Filing, Failure to Answer, Default
  - 251.16 Presiding Disciplinary Judge
  - 251.17 Hearing Board
  - 251.18 Hearings Before the Hearing Board
  - 251.19 Findings of Fact and Decision
  - 251.20 Attorney Convicted of a Crime
  - 251.21 Discipline Imposed by a Foreign Jurisdiction
  - 251.22 Discipline Based on Admitted Misconduct
  - 251.23 Disability Inactive Status
  - 251.24 Appellate Discipline
  - 251.25 Counsel for Appellate Discipline
  - 251.26 Proceedings Before the Appellate Discipline Commission
  - 251.27 Proceedings Before the Supreme Court
  - 251.28 Required Action for Disbarment
  - 251.29 Readmission and Reinstatement After Discipline
  - 251.30 Reinstatement After Transfer to Disability Inactive Status
  - 251.31 Access to Information Concerning Proceedings Under these Rules
  - 251.32 General Provisions
  - 251.33 Expunction of Records
  - 251.34 Advisory Committee

## **Attorney's Fund For Client Protection:**

### **1. What Is the Colorado Attorneys' Fund for Client Protection?**

The Colorado Attorneys' Fund for Client Protection is a fund established by the Colorado Supreme Court to reimburse clients who suffer loss of money or other property from the dishonest conduct of their attorney. The Fund is a remedy of last resort for clients who cannot be repaid from other sources, such as from insurance or from the attorney involved. Claimants are expected to make reasonable efforts to collect from these other sources first.

### **2. Why Was the Colorado Attorneys' Fund for Client Protection Established?**

The legal profession depends upon the trust of clients. In a very small number of cases where attorneys betray that trust and improperly handle client funds or property, it is important that the legal profession's reputation for honesty be maintained and protected by helping injured clients recover their losses.

### **3. How Is the Fund Financed?**

The Fund is financed by annual assessments of active Colorado attorneys. None of the money in the Fund comes from clients' fees. No tax dollars are used. The voluntary nature of the Fund demonstrates the genuine desire of the Colorado legal professional to compensate clients for the dishonest actions of a few of its members.

### **4. Who Administers the Colorado Attorneys' Fund for Client Protection?**

The Fund is administered by a Board of seven Trustees appointed by the Colorado Supreme Court. The Board, which is composed of both attorneys and non-attorneys, serves without compensation as a public service. The Board obtains administrative and investigative assistance from the Colorado Supreme Court Office of Attorney Regulation Counsel. All final claim decisions are made by the Board.

### **5. How Does the Board Operate and Make Decisions?**

The Colorado Supreme Court has adopted written rules for the Board. Additionally, the Board also has adopted its own guidelines to publicize its internal procedures. The Board must follow these rules and guidelines in its procedures and decisions. The Board is allowed substantial discretion in deciding what claims to pay and deny, and the amount of payment. You may view the Board's Rules by reviewing C.R.C.P. 252.

### **6. What Kinds of Losses Are Covered?**

The Colorado Attorneys' Fund for Client Protection covers losses caused by the dishonest conduct of an attorney who is licensed to practice law by the Colorado Supreme Court. The attorney must have served the client as an attorney or in a court-appointed fiduciary relationship.

### **7. Who Is a Proper Claimant?**

In order to be a proper claimant, a person must prove the existence of an attorney/client relationship or a fiduciary relationship with an attorney. The fund does not pay interest on claims.

## **8. How Are Claims Filed?**

You can request claim forms in writing or by telephone. Staff personnel screen each claim. If the claim does not appear to be within the jurisdiction of the Fund, that is explained to the person requesting the form. However, no one is refused a claim form. The completed claim form must be signed by the claimant, and the claimant's signature must be notarized. There is no filing fee.

## **9. What Kinds of Claims Are Compensable?**

Claimants must show that the attorney received funds and misappropriated them. There also are instances where an attorney takes and keeps a retainer despite knowing that services cannot, or will not, be performed. Claims involving misappropriation of funds for the purpose of making an investment on behalf of the client may be compensable in limited instances.

## **10. What Kinds of Claims Are Not Compensable?**

Claims involving fee disputes, unfortunate or ill-advised investments placed through attorneys, and professional negligence or malpractice are not eligible.

## **11. What Is "Dishonest" Conduct?**

"Dishonest" conduct includes theft or embezzlement of money or conversion of money, property or other things of value, refusal to refund unearned fees and costs deposits, or borrowing money from a client without intention or ability to repay it.

## **12. What Proof of Dishonest Conduct Is Necessary?**

A claimant must prove:

1. receipt by the attorney of money or property belonging to the claimant;
2. conversion of the funds by the attorney; and
3. a definite loss resulting from this dishonest conduct.

It is necessary to submit specific proof of payment of funds to an attorney, such as copies of front and reverse sides of checks, supporting documents such as escrow agreements, settlement statements or retainer agreements. Although the staff will assist in identifying proof, the primary burden is on the claimant to demonstrate the compensability of a claim. The Fund has subpoena power for use when necessary. The attorney will receive a copy of each claim including documentation provided together with an invitation to reply.

## **13. What Happens When a Claim Is Filed?**

Each claim is initially reviewed by the Colorado Supreme Court's Office of Attorney Regulation Counsel to determine eligibility for payment. All claims then will be reviewed by the Board of Trustees to determine the merits of all claims, and the amount of any reimbursement.

## **14. How Long Will the Claim Process Take?**

Typically the Fund will make disbursements once a year. In other words, the investigation and analysis of the claim may take as long as one year. It is important that you keep the Office of Attorney Regulation informed of your current mailing address and

telephone number. NOTE: The first disbursement from the Fund will not occur until on or after January 1, 2001.

**15. What Are the Limits on the Payment of Claims?**

At the present time there is a limit of \$50,000 per claim and an aggregate maximum limit of \$100,000 for all claims against a single attorney. The dishonest conduct causing the loss must have occurred on or after July 1, 1999.

**16. Does the Fund Seek to Recover Payments Made?**

Yes. The Fund takes an assignment of the claimant's rights against attorneys and others who may be liable. It is the Trustees' policy to obtain judgment against all dishonest attorneys. The Fund vigorously pursues collateral sources where appropriate.

**17. What Are Collateral Sources?**

Collateral sources are third parties who may be liable by virtue of the nature of the misappropriation. Examples of collateral sources are fidelity bonds, title insurance, partners of the dishonest attorney and his or her malpractice carrier, and banks and insurance companies involved in forged indorsement cases.

**18. Are There Ways Other Than Financial Support in Which the Profession Contributes to the Fund's Success?**

Yes. Many claimants are assisted in their claim by Colorado attorneys. Such representation is without charge. Also, the prosecutors and individuals who work in the Attorney Regulation Counsel's office develop information helpful to a just resolution of claims.

**Attorney Regulation Committee:**

The Attorney Regulation Committee is composed of nine members, six of whom are members of the Bar of Colorado and three of whom shall be public members. Under Rule 251.12 the role of the Attorney Regulation Committee is to assist the office of Attorney Regulation Counsel.

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

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

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

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

(d) Order private admonition imposed; or

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

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

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

(2) The level of injury;

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

(4) Whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings because it involves misrepresentation, conversion or commingling of funds, acts of violence, or criminal or other misconduct that ordinarily would result in public censure, suspension or disbarment.