



# Office of Attorney Regulation Counsel

Protecting the Public. Promoting Professionalism.

# 2015

ANNUAL REPORT





*“A license to practice law  
is a proclamation by this Court ...*

*... that its holder is a person to  
whom members of the public may  
entrust their legal affairs with  
confidence; that the attorney will  
be true to that trust; that the  
attorney will hold inviolate the  
confidences of clients; and that the  
attorney will competently fulfill the  
responsibilities owed to clients and  
to the courts.”*

— Colorado Rule of Civil Procedure 251.1(a)

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April 13, 2016

Dear Chief Justice Rice and Justices of the Court:

When I first started working for the Office of Disciplinary Counsel in 1990, the office signage reminded me on a daily basis that this office's primary function was to discipline lawyers. Our staff was not required to educate lawyers, clients, or other participants in the legal system. We were also not required to enhance client protection or to prevent future attorney misconduct. Instead, our purpose at that time was to discipline lawyers who violated a rule of professional conduct.

A lot has changed since then, including the name of this office, through the hard work of many people. We now embrace our role in ensuring that those who are admitted to practice law in Colorado are worthy of the trust and confidence that clients and the judicial system reasonably place on them. We firmly believe the best way to protect the public is to prevent misconduct from occurring in the first place, if at all possible. Thus, we work hard in admissions, registration, regulation and through continuing legal and judicial education to develop methods to identify and assess risk, and provide lawyers with effective tools to address those risks and prevent misconduct. And should misconduct occur, we make every effort to respond in an appropriate fashion that prevents future misconduct, whether this be through education and rehabilitation, or discipline when needed.

Colorado is a national leader with our innovative and effective approaches to regulating not only the 39,229 licensed Colorado lawyers, but also out-of-state lawyers who practice law in Colorado and any others who cause consumer harm through the unauthorized practice of law. We accomplish this only with the assistance of dedicated volunteers, including those on the Court's standing and permanent committees.

With this letter, I enclose our 2015 Annual Report. In 2015, the office continued to refit for the changing needs of the public, legal consumers, the courts, and the profession:

- Throughout the year in admissions, we continued to implement the new Rules Governing Admission, enacted by the Court and made effective in July and September 2014. These new rules promote consumer choice in the delivery of legal services and recognize greater need for lawyer mobility in delivering those services. The office also continued to improve our web-based application management system.
- The office redesigned the attorney registration forms to obtain relevant demographics concerning Colorado lawyers and improve efficiency in the attorney registration process.
- In May 2015, the office hosted the First Regulators Workshop on Proactive, Risk-Based Management Regulation with participants from 20 jurisdictions from around the globe. In September, the office also hosted the 12<sup>th</sup> Annual Organization of Bar Investigators (OBI) Conference, with the majority of states represented.
- The office assisted the Supreme Court Advisory Committee in initiating subcommittees on proactive, risk- and management-based regulatory programs (PMBR), limited-licensed legal technicians (LLLTs) and conditional admissions; and partnered with those subcommittees in their work.
- The office continued to assist the Board of Continuing Legal and Judicial Education in its work to remodel the mandatory continuing legal and judicial education program.
- The office continued to collaborate with the Chief Justice's Commission on Professional Development in projects involving active study of attorney demographic and other data to identify and address current and emerging trends and risks in the delivery of legal services. By obtaining an accurate picture of our attorney population, we will be able to better develop resources that address their specific needs.
- The office participated in CBA/DBA Professionalism Coordinating Council initiatives, including defining professionalism for the Colorado



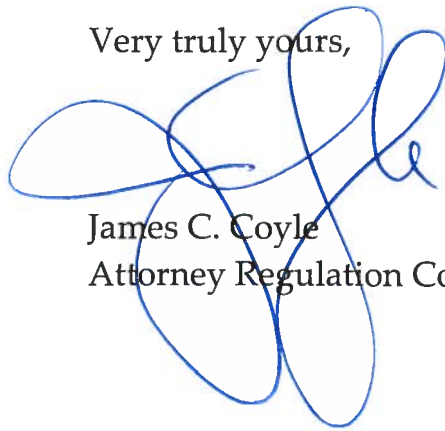
April 13, 2016

legal community and developing a proposed new rule on professionalism.

- The office also continued with greater community outreach through our website, newsletters, educational programs and other activities. The office also completed much of the work on our new website, which just recently went live.
- The office worked specifically with the PMBR Subcommittee on the Court's new preamble to Chapters 18-20 of the Colorado Rules of Civil Procedure. This preamble challenges the regulatory offices to do more in the public interest and sets forth the purposes for regulating the practice of law in Colorado.

The year 2015 was a very successful one for this office. We continue this momentum in 2016 as we further develop programs in line with this Court's objectives. I thank you for the continuing opportunity to serve as your Attorney Regulation Counsel.

Very truly yours,



James C. Coyle  
Attorney Regulation Counsel

JCC/cl

# WHO WE ARE



**A**ttorney Regulation Counsel serves at the pleasure of the Colorado Supreme Court. The Supreme Court Advisory Committee assists the Court by reviewing the productivity, effectiveness and efficiency of the attorney regulation system, including Attorney Regulation Counsel.

The Office of Attorney Regulation Counsel works with seven other permanent Supreme Court committees in regulating the practice of law in Colorado. Attorney Regulation Counsel oversees attorney admissions, registration, mandatory continuing legal and judicial education, diversion and discipline, regulation of unauthorized practice of law, and administrative support for the Client Protection Fund. Sixty-two full-time employees work in this office.

## JUSTICES OF THE COLORADO SUPREME COURT

Chief Justice Nancy E. Rice

Justice Gregory J. Hobbs, Jr.<sup>1</sup>

Justice Nathan B. Coats

Justice Allison H. Eid

Justice Monica M. Márquez

Justice Brian D. Boatright

Justice William W. Hood, III

Justice Richard L. Gabriel<sup>2</sup>

## SUPREME COURT ADVISORY COMMITTEE

David W. Stark, Chair

Steven K. Jacobson, Vice-Chair

Nancy L. Cohen

Cynthia F. Covell

Mac V. Danford

Cheryl Martinez-Gloria

David C. Little

Barbara A. Miller

Richard A. Nielson

Henry R. Reeve

Alexander R. Rothrock

Daniel A. Vigil

Brian Zall

Justice Nathan B. Coats

Justice Monica M. Márquez

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<sup>1</sup> Retired Aug. 31, 2015.

<sup>2</sup> Sworn in Sept. 1, 2015.

## OFFICE OF ATTORNEY REGULATION COUNSEL



**James C. Coyle**

Attorney Regulation Counsel

Jim Coyle is Attorney Regulation Counsel for the Colorado Supreme Court. Mr. Coyle has been a trial attorney with the Office of Disciplinary Counsel or successor Office of Attorney Regulation Counsel since 1990. Prior to that, he was in private practice. He earned his law degree from the University of Colorado School of Law in 1985.

Mr. Coyle is actively involved on a national level with the National Client Protection Organization (NCPO), the National Conference of Bar Examiners (NCBE), National Organization of Bar Counsel (NOBC), and the International Conference of Legal Regulators (ICLR). He currently serves on the NOBC board of directors and is an NOBC liaison to the ABA Commission on Lawyer Assistance Programs and an NOBC liaison to the Association of Professional Responsibility Lawyers (APRL) Committee on ABA Model Rules on Advertising.

Recent committee work includes programming work on and hosting the first ABA Center for Professional Responsibility (CPR)/NOBC/Canadian Bar Association Regulators Workshop on proactive, risk-based regulatory programs in Denver in May 2015, and participating in planning future workshops in Philadelphia in June 2016 and Washington, D.C. in September 2016; acting as co-chair and organizer of the First ABA Standing Committee on Client Protection UPL School in Denver in August 2013; and member of the planning team for the Second UPL School in Chicago in April 2015; NOBC Program Committee and International Committee, including as Chair of the Entity Regulation Subcommittee; NOBC aging lawyers and permanent retirement subcommittees; and the NOBC/APRL Joint Task Force on Attorney Wellness Issues. Mr. Coyle is also an active member of the Chief Justice Commission on Professional Development and its mid-career working group, the CBA/DBA Professionalism Coordinating Council and its subcommittee on a professionalism rule, the Supreme Court Standing Committee on the Colorado Rules of Professional Conduct, and the University of Colorado Law Alumni Board's Diversity Committee.



## **Management Team**

### **James S. Sudler**

Chief Deputy Regulation Counsel, Trial Division

Jamie Sudler is Chief Deputy Regulation Counsel overseeing the trial division. Mr. Sudler has more than 35 years of experience, both as a private attorney and as a prosecutor in the Denver District Attorney's Office and in the Colorado Attorney General's Office. He earned his law degree from the University of Denver.

Mr. Sudler designed and developed Trust Account School and regularly teaches at the Colorado Supreme Court Ethics School. He recently completed a 26-day trial in Phoenix of the former Maricopa County Attorney and two of his deputies for ethical violations over a period of years. The trial resulted in the disbarment of Andrew Thomas, who was Maricopa County Attorney, and his deputy Lisa Aubuchon. Another deputy, Rachel Alexander, was suspended for six months after her appeal to the state's Supreme Court.

### **Matthew A. Samuelson**

Chief Deputy Regulation Counsel, Intake Division and Operations

Matthew Samuelson is Chief Deputy Regulation Counsel overseeing the intake division, admissions, and mandatory continuing legal and judicial education. Mr. Samuelson received his undergraduate degree from St. John's University in Minnesota and his law degree from the DePaul University College of Law. He is a former judge advocate in the United States Air Force. After leaving active duty, Mr. Samuelson practiced as a deputy public defender in Minnesota and was in private practice in Denver focusing in the area of civil rights litigation.

He has worked for the Office of Attorney Regulation Counsel since September 2000, and is a member of the Colorado Bar Association, the American Bar Association, and the National Organization of Bar Counsel. Matt is currently a member of NCBE's Special Committee on the Uniform Bar Exam.

### **Charles E. Mortimer**

Deputy Regulation Counsel, Trial Division

Charles E. Mortimer (Chip) is Deputy Regulation Counsel in the trial division. Mr. Mortimer received his undergraduate degree from Tufts University in 1983, and his law degree from the College of William and Mary in Virginia in 1986. He was licensed to practice law in Colorado in 1986 and spent fourteen years in private practice before joining the Office of Attorney Regulation Counsel.

Chip has served on the Thursday Night Bar Association Board of Directors, the First Judicial District Board of Trustees, and Governor Owens' Commission on Civil

Justice Reform. Prior to coming to the Office of Attorney Regulation Counsel, Chip chaired the Colorado Lawyer's Fidelity Fund and served as a Trustee on the Colorado Lawyer's Fund for Client Protection.

### **Margaret Brown Funk**

Deputy Regulation Counsel, Intake Division and Human Resources

Margaret Brown Funk is Deputy Regulation Counsel in the intake divisions. Ms. Funk also assists in the supervision of admissions, continuing legal and judicial education, attorney registration and human resources. Ms. Funk graduated from the University of Denver College of Law in 1994 and was in private practice for 12 years before joining the Office of Attorney Regulation Counsel in 2006 as a trial attorney.

In private practice, Ms. Funk represented individuals in civil rights matters, primarily in the area of employment law. Between 1995 and 1998, she served as President and Vice President of the Colorado Plaintiffs Employment Lawyers Association (PELA). Between 1998 and 2005, she served as a member of the PELA board of directors and was assigned the duties of chair of the legislative committee and liaison to the Colorado Bar Association. She has published several articles in the Colorado Trial Lawyers Association's monthly magazine, *Trial Talk*, and has lectured extensively on civil rights, litigation, and legal ethics. Recent committee work includes the National Organization of Bar Counsel (NOBC) Program Committee; the Colorado Supreme Court Advisory subcommittee on Proactive, Management-Based Regulation; the Colorado Board of Continuing Legal and Judicial Education rule revision subcommittee; and the Colorado Chief Justice Commission on Professionalism Development, New Lawyer Working Group.

### **Assistant Regulation Counsel**

#### **Trial Division**

Kim E. Ikeler  
Erin Robson Kristofco  
Geanne R. Moroye  
Alan Obye<sup>3</sup>  
Katrin Miller Rothgery  
Catherine Shea  
Jacob Vos<sup>4</sup>  
Jennifer Wascak<sup>5</sup>

#### **Intake Division**

Jill Perry Fernandez  
Lisa E. Frankel  
April McMurrey  
Brooke H. Meyer<sup>5</sup>  
J.P. Moore<sup>6</sup>  
Timothy J. O'Neill  
E. James Wilder

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<sup>3</sup> Moved from a staff attorney to a trial attorney in 2015.

<sup>4</sup> Joined the office in 2015.

<sup>5</sup> Left the office in 2015.

<sup>6</sup> Joined the office in 2016.



### **Staff Attorneys**

Marie Nakagawa<sup>7</sup>

### **Attorney Admissions**

Susan Gleeson, Director of  
Examinations

Melissa Oakes, Director of Character  
and Fitness

### **Attorney Registration and Continuing Legal and Judicial Education**

Elvia Mondragon, Clerk of Attorney Registration and Director of Continuing Legal  
and Judicial Education

### **Investigators**

#### **Trial Division**

Karen Bershenyi  
Mary Lynne Elliott  
Janet Layne

Donna Scherer  
Laurie Ann Seab

#### **Intake Division**

Rosemary Gosda  
Carla McCoy

#### **Admissions**

Michelle Meyer  
Deb Ortiz

### **Inventory Counsel**

Carola Rhodes, Inventory Counsel Coordinator  
Adrian Radase, Assistant Inventory Counsel Coordinator

### **Information Resources Coordinator**

James Carlson

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<sup>7</sup> Left the office in 2015.

# PERMANENT COMMITTEES

## **Board of Law Examiners**

### **Law Committee**

Richard Nielson, Chair

Laura M. Maresca,  
Vice- Chair

Jennifer C. Fortier

Hon. Terry Fox

John Greer

Eric Liebman

Anna M. Martinez<sup>8</sup>

Dayna B. Matthew<sup>9</sup>

David D. Powell, Jr.

Barry Schwartz

Sunita Sharma

Magistrate Holly  
Strablizky

Justice Nathan B.  
Coats (Liaison)

Justice Monica  
Márquez (Liaison)

### **Character & Fitness Committee**

Brian Zall, Chair

Lorraine E. Parker,  
Vice-Chair

David Diffie<sup>9</sup>

Jay E. Fernandez<sup>9</sup>

Doris C. Gundersen,  
M.D.<sup>8</sup>

Franz Hardy<sup>8</sup>

Stephen J. Hensen<sup>9</sup>

Carolyn D. Love, Ph.D

Porya Mansorian<sup>8</sup>

Linda Midcap

Kelly Murphy

Charles Park, M.D.<sup>10</sup>

Henry R. Reeve

Corelle M. Spettigue

Justice Nathan B.  
Coats (Liaison)

Justice Monica  
Márquez (Liaison)

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<sup>8</sup> New Member, started Jan. 1, 2016

<sup>9</sup> Term expired Dec. 31, 2015

<sup>10</sup> New Member, started Oct. 8, 2015

### **Board of Continuing Legal and Judicial Education**

David C. Little, Chair	David A. Price <sup>11</sup>
Peter Cannici <sup>11</sup>	Susan S. Riehl
Melissa Hart <sup>11</sup>	Martha Rubi-Byers <sup>12</sup>
Amanda Hopkins <sup>12</sup>	Gordon Scheer <sup>11</sup>
Genet Johnson <sup>12</sup>	Rachel Sheikh <sup>12</sup>
Hon. Andrew P. McCallin	Justice Nathan B. Coats (Liaison)
Dawn M. McKnight	Justice Monica M. Marquez (Liaison)
Nathifa M. Miller	

### **Attorney Regulation Committee**

Steven K. Jacobson, Chair	Barbara J. Kelley
Mac V. Danford, Vice- Chair	Steven C. Lass <sup>11</sup>
Diana David Brown	Carey Markel
Doris C. Gundersen, M.D. <sup>11</sup>	Charles Shuman, M.D. <sup>12</sup>
David M. Johnson <sup>12</sup>	Luis M. Terrazas
	Lance Timbreza

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<sup>11</sup> Term expired Dec. 31, 2015

<sup>12</sup> New member, Jan. 1, 2016

### **Unauthorized Practice of Law Committee**

Cheryl Martinez-Gloria,  
Chair  
Elizabeth A. Bryant,  
Vice-Chair  
Elsa Djab Burchinow  
Judy L. Graff Samantha  
Halliburton

Patsy Leon<sup>13</sup>  
Brenda Meintka<sup>14</sup>  
Anthony J. Perea  
John K. Priddy<sup>13</sup>  
Martha Rubi-Byers<sup>14</sup>  
Charles Spence

### **Board of Trustees, Attorneys Fund for Client Protection**

Charles Goldberg,  
Chair  
Charles Turner, Vice-  
Chair  
Katayoun A. Donnelly  
Yolanda M. Fennick

Melinda M. Harper  
Michael B. Lupton  
David A. Mestas  
Charles Turner

### **Colorado Commission on Judicial Discipline**

Hon. Martha Minot,  
Chair  
Richard O. Campbell,  
Vice-Chair  
Kathleen Kelley  
Yolanda Lyons  
Bruce A. Casias  
Elizabeth Espinosa  
Krupa

Hon. Leroy Kirby  
Sonia Ann Negrete-  
Winn  
Hon. Ted C. Tow III  
Hon. William D.  
Robbins  
William J. Campbell  
(Executive Director)

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<sup>13</sup> New Member, started Jan. 1, 2016

<sup>14</sup> Term expired Dec. 31, 2015



## SUBCOMMITTEES

### **Limited License Legal Technicians Subcommittee**

Alec Rothrock, Chair	Margarita Lopez
James Coyle, Attorney Regulation Counsel	Kara Martin
Jonathan Asher	Melissa Oakes
Loren Brown	Alan Obye
Barbara Butler	Christopher Ryan
Cynthia Covell	Helen Shreves
Hon. Adam Espinosa	David Stark
Patrick Flaherty	Hon. Liz Starrs
Allison Gerkman	Michelle Sylvain
Susan Gleeson	Hon. Dan Taubman
Judy Graff	Chuck Turner
Hon. Suzanne Grant	Steven Vasconcellos
Kevin Hanks	Daniel Vigil
Velvet Johnson	Lynne Weitzel
Steve Lass	

## **Proactive Management-Based Regulation Subcommittee**

David Stark, Chair

Jim Coyle, Attorney Regulation Counsel

### **Ten Working Groups**

#### **1. Developing competent practices**

David Wollins

Chip Mortimer

Karen Hammer

Cori Peterson

#### **2. Communicating in an effective, timely professional manner and maintaining professional relations**

Bill Ojile

Suzann Bacon

Mark Lyda

Cat Shea

James Carlson

#### **3. Ensuring that confidentiality requirements are met**

Dick Reeve

Vince Buzek

April McMurrey

#### **4. Avoiding conflicts of interest**

Marcy Glenn

Kati Rothgery

Sara Van Deusen

#### **5. Maintaining appropriate file and records management systems**

Jay Fernandez

Brett Corporon

Tim O'Neill

#### **6. Managing the law firm/legal entity and staff appropriately**

Michael Mihm

Jack Hanley

Reba Nance

James Wilder

Kim Ikeler

7. Charging appropriate fees and making appropriate disbursements

Jamie Sudler  
Steve Jacobson

Cecil Morris

8. Ensuring that reliable trust account practices are in use

Margaret Funk  
Melinda Harper

Genet Johnson

9. Working to improve the administration of justice and access to legal services

Charles Garcia  
Matt Samuelson

Katy Donnelly  
Leni Plimpton

10. Wellness and inclusivity

Patricia Jarzowski  
Barb Ezyk  
Scott Meiklejohn

Karen Hester  
Geanne Moroye

**Conditional Admission Subcommittee**

Brian Zall, Chair

Rich Nielson

Matt Samuelson, Chief Deputy  
Regulation Counsel

Melissa Oakes

Nancy Cohen

Dick Reeve

James Coyle

Alexa Salg

Barb Ezyk

Dan Vigil

Margaret Funk

# WHY WE REGULATE



**T**he Colorado Supreme Court's regulatory offices and proactive programs strive to protect and promote the public's interest. To frame the objectives of this goal, the Colorado Supreme Court recently adopted a preamble to the regulatory rules involving the practice of law:

### **Preamble to Chapters 18-20**

The Colorado Supreme Court has exclusive jurisdiction to regulate the practice of law in Colorado. The Court appoints an Advisory Committee, Attorney Regulation Counsel, the Presiding Disciplinary Judge, the Executive Director of the Colorado Lawyers Assistance Program (COLAP) and the Director of the Colorado Attorney Mentoring Program (CAMP) to assist the Court. The Court also appoints numerous volunteer citizens to permanent regulatory committees and boards to assist in regulating the practice of law.

The legal profession serves clients, courts and the public, and has special responsibilities for the quality of justice administered in our legal system. The Court has established essential eligibility requirements, rules of professional conduct and other rules for the legal profession. Legal service providers must be regulated in the public interest. In regulating the practice of law in Colorado in the public interest, the Court's objectives include:

1. Increasing public understanding of and confidence in the rule of law, the administration of justice and each individual's legal rights and duties;
2. Ensuring compliance with essential eligibility requirements, rules of professional conduct and other rules in a manner that is fair, efficient, effective, targeted and proportionate;
3. Enhancing client protection and promoting consumer confidence through the Office of Attorney Regulation Counsel, the Attorneys Fund for Client Protection, inventory counsel services, the regulation of non-lawyers engaged in providing legal services, and other proactive programs;
4. Assisting providers of legal services in maintaining professional competence and professionalism through continuing legal education; Attorney Regulation Counsel professionalism, ethics and trust account schools and other proactive programs;
5. Helping lawyers throughout the stages of their careers successfully navigate the practice of law and thus better serve their clients, through COLAP, CAMP and other proactive programs;
6. Promoting access to justice and consumer choice in the availability and affordability of competent legal services;
7. Safeguarding the rule of law and ensuring judicial and legal service providers' independence sufficient to allow for a robust system of justice;
8. Promoting diversity, inclusion, equality and freedom from discrimination in the delivery of legal services and the administration of justice; and
9. Protecting confidential client information.

**WHAT WE DO**

**T**he Office of Attorney Regulation Counsel's duties involve all phases of the practice of law in Colorado. The primary purpose behind each of these duties is protecting and promoting the interests of the public, ensuring that Colorado providers of legal services are competent, diligent, communicative, honest and in compliance with the Colorado Rules of Professional Conduct.

The Office of Attorney Regulation Counsel administers the bar examination, screens each applicant's character and fitness to practice law in Colorado, and enforces all other attorney admission and annual registration functions. The office educates the general public and the legal profession on the underlying duties and requirements contained in the Colorado Rules of Professional Conduct. The office enforces the Colorado rules regarding attorney discipline and disability proceedings and mandatory continuing legal and judicial education. When necessary, the office oversees the handling of client files for attorneys who can no longer practice law.

The Office of Attorney Regulation Counsel also investigates and prosecutes individuals who cause harm to consumers when engaging in the unauthorized practice of law in Colorado. The office assists the Board of Trustees in administering the Attorneys' Fund for Client Protection, and the Commission on Judicial Discipline when requested. A more complete listing of office duties can be found in Appendix A.

# ATTORNEY ADMISSIONS

## OVERVIEW

Attorney Admissions is the first stop within the regulatory system for attorneys wanting to practice law in the state of Colorado. Attorney Regulation Counsel is charged with administering the bar exam and conducting character and fitness reviews of exam, on-motion, and Uniform Bar Exam transfer applicants.

The Director of Character & Fitness, one full-time investigator, one part-time investigator, and four staff assistants review applications for character and fitness qualifications. By addressing concerns with applicants before they become practicing attorneys, the character and fitness process takes a proactive role in protecting the public.

The number of people who sat for the Colorado Bar Exams declined again in 2015. Since 2013, combined examinees for the February and July exams have dropped 13 percent. This tracks the nationwide trend of declining law school enrollment.<sup>15</sup>

However, the total number of applications handled by Attorney Admissions rose in 2015, due to a large increase in on-motion and UBE score transfer applicants. (See above.)

### **Consumer Choice, Lawyer Mobility Rises**

A change to admissions rules in recent years resulted in an increase in on-motion applicants this year.

In 2015, Attorney Admissions received 395 such applications, a 66 percent uptick from 2014. The jump is likely due to a 2014 change in on-motion requirements that recognized lawyers' desire for more mobility and this office's goal of increasing consumer choice.

On-motion applicants are those admitted from other jurisdictions without taking the Colorado Bar Exam, as long as they meet certain criteria.

The new Rules achieve two goals. One, they recognize the new ways in which lawyers want to practice. Few attorneys stay at one firm or in one state their entire life. The current Rules allow for greater lawyer mobility. Two, they increase consumer choice by allowing attorneys to follow their clients across state lines more easily.

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<sup>15</sup> <http://www.ncbex.org/publications/statistics/mbe-statistics/>



## BAR EXAM

Attorney Admissions works with the Colorado Supreme Court's Board of Law Examiners, whose volunteer members provide citizens' advice and direction on the execution of the office's duties. The Board consists of two committees — the Law Committee and the Character & Fitness Committee.

The office works with the Law Committee to administer two bar examinations each year, one in February and one in July. The Law Committee is composed of 11 volunteer members appointed by the Supreme Court. It reviews and approves the standards that must be met to pass the written examination.

*You did a very good job alleviating my concerns.*

-- A law school graduate attending the new Colorado Bar Exam Orientation course.

In 2015, a total of 1,158 people sat for the bar exam<sup>16</sup>:

- 359 took the February bar exam:
  - 222 passed (62 percent pass rate); and
  - 71 percent first-time-examinee pass rate.
- 799 took the July bar exam:
  - 576 passed (72 percent pass rate); and
  - 77 percent first-time-examinee pass rate.

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<sup>16</sup> For detailed statistics on bar exam passage rates, see Appendix B.

Attorney Admissions also processes on-motion and Uniform Bar Exam (UBE) score transfer applications.<sup>17</sup>

In 2015, Attorney Admissions processed 476 new on-motion and UBE score transfer applications:

- 395 new on-motion applications were received:<sup>18</sup>
  - 282 on-motion applications were approved for admission; and
  - 2 on-motion applications ineligible for processing
- 81 new UBE applications were received.

## CHARACTER AND FITNESS

Attorney Admissions reviews all bar exam, on-motion, and Uniform Bar Exam applications for moral and ethical qualifications.

Applicants must disclose details about their past including any court proceedings, financial problems, and other issues relevant to the



The Colorado Supreme Court holds two special sessions each year at Boettcher Concert Hall in Denver to administer the oath of admission to those who passed the bar exam.

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<sup>17</sup> Colorado and 20 other jurisdictions currently comprise this Uniform Bar Exam (UBE) compact. Each of these states accept scores transferred from the other states administering the Uniform Bar Exam. The other UBE jurisdictions are: Alabama, Alaska, Arizona, District of Columbia, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, South Carolina, Utah, Vermont, Washington and Wyoming.

<sup>18</sup> The number of on-motion applications received and number approved and denied don't reconcile due to a few factors. For instance, many applications received don't meet the eligibility requirements and are therefore never processed. Also, many applications received in late 2015 were still being reviewed in 2016.

## **Admissions ‘safety net’ considered**

A subcommittee of the Supreme Court Advisory Committee is studying whether Colorado should adopt a new conditional admission rule.

Nearly half the states have implemented some form of conditional admission, which allows a small number of applicants who may otherwise be denied a license due to recent substance abuse or mental health issues to be admitted on the condition that they complete a trial period without recurrence of the underlying issue. Such a conditional admission establishes the sustained and meaningful recovery necessary to continue the privilege of practicing law

As the ABA put it in a commentary to their Model Rule, conditional admissions “is intended to act as a ‘safety net’ to increase the likelihood of the conditional lawyer’s continuing fitness—not as a method of achieving fitness.”

In the event an applicant has a history of conduct stemming from a substance abuse or mental health issue, the rule would require the applicant be engaged in a sustained and effective course of treatment or remediation. The treatment or remediation would have to demonstrate the applicant’s commitment and progress, but may not yet be sufficient to demonstrate a track record or period of time warranting full admission.

In these limited circumstances, a conditional admission rule would allow the applicant to be admitted with conditions designed to increase the likelihood of the lawyer’s continuing fitness and to protect the lawyer’s clients and the public.

applicants’ moral and ethical qualifications.

The office works with the Character and Fitness Committee to review applicants. The Character and Fitness Committee is charged with investigating applicants’ mental stability, education, professional experience, and ethical and moral qualifications for admission to practice law.

If information provided by an applicant or obtained during the character and fitness review raises concerns, he or she may appear before an inquiry panel composed of members from the Character and Fitness Committee.

An inquiry panel is composed of five members from the

Character and Fitness Committee: three attorneys and two non-attorneys (citizen members). One of the citizen members shall be a mental health professional. (Currently, we have two Colorado licensed psychiatrists, with one serving on each of the two panels.) The other represents other members of the Colorado community.

The inquiry panel can either approve admission, defer action until an applicant addresses trouble areas in their application, or deny admission based on the guidelines set forth in the admissions rules, particularly C.R.C.P. 208.1.

Should the inquiry panel deny an application, an applicant can request a formal hearing or contest the inquiry panel's decision. The Supreme Court retains ultimate decision-making authority over whether an application is granted or denied.

In 2015, Attorney Admissions reviewed 1,634 applications to determine the character and fitness qualifications of applicants:

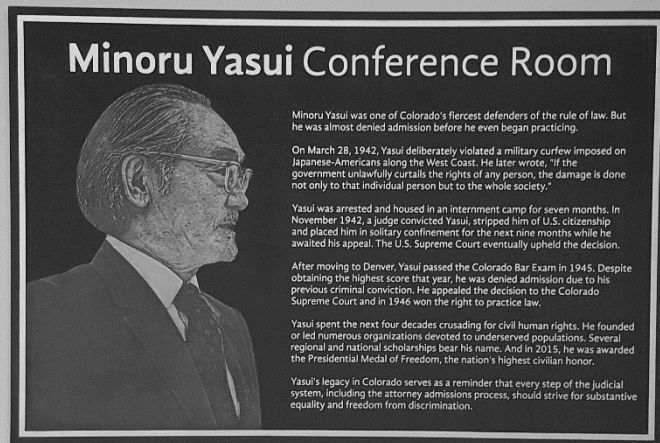
- 11 applications were forwarded to an inquiry panel:
  - 7 applicants were admitted;
  - 2 cases were deferred by an inquiry panel; and
  - 2 applicants were found to have probable cause to deny.
    - ◇ 1 applicant was denied without requesting a formal hearing.
    - ◇ 1 applicant appeared at a formal hearing and was subsequently denied by the Colorado Supreme Court

In appropriate cases, Attorney Admissions sends letters to applicants alerting them to the Colorado Lawyer Assistance Program (COLAP) and its services. The program is confidential and connects those in the legal community with resources to help with mental health issues, substance abuse problems, financial issues, gambling problems, relationship issues, grief counseling, aging in the profession and any other issues that impact a lawyer's ability to provide competent, diligent, communicative and conflict-free representation. **In 2015, Attorney Admissions sent COLAP letters to more than 40 applicants.** In addition, Attorney Regulation Counsel and staff regularly appear at the state's two law schools, beginning with first-year orientation. These visits are to educate law students about the admissions process, COLAP and OARC resources, and professional responsibility issues.

## Conference room dedicated to crusading Denver attorney

In September 2015, Attorney Regulation Counsel named its admissions conference room after the late Denver attorney Minoru Yasui.

Yasui was one of Colorado's fiercest defenders of the rule of law. But he was almost denied admission before he even began practicing.



On March 28, 1942, Yasui deliberately violated a military curfew imposed on Japanese-Americans along the West Coast. He later wrote, "If the government unlawfully curtails the rights of any person, the damage is done not only to that individual person but to the whole society."

Yasui was arrested and housed in an internment camp for seven months. In November 1942, a judge convicted Yasui, stripped him of U.S. citizenship and placed him in solitary confinement for the next nine months while he awaited his appeal. The U.S. Supreme Court eventually upheld the decision.

After moving to Denver, Yasui passed the Colorado Bar Exam in 1945. Despite obtaining the highest score that year, he was denied admission due to his previous criminal conviction. He appealed the decision to the Colorado Supreme Court and in 1946 won the right to practice law.

Yasui spent the next four decades crusading for civil and human rights. He founded or led numerous organizations devoted to underserved populations. Several regional and national scholarships bear his name. And in 2015, he was awarded the Presidential Medal of Freedom, the nation's highest civilian honor.

Yasui's legacy in Colorado serves as a reminder that every step of the judicial system, including the attorney admissions process, should strive for substantive equality and freedom from discrimination.



# ATTORNEY REGISTRATION AND CLE

## OVERVIEW

Once an applicant meets admission requirements, Attorney Registration completes the process by ensuring the proper administration of the oath. Attorneys then register annually with the office and pay annual license fees.

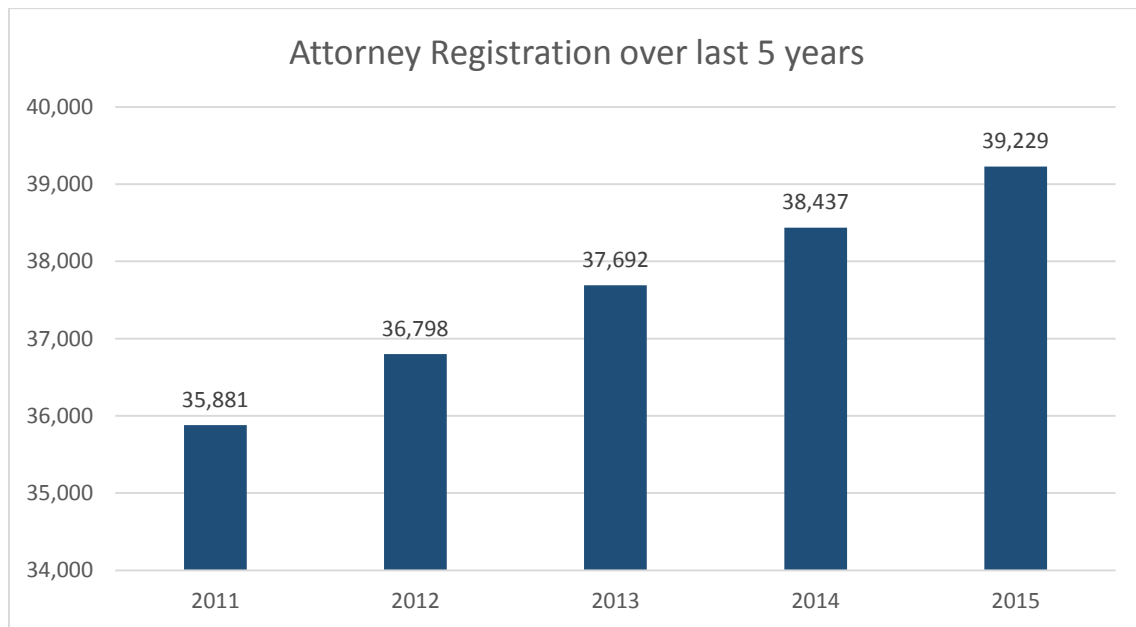
Colorado ended 2015 with 39,229 registered attorneys, up 9 percent over the last five years. Of those registered attorneys, 25,991 were active and 13,238 were inactive.

# 39,229

The number of registered attorneys at the end of 2015.

The annual license fees fund the Attorneys Fund for Client

Protection and defray the costs of attorney regulation (including the Office of the Presiding Disciplinary Judge), attorney registration, continuing legal and judicial education, enforcement of the unauthorized-practice-of-law rules, the Colorado Lawyer Assistance Program, the Colorado Attorney Mentoring Program, the Commission on Judicial Discipline, and some library services.



The office is run by the Clerk of Attorney Registration and Director of CLE Regulation and is aided by five full-time staff members.

In 2014, the office changed its registration form to collect better demographic statistics on the state's lawyer profession. In 2015, the office expanded its collection of demographics to include how many lawyers are practicing in-house, in government, and in a private law firm and a further breakdown of each category by government practice area and by firm size.

Maintaining an accurate picture of our lawyer population allows us to better serve the public and the profession by providing tailored resources to specific groups of attorneys in the future.<sup>19</sup>

## ATTORNEY REGISTRATION

Attorney Registration maintains the roll of licensed attorneys in the state of Colorado.

In 2015, Attorney Registration approved for admission 1,798 new attorneys:

- 914 through the bar exam;
- 45 through application of UBE requirements;
- 245 on-motion from a reciprocal admissions state;
- 63 as single-client certification attorneys;
- 496 pro hac vice;
- 1 under the temporary professor rule;
- 2 under the military spouse rule;
- 1 under the judge advocate certification;
- 19 under the pro bono emeritus status; and
- 12 under the practice pending admission rule.

*You picked up my call and were so pleasant and helpful. You are a credit to the Colorado Supreme Court.*

-- A lawyer on his experience with Attorney Registration.

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<sup>19</sup> For detailed statistics on attorney demographics in Colorado, see Appendix C

## **Student practice rule helps non-profits**

When Abby Boyd stepped into court in the summer of 2014, she hadn't yet taken the oath of admission. She was awaiting her bar results that would tell her whether she could be sworn in as a Colorado attorney.

Still, she wasn't in court that day merely to observe. She was acting as guardian ad litem for a child involved in a protective order case. She had interviewed the parties, helped devise the child custody plan and was there to present it to the court. There was no supervising attorney present. She was it.

"It was my first time in court," Boyd said. "And it was a great experience to get my feet under me and build confidence."

Boyd was practicing under the Student Practice C.R.C.P 205.7. That rule was expanded in 2011 to allow students and those who haven't been sworn in to represent a non-profit organization in court proceedings. Since the change, 71 people have registered under the rule to practice for places like Colorado Legal Services, Metro Volunteer Lawyers, Rocky Mountain Children's Law Center and others.

The change is one part of an effort to increase access to justice, in this case by allowing student practitioners to take on cases of the underserved.

The Rocky Mountain Children's Law Center utilizes seven or eight practitioners under the rule every year, said Jennifer Eyl, Director of Family Stability Programs. Many of those, like Boyd, work as guardians ad litem in domestic violence cases. Eyl said the rule has decreased staff training time.

"The students can take on far more cases than our volunteer lawyers," she said. "Otherwise, we'd have to recruit and train more volunteers."

Colorado Legal Services also takes on those registered under the student practice rule, said Executive Director Jon Asher. He said prior to the rule change, those who had graduated from law school but not yet sworn in were stuck in a kind of limbo period where "you couldn't do much except legal research" for non-profits.

"Now you can go to court and be of significant help to places like Legal Aid," he said.

## CONTINUING LEGAL AND JUDICIAL EDUCATION

Attorneys have to meet continuing legal education requirements on a three-year cycle. Attorney Regulation works with the Board of Continuing Legal and Judicial Education to accredit CLE courses and process affidavits affirming attorneys' attendance at events. The Board consists of nine members: six attorneys, one judge and two non-attorneys who provide citizen voices in administration of the mandatory continuing legal and judicial education system.



Attorneys now enter their CLE affidavits online. The system also allows attorneys who lose the form provided at CLE programs to look up the course and to monitor their transcript.

Attorney Regulation Counsel Jim Coyle, left, and the Honorable Claudia Jordan (retired) discuss ethical issues with attendees at the CLE program "Ethics Lessons from Breaking Bad" held in July.

In 2015, the Board of Continuing Legal and Judicial Education:

- Processed 92,298 CLE affidavits;
- Processed 33 additional CLE affidavits for mentoring;
- Processed 59 additional CLE affidavits for pro bono work; and
- Accredited 5,755 CLE courses.

In May 2013, a subcommittee was formed to review and consider revisions to the current Rules and Regulations pertaining to Mandatory Continuing Legal and Judicial Education. These Rules and Regulations need thorough review and analysis because they still contain information and dates specific to the time they were adopted in the late-1970s. The subcommittee hopes to propose revised Rules to the Supreme Court through the Court's Advisory Committee in the fall of 2016.

*“I do solemnly swear ...*

*... that I will support the Constitution of  
the United States and the Constitution of  
the State of Colorado; I will maintain the  
respect due to Courts and judicial  
officers; I will employ only such means as  
are consistent with truth and honor; I will  
treat all persons whom I encounter  
through my practice of law with fairness,  
courtesy, respect and honesty; I will use  
my knowledge of the law for the  
betterment of society and the improvement  
of the legal system; I will never reject,  
from any consideration personal to myself,  
the cause of the defenseless or oppressed; I  
will at all times faithfully and diligently  
adhere to the Colorado Rules of  
Professional Conduct.”*

— Colorado Attorney Oath of Admission

# ATTORNEY REGULATION

## OVERVIEW

Attorney Regulation Counsel's traditional role is to investigate, regulate and, when necessary, prosecute attorneys accused of more serious violations of the Colorado Rules of Professional Conduct.

The Colorado model of attorney regulation is designed to move cases of minor ethical misconduct toward a quick resolution and devote its resources to cases that involve more serious attorney misconduct. The goal is to protect the public while educating attorneys to prevent any future misconduct.

In 2015, Attorney Regulation Counsel received 19,461 calls. Of those, 3,505 were calls filing a request for investigation against an attorney. The office's intake division reviewed all of those cases and processed 348 matters for full investigation by the trial division.

The trial division worked those 348 cases in addition to 250 cases carried over from 2014. In total, the Office of Attorney Regulation's work in 2015 resulted in:

- 173 dismissals with educational language;
- 83 diversion agreements;
- 6 public censures;
- 34 suspensions;
- 19 probations; and
- 14 disbarments.

## INTAKE DIVISION

The intake division acts as the office's triage unit. Its six attorneys, two investigators and three legal assistants are the front line for all complaints, deciding how a case is handled and whether it moves forward.<sup>20</sup>

Trained specialists take all calls to the office and, if necessary, assign the case to an intake attorney. That attorney reviews the facts, then decides whether the Colorado Rules of Professional Conduct are implicated and whether further investigation is warranted.

*Citizens complain daily about all levels of governmental indifference and uncaring. I'm happy to report that those descriptors are eons from the truth about your office and the conduct of personnel therein.*

-- A complaining witness on his experience with the Intake Division.

Intake attorneys have numerous options. They can dismiss cases outright; issue letters with educational language to the respondent-attorney; refer the matter for resolution by fee arbitration; agree in cases of minor misconduct to an alternative to discipline involving education or monitoring; or forward matters of more serious misconduct to the trial division.

In 2015, central intake handled 19,461 telephone calls. The intake division:

- Reviewed 3,505 requests for investigation;<sup>21</sup>
- Entered into 35 diversion agreements;
- Dismissed 142 cases with educational language;
- Processed 348 cases for further investigation by the trial division.

<sup>20</sup> For detailed statistics on the intake division, see Appendix D.

<sup>21</sup> For a breakdown of complaints by practice area and by nature of complaint, see Appendix E.




## TRIAL DIVISION

The next stop for a case that involves allegations of serious misconduct is the trial division. In 2015, the trial division handled many of the 348 cases processed by the intake division as well as 250 cases carried over from 2014.<sup>22</sup>

The trial division's attorneys, non-attorney investigators and legal assistants investigate the cases. At the end of the investigation, there are numerous outcomes, many intended to quickly resolve less serious matters.

In 2015, during the investigation phase, the trial division:

- Recommended the dismissal of 120 cases, 31 of them with educational language; and
- Entered into 11 conditional admission agreements

  
*You were gracious and understanding throughout ... You proved to me on several occasions that understanding and true caring between lawyers can exist.*

-- A respondent lawyer on his experience with the Trial Division.

### Colorado hosts investigators conference

More than 60 bar investigators from 26 jurisdictions traveled to Denver in September for the 12th Annual Organization of Bar Investigators (OBI) Conference hosted by the Office of Attorney Regulation Counsel.

Attendees heard from experts on motivational interviewing, compassion fatigue and the fate of changes to federal immigration policy, among other issues.

The conference ran for three days and featured nine sessions for those who help investigate attorneys accused of ethical violations. Attorney Regulation Counsel Jim Coyle welcomed conference-goers the first day and introduced the keynote speaker, Justice Monica Márquez of the Colorado Supreme Court.

The Office has been instrumental in OBI from the beginning. It hosted the first bar investigators' training conference in 2004. Since its inception, OBI has grown into an international association of more than 300 investigators helping to foster excellence in bar investigation techniques.

<sup>22</sup> For detailed statistics on the trial division process, see Appendices F through J. For detailed statistics on the rule violations implicated in the final disposition, see Appendix K.

If, at the end of the investigation phase, one of the above resolutions is not reached, trial counsel prepares a report recommending formal proceedings. That report is presented to the Attorney Regulation Committee, which



Anjali Nandi, program director for a Colorado drug and alcohol treatment agency, delivered a talk on motivational interviewing at the Organization of Bar Investigators Conference in September hosted by the Office of Attorney Regulation Counsel.

comprises nine members: six attorneys and three public members who act as an outside perspective and gatekeeper for all official disciplinary proceedings against respondent attorneys. One of the members is a licensed Colorado psychiatrist. The Committee considers reports prepared by Office of Attorney Regulation Counsel attorneys and determines whether reasonable cause exists to seek discipline.

In 2015, the trial division presented 166 matters to the Attorney Regulation Committee.<sup>23</sup> The Committee approved:

- 97 formal proceedings;
- 47 diversion agreements; and
- 9 private admonitions.

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<sup>23</sup> Because some matters are carried over from one calendar year to the next, the number of matters reviewed by the Attorney Regulation Committee will not reconcile with the number docketed or completed in the investigative area.

Several of the 97 matters in which the Office was authorized to file a formal complaint were consolidated. In certain cases, after authority to file a formal complaint was obtained, Attorney Regulation Counsel and respondent entered into a conditional admission prior to filing of a formal complaint.

In 2015, after receiving authorization to file a formal complaint, the Attorney Regulation Counsel:

- Filed 44 formal complaints;
- Resolved 11 matters prior to filing a formal complaint; and
- Entered into 26 conditional admissions agreements.

The 44 formal complaints filed in 2015, and those pending from 2014, resulted in 12 discipline trials before the Presiding Disciplinary Judge.

### **Colorado looks at proactive programs**

This year, the Office of Attorney Regulation Counsel spearheaded a radical shift in how the legal profession regulates lawyers.

In May 2015, the Office co-hosted the 1<sup>st</sup> Regulators' Workshop on Proactive Risk-Based Regulation<sup>24</sup>. Bar counsel, legal ethics professors, solo practitioners and risk adjusters from more than 20 international and U.S. jurisdictions gathered in Denver to discuss how to develop proactive risk-based programs to improve overall professional conduct and client satisfaction.

Such program would complement the current disciplinary system, but also hopefully increase client satisfaction and thus reduce the need for discipline due to better compliance with the Rules of Professional Conduct. Colorado already leads the country with proactive programs, but wants to consider other potential programs to promote the public interest.

Studies show that proactive programs in jurisdictions in New South Wales and England that currently have a PMBR program have resulted in a decrease in disciplinary complaints, and increase in consumer satisfaction, and an increase in job satisfaction among lawyers.

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<sup>24</sup> For the minutes of the 1<sup>st</sup> Regulators' Workshop on Proactive Risk-Based Regulation, see Appendix L.

As a result of the regulators' workshop, the Colorado Supreme Court's Advisory Committee formed a PMBR Subcommittee in June 2015 to develop such a program. A PMBR program is being developed to help lawyers better serve their clients and simplify their professional lives. It will be designed to identify the common risks lawyers face and provide effective management systems to address those risks.

If enacted in Colorado, it would be the first such program of its kind in the United States.

Colorado's subcommittee has met on a monthly basis since August 2015 and has already completed its first task: drafting a preamble to the rules governing the practice of law in Colorado. That language was recently adopted by the Colorado Supreme Court. Those regulatory objectives are now pending before the Supreme Court. The draft regulatory objectives focus on protecting the public and promoting the public interest through proactive programs that educate lawyers in their continuing professional development, improve client service and reduce client complaints.

Next on the subcommittee's agenda is development of a PMBR program. The goal of this program is to assist lawyers in implementing and maintaining effective management systems for an ethical law practice.

In early 2016, the subcommittee identified the 10 common principles that are encouraged for any law firm's ethical infrastructure. The subcommittee has broken into 10 working groups to now develop a self-evaluation tool in each of those 10 categories so law firms have effective management systems in place to address these common risks.

Who wins with such a program? Everyone. Clients get better service, lawyers get the tools they need to improve their law practice in an efficient and helpful way, consumer complaints are reduced and public confidence in the legal system is improved.

## OTHER ACTIONS<sup>25</sup>

### Immediate Suspensions

On rare occasions, the Office of Attorney Regulation Counsel may seek the immediate suspension of an attorney's license in order to protect the public. An immediate suspension may be appropriate when there is reasonable cause to believe that an attorney is causing immediate and substantial public or private harm. Additionally, the office can seek such action if an attorney is in arrears on a child-support order or is not cooperating with Attorney Regulation Counsel as required by the Colorado Rules of Professional Conduct.

In 2015, the Office of Attorney Regulation Counsel filed 11 petitions for immediate suspension.

- 3 involved attorneys causing immediate and substantial harm;
- 1 involved failure to pay child support;
- 2 involved failure to cooperate with Attorney Regulation Counsel;
- 3 involved a felony conviction; and
- 2 were pending as of the drafting of this report

### Disability Matters

When an attorney is unable to fulfill professional responsibilities due to physical, mental, or emotional illness, the Office of Attorney Regulation Counsel may file a petition to transfer an attorney to disability status. This is not a form of discipline.

In 2015, the Office of Attorney Regulation Counsel filed 11 petitions to place attorneys on disability status. 11 were granted. 1 was denied. 0 remained pending.<sup>26</sup>

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<sup>25</sup> For detailed statistics on Other Actions, see Appendix M.

<sup>26</sup> The eleven petitions filed aren't necessarily the same 11 petitions granted in 2015. Some petitions filed in 2014 weren't ruled on until 2015.

## Contempt Proceedings

The Office of Attorney Regulation Counsel may file a motion with the Supreme Court recommending contempt for an attorney practicing law while under suspension or disbarment.

In 2015, the Office of Attorney Regulation Counsel filed 1 motion for contempt against a Colorado attorney. That motion was denied.

## Magistrates

Attorney Regulation Counsel is responsible for handling complaints against state court magistrates.

In 2015, 46 complaints were filed against magistrates — of those, 43 were dismissed and three remained pending.

## Reinstatement and Readmission Matters

Attorneys who have been disbarred or suspended for at least one year and one day must apply for readmission or reinstatement. The reinstatement and readmission processes are similar to an attorney discipline case and are intended to assess the attorney's fitness to return to the practice of law. In readmission and reinstatement matters, the applicant attorney must prove rehabilitation and other elements by clear and convincing evidence.

In 2015, 9 attorneys applied for reinstatement or readmission:

- 1 was readmitted;
- 2 were reinstated;
- 2 applications were dismissed;
- 1 application was withdrawn;
- 2 were denied; and
- 7 matters were pending at the close of 2015.

## Trust Account

Attorneys in private practice are required to maintain a trust account in an approved Colorado financial institution. Those financial institutions agree to report to Attorney Regulation Counsel any overdraft on the trust accounts. The reporting requirement is designed as an early warning that an attorney is engaging in conduct that may harm clients. Reports of overdrafts receive immediate attention.

In 2015, the Office of Attorney Regulation Counsel received 159 notices of trust account checks drawn on insufficient funds. These matters were handled through the investigation process described above.

## Unauthorized Practice of Law<sup>27</sup>

The Office of Attorney Regulation Counsel, in coordination with the Unauthorized Practice of Law Committee (UPL), investigates and prosecutes allegations of the unauthorized practice of law. The UPL Committee is composed of nine members: six attorneys and three non-attorneys who provide a community perspective on UPL regulation and who retain jurisdiction over complaints of unauthorized practice of law.

In 2015, the Office of Attorney Regulation Counsel received 70 requests for investigation alleging the unauthorized practice of law. Of those 70 matters, 52 were completed in 2015:

- 28 were dismissed by Attorney Regulation Counsel;
- 10 resulted in written agreements to refrain from the conduct in question; and
- 13 resulted in an injunctive or contempt proceeding.

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<sup>27</sup> For detailed statistics on the Unauthorized Practice of Law, including a breakdown of UPL cases by Type of Complaining Witness and Type of Legal Service, see Appendix N.



## **Office combats UPL on multiple fronts**

In 2015, the Office of Attorney Regulation Counsel worked in conjunction with other local, state and federal agencies in efforts to protect the public from persons and entities causing harm when practicing the unauthorized practice of law.

The efforts of the Office of Attorney Regulation Counsel, the Office of the Colorado Attorney General, and similar agencies across the country resulted in the federal Consumer Financial Protection Bureau suing a debt settlement enterprise for \$67 million in damages to consumers nationwide. In September, a federal court froze the company's assets and appointed a receiver. The case is ongoing.

The Office also participated in consumer protection activities coordinated by the Federal Trade Commission. It contributed to the FTC's Consumer Sentinel Network, which tracks consumer fraud cases nationwide, and posts on the Consumer Sentinel, the FTC's list of injunctions against persons enjoined from the unauthorized practice of law.

Our staff also attends and participates in quarterly FTC-organized telephone conferences, called the First Tuesday Group, which focuses on ways to protect consumers from scams against immigrants and consumers.

The Office will continue its efforts in 2016 and has already begun a collaboration with the U.S. Attorney's Office and other government agencies to better spread the word to populations most vulnerable to the unauthorized practice of law.

### Attorneys' Fund for Client Protection

Attorney Regulation Counsel assists the Board of Trustees for the Attorneys Fund for Client Protection by investigating claims made on the fund, alleging client loss due to the dishonest conduct of an attorney. The statistics for this work are shown in a separate annual report, posted on [www.coloradosupremecourt.com](http://www.coloradosupremecourt.com), "Attorneys' Fund for Client Protection Annual Report 2015."

### Commission on Judicial Discipline

Attorney Regulation Counsel acts as Special Counsel for the Colorado Commission on Judicial Discipline on request of the Executive Director.

# CASE MONITOR

The cornerstones of Colorado's attorney regulation system are the diversion (alternative-to-discipline) agreement and probation conditions in discipline matters. Diversion agreements and probation conditions protect the public while allowing an otherwise competent attorney to continue practicing.

Central to these agreements is monitoring. An attorney respondent must adhere to conditions agreed to by this office and the attorney. Those conditions can include attendance at our office's trust account school or ethics school, submitting to drug or alcohol monitoring, financial monitoring, practice audits and/or monitoring, or receiving medical or mental health treatment.

To ensure compliance, this office employs a full-time case monitor. The case monitor's relationship with respondent attorneys begins when the monitor sends a calendar detailing important compliance deadlines. Throughout the diversion or probation process, the monitor follows up with email reminders and finally phone calls if an attorney has missed a deadline.

The goal of the monitor is to help attorneys comply with their diversion or probation conditions and help them make a successful transition back to normal law practice.

The case monitor also helps run the various schools for attorneys intended to improve the provision of legal services to consumers.

*As we speak, I'm enjoying a webinar on Trust Account School. The presentation is very informative and the materials are very good.*

-- Out-of-state bar counsel on one of this office's many presentations.

In 2015, the case monitor:

- Organized 5 Ethics Schools, attended by 124 attorneys; and
- Organized 5 Trust Account Schools, attended by 58 people.

# INVENTORY COUNSEL

Attorney Regulation Counsel's umbrella covers the end of an attorney's career and sometimes the end of his or her life. When an attorney is no longer able to perform his or her duties to clients, either due to disability or death, and there's no other party responsible for the attorney's affairs, the Office of Attorney Regulation Counsel steps in to file a petition for appointment of inventory counsel.

With the assistance of volunteer Colorado attorneys, and investigators and attorneys from the office, the Inventory Counsel Coordinator reviews all of the files and takes steps to protect the interests of the attorney and the attorney's clients. The file inventory and file return process may take months or years depending on the number of files, the area of practice, and the difficulty in locating the previous clients.

In 2015, the Office of Attorney Regulation Counsel:

- Filed 13 new petitions for appointment of inventory counsel;
- Worked 12 active inventory matters;
- Closed 9 inventory matters;
- Contacted 330 clients whose files contained original documents, involved a felony criminal matter, or were considered current;
- Inventoried 3,005 client files; and
- Returned 103 files to clients or attorneys of record.

# EDUCATION/OUTREACH

This office now recognizes the best way to protect and promote the public interest is to prevent misconduct before it occurs.

In pursuit of that goal, the Office of Attorney Regulation Counsel seeks to promote an understanding of the legal field and offer attorneys educational opportunities that aid them in their practice of law.

That pursuit takes many forms.<sup>28</sup>

- The Office of Attorney Regulation Counsel conducts a majority of its outreach through talks and presentations. The office seeks to reach attorneys early and so its members often speak to students at the state's two law schools. Members of the office also talk at bar association gatherings and CLE courses on various attorney ethics topics. And the office often delivers presentations at conferences for other bar counsel professionals.
- The office created and teaches schools for attorneys intended to improve the provision of legal services to consumers. These schools are:
  - Ethics School, a seven-hour course focusing on everyday dilemmas that confront attorneys;
  - Trust Account School, a four-hour course that addresses the correct method for maintaining and administering a trust account;
  - Professionalism School, a six-hour course that addresses the most common ethical dilemmas faced by newly admitted attorneys; and
  - Practice Monitor Class, a half-day course instructing attorneys on how to be practice monitors for other attorneys required to have supervision as part of an alternative-to-discipline program.
- The office's attorneys and investigators serve on numerous local boards and are active in national and international legal organizations.

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<sup>28</sup> For further details on the office's Education and Outreach, see Appendix O.

- Members of the office regularly make presentations on a national level, including presentations for the National Organization of Bar Counsel, the ABA Standing Committee on Client Protection, the National Conference of Bar Examiners, the National Client Protection Organization, the ABA Immigration Section, and the Commission on Lawyer Assistance Programs.

In 2015, the office also continued two outreach initiatives:

1. The office sent the *OARC Update*, a quarterly email newsletter to the state's 39,000-plus attorneys. The newsletters contain deadline reminders and links to articles written by the office's attorneys on best practices and ethical hot topics.
2. The office also sends letters to attorneys who change their practice area from public service or large firm practice to solo or small-firm practice. These attorneys face challenges in managing a private practice they likely didn't face while working as a government or large-firm attorney. The letters ask the practitioner to fill out a self-audit checklist and discuss the results with a seasoned solo or small firm practitioner. The letters also make these attorneys aware of resources that may help them during their transition

*I wanted to thank you and your team for the OARC Update. The pieces on the bar application and the bar exam are very helpful to our students.*

-- DU law professor on the Office's quarterly newsletter.

In 2015, the Office of Attorney Regulation Counsel:

- Delivered 149 public speeches and presentations;
- Disseminated four newsletters, each of which was opened by an average of 16,431 attorneys; and
- Sent 313 letters to attorneys changing from public service or large-firm practice to solo or small-firm practice informing them of resources that may be helpful in their transition.

# COMMITTEES

There are numerous boards and committees composed of volunteer members who provide critical citizen input into regulating the practice of law in Colorado.<sup>29</sup>

## Supreme Court Advisory Committee

The Supreme Court Advisory Committee is a volunteer committee that assists the Court with administrative oversight of the entire attorney regulation system. The Committee's responsibilities are to review the productivity, effectiveness and efficiency of the Court's attorney regulation system including that of the Attorney Regulation Counsel, the Office of the Presiding Disciplinary Judge, the Colorado Lawyer Assistance Program (COLAP) and the Colorado Attorney Mentoring Program (CAMP).

## Attorney Regulation Committee

The Attorney Regulation Committee is composed of nine volunteer members: six attorneys and three public members. The Committee, known as ARC, is the gatekeeper for all official disciplinary proceedings against respondent attorneys. It considers reports prepared by Office of Attorney Regulation Counsel attorneys and determines whether reasonable cause exists to seek discipline. The Committee also considers, and enters into, investigation-level diversion agreements.

## Board of Trustees, Attorneys' Fund for Client Protection

The Board of Trustees is composed of five attorneys and two non-attorney public members. The trustees evaluate, determine and pay claims made on the Attorneys' Fund for Client Protection based on reports submitted by the Office of Attorney Regulation Counsel. The Board of Trustees issues a separate report, found on [www.coloradosupremecourt.com](http://www.coloradosupremecourt.com).

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<sup>29</sup> Committee rosters are listed beginning on pages 10.

## **Subcommittee studies solutions to pro se problem**

The Supreme Court Advisory Committee undertook an effort this year to address the growing problem of civil access to justice.

In March 2015, the Colorado Supreme Court's Advisory Committee formed a subcommittee to study authorizing a new legal professional to advise and assist clients with a limited scope in approved practice areas.

The problem of pro se litigants is big. In 78 percent of Colorado family law cases, one party is not represented. In 53 percent of family law cases, both sides are self-represented. It's not all by choice. Of those indigent parties eligible for legal aid, fully half are turned away by service providers because of lack of funding or resources. Colorado Legal Services, the main provider of civil legal representation, has roughly 50 attorneys to serve the eligible indigent population of nearly 900,000.

To address the problem, a 2014 report by the ABA Task Force on the Future of Legal Education called for states to license "persons other than holders of a J.D. to deliver limited legal services."

Colorado's Limited License Legal Technician Subcommittee is looking at other states' efforts. Washington led the charge in 2014 by becoming the first state to implement an LLLT program. In May 2015, the Executive Director of the Washington State Bar Association and the Chair of the Washington Practice of Law Board traveled to Denver to discuss the Washington Program. Paula Littlewood and Steve Crossland told the crowd of lawyers that the number of unmet legal needs is rising, the number of lawyers available is falling, and that people continue to turn to online services like Legal Zoom.

Ms. Littlewood, WSBA's Executive Director, said "the tidal wave is coming" whether the legal community is ready or not.

"We just want to be in charge of where we're going," she told those gathered.

Colorado's LLLT Subcommittee is also looking at New York and its Navigators program. There, a Court Navigator Program provides specially trained non-lawyers to help litigants access and complete court forms, assist them with keeping paperwork in order, help them access interpreters, explain to them what to expect and to understand the roles of each person in the courtroom.

The Honorable Fern Fischer, Deputy Chief Administrative Judge for New York City Courts and the Director of the New York State Courts Access to Justice Program, will be in Denver in April 2016 to present on the Navigators program.



### Committee on the Colorado Rules of Professional Conduct

The Committee on the Colorado Rules of Professional Conduct is composed of attorneys and judges from varying backgrounds. The Committee is charged with reviewing and updating the Colorado Rules of Professional Conduct. Prior to the Committee's formation, numerous interest groups individually recommended rule changes to the Supreme Court. Those parties continue to request changes, but the Supreme Court expects the Committee to consider these recommendations in the first instance.

### Law Committee

The Law Committee is composed of 11 volunteer attorney members. It reviews and approves the standards that must be met to pass the written examination.

### Character and Fitness Committee

The Bar Committee is composed of 11 volunteer members: seven attorneys and four non-attorneys. The Committee is charged with investigating applicants' character and fitness to practice law in Colorado.

### Board of Continuing Legal and Judicial Education

The Board of Continuing Legal and Judicial Education consists of nine members: six attorneys, one judge and two non-attorneys. The Board administers the program requiring attorneys and judges to take continuing education courses.

### Unauthorized Practice of Law Committee

The Unauthorized Practice of Law Committee is composed of nine members: six attorneys and three non-attorneys. The Committee has jurisdiction over allegations involving the unauthorized practice of law.

### Colorado Commission on Judicial Discipline

The Colorado Commission on Judicial Discipline is composed of 10 members of the public. Members are appointed by the Supreme Court, the Governor, and the Legislature. The Commission is charged with monitoring the conduct of the judiciary, including judges of county and district courts, the Court of Appeals, and the Supreme Court.

# APPENDICES

# Appendix A

## OFFICE OF ATTORNEY REGULATION COUNSEL DUTIES

The Colorado Rules of Civil Procedure lay out Attorney Regulation Counsel's multiple regulatory and administrative duties. These duties include:

1. Field and investigate complaints filed with the central intake division of the Office of Attorney Regulation Counsel;
2. Investigate and prosecute violations of the Colorado Rules of Professional Conduct under the direction of the Attorney Regulation Committee, C.R.C.P. 251.3;
3. Investigate and prosecute violations of the Colorado Rules of Professional Conduct relating to trust account overdraft notifications;
4. Investigate and prosecute attorney disability actions;
5. Investigate and prosecute petitions for immediate suspension, C.R.C.P. 251.8, C.R.C.P. 251.8.5, and C.R.C.P. 251.8.6;
6. Investigate and prosecute contempt proceedings for violations of the Colorado Rules of Procedure Regarding Attorney Discipline and Disability, C.R.C.P. 251.3(c)(7);
7. Investigate and prosecute violations of the Code of Judicial Conduct by attorneys serving as magistrates under the Colorado Rules for Magistrates;
8. Investigate and prosecute complaints alleging the unauthorized practice of law upon the request and direction of the Unauthorized Practice of Law Committee, C.R.C.P. 228, *et seq.*;
9. Coordinate and investigate the filing of claims with the Colorado Attorneys' Fund for Client Protection under the direction of the Colorado Attorneys' Fund for Client Protection Board of Trustees, C.R.C.P. 251.3, *et seq.*, C.R.C.P. 252, *et seq.*;
10. Perform attorney admission duties, including the administration of the Colorado Bar Examination and all character and fitness determinations;

- and represent and counsel the Colorado State Board of Law Examiners in inquiry panels and formal hearings as required by the Rules Governing Admission to the Practice of Law in Colorado;
11. As requested, represent and serve as special counsel to the Commission on Judicial Discipline in matters related to the removal, retirement, suspension, censure, reprimand, or other discipline of judges, Colorado Rules of Judicial Discipline, Chapter 24;
  12. Obtain appointment of inventory counsel in cases where an attorney has become disabled, disappeared, or died, and assist inventory counsel with the client files and funds;
  13. Provide extensive educational opportunities to the practicing bar and the public on topics related to attorney ethics; and
  14. Perform duties on behalf of the Board of Continuing Legal and Judicial Education pursuant to the Colorado Supreme Court's interim order dated December 1, 2011.

The various duties of Attorney Regulation Counsel are set forth individually to reflect a summary of work performed in each area. The annual report of the Colorado Attorneys' Fund for Client Protection is under separate cover.

In 2015, the Office of Attorney Regulation Counsel employed 62 full-time employees.

## Appendix B

### BAR EXAM STATISTICS

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#### EXAM STATISTICS

February 2015 Bar Exam

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	<u>Attorney</u>	<u>Non-attorney</u>	<u>Total</u>
# of applicants	119	284	403
# of withdrawals	15	22	37
# of no shows	1	6	7
# who took exam	103	256	359
# of new applicants	81	121	202
# of updates	22	135	157*
# who passed	72	150	222 (62%)
# who failed	31	106	137 (38%)

\* 23 who have never sat for an exam in Colorado and 134 who previously failed.

## PASS/FAIL RATES

### By Law School

February 2015 Bar Exam

Examinees	Law School	Passed		Failed		Total
<b>First Time</b>	University of Colorado	6	(60%)	4	(40%)	10
	University of Denver	39	(91%)	4	(9%)	43
	National*	10	(83%)	2	(17%)	12
	Other	104	(65%)	56	(35%)	160
		159	(71%)	66	(29%)	225
<b>Repeat</b>	University of Colorado	14	(70%)	6	(30%)	20
	University of Denver	18	(60%)	12	(40%)	30
	National*	1	(50%)	1	(50%)	2
	Other	30	(37%)	52	(63%)	82
		63	(47%)	71	(53%)	134
<b>All</b>	University of Colorado	20	(67%)	10	(33%)	30
	University of Denver	57	(78%)	16	(22%)	73
	National*	11	(79%)	3	(21%)	14
	Other	134	(55%)	108	(45%)	242
		222	(62%)	137	(38%)	359

\* Schools categorized as "National" are:

Columbia  
Harvard  
Stanford  
Yale  
Duke  
Michigan  
Chicago  
California Berkeley  
Virginia  
Texas

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**EXAM STATISTICS**July 2015 Bar Exam

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	<u>Attorney</u>	<u>Non-attorney</u>	<u>Total</u>
# of applicants	113	761	874
# of withdrawals	20	41	61
# of no shows	4	10	14
# who took exam	89	710	799
# of new applicants	69	623	692
# of updates	20	87	107*
# who passed	64	512	576 (72%)
# who failed	25	198	223 (28%)

\* 19 who have never sat for an exam in Colorado and 88 who previously failed.



## PASS/FAIL RATES

### By Law School

July 2015 Bar Exam

Examinees	Law School	Passed		Failed		Total
<b>First Time</b>	University of Colorado	121	(90%)	14	(10%)	135
	University of Denver	165	(81%)	38	(19%)	203
	National*	37	(90%)	4	(10%)	41
	Other	227	(69%)	104	(31%)	331
		550	(77%)	160	(23%)	710
<b>Repeat</b>	University of Colorado	5	(63%)	3	(38%)	8
	University of Denver	3	(14%)	19	(86%)	22
	National*	0	(0%)	0	(0%)	0
	Other	18	(31%)	41	(69%)	59
		26	(29%)	63	(71%)	89
<b>All</b>	University of Colorado	126	(88%)	17	(12%)	143
	University of Denver	168	(75%)	57	(25%)	225
	National*	37	(90%)	4	(10%)	41
	Other	245	(63%)	145	(37%)	390
		576	(72%)	223	(28%)	799

\* Schools categorized as "National" are:

Columbia  
Harvard  
Stanford  
Yale  
Duke  
Michigan  
Chicago  
California Berkeley  
Virginia  
Texas

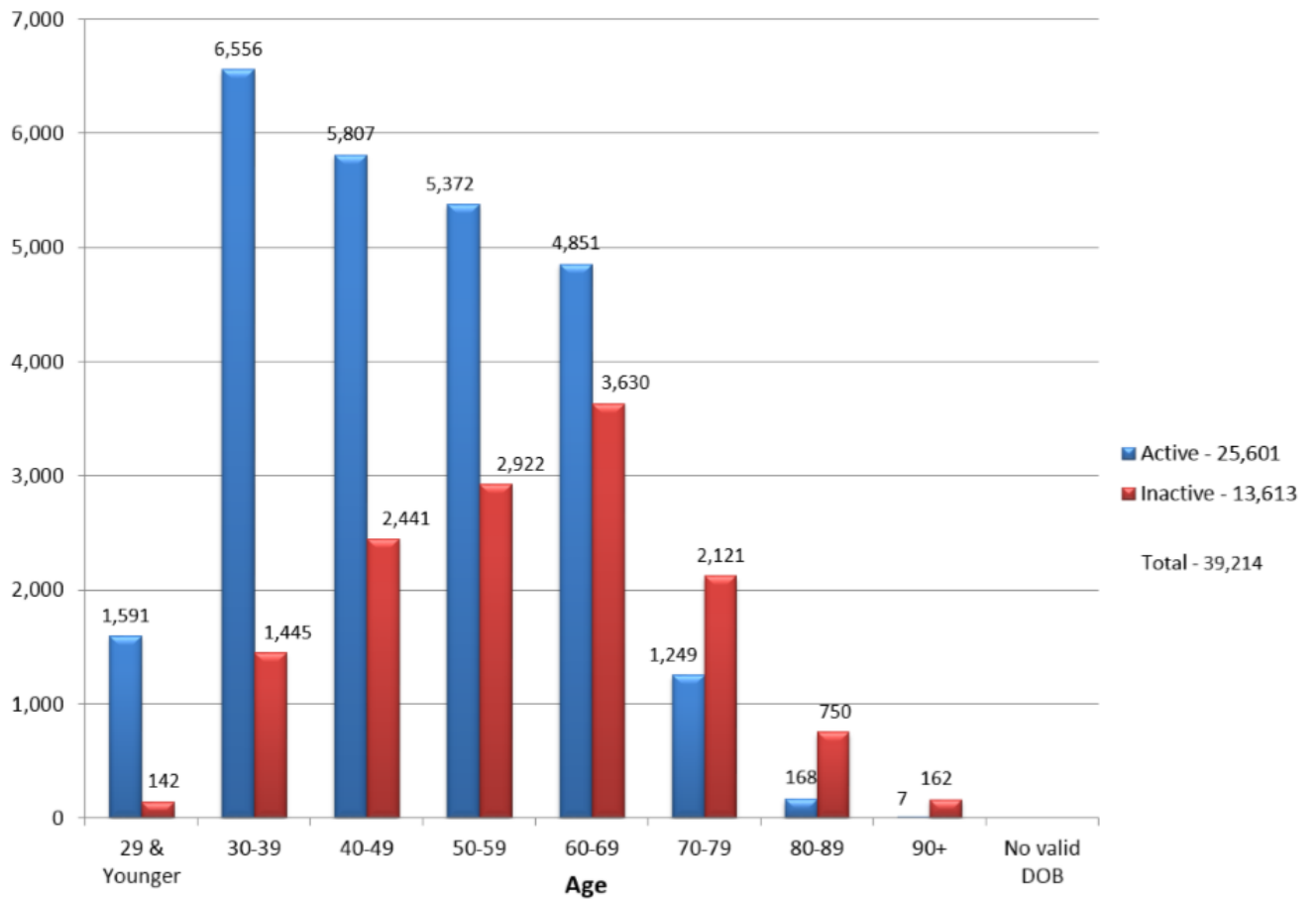
## Appendix C

### COLORADO ATTORNEY DEMOGRAPHICS

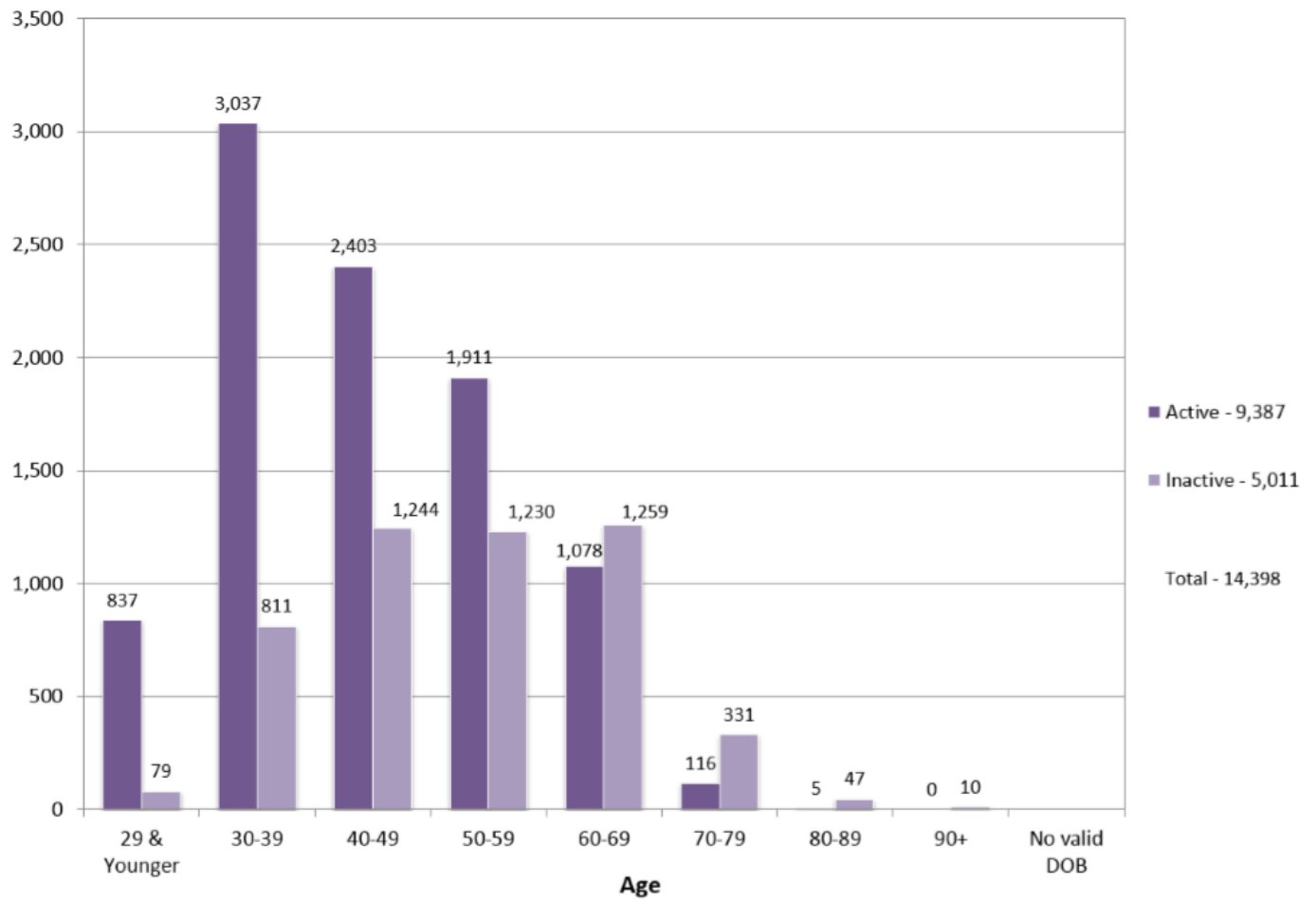
The Office of Attorney Regulation Counsel changed the registration form to collect better demographic statistics on the state's lawyer profession. With an accurate picture of Colorado's lawyer population, the office hopes to provide better resources to specific groups of attorneys in the future.

## COLORADO ATTORNEYS, BY AGE

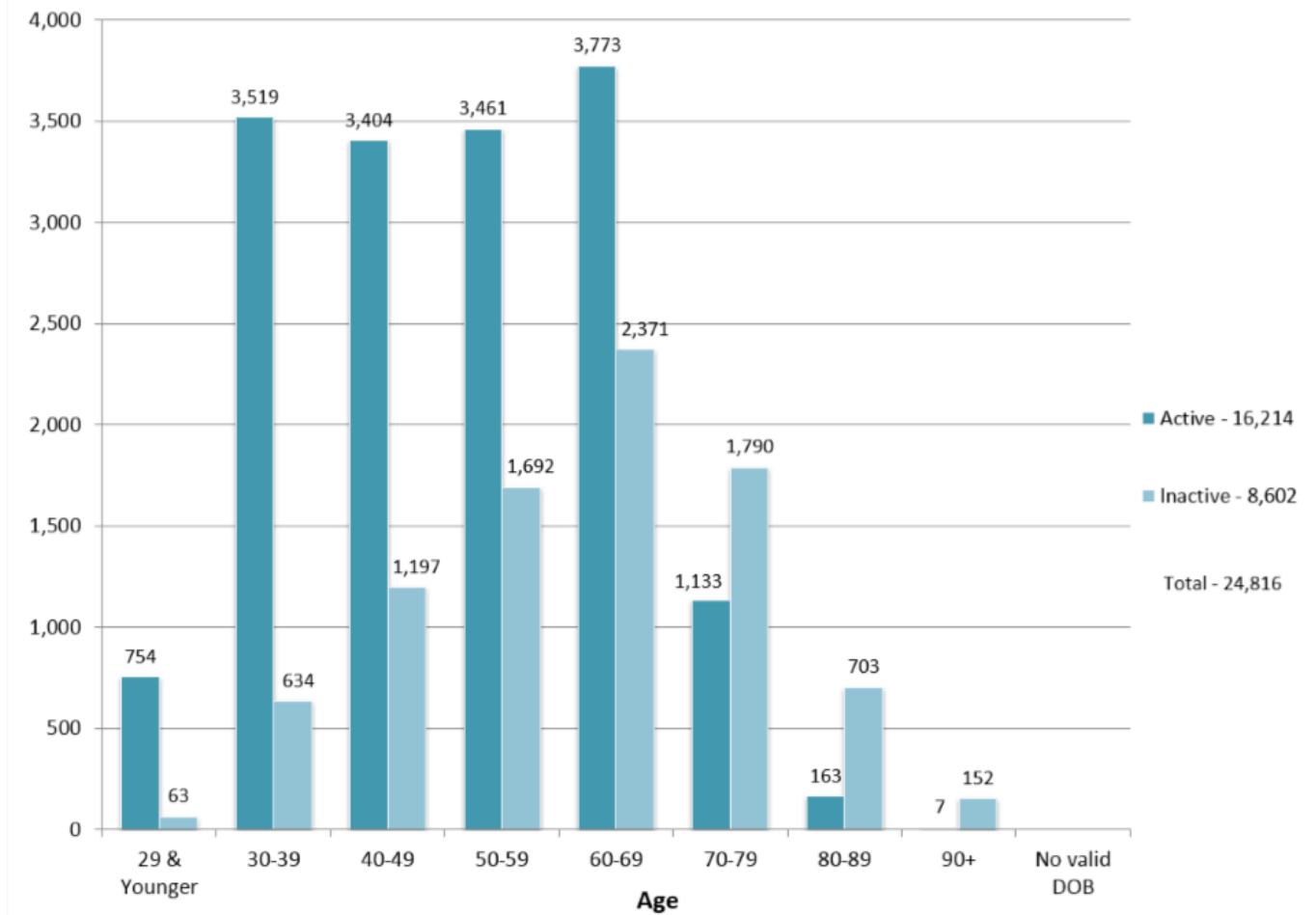
Colorado Attorneys, active and inactive by age



## Colorado Female Attorneys, active and inactive by age

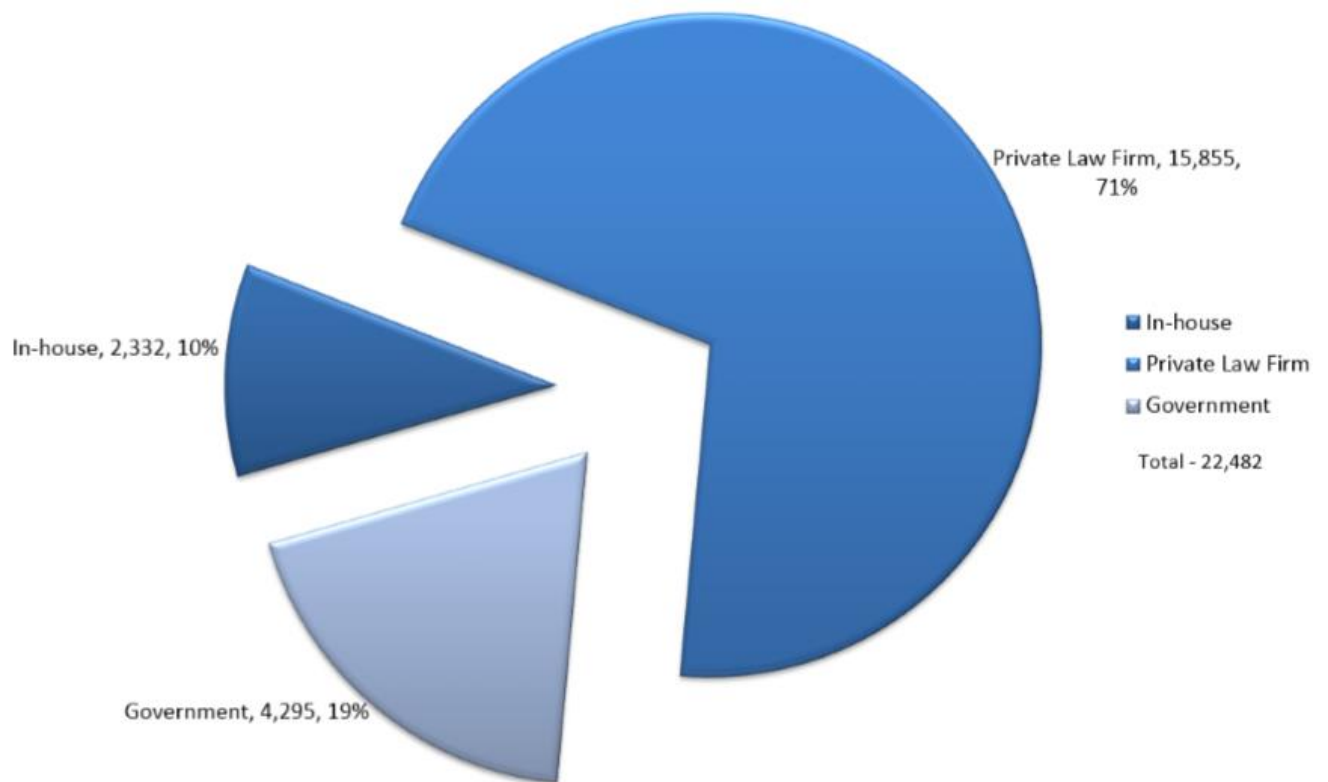


## Colorado Male Attorneys, active and inactive by age

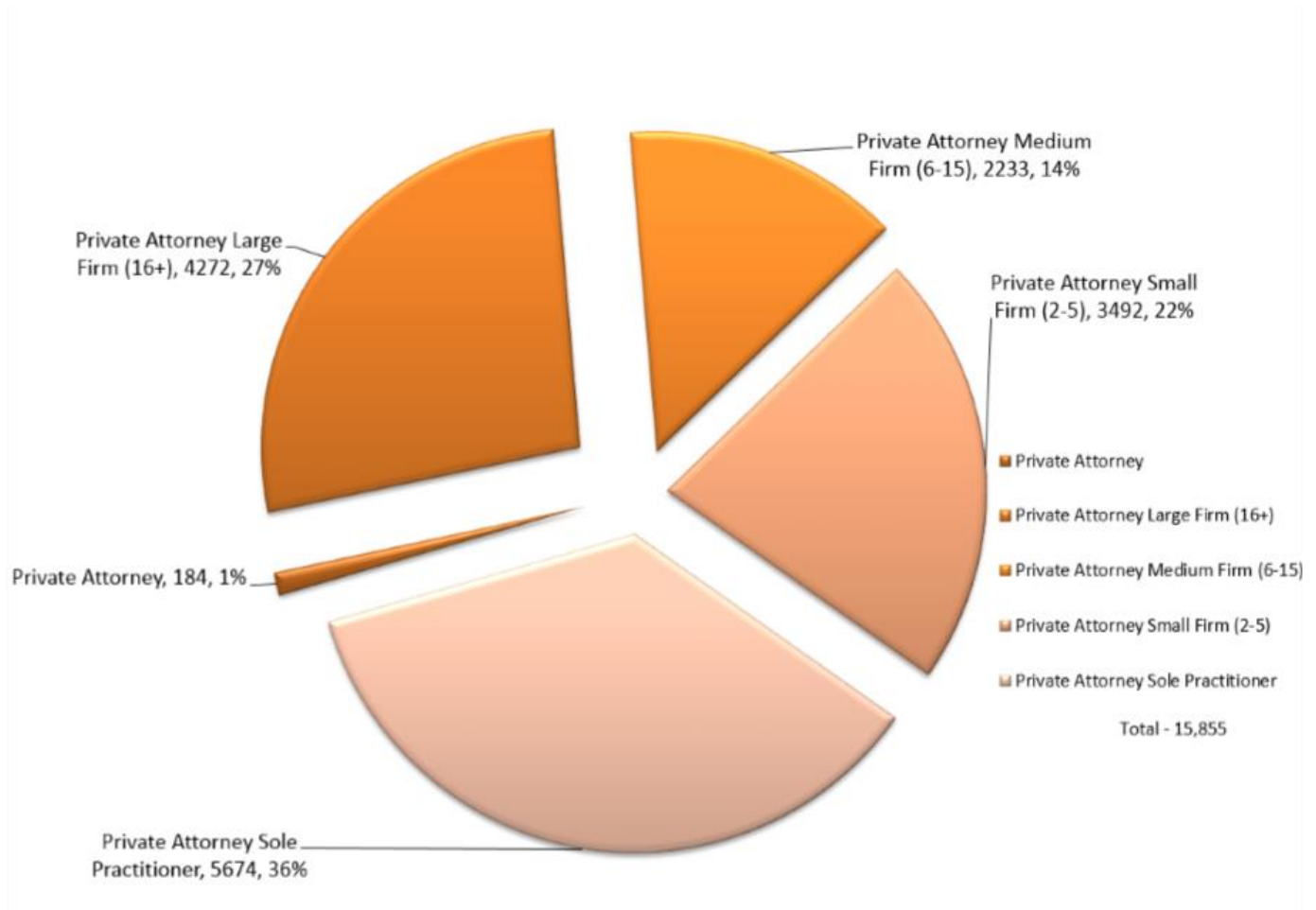


## ACTIVE ATTORNEYS, BY PRACTICE

Active Attorneys, by practice

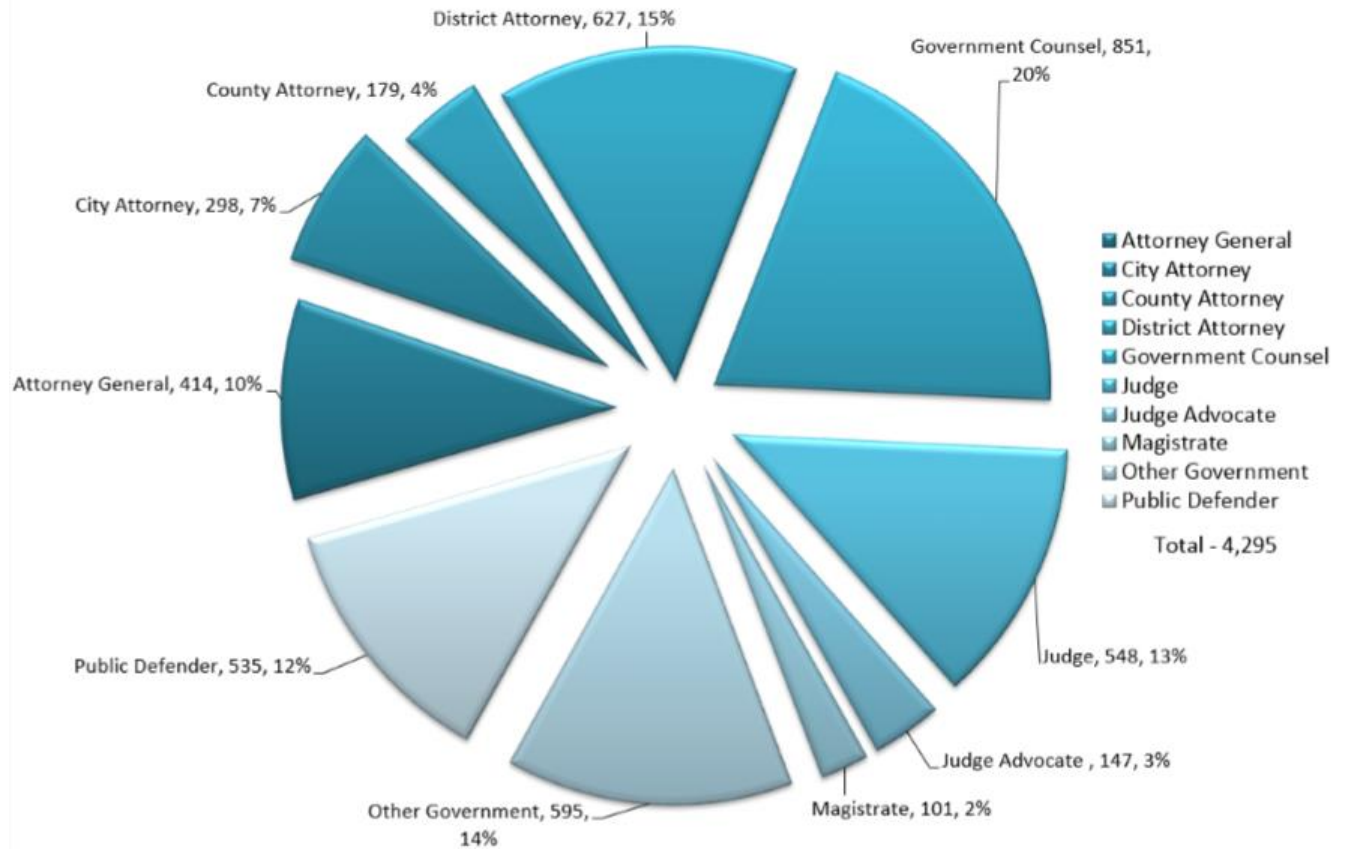


## Active Attorneys in Private Practice, by firm size



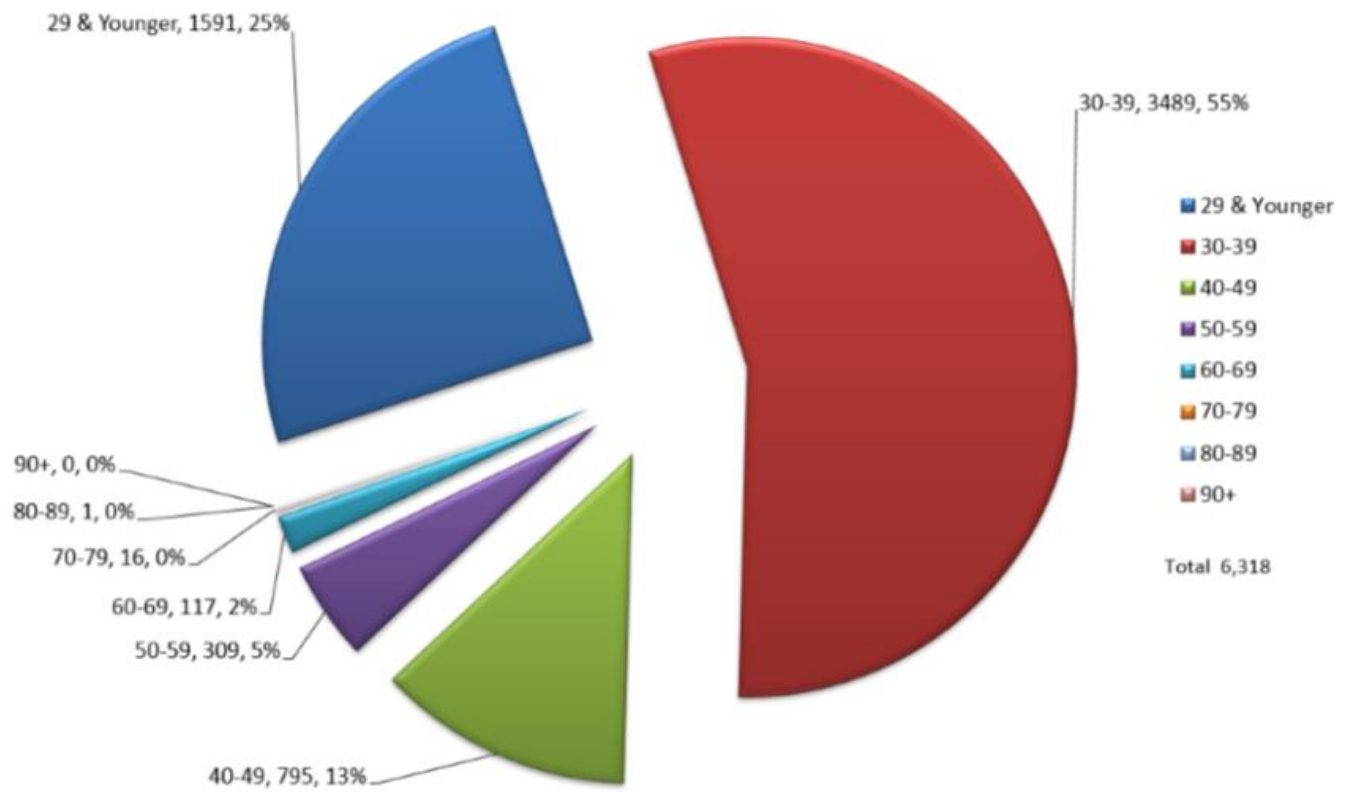


## Active Attorneys in Government Practice, by type

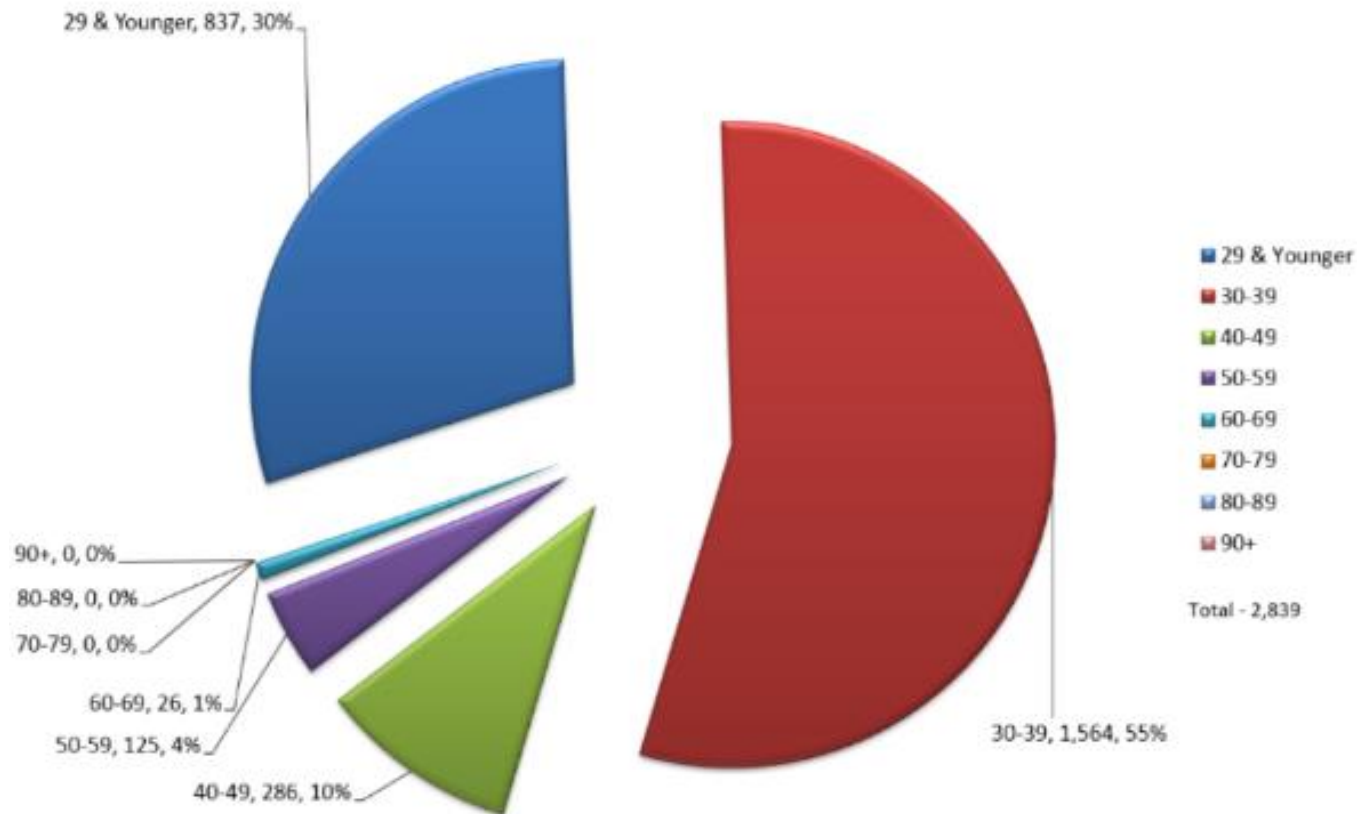


## ACTIVE ATTORNEYS, BY YEARS OF PRACTICE

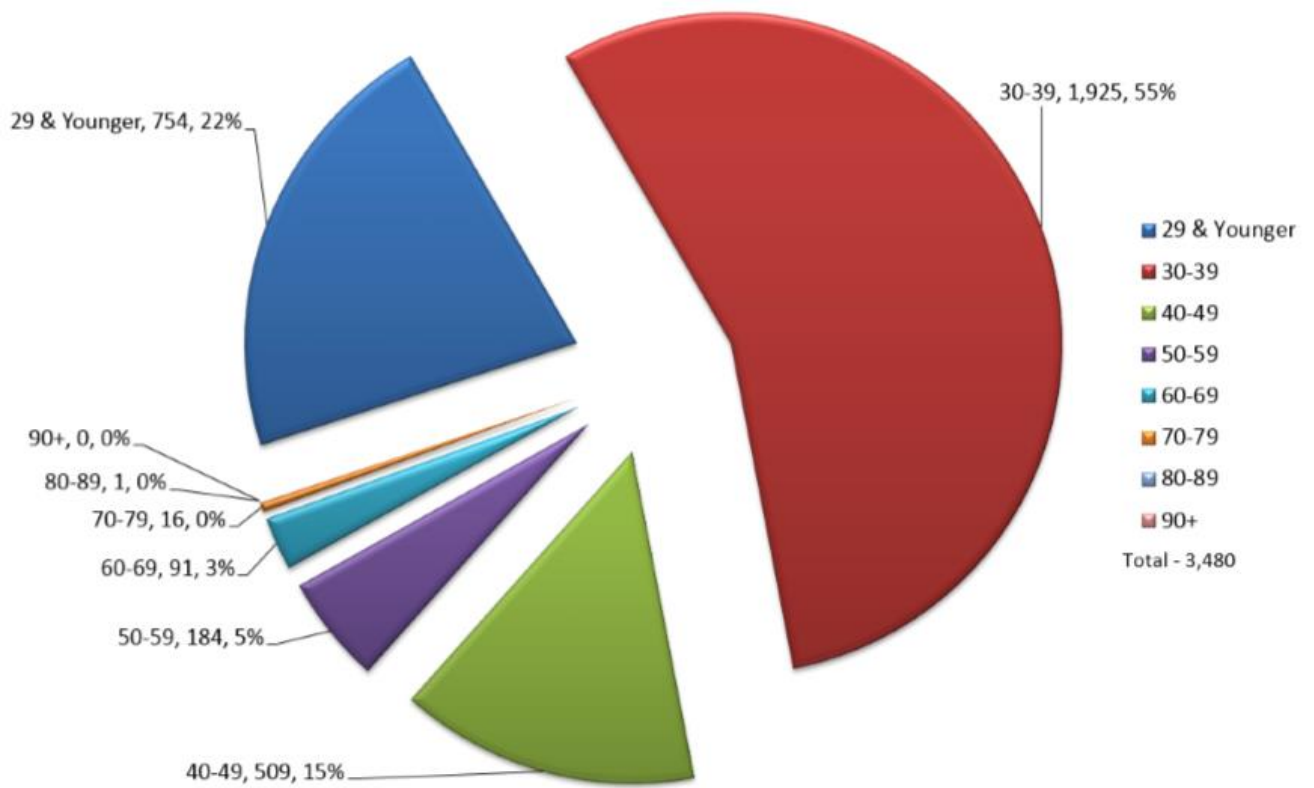
### Active Attorneys, practicing 0-5 years



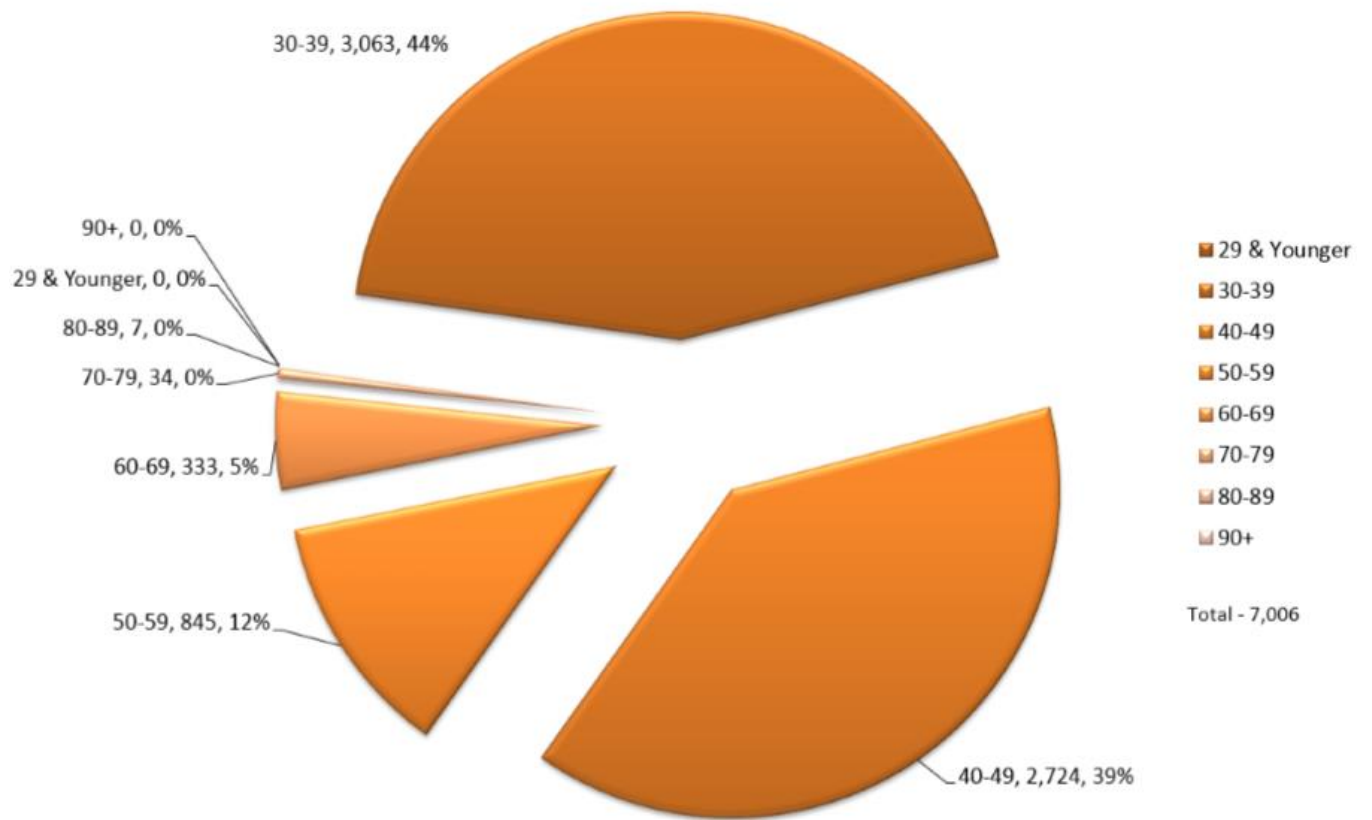
## Active Female Attorneys, practicing 0-5 years



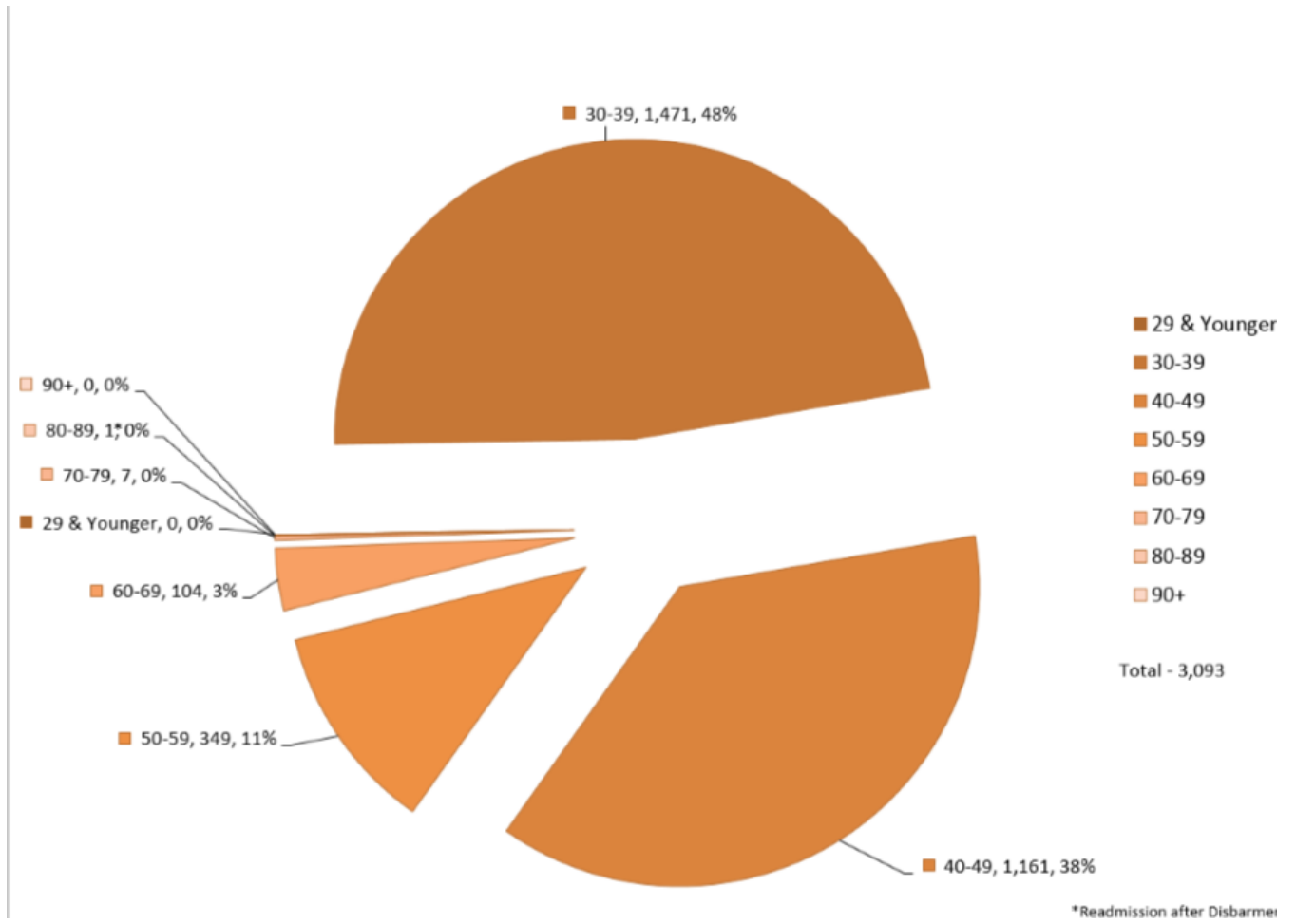
## Active Male Attorneys, practicing 0-5 years



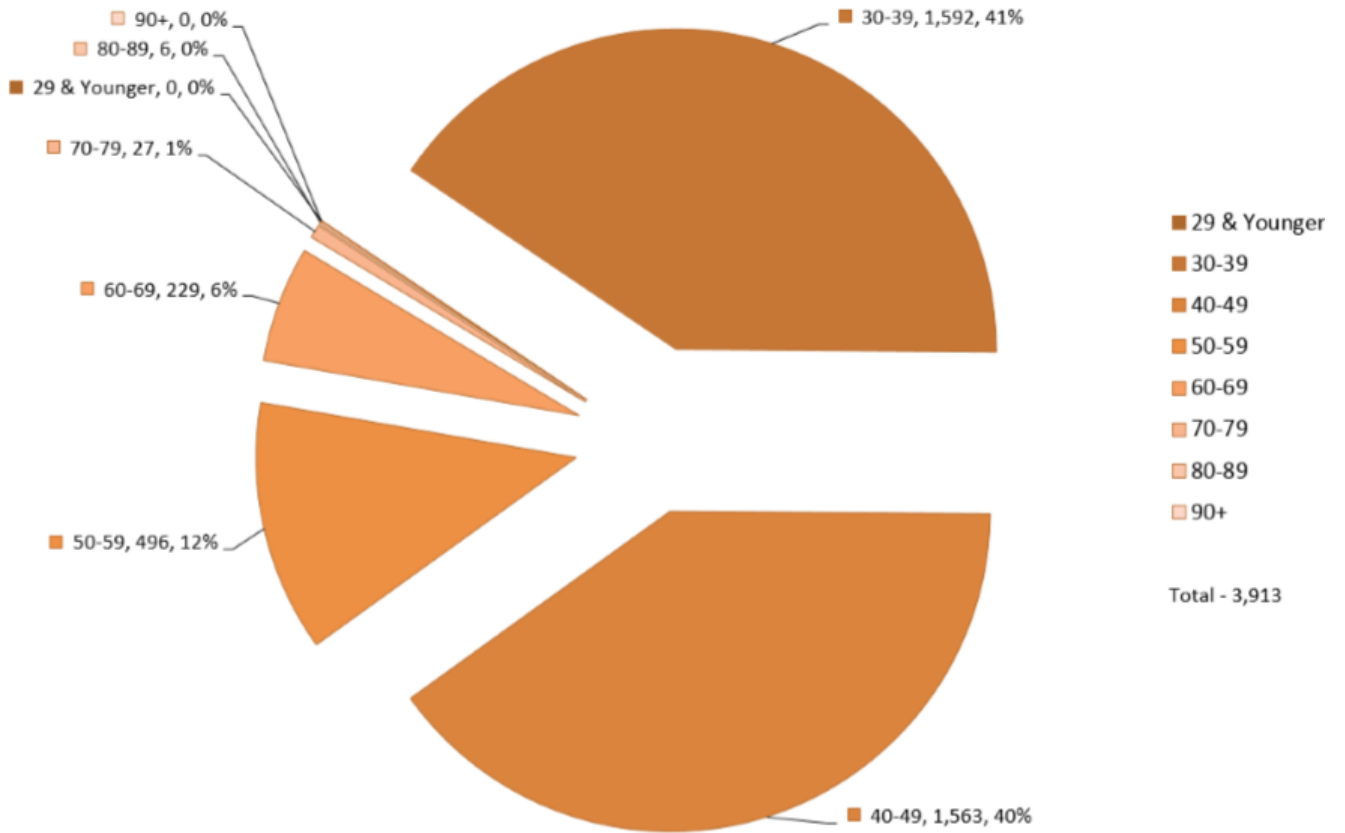
### Active Attorneys, practicing 6-15 years



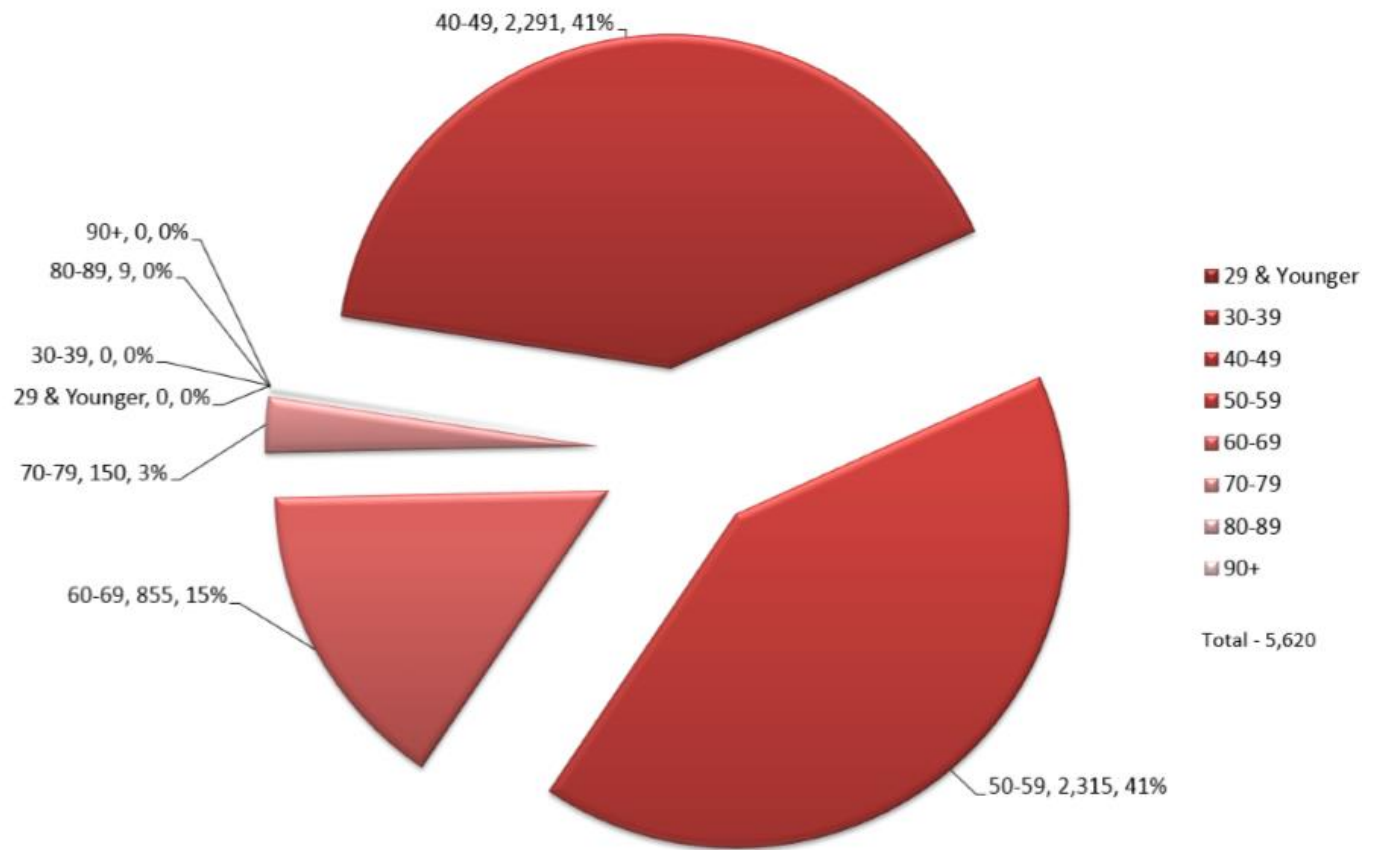
## Active Female Attorneys, practicing 6-15 years



## Active Male Attorneys, practicing 6-15 years

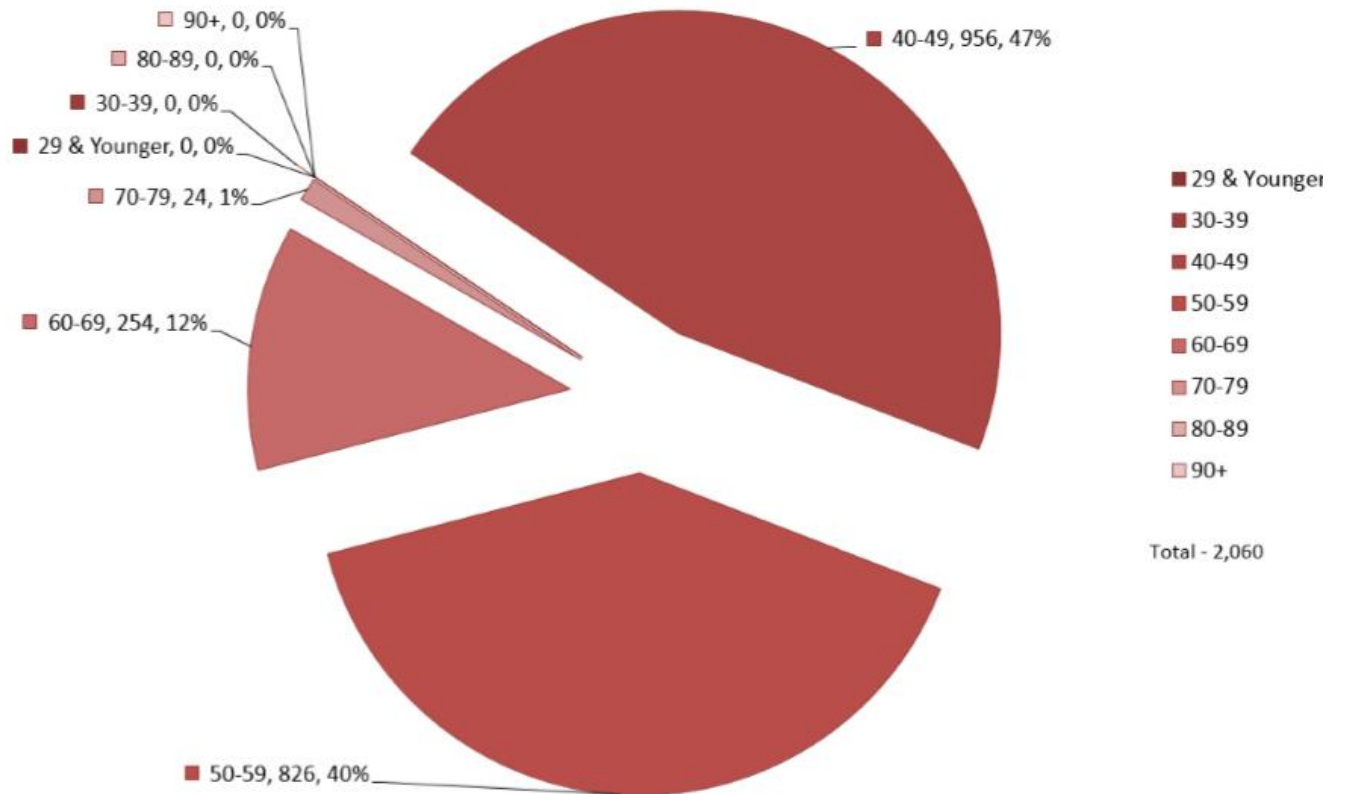


## Active Attorneys, practicing 16-25 years

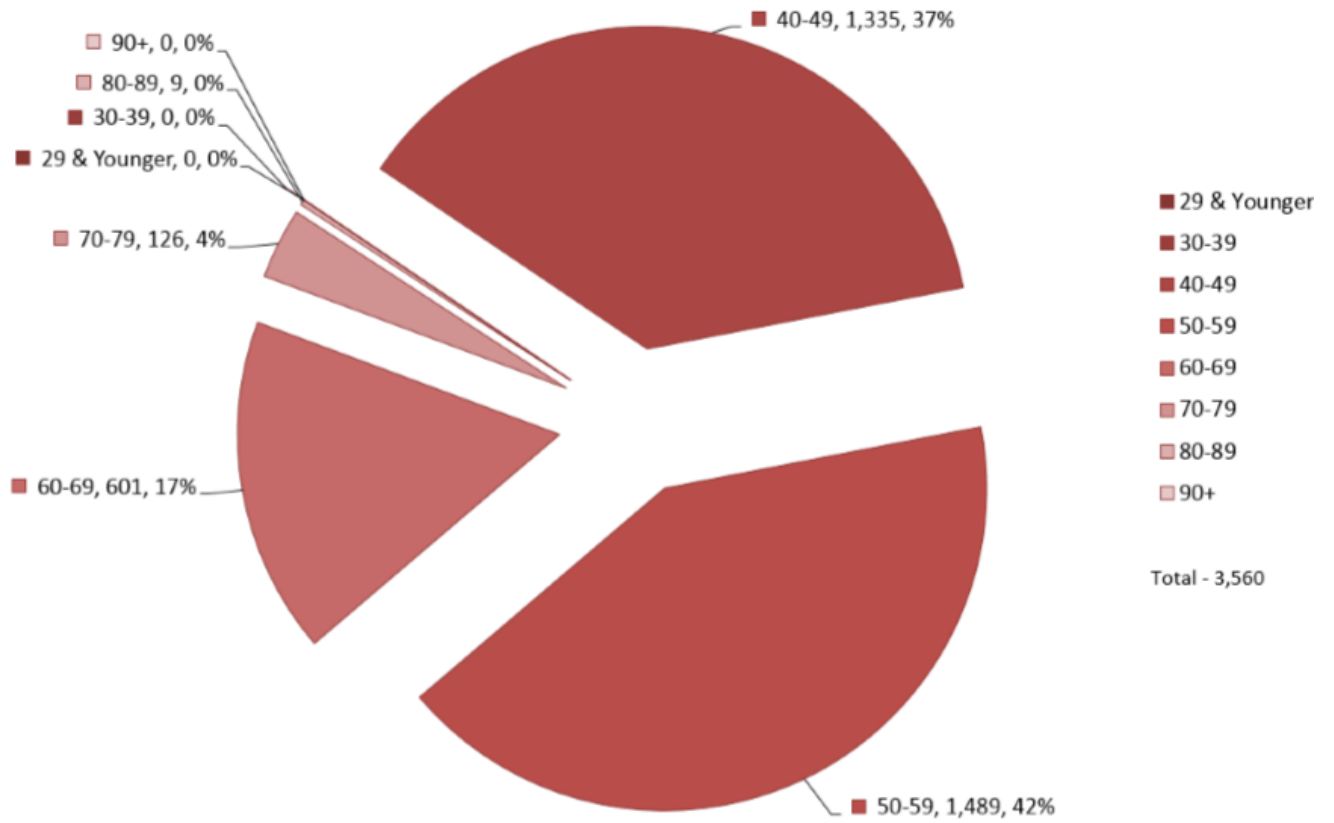




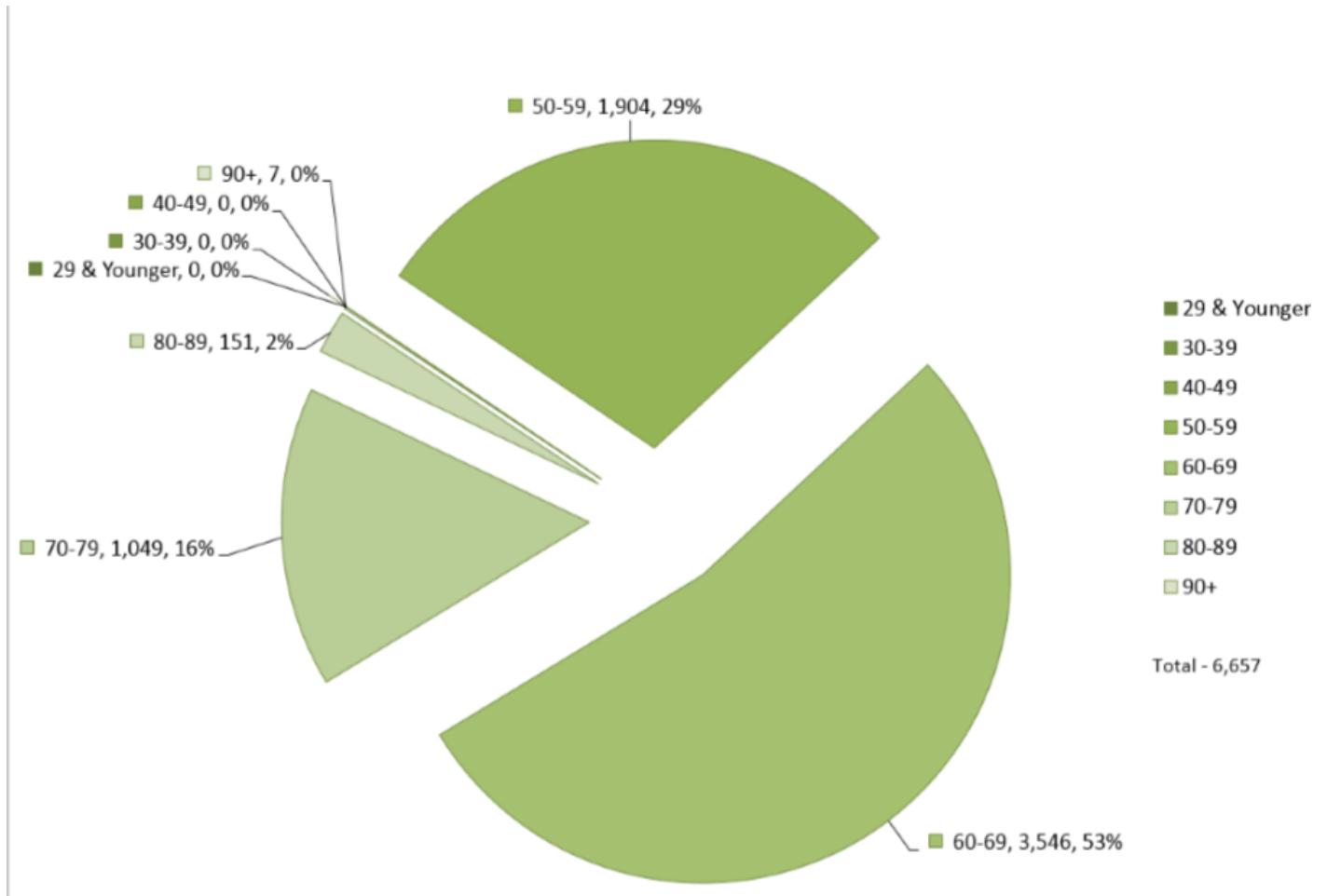
## Active Female Attorneys, practicing 16-25 years



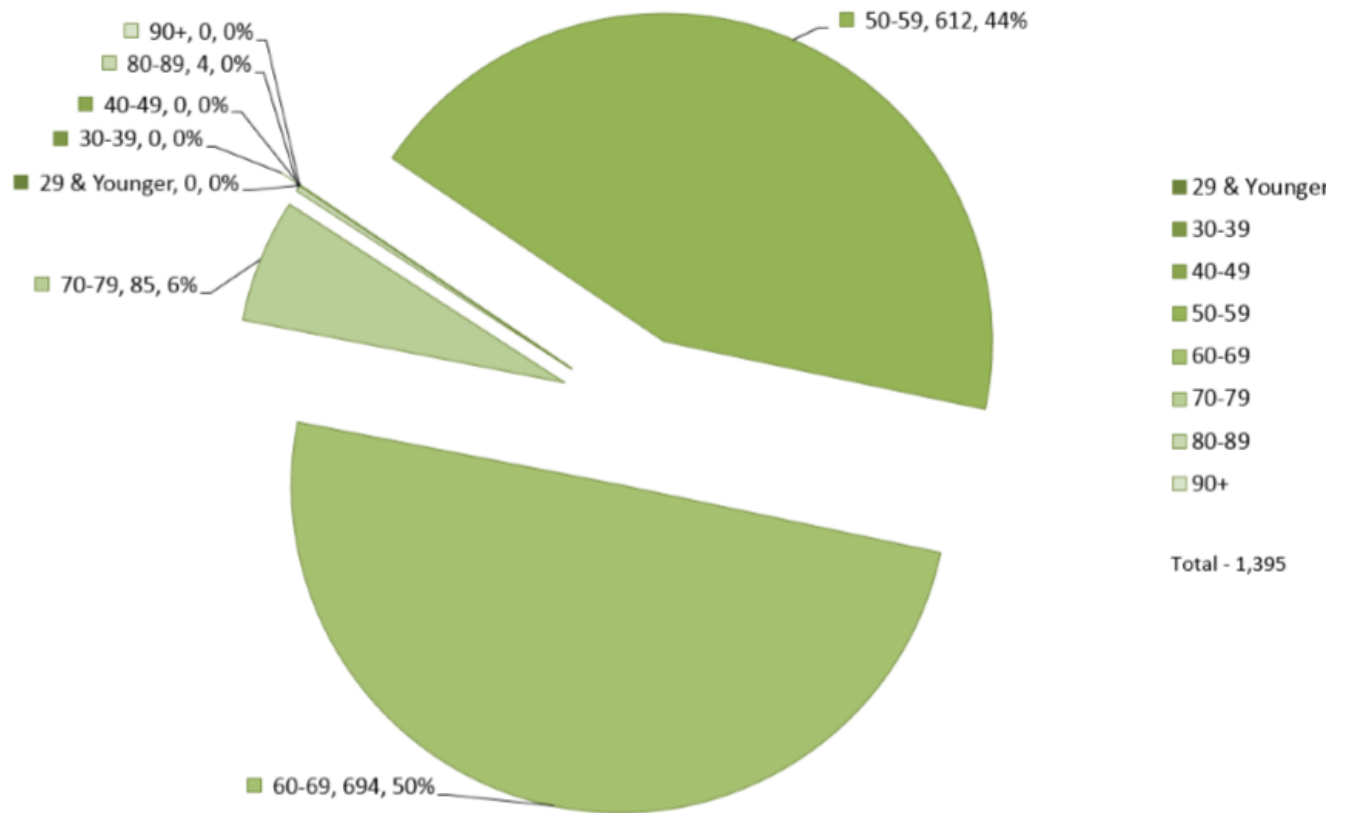
### Active Male Attorneys, practicing 16-25 years



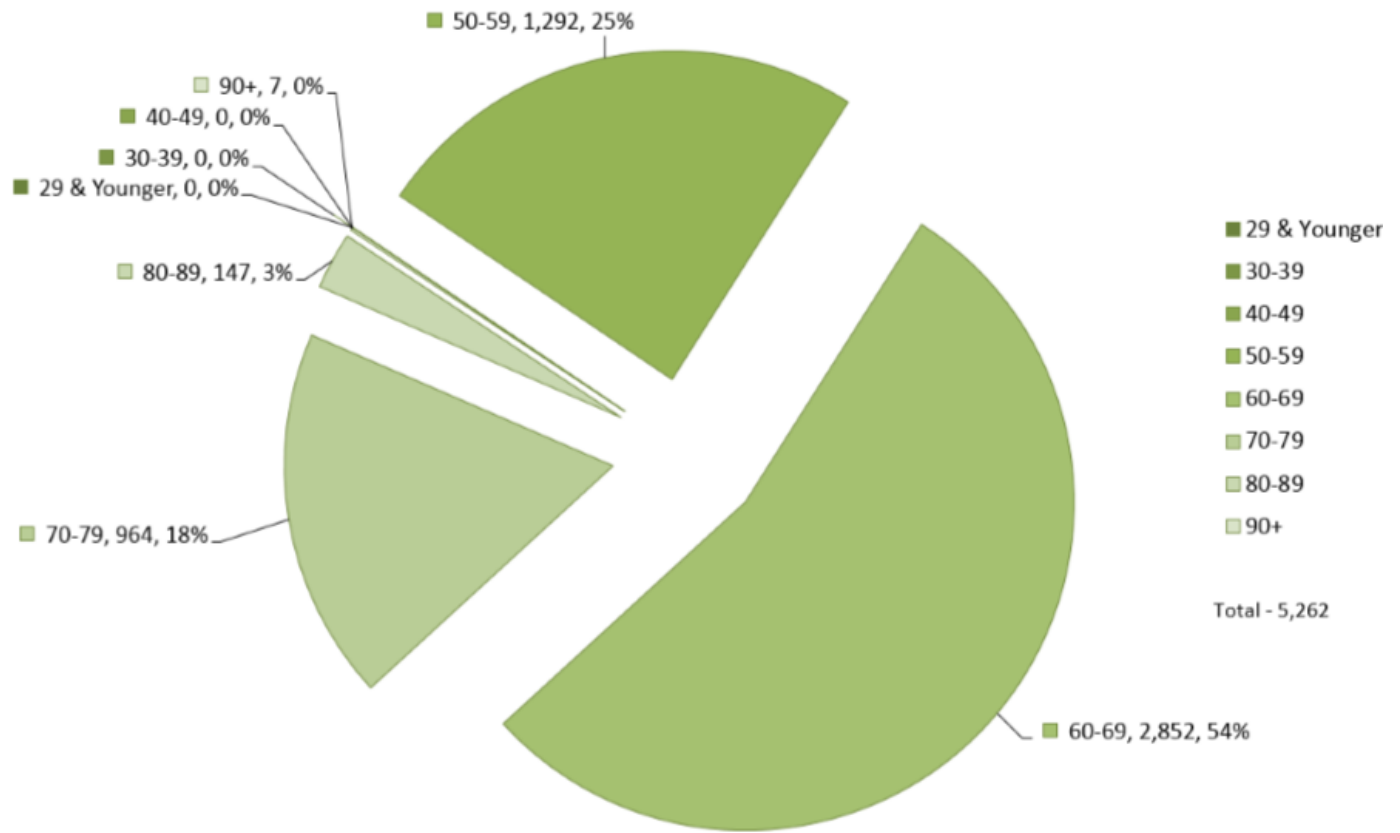
## Active Attorneys, practicing 26+ years



## Active Female Attorneys, practicing 26+ years



## Active Male Attorneys, practicing 26+ years



## Appendix D

### INTAKE STATISTICS

TABLE 1

Year	Complaints Filed	Percent Change From Prior Year
2015	3,505	(.006%)
2014	3,528	(9%)
2013	3,883	(3%)
2012	3,983	(2%)
2011	4,081	(0%)
2010	4,089	(2%)
2009	4,169	1%
2008	4,119	3%

TABLE 2

Year	Intake Complaint Calls	Additional Intake Calls	Additional Miscellaneous Calls
2015	3,505	5,859	10,097
2014	3,528	5,263	11,318
2013	3,883	4,641	19,349
2012	3,983	4,489	16,093
2011	4,081	4,473	15,241
2010	4,089	4,906	16,026
2009	4,169	4,720	17,014
2008	4,119	5,142	18,850

Chief Deputy Regulation Counsel reviews all offers of diversion made by the central intake attorneys. Additionally, at the request of either the complainant or the respondent-attorney, Regulation Counsel reviews any determination made by a central intake attorney.

One of the goals of central intake is to handle complaints as quickly and efficiently as possible. In 1998, prior to central intake, the average time matters spent at the intake stage was 13 weeks.

TABLE 3

Average Time (weeks)	
2015	7.4
2014	7.7
2013	8.2
2012	1.8
2011	1.6
2010	1.7
2009	1.5
2008	1.5

The average time at intake has been different in the past three years from years prior to the time. This is due to the following factors:

1. Our case management software provides additional capabilities for file creation, handling and tracking that we did not have in our previous software system. (JustWare was deployed in our central intake section in July 2012 in place of a Microsoft Access-based software program.) JustWare gives us the capability to track files using different status markers while we wait for additional information and documentation. Consequently, we adopted and implemented policies to ensure files remain open only for so long as they are actively pending in the intake division. These policies are intended to ensure the appropriate amount of procedural fairness for all parties involved in the attorney regulation process.
2. A new intake lawyer started in mid-January 2015 in the place of an attorney who worked in central intake for more than fifteen years. Prior to that lawyer joining the office, cases had been reassigned from the long-tenured intake attorney to others. These case reassignments, coupled with the training responsibilities our other intake lawyers handled in early 2015, resulted in an average number of weeks that is higher than in years past. However, the average number of weeks at intake has been reduced each year for the past three years. This demonstrates that our central intake staff is committed to providing high-quality service to anyone who presents concerns to this office about an individual attorney's ethical conduct.

Critical to the evaluation of central intake is the number of matters processed for further investigation versus the number of cases processed for investigation prior to implementation of central intake. In 1998, prior to the implementation of central intake, 279 cases were processed for further investigation. In 2015, central intake handled 3,505 complaints; 348 of those cases were processed for further investigation. *See* Table 4.

**TABLE 4**

Year	Investigations Initiated	% Change From Prior Year
2015	348	.005%
2014	346	(5%)
2013	366	(1%)
2012	368	(2%)
2011	377	(7%)
2010	407	1%
2009	401	11%
2008	360	(3%)

In addition to gathering information and analyzing whether there are sufficient facts upon which to take action or pursue further investigation, our Central Intake staff spends a considerable amount of time educating the public and licensed lawyers about the many ethical duties and responsibilities that are involved in the practice of law. This education is a component of virtually every request for investigation, even those that are closed and dismissed. Intake lawyers spend a significant amount of time explaining the legal process to complainants who report concerns about lawyer ethical conduct, and also explaining the many ethical responsibilities that lawyers have. It is not uncommon for our intake lawyers to explain procedural or substantive legal issues to members of the public so they have a better understanding of a lawyer's ethical responsibilities. On occasion, our intake lawyers educate a respondent lawyer about procedural and substantive issues, too. This educational component is necessary to provide procedural fairness to all parties involved in the attorney regulation process.

In conjunction with central intake, cases that are determined to warrant a public censure or less in discipline are eligible for a diversion program. *See* C.R.C.P. 251.13. Participation in diversion is always voluntary and may involve informal resolution of minor misconduct by referral to Ethics School and/or Trust School,<sup>30</sup> fee arbitration, an educational

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<sup>30</sup> Ethics School is a one-day program designed and conducted by the Office of Attorney Regulation Counsel. The program is a comprehensive review of an attorney's duty to her clients, courts, opposing parties and counsel, and the legal profession. The class also covers conflicts, fee issues, law office



program, or an attorney-assistance program. If the attorney successfully completes the diversion agreement, the file in the Office of Attorney Regulation Counsel is closed and treated as a dismissal. In 2015 at the central intake stage, 35 matters were resolved by diversion agreements. *See* Table 5. (A representative summary of diversion agreements is published quarterly in *The Colorado Lawyer*.)

TABLE 5

Year	Central Intake Diversion Agreements
2015	35
2014	45
2013	42
2012	32
2011	42
2010	51(52)*
2009	45(53)*

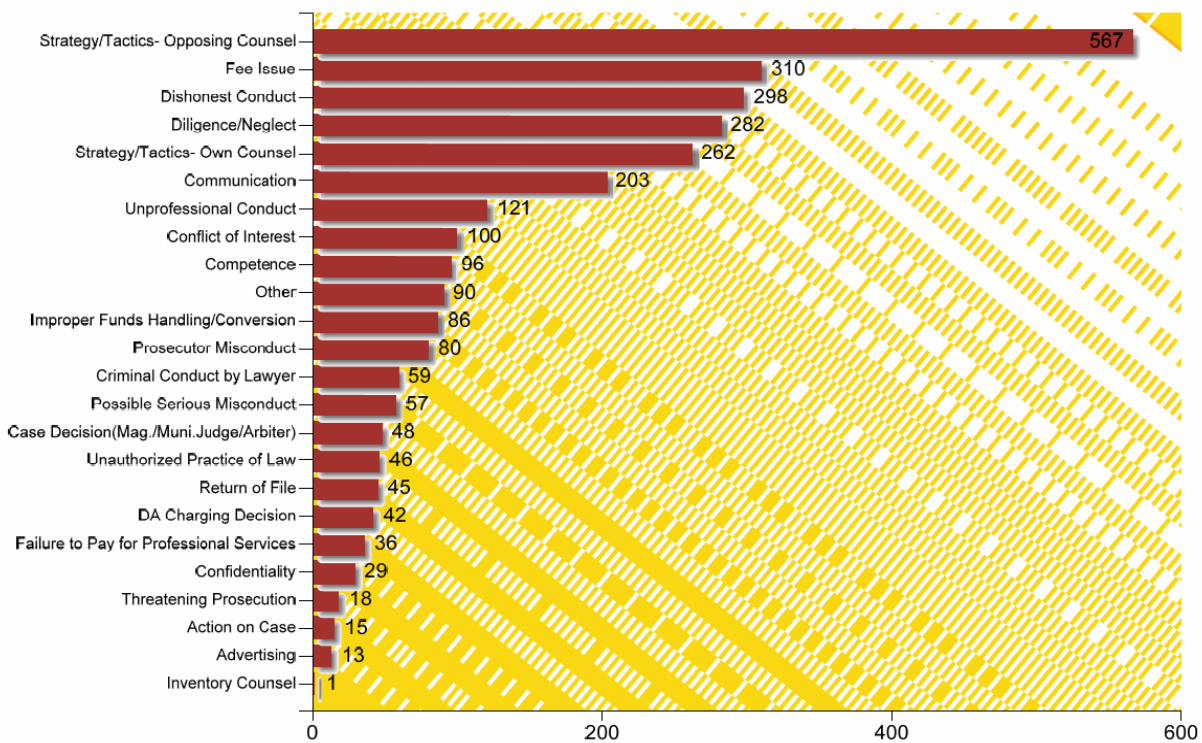
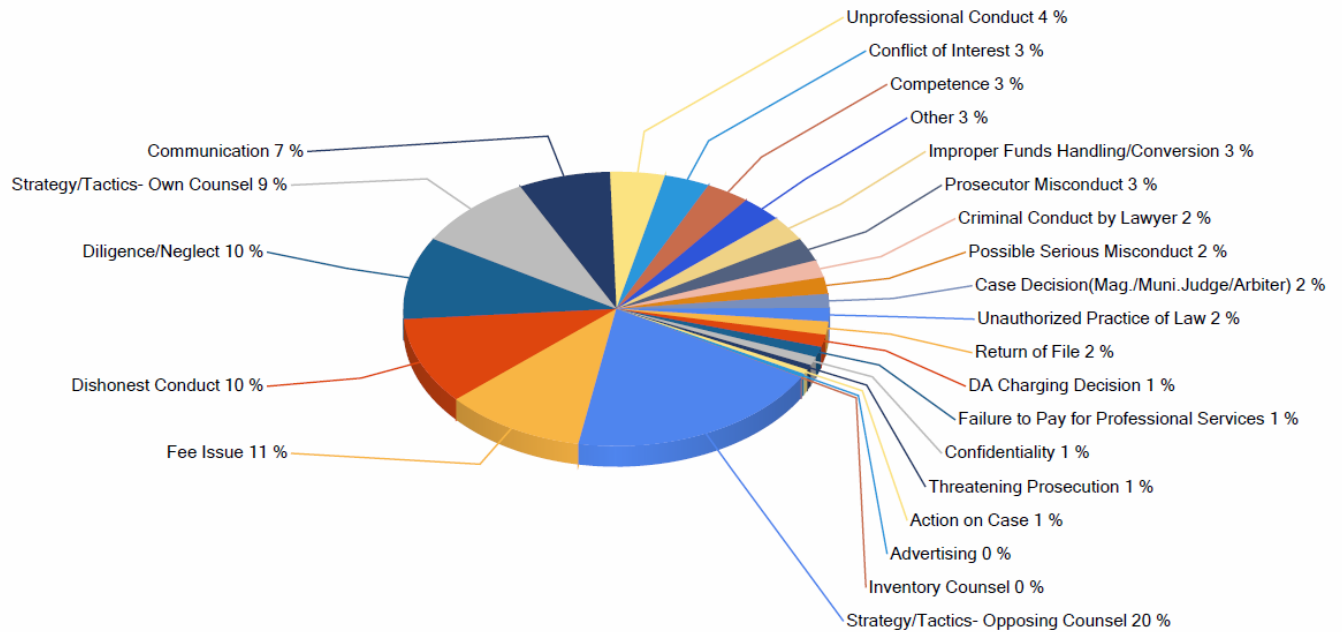
\*The first number is actual diversion agreements. The second number in parentheses represents the number of separate requests for investigation involved in the files.

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management, and trust accounts. Attendance is limited to attorneys participating in diversion agreements or otherwise ordered to attend. Trust School is a half-day program presented by the Office of Attorney Regulation Counsel. The school is available to attorneys and their staff. The class covers all aspects of an attorney's fiduciary responsibility regarding the administration of a trust account. The class also offers instruction on accounting programs available for trust and operating accounts.

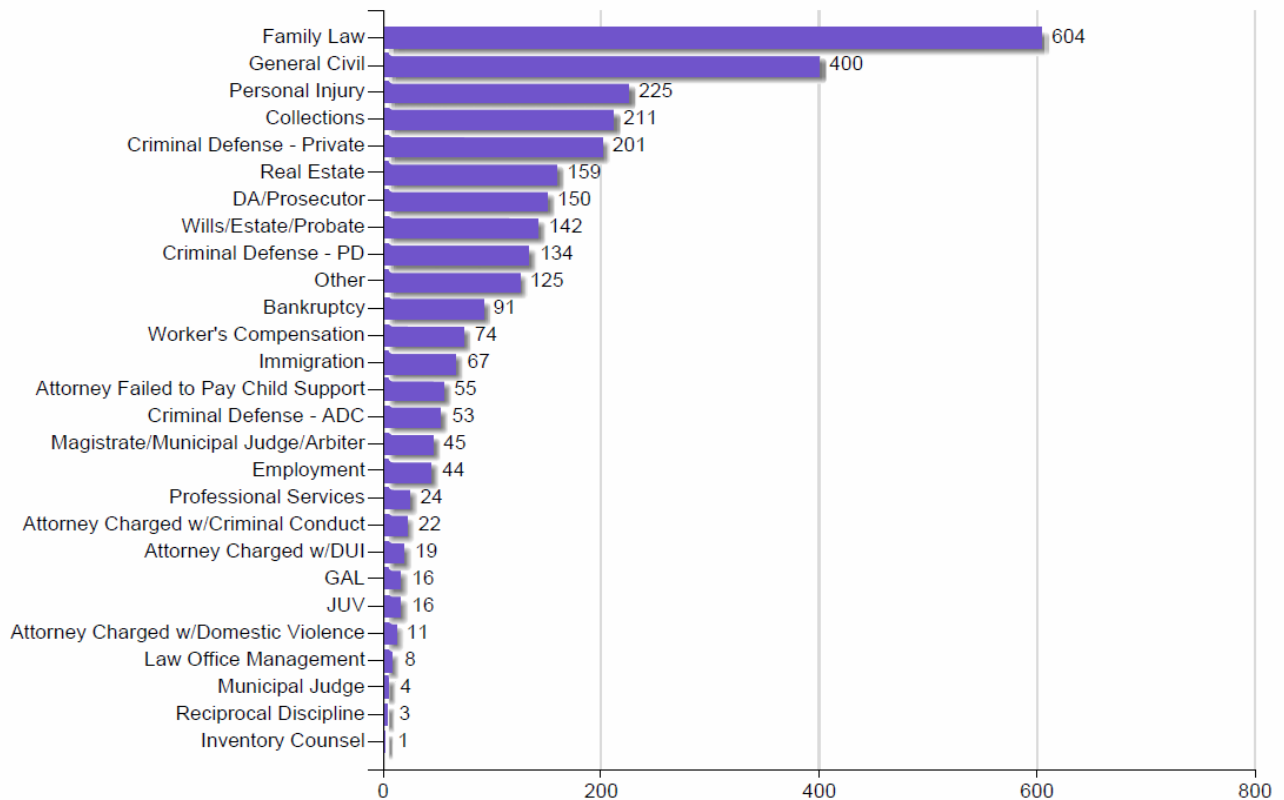
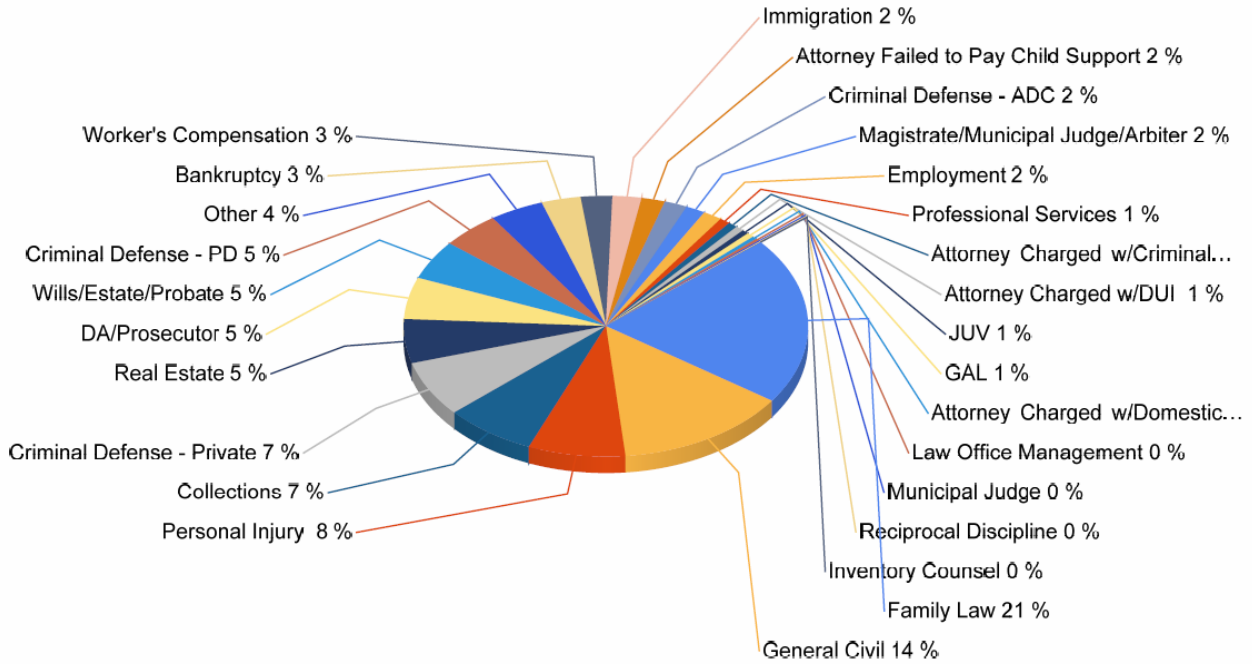
## Appendix E

### Central Intake Inquiries (by nature of complaint) January 31, 2015 – December 31, 2015



# Central Intake Inquiries (by practice area)

## January 31, 2015 – December 31, 2015



## Appendix F

### INVESTIGATION STATISTICS

Matters docketed for further investigation are assigned to trial counsel within the Office of Attorney Regulation Counsel.

Trial counsel also investigates Unauthorized Practice of Law matters and Attorneys' Fund for Client Protection matters. Statistics relating to the unauthorized practice of law are covered under a separate heading in this report. The Attorneys' Fund for Client Protection report is filed separately.

**TABLE 6**

Year	Investigations Initiated	Dismissed by Regulation Counsel	To Presiding Disciplinary Judge	To Attorney Regulation Committee	Directly to Presiding Disciplinary Judge	Placed in Abeyance	Other	Pending
2015	348	120	23(38)*	146(164)*	10(13)*	21(62)****	0	201
2014	346	76	20(24)*	143(151)*	14(16)	60***	0	250
2013	366	100	16(25)*	143(153)*	11(14)*	27	0	231
2012	368	92	17(25)*	165(171)*	11(17)*	13(32)*	0	184
2011	377	204	35(44)*	143(154)*	11	18(20)*	0	153
2010	407	128	25(39)*	217(223)*	14(29)*	30**	0	187
2009	401	140	25(33)*	115(122)*	8	7(12)*	0	229
2008	360	169	24(33)*	125(130)*	16(26)	7*	0	143

\*The first number is actual files. The second number in parentheses represents the number of separate requests for investigation involved in the files.

\*\*Twenty of the thirty matters placed in abeyance concerned one respondent.

\*\*\*Forty of the sixty matters placed in abeyance concerned one respondent.

\*\*\*\*The first number is the number of individual respondents. The second number in parentheses represents the number of separate requests for investigation.

#### Dismissals With Educational Language

In October 2004, the Office of Attorney Regulation Counsel began tracking matters that are dismissed with educational language. The dismissals occur both at the intake stage and the investigative stage. In 2015, 173 matters were dismissed with educational language both at the intake stage and the investigative stage. Some of the matters involve *de minimis* violations that would have been eligible for diversion. Some of the dismissals require attendance at Ethics School or Trust Account School. See Table 7.

**TABLE 7**

Dismissals With Educational Language

Year	Intake Stage	Investigative	Total
2015	142	31	173
2014	181	9	190
2013	113	20	133
2012	132	4	136
2011	199	25	224
2010	223	29	252
2009	159	27	186
2008	128	55	183

Review of Regulation Counsel Dismissals

A complainant may appeal Regulation Counsel’s determination to dismiss the matter to the full Attorney Regulation Committee. If review is requested, the Attorney Regulation Committee must review the matter and make a determination as to whether Regulation Counsel’s determination was an abuse of discretion. See C.R.C.P. 251.11; see Table 8.

**TABLE 8**

Year	Number of Review Requests	Regulation Counsel Sustained	Regulation Counsel Reversed
2015	5	5	0
2014	0	0	0
2013	1	1	0
2012	1	1	0
2011	2	2	0
2010	0	0	0
2009	4	4	0
2008	2	2	0

## Appendix G

### ATTORNEY REGULATION COMMITTEE (ARC)

The Attorney Regulation Committee is composed of nine members, six attorneys and three public members appointed by the Supreme Court with assistance from the Court's Advisory Committee. One of the Attorney Regulation Committee's primary functions is to review investigations conducted by Regulation Counsel and determine whether there is reasonable cause to believe grounds for discipline exist. *See* C.R.C.P. 251.12. Following review of the investigation conducted by Regulation Counsel, the Attorney Regulation Committee may dismiss the allegations, divert the matter to the alternatives to discipline program, order a private admonition be imposed, or authorize Regulation Counsel to file a formal complaint against the respondent-attorney.

In 2015 the Attorney Regulation Committee reviewed 166 matters. *See* Table 9.

**TABLE 9**

Cases Reviewed by ARC	
2015	166
2014	151
2013	153
2012	171
2011	154
2010	225
2009	122
2008	131

**TABLE 10**

<i>Number of Requests for Investigation Dismissed After Investigation by the Attorney Regulation Committee</i>	
2015	0
2014	0
2013	0
2012	0
2011	0
2010	2
2009	0
2008	1

**TABLE 11**

Number of Weeks from Case Assigned to Dismissal by Regulation Counsel/ARC	
2015	33.3
2014	27.1
2013	26.9
2012	25.4
2011	30.3
2010	24.2
2009	22.2
2008	19.4

The Attorney Regulation Committee's disposition of the 166 matters presented to the Committee is detailed in Table 12.<sup>31</sup>

**TABLE 12**

Year	Formal Proceedings	Diversion Agreements	Private Admonition	Conditional Admissions	Dismissals	Total Cases Acted Upon By ARC
2015	97	47(54)*	9(14)*	0	1	154(166)*
2014	102	37(45)*	4	0	0	143(151)*
2013	101	36(44)*	6(8)*	0	0	143(153)*
2012	123	33(39)*	9	0	0	165(171)*
2011	95	36(46)*	12(13)*	0	0	143(154)*
2010	175	37(42)*	5(6)*	0	2	219(225)*
2009	87	20(25)*	2(10)*	0	0	109(122)*
2008	95	24(28)*	6(7)*	0	1	126(131)*

\*The first number is actual files. The second number in parentheses represents the number of separate requests for investigation involved in the files.

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<sup>31</sup> Because some matters are carried over from one calendar year to the next, the number of matters reviewed by the Attorney Regulation Committee and the number of matters dismissed by Regulation Counsel generally will not conform to the number of cases docketed or completed in the investigation area. *See* Tables 4, 6, and 9

**TABLE 13**

Number of Weeks from Case Assigned to Completion of Report/Diversion/Stipulation	
2015	27.6
2014	24.7
2013	25.7
2012	24.8
2011	25.4
2010	23.2
2009	22.7
2008	19.6



## Appendix H

### FORMAL COMPLAINTS

In 97 separate matters, the Attorney Regulation Committee found reasonable cause and authorized the Office of Attorney Regulation Counsel to file a formal complaint. *See* C.R.C.P. 251.12(e). Several matters were consolidated, and the number of formal complaints filed in 2015 was 44. In certain cases, after authority to file a formal complaint is obtained, Attorney Regulation Counsel and Respondent enter into a Conditional Admission to be filed with the Presiding Disciplinary Judge without the filing of a formal complaint. *See* Table 14.

TABLE 14

Year	Formal Complaints Filed	Resolved Prior to Complaint Filed
2015	44(95)*	11(17)*
2014	41(56)*	7(8)*
2013	48(73)*	8(12)*
2012	47(92)*	2(5)*
2011	35(90)*	9(19)*
2010	85(184)*	10(20)*
2009	44(68)*	13(15)*
2008	55(99)*	13(23)*

\*The first number is actual files. The second number in parentheses represents the number of separate requests for investigation involved in the files.

The formal complaints filed, and those pending from 2014, in the attorney discipline area resulted in 12 disciplinary trials; 4 sanctions hearings, and 4 reinstatement hearings, 2 admissions hearings and 5 Unauthorized Practice of Law hearings. The trial division also participated in additional matters before the Presiding Disciplinary Judge (at issue conferences, status conferences, and pretrial conferences). Disposition of the matters is detailed in Table 15.

**TABLE 15**

Year	Attorney Discipline Trials	Reinstatement Hearings	Conditional Admissions	Diversion Agreements	Dismissals	Abeyance
2015	12	4	26(50)*	1(3)*	1	0
2014	16	1	27(46)*	1	1	0
2013	10	2	17(25)*	0	0	0
2012	11	3	24(53)*	0	3	0
2011	22	3	43(91)*	2	7	1
2010	22(29)*	2	40(94)*	2	2	2
2009	16(32)*	1	42(65)*	0	3	4
2008	15(23)*	2	43(63)*	5(7)*	2	5

\*The first number represents actual files; the second number in parentheses represents the number of separate requests for investigation involved in the files.

A diversion agreement is an alternative to discipline. Diversion agreements are useful in less serious matters in which an attorney must comply with certain conditions, which may include 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. *See* Table 16.

**TABLE 16**

Diversion Agreements at Intake Stage	
2015	35
2014	45
2013	42
2012	32
2011	42
2010	51(52)*
2009	45(53)*
2008	45(49)*

Diversion Agreements at Investigative Stage Approved by the Attorney Regulation Committee	
2015	47(54)*
2014	37(45)*
2013	36(44)*
2012	33(39)*
2011	36(46)*
2010	37(42)*
2009	20(25)*
2008	24(28)*

Diversion Agreements at Trial Stage Approved by the Presiding Disciplinary Judge	
2015	1(3)*
2014	1
2013	0
2012	0
2011	2
2010	2
2009	0
2008	5(7)*

Conditional Admissions at Investigative Stage Approved by the Presiding Disciplinary Judge	
2015	11(14)*
2014	20(24)*
2013	16(25)*
2012	17(25)*
2011	35(44)*
2010	25(39)*
2009	25(33)*
2008	24(43)*

Conditional Admissions at Trial Stage Approved by the Presiding Disciplinary Judge	
2015	26(50)*
2014	27(46)*
2013	17(25)*
2012	24(53)*
2011	43(91)*
2010	40(94)*
2009	42(65)*
2008	43(63)*

\*The first number represents actual files; the second number in parentheses represents the number of separate requests for investigation involved in the files.

After a formal complaint is filed with the Presiding Disciplinary Judge, the matter may be resolved by dismissal, diversion, conditional admission of misconduct,<sup>32</sup> or by trial. The following tables compare the length of time formal complaints are pending before Presiding Disciplinary Judge. Additionally, a comparison of the time period from the filing of the formal complaint until a conditional admission of misconduct is filed, and a comparison of the time period from the filing of the formal complaint to trial, is provided.

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<sup>32</sup> Pursuant to C.R.C.P. 251.22, at any point in the proceedings prior to final action by a Hearing Board, an attorney against whom proceedings are pending may tender a conditional admission of misconduct. The conditional admission constitutes grounds for discipline in exchange for a stipulated form of discipline. The conditional admission must be approved by the Regulation Counsel prior to its submission.

**TABLE 17**

Year	Average Weeks From Filing of Formal Complaint to Conditional Admission/Diversion Filed	
2015	Presiding Disciplinary Judge	18.2 weeks
2014	Presiding Disciplinary Judge	26.1 weeks
2013	Presiding Disciplinary Judge	23.0 weeks
2012	Presiding Disciplinary Judge	27.3 weeks
2011	Presiding Disciplinary Judge	31.9 weeks
2010	Presiding Disciplinary Judge	25.2 weeks
2009	Presiding Disciplinary Judge	19.6 weeks
2008	Presiding Disciplinary Judge	18.7 weeks

Year	Average Weeks From Filing of Formal Complaint to Trial	
2015	Presiding Disciplinary Judge	34.3 weeks
2014	Presiding Disciplinary Judge	27.6 weeks
2013	Presiding Disciplinary Judge	33.5 weeks
2012	Presiding Disciplinary Judge	25.9 weeks
2011	Presiding Disciplinary Judge	39.7 weeks
2010	Presiding Disciplinary Judge	32.3 weeks
2009	Presiding Disciplinary Judge	41.6 weeks
2008	Presiding Disciplinary Judge	40.8 weeks

Another comparison is the average time it takes from the filing of the formal complaint with the Presiding Disciplinary Judge until the Presiding Disciplinary Judge issues a final order.

**TABLE 18**

Average Weeks from the Filing of the Formal Complaint Until the Final Order is Issued by the Presiding Disciplinary Judge		
	Conditional Admission or Diversion Filed	Trial Held
2015	24.3 weeks	56.3 weeks
2014	28.8 weeks	42.7 weeks
2013	22.3 weeks	36.4 weeks
2012	32.9 weeks	62.3 weeks
2011	30.6 weeks	41.8 weeks
2010	26.4 weeks	49.7 weeks
2009	20.3 weeks	61.1 weeks
2008	24.6 weeks	57.2 weeks

# Appendix I

## APPEALS

In 2015, five attorney discipline appeals were filed with the Court.

TABLE 19

Year	Appeal Filed With:	Number of Appeals
2015	Colorado Supreme Court	5
2014	Colorado Supreme Court	5
2013	Colorado Supreme Court	4
2012	Colorado Supreme Court	8
2011	Colorado Supreme Court	14
2010	Colorado Supreme Court	6
2009	Colorado Supreme Court	4
2008	Colorado Supreme Court	2

Year	Appeals Filed	Appeals Dismissed	Appeals Affirmed	Appeals Reversed	Appeals Pending
2015	5	1	3	0	3
2014	5	1	1	1	3
2013	4	0	4	0	4
2012	8	2	4	0	3
2011	14	3	5	1	9
2010	6	1	1	0	4
2009	4	0	4	0	3
2008	2	0	4	0	1

## Appendix J

### FINAL DISPOSITIONS

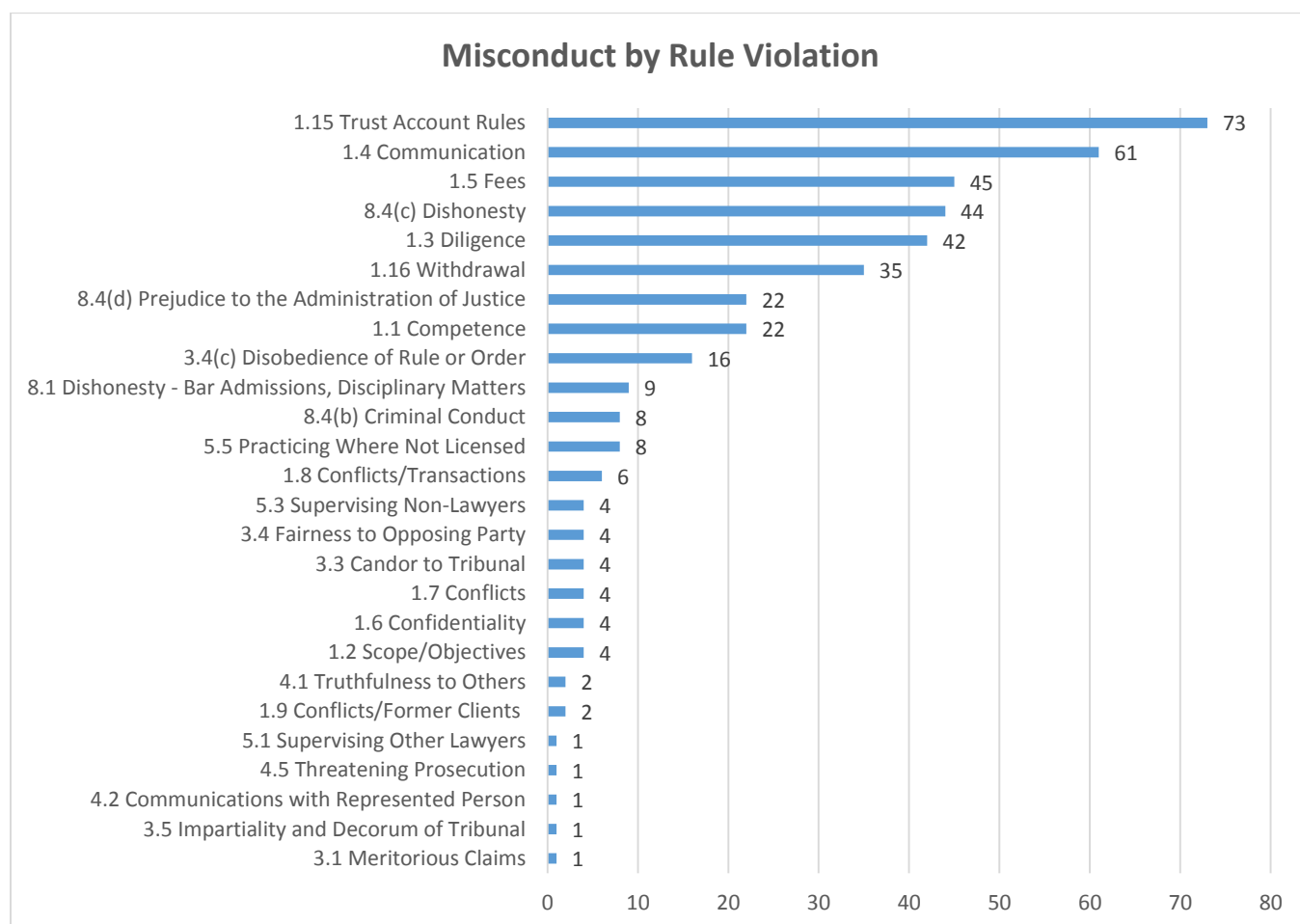
Final dispositions of proceedings are reflected in Table 20.

**TABLE 20**

Year	Abeyance	Dismissals	Diversions	Public Censures	Suspensions	Probations	Disbarments
2015	0	1	1(3)*	6(11)*	34(60)*	19(29)*	14(36)*
2014	0	1	1	1	44(73)*	27(40)*	9(32)*
2013	0	0	0	5	46(61)*	25(43)*	18(27)*
2012	0	3	0	8	43	21	8
2011	2	7	2	9	60(61)*	40	16
2010	2	2	2	15	56(59)*	29	9
2009	4	3	0	9	52(54)*	28(29)*	8(11)*
2008	5	2	5(7)*	5	51	35	10

\*The first number represents actual files; the second number in parentheses represents the number of separate requests for investigation involved in the files.

## Appendix K





# Appendix L

## Other Actions

### Immediate Suspensions

In 2015, the Office of Attorney Regulation Counsel filed 11 petitions for immediate suspension.<sup>33</sup> The petitions are filed directly with the Presiding Disciplinary Judge or the Colorado Supreme Court. The Presiding Disciplinary Judge or a Justice of the Supreme Court may issue an order to show cause why the respondent-attorney should not be immediately suspended. The respondent-attorney may request a prompt hearing if the Supreme Court enters an order to show cause. Dispositions of the immediate suspension petitions are reflected in Table 21.

**TABLE 21**

Year	Filed	Suspended	Suspended (Child Support)	Suspended (Failure to Cooperate)	Felony Conviction	Reinstated	Withdrawn	Discharged/Denied	Pending
2015	11	3	1	2	3	0	0	0	2
2014	19	5	0	5	3	0	5	0	1
2013	14	8	1	3	1	0	1	0	0
2012	16	3	0	6	0	2	0	3	1
2011	14	3	2	3	3	0	0	2	1
2010	19*	12	0	4	1	0	0	2	0
2009	17	7	0	6	1	0	0	4	1
2008	15	10	0	4	1	0	0	4	1

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

\*One matter resulted in the attorney being disbarred.

<sup>33</sup> Immediate suspension is the temporary suspension by the Supreme Court of an attorney's license to practice law. Ordinarily, an attorney's license is not suspended during the pendency of disciplinary proceedings, but when there is reasonable cause to believe that an attorney is causing or has caused immediate and substantial public or private harm, immediate suspension may be appropriate. Petitions are typically filed when an attorney has converted property or funds, the attorney has engaged in conduct that poses an immediate threat to the administration of justice, or the attorney has been convicted of a serious crime. *See* C.R.C.P. 251.8. Additionally, under C.R.C.P. 251.8.5, a petition for immediate suspension may be filed if an attorney is in arrears on a child-support order. Note: On October 29, 2001, the Supreme Court adopted a rule change authorizing suspension of an attorney for failure to cooperate with Regulation Counsel. *See* C.R.C.P. 251.8.6. The rule change authorizes Regulation Counsel to file a petition directly with the Supreme Court alleging that an attorney is failing to cooperate in an investigation alleging serious misconduct. Proceedings under the rule are not disciplinary proceedings. *See* Comment to Rule 251.8.6.

## Disability Matters

The Office of Attorney Regulation Counsel filed 11 petitions/stipulations to transfer attorneys to disability inactive status in 2015. When an attorney is unable to fulfill his/her professional responsibilities because of physical, mental, or emotional illness, disability proceedings are initiated. An attorney who has been transferred to disability inactive status may file a petition for reinstatement with the Presiding Disciplinary Judge. *See* Table 22.

**TABLE 22**

Year	Filed	Disability Inactive Status	Dismissed/ Discharged/ Denied	Reinstated	Withdrawn	Pending
2015	11	11	1	1	0	0
2014	15	13	2	0	0	1
2013	7	5	2	0	0	0
2012	8	9	2	0	0	0
2011	10	8	1	1	0	3
2010	6	4	1*	0	0	1
2009	13	14	2	2	1	2
2008	19*	12	1	2		5

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

\*One matter was closed due to the death of the respondent during the proceedings.

## Contempt Proceedings

The Office of Attorney Regulation Counsel filed one motion recommending contempt with the Supreme Court. Contempt proceedings are filed when an attorney practices law while under suspension or disbarment. *See* Table 23.

**TABLE 23**

Year	Motions for Contempt	Held in Contempt	Discharged\ Dismissed	Withdrawn	Pending
2015	1	0	1	0	0
2014	3	3	0	0	1
2013	1	0	0	0	1
2012	0	0	0	0	0
2011	1	0	0	0	1
2010	1	0	0	0	1
2009	0	0	0	0	0
2008	1	1	0	0	0

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

### **Magistrates**

Effective July 2000, the Office of Attorney Regulation Counsel undertook the responsibility of handling complaints against magistrates. *See* C.R.C.P. 251.1(b). In the year 2015, the Office of Attorney Regulation Counsel received 46 complaints against magistrates. *See* Table 24.

**TABLE 24**

Year	Complaints	Dismissed	Diversion	Investigation Initiated
2015	46	43	0	3 pending
2014	45	43	0	2 pending
2013	43	43	0	0
2012	45	42	1	2
2011	66	66	0	0
2010	55	55	0	0
2009	51	51	0	0
2008	49	49	0	0

### **Reinstatement and Readmission Matters**

Nine reinstatement or readmission matters were filed with the Office of Attorney Regulation Counsel in 2015. When an attorney has been suspended for at least one year

and one day, has been disbarred, or the court's order requires reinstatement, he/she must seek reinstatement or apply for readmission to the Bar.<sup>34</sup>

TABLE 25

Year	Filed	Readmitted	Reinstated	Dismissed	Withdrawn	Denied	Pending
2015	9	1	2	2	1	2	7
2014	8	0	4	1	0	1	4
2013	6	1	1	0	1	0	3
2012	8	0	4	1	0	1	6
2011	3	1	6	0	0	1	3
2010	12	0	5	0	2	1	6
2009	6	1	1	1	4	0	5
2008	10	1	7	0	0	0	2

(Matters filed in the previous calendar year may be carried over to the next calendar year.)

### Trust Account Notification Matters

All Colorado attorneys in private practice must maintain a trust account in a financial institution doing business in Colorado. The financial institution must agree to report to Regulation Counsel any properly payable trust account instrument presented against insufficient funds, irrespective of whether the instrument is honored. The report by the financial institution must be made within five banking days of the date of presentation for payment against insufficient funds.

The reporting requirement is a critical aspect of the Attorneys' Fund for Client Protection. The rule is designed to operate as an "early warning" that an attorney may be engaging in conduct that might injure clients.

In 2015, the Office of Attorney Regulation Counsel received 159 notices of trust account checks drawn on insufficient funds. Because of the potentially serious nature, the reports receive immediate attention from the Office of Attorney Regulation Counsel. An investigator or attorney is required to contact the attorney account holder and the financial institution making the report. A summary of the investigator's finding is then submitted to Regulation Counsel for review. If Regulation Counsel determines that there is reasonable cause to believe that a conversion of client funds occurred, the matter is

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<sup>34</sup> A disbarred attorney may seek readmission eight years after the effective date of the order of disbarment. The individual must retake and pass the Colorado Bar examination and demonstrate fitness to practice law. Any attorney suspended for a period of one year and one day or longer must file a petition for reinstatement with the Presiding Disciplinary Judge. In some matters, reinstatement proceedings are ordered when the suspension is less than one year and one day. *See* C.R.C.P. 251.29.

immediately assigned to trial counsel. If there is no evidence of intentional misconduct or inappropriate accounting practices, the matter is dismissed by Regulation Counsel.

**TABLE 26**

Year	Total Reports	Bank Errors	Bookkeeping/ Deposit Errors	Checks Cashed Prior To Deposit Clearing/ Improper Endorsement ***	Conversion/ Commingling Assigned to Trial Attorney	Diversion	Other <sup>35</sup>	Pending
2015	159	18	51	16	1	0	63	
2014	269	13	60	20	7(14)	8	86	111
2013	247	25(5)**	51(19)**	30(12)**	0	0	141(29)**	33
2012	262	31(1)**	69(11)**	49(22)**	0	0	106(18)**	33
2011	256	25	111(19)**	28(15)**	23	2	60(9)**	26
2010	276	34(2)**	125(22)**	29(16)**	12	4(5)*	64(8)**	19
2009	278	34(1)**	125(22)**	23(17)**	14	5(6)*	64(10)**	11
2008	273	31	92(11)**	48(13)**	18	7(12)*	72(15)*	22

\*The first number represents actual files; the number in parentheses represents the number of separate requests for investigation involved in the files.

\*\*The number in parentheses represents the number of cases that were dismissed with educational language.

\*\*\*In 2012, four matters involved checks that were not endorsed or endorsed improperly.

<sup>35</sup> The category Other includes errors due to unanticipated credit card fees or charges, employee theft, forgery, stolen check or other criminal activity, check written on wrong account, charge back item (a fee charged to the law for a client's NSF check) and check or wire fee not anticipated.

## Appendix M

### Unauthorized Practice of Law

Attorney Regulation Counsel investigates and prosecutes allegations of the unauthorized practice of law. In 2015, the Office of Attorney Regulation Counsel received 70 complaints regarding the unauthorized practice of law. *See* Table 27.

TABLE 27

UPL Complaints Received	
2015	70
2014	73
2013	59
2012	80
2011	147
2010	94
2009	144
2008	97

The Unauthorized Practice of Law Committee may direct trial counsel to seek a civil injunction by filing a petition with the Supreme Court or, in the alternative, offer the respondent an opportunity to enter into a written agreement to refrain from the conduct in question, to refund any fees collected, and to make restitution. Additionally, trial counsel may institute contempt proceedings against a respondent that is engaged in the unauthorized practice of law. *See* C.R.C.P. 238.

In 2015, the Unauthorized Practice of Law Committee took action on 24 unauthorized practice of law matters, and 28 complaints were dismissed by Attorney Regulation Counsel, for a total of 52 completed matters. *See* Table 28.

TABLE 28

Unauthorized Practice of Law Dispositions						
Year	Filed	Dismissed by Regulation Counsel	Dismissed After Investigation by UPL Committee	Abeyance	Agreements	Formal (injunctive or contempt proceedings)
2015	70	28	1	0	10	13
2014	73	35	0	0	14	19
2013	59	20	0	0	3	13
2012	80	64	0	0	13	29
2011	147	47	0	0	14	27
2010	94	24	0	2	4	25
2009	144	33(6) **	0	0	12	17(25)*
2008	97	25(17)**	0	0	4	17(26)*

\*The first number represents actual files; the number in parentheses represents the number of separate requests for investigation involved in the files.

\*\*The number in parentheses are the cases dismissed with educational language.

(Matters filed in the previous year may be carried over to the next calendar year.)

The following information regarding the investigation and prosecution of unauthorized practice of law matters is provided for informational purposes:

INTAKE: The Office of Attorney Regulation Counsel typically receives several general inquiries on unauthorized practice of law matters each week. These calls come from lawyers, judges, clients, or non-lawyers who have questions concerning Colorado's multi-jurisdictional practice rule, C.R.C.P. 220, and also from individuals who may be interested in opening, or who have opened, a document-preparation business. Attorney Regulation Counsel uses these telephone inquiries as an opportunity to educate the lawyer, client, or non-lawyer-provider on the issues of what constitutes the unauthorized practice of law and possible harm that can result from the unauthorized practice of law. Regulation Counsel discusses the impact of C.R.C.P. 220 (Colorado's multi-jurisdictional temporary practice rule, C.R.C.P. 205.1 and 205.2 and C.R.C.P. 205.3 and 205.4 (Colorado's *pro hac vice* rules), and C.R.C.P. 204.1 (Colorado's single-client certification rules), amongst other rules. Attorney Regulation Counsel also discusses the fact that non-lawyers owe no duties of competence, diligence, loyalty, or truthfulness, and there may be fewer remedies as there is no system regulating the quality of such services, no

client protection funds, and no errors and omissions insurance. Attorney Regulation Counsel discusses the potential issues involving types and levels of harm. Attorney Regulation Counsel encourages a caller to file a request for investigation if they believe the unauthorized practice of law has occurred rather than dissuade the caller from filing an unauthorized practice of law request for investigation.

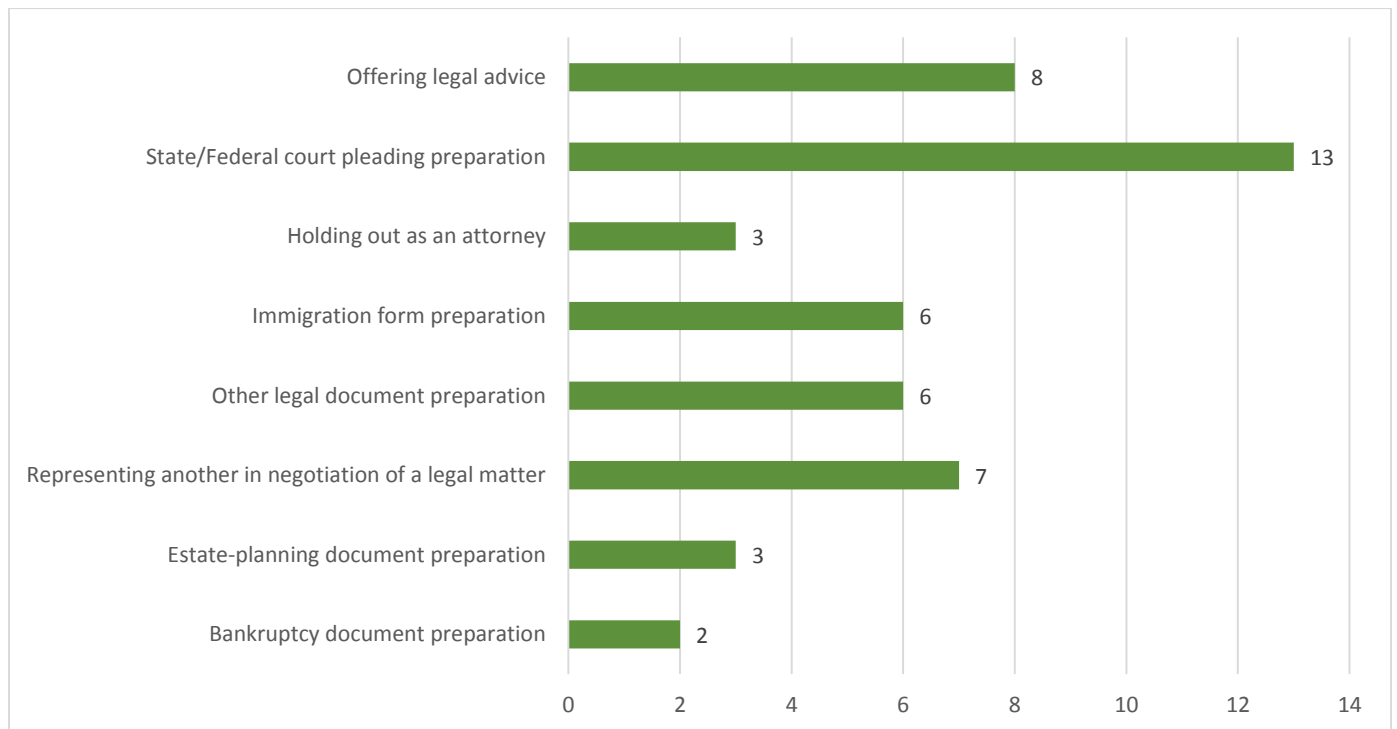
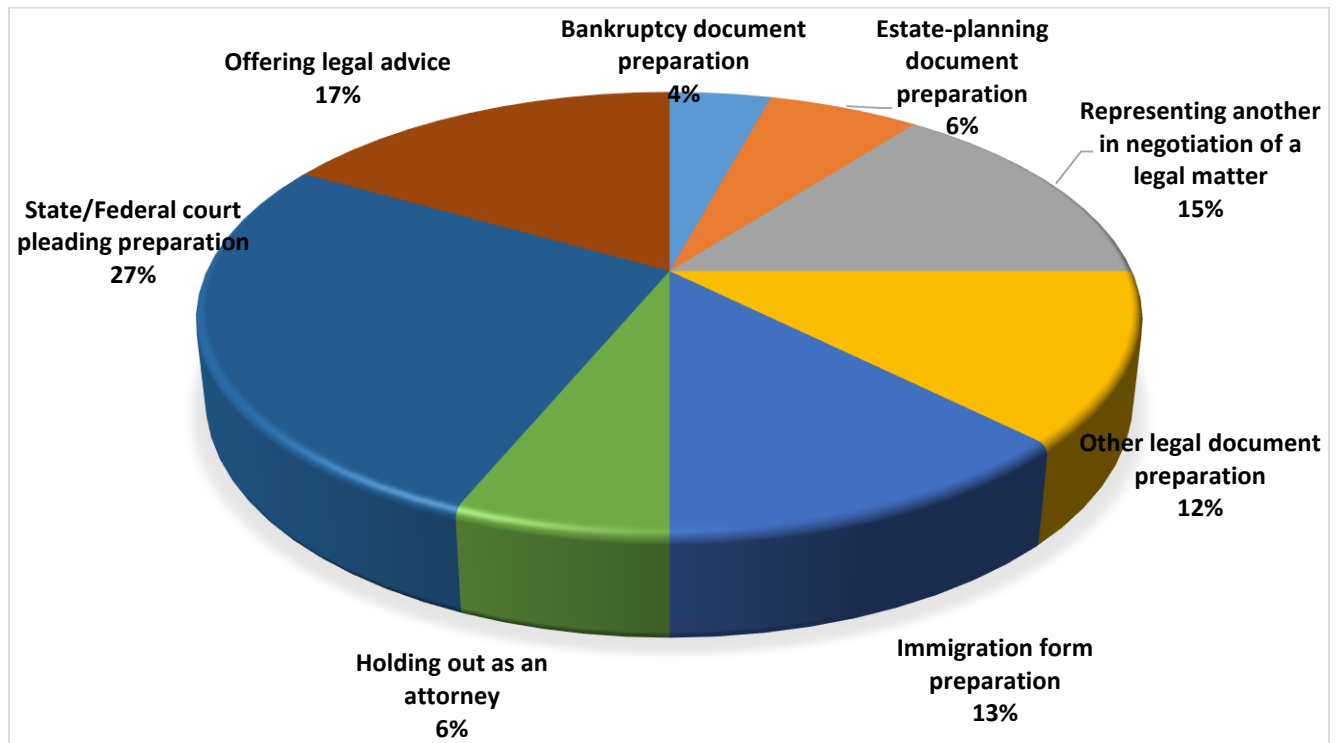
**INVESTIGATION:** The Office of Attorney Regulation Counsel uses the same investigation techniques in unauthorized practice of law matters that are used in attorney discipline matters. These techniques include interviewing the complaining witness, any third-party witnesses, and the respondent(s). Attorney Regulation Counsel orders relevant court files and other documents, and frequently uses the power of subpoenas to determine the level and extent of the unauthorized practice. If the unauthorized practice of law has occurred, Attorney Regulation Counsel attempts to identify and resolve the unauthorized practice, as well as issues involving disgorgement of fees and restitution with an informal agreement. These investigations create further public awareness of what constitutes the unauthorized practice of law and this office's willingness to address unauthorized practice of law issues.

**TRIAL:** Once matters are investigated and issues involving serious client harm or harm to the legal system are identified, Attorney Regulation Counsel pursues enforcement of the rules concerning the unauthorized practice of law. Injunctive proceedings are used to ensure that future misconduct does not occur. Federal and state district court (and state county court) judges have taken note of this and submit the names of the problematic non-lawyer respondents. As a result of unauthorized practice of law proceedings, numerous immigration consulting businesses have been shut down throughout Colorado. In addition, other individuals who either posed as lawyers to unwary clients, or who otherwise provided incompetent legal advice were enjoined from such conduct. Two individuals were found in contempt of prior Colorado Supreme Court orders of injunction.

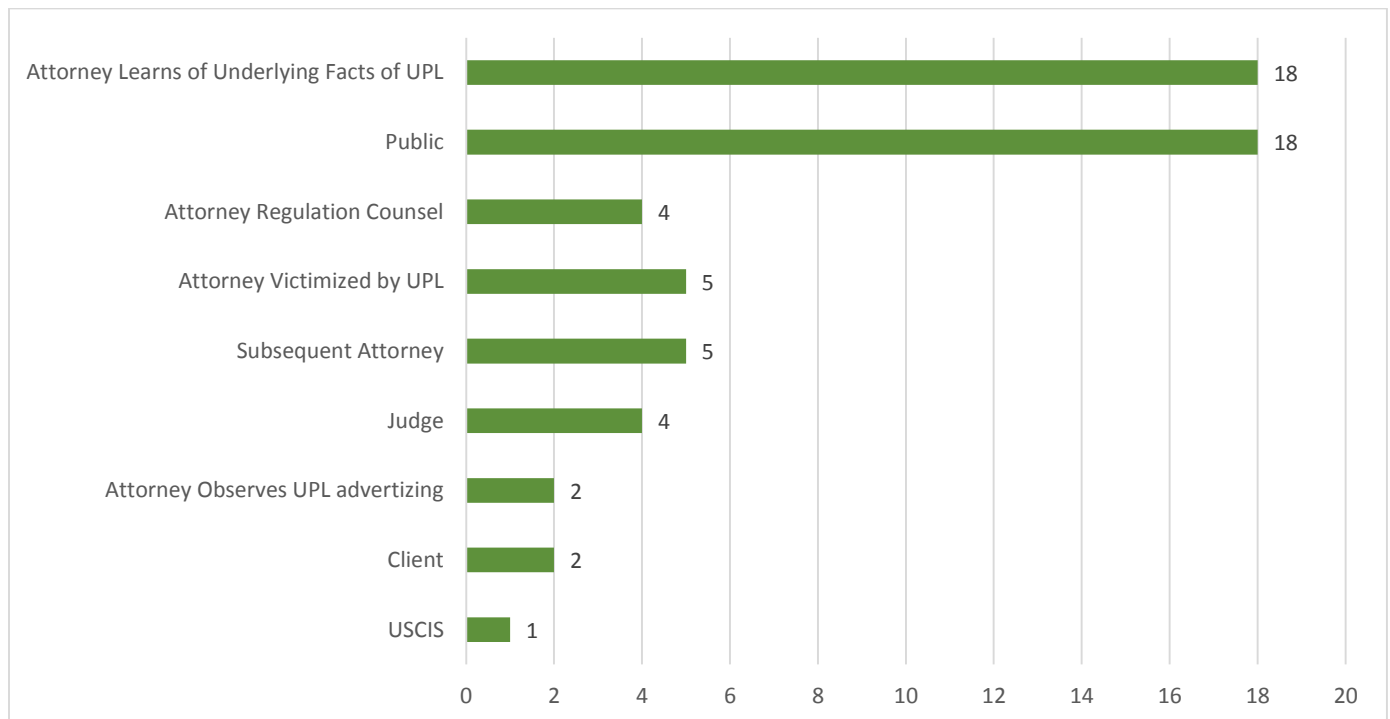
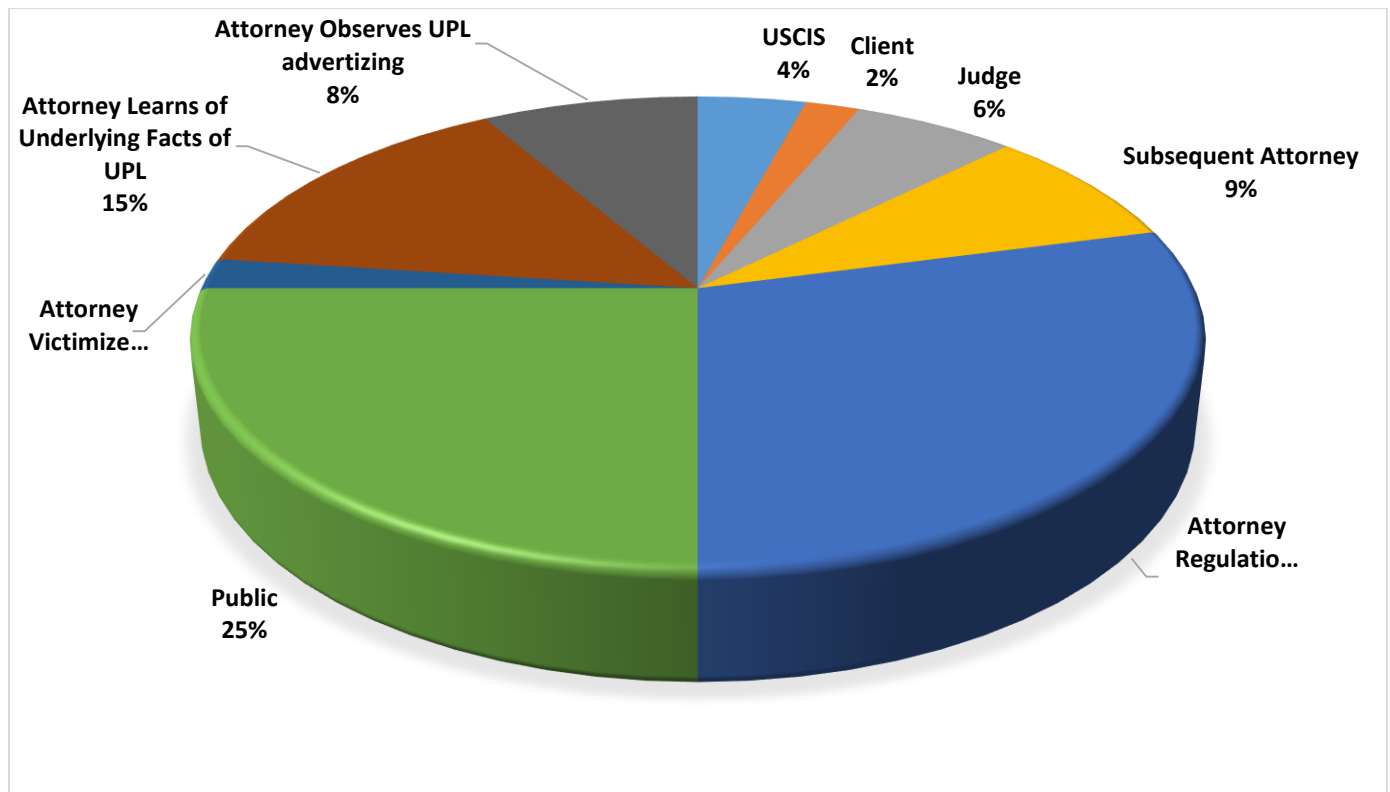
Attorney Regulation Counsel assigns trial counsel and non-attorney investigators to unauthorized practice of law matters.



## UPL Cases 2015, by type of legal service



## UPL Cases 2015, by type complaining witness



## Appendix N

### EDUCATION/OUTREACH

#### Presentations/Talks

The Office of Attorney Regulation Counsel presented 145 total public speeches in 2015. See Table 29.

TABLE 29

Presentations/Talks Delivered	
2015	145
2014	159
2013	169
2012	149
2011	191
2010	144
2009	119
2008	164

#### Ethics School

The Office of Attorney Regulation Counsel created, designed, and staffs an Ethics School. See Table 30.

TABLE 30

Year	Classes Presented	Attendance
2015	5	124
2014	5	132
2013	5	91
2012	5	110
2011	5	161
2010	4	123
2009	5	143
2008	5	165

The school is a seven-hour course that focuses on the everyday ethical dilemmas attorneys confront. The course addresses the following issues:

- Establishing the attorney-client relationship;
- Fee agreements;
- Conflicts;
- Trust and business accounts;
- Law office management; and
- Private conduct of attorneys.

The Ethics School is not open to all attorneys. Rather, the attorneys attending are doing so as a condition of a diversion agreement or pursuant to an order from the Presiding Disciplinary Judge or Supreme Court. The attorneys attending Ethics School are provided with a detailed manual that addresses all of the topics covered in the school, along with suggested forms and case law.

The Ethics School manual is available for purchase for \$150. The purchase price includes manual updates for one year. A manual may be purchased by contacting the Office of Attorney Regulation Counsel.

#### Trust Account School

In 2003, the Office of Attorney Regulation Counsel created a four-hour school that addresses the correct method for maintaining a trust account. The course is designed for either attorneys or legal support staff. The course instructors are trial attorneys from the Office of Attorney Regulation Counsel and a certified QuickBooks instructor. See Table 31.

TABLE 31

Year	Classes Presented	Attendance
2015	5	58
2014	7 (2 outside the office)	92
2013	5	76
2012	5	49
2011	5	68
2010	5	63
2009	4	47
2008	5	56

The course is accredited for four general Continuing Legal Education credits and is open to all members of the bar. The cost of the course is minimal so as to encourage widespread attendance.

### Professionalism School

At the direction of the Supreme Court and in cooperation with the Colorado Bar Association, the Office of Attorney Regulation Counsel designed a professionalism school for newly admitted Colorado attorneys. The Office of Attorney Regulation Counsel designed the curriculum and teaches the course in such a fashion as to address the most common ethical dilemmas confronted by newly admitted attorneys.

Attendance at the course is a condition of admission to the Colorado Bar. On an annual basis, nearly 1,000 admittees attend and participate in the training. Lawyers from the Office of Attorney Regulation Counsel committed hundreds of hours to the planning, administration, and presentation of the professionalism course. This course is separate and distinct from the ethics school and trust accounting school presented by the Office of Attorney Regulation Counsel. In 2015, the office participated in 18 separate presentations of the course.

## 2015 Talks and Presentations

Name of Attorney	Speech Given To	Topic of Speech	Date of Speech	Geographic Area
Lisa E. Frankel	Massachusetts team	JustWare presentation	01/13/2015	Denver
James C. Coyle	Douglas/Elbert County BA	The Next Ten Years	01/14/2015	Englewood
Matt Samuelson	Professionalism Course	Welcome to the Profession	01/28/2015	Denver
Matt Samuelson	Ethics School	Forming the A/C Relationship	01/30/2015	Denver
Lisa E. Frankel	Ethics School	Fees and Fee Agreements	01/30/2015	Denver
Timothy J. O'Neill	Ethics School	Law Office Management	01/30/2015	Denver
Charles E. Mortimer	Ethics School	General Ethics	01/30/2015	Denver

## FEBRUARY 2015

Name of Attorney	Speech Given To	Topic of Speech	Date of Speech	Geographic Area
James C. Coyle	NOBC-Mid Year	Cradle-to-Grave: A "One Shop Does it All" Approach to Regulating the Practice of Law	02/04/2015	Houston
James C. Coyle	NOBC-Mid Year	Fran Bassios Memorial Management Program	02/05/2015	Houston
James Sudler	NOBC-Mid Year	ABA Standards	02/05/2015	Houston

Margaret Funk	NOBC-Mid Year	Trust Accounts	02/06/2015	Houston
James C. Coyle	APRL Conference	UPL and MJP issues	02/06/2015	Houston
Charles E. Mortimer	CBA CLE	Basic Family Law	02/12/2015	Denver
James C. Coyle	Family Law Executive Council Mtg	LLLT program	02/20/2015	Denver
Margaret Funk	Trust Account School	Trust Accounts	02/20/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	02/26/2015	Denver
James Sudler	Professionalism School	Problems During Rep.	02/26/2015	Denver
Margaret Funk	Professionalism School	Managing the Money	02/26/2015	Denver
Charles E. Mortimer	Professionalism School	Duties to Third Parties and Beyond	02/26/2015	Denver

## MARCH 2015

<b>Name of Attorney</b>	<b>Speech Given To</b>	<b>Topic of Speech</b>	<b>Date of Speech</b>	<b>Geographic Area</b>
Charles E. Mortimer	CBA CLE	Succession Planning	03/03/15	Denver
Charles E. Mortimer	Metro State Paralegal Class	UPL	03/04/2015	Denver
Margaret Funk	NOBC – Webinar	Trust Accounts	03/04/2015	Webinar
James Sudler	SCAO – Resp. Parents Counsel	Ethics Issues for Respondent’s Parents Counsel	03/05/2015	Colo. Springs

James C. Coyle	CBA Litigation Council	ARC update	03/07/2015	Denver
Matt Samuelson	Ethics School	Forming the A/C Relationship	03/13/2015	Denver
Lisa E. Frankel	Ethics School	Fees and Fee Agreements	03/13/2015	Denver
E. James Wilder	Ethics School	Law Office Management	03/13/2015	Denver
April M. McMurrey	CU Law Ethics Class	Admissions & Issues for the New Attorney	03/16/2015	Boulder
Margaret Funk	NOBC – Webinar	Trust Accounts	03/19/2015	Webinar
James C. Coyle	COBALT	Leadership Opportunities in Attorney Regulation	03/21/2015	Estes Park
Matt Samuelson	Professionalism Course	Welcome to the Profession	02/26/2015	Denver
James C. Coyle	USCIS	UPL/Attorney Discipline in Immigration Matters	03/25/2015	Englewood
Margaret Funk	ABA	All is Good – Marijuana Update	03/26/2015	Naples, FL

## APRIL 2015

<b>Name of Attorney</b>	<b>Speech Given To</b>	<b>Topic of Speech</b>	<b>Date of Speech</b>	<b>Geographic Area</b>
E. James Wilder	El Paso Bar Solo Cmte	Social Media: Ethical Tips	04/01/2015	Colo. Springs
Charles E. Mortimer	ABA Water Law Conference	Ethics and Lobbying	04/01/2015	Denver



Margaret Funk	Trust Account School	Trust Accounts	04/10/2015	Denver
James C. Coyle	2 <sup>nd</sup> ABA UPL School	Everything You Want to Know About UPL	04/17/2015	Chicago, IL
James C. Coyle	2 <sup>nd</sup> ABA UPL School	Therein Lies the Rule: The Necessary Tension Between Public Protection in UPL Enforcement and Ensuring Access to Justice.	04/18/2015	Chicago, IL
E. James Wilder	Comm. Assoc. Inst.	OARC Process and UPL	04/24/2015	Denver
Erin R. Kristofco	Multidisciplinary Professionals	Where Has Professionalism Gone?	04/24/2015	Colo Springs
Matt Samuelson	Professionalism Course	Welcome to the Profession	04/28/2015	Denver

## MAY 2015

Name of Attorney	Speech Given To	Topic of Speech	Date of Speech	Geographic Area
James C. Coyle	NCBE Annual Bar Admissions	Drugs and Alcohol: Key Fitness Issues	05/01/2015	Chicago, IL
Matt Samuelson	NCBE Annual Bar Admissions	Uniform Bar Examination: Perspectives & Advice	05/01/2015	Chicago, IL
Charles E. Mortimer	Practice Monitors	Practice Monitoring	05/06/2015	Denver
Timothy J. O'Neill	Colorado Rural Electric Ass'n	Professionalism and Ethics Update	05/08/2015	Denver

James C. Coyle	Board of Governors	Atty Regulation Counsel Update	05/09/2015	Vail
James C. Coyle	SWCBA	Atty Regulation Counsel Update	05/12/2015	Durango
Matt Samuelson	Professionalism Course	Welcome to the Profession	05/18/2015	Denver
Lisa E. Frankel	Professionalism School	Managing the Money	05/18/2015	Denver
April M. McMurrey	Professionalism School	Relationships with Clients & Courts	05/18/2015	Denver
Timothy J. O'Neill	Professionalism School	Duties to Third Parties & Beyond	05/18/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	05/19/2015	Denver
Lisa E. Frankel	Professionalism School	Managing the Money	05/19/2015	Denver
April M. McMurrey	Professionalism School	Relationships with Clients & Courts	05/19/2015	Denver
Charles E. Mortimer	Professionalism School	Duties to Third Parties & Beyond	05/19/2015	Denver
Geanne R. Moroye	NOBC	Regulation of Discrimination in Lawyer Ethics: Aspiration or Apathy	05/20/2015	Webinar
James C. Coyle	Washington Bar-LLLT		05/22/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	05/26/2015	Denver
April M. McMurrey	Professionalism School	Relationships with Clients & Courts	05/26/2015	Denver
Jill Perry Fernandez	Professionalism School	Elements of a Practice	05/26/2015	Denver
Margaret Funk	Professionalism School	Managing the Money	05/26/2015	Denver

Kati Miller Rothgery	Pro School	Duties to Third Parties & Beyond	05/26/2015	Denver
James C. Coyle	ABA – Prof. Responsibility		05/28/2015	Denver
James C. Coyle	ABA – Client Protection Fund	Fund Challenges Arising from MJD and Multistate Practice	05/29/2015	Denver
James C. Coyle	1 <sup>st</sup> Regulators Workshop on Proactive, Risk-Based Regulation	States as Laboratories-Articulating Steps for Moving Forward	05/30/2015	Denver
<b>JUNE 2015</b>				
<b>Name of Attorney</b>	<b>Speech Given To</b>	<b>Topic of Speech</b>	<b>Date of Speech</b>	<b>Geographic Area</b>
Charles E. Mortimer	SCAO	Self-Represented Litigant Coordinators and Family Court Facilitators	06/02/2015	Denver
Matt Samuelson	Ethics School	Forming the A/C Relationship	06/05/2015	Denver
Lisa E. Frankel	Ethics School	Fees and Fee Agreements	06/05/2015	Denver
April M. McMurrey	Ethics School	During the Attorney-Client Relationship	06/05/2015	Denver
April M. McMurrey	Ethics School	Termination/Private Conduct	06/05/2015	Denver
Timothy J. O'Neill	Ethics School	Law Office Management	06/05/2015	Denver
Kati Miller Rothgery	CBA CLE	Ethics Update 2015	06/05/2015	Denver
James C. Coyle	Dan Cordova's Law Class	The Foundation for a Long and	06/08/2015	Denver

James C. Coyle	CU Law LAB Diversity Comm.	Successful Career		
James C. Coyle	State Bar Assoc. of N. Dakota	Lawyer's Ethical Responsibilities Breaking Bad	06/16/2015	Denver
James C. Coyle	State Bar Assoc. of N. Dakota	Self-Audit Checklists	06/17/2015	Bismarck, ND
Matt Samuelson	Professionalism Course	Marijuana	06/18/2015	Bismarck, ND
		Welcome to the Profession	06/24/2015	Denver

## JULY 2015

<b>Name of Attorney</b>	<b>Speech Given To</b>	<b>Topic of Speech</b>	<b>Date of Speech</b>	<b>Geographic Area</b>
E. James Wilder	AILA	Ethical Immigration Practice	07/08/2015	Denver
Timothy J. O'Neill	Colo. Federal Pro Bono Comm.	Ethical Issues in Pro Bono Cases	07/08/2015	Denver
James C. Coyle	CBA Ethics Committee	The Changing Practice of Law	07/18/2015	Stmbt Spgs.
James C. Coyle	Int'l Conf. of Legal Regulators	Lawyers on the Edge: Licensure And the Impaired Professional	07/27/2015	Toronto
James C. Coyle	Int'l Conf. of Legal Regulators	What Can We Expect from the U.S.	07/28/2015	Toronto
James C. Coyle	NOBC Annual Meeting	What can the US Expect from the Rest of the World	07/29/2015	Chicago
Matt Samuelson	Professionalism Course	Welcome to the Profession	07/30/2015	Denver

Lisa E. Frankel	Professionalism School	Managing the Money	07/30/2015	Denver
April M. McMurrey	Professionalism School	Relationships with Clients&Courts	7/30/2015	Denver
Timothy J. O'Neill	Professionalism School	Duties to Third Parties & Beyond	07/30/2015	Denver
Kati Miller Rothgery	Pro School	Elements of a Practice	07/30/2015	Denver
James C. Coyle	NOBC Annual Meeting	Joint APRL/NOBC: Changes to the Advertising Rules: A Reality Check	07/31/2015	Chicago
Margaret Funk	NOBC Annual Meeting	Cross-Border Jurisdiction Reg.	07/30/2015	Chicago

## AUGUST 2015

<b>Name of Attorney</b>	<b>Speech Given To</b>	<b>Topic of Speech</b>	<b>Date of Speech</b>	<b>Geographic Area</b>
April M. McMurrey	Squire, Patton Boggs	Ethical Issues for Big Firm Lawyers	08/4/2015	Denver
Charles E. Mortimer	CBA CLE	Family Law Ethics	08/08/15	Vail
Matt Samuelson	NCBE/CBAA Annual Meeting	Calibrating Bar Exam Graders For Administrators	08/08/2015	Wilmington, NC
James Sudler	Colorado Environmental Management Society	Representing Organizations 1.13	08/11/15	Denver
E. James Wilder	Mi Casa Legal Night	Unauthorized Practice of Law	08/18/2015	Denver
Kati Miller Rothgery	CBA CLE Hanging Your Shingle	COLTAF Accounts	08/20/2015	Denver

Charles E. Mortimer	CBA CLE Hanging Your Shingle	Small Firm/Solo Ethics	08/21/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	08/25/2015	Denver

## SEPTEMBER 2015

Name of Attorney	Speech Given To	Topic of Speech	Date of Speech	Geographic Area
Margaret Funk	CBA Inter'l Law Section	New Admission Rules	09/02/2015	Denver
Charles E. Mortimer	4 <sup>th</sup> Judicial Bar Assoc.	General Ethics	09/02/2015	Colo. Springs
James C. Coyle	OBI Conference	The Regulator and the Regulated: How Do We Handle Addiction?	09/03/2015	Denver
James Sudler	CU Boulder Law School	Attorney Regulation	09/16/15	Boulder
James C. Coyle	Virginia LAP Conf.	The Legalization of Marijuana Lessons from Colorado on How it Affects Discipline, the LAP, and The Practice of Law	09/18/2015	Charlottesville Virginia
James C. Coyle	Public Defenders' Conference	Ruminations of Attorney Regulation	09/20/2015	Snowmass
James Sudler	DA's Council	Prosecutorial Misconduct	09/21/15	Breckenridge
James C. Coyle	Annual Judicial Conference	Important Considerations in Contempt Proceedings	09/21/2015	Vail

Kati Miller Rothgery	CO AG Office	Litigation Ethics	09/24/2015	Denver
Lisa E. Frankel	Ethics School	Fees and Fee Agreements	09/25/2015	Denver
Charles E. Mortimer	Ethics School	General Ethics	09/25/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	09/29/2015	Denver
April M. McMurrey	Prof School	Relationships with Clients&Courts and Q&A	9/29/2015	Denver
Timothy J. O'Neill	Prof School	Duties to 3d Parties/Pvt Conduct and Q&A	09/29/2015	Denver

## OCTOBER 2015

<b>Name of Attorney</b>	<b>Speech Given To</b>	<b>Topic of Speech</b>	<b>Date of Speech</b>	<b>Geographic Area</b>
Timothy J. O'Neill	CREA Fall Conference	Ethics Update 2015	10/2/2015	Denver
Timothy J. O'Neill	Rocky Mtn Employers Conference	Ethics Overview for In-House Counsel	10/7/2015	Denver
James Sudler	CLE/Colorado	Professionalism	10/08/15	Denver
Margaret Funk	Trust Account School	Trust Account Management	10/29/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	10/13/2015	Denver
Jill Perry Fernandez	Professionalism School	Elements of a Practice	10/13/2015	Denver

Lisa E. Frankel	Professionalism School	Managing the Money	10/13/2015	Denver
Jill Perry Fernandez	Professionalism School	Elements of a Practice	10/14/2015	Denver
Margaret Funk	Professionalism School	Managing the Money	10/14/2015	Denver
April M. McMurrey	Prof School	Relationships with Clients&Courts and Q&A	10/14/2015	Denver
Kati Miller Rothgery	Pro School	3 <sup>rd</sup> Parties & Private Conduct	10/14/2015	Denver
Kati Miller Rothgery	CBA Real Estate Section	Worst of the Worst	10/16/2015	Denver
James C. Coyle	ABA Nat'l Conf. for LAP	Marijuana: From Medicinal to Recreational: What Has Happened Along the Way	10/20/2015	Albuquerque
James C. Coyle	ABA Nat'l Conf. for LAP	Past Your "Best By" Date? Helping Lawyers Face Up to Their Mortality	10/21/2015	Albuquerque
Charles E. Mortimer	WCEA	Workers' Compensation Ethics	10/23/2015	
April M. McMurrey	Rocky Mtn Paralegals Ass.	Ethical Issues and Paralegals	10/24/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	10/27/2015	Denver
Margaret Funk	Professionalism School	Managing the Money	10/27/2015	Denver
Charles E. Mortimer	Professionalism School	Elements of a Practice	10/27/2015	Denver
Kati Miller Rothgery	Professionalism School	Private Conduct and Questions	10/27/2015	Denver
Matt Samuelson	Professionalism Course	Welcome to the Profession	10/28/2015	Denver



Jill Perry Fernandez	Professionalism School	Elements of a Practice	10/28/2015	Denver
Lisa E. Frankel	Professionalism School	Managing the Money	10/28/2015	Denver
April M. McMurrey	Prof School	Relationships with Clients & Courts and Q&A	10/28/2015	Denver

## NOVEMBER 2015

Name of Attorney	Speech Given To	Topic of Speech	Date of Speech	Geographic Area
April M. McMurrey	CU Law Ethics Class	Admissions & Issues for the New Attorney	11/4/2015	Boulder
James C. Coyle	IAALS	LLLTs and Access to Justice	11/11/2015	Colo. Springs
Matt Samuelson	Professionalism Course	Welcome to the Profession	11/12/2015	Denver
James Sudler	CLE/Colorado	Appellate Ethicist	11/12/15	Denver
Matt Samuelson	Ethics School	Forming the A/C Relationship	11/13/2015	Denver
Charles E. Mortimer	Ethics School	Fees and Fee Agreements	11/13/2015	Denver
Kati Miller Rothgery	Ethics School	Termination and Private Conduct	11/13/2015	Denver
James C. Coyle	DBA Orientation	Top 10 Ways to Avoid OARC	11/19/2015	Denver
James C. Coyle	Law Club	Building an Attorney Regulation	11/20/15	Denver

**DECEMBER 2015**

<b>Name of Attorney</b>	<b>Speech Given To</b>	<b>Topic of Speech</b>	<b>Date of Speech</b>	<b>Geographic Area</b>
Charles E. Mortimer	Practice Monitors	Practice Monitoring	12/10/2015	Denver
Charles E. Mortimer	Professionalism School	Welcome to the Profession	12/16/2015	Denver
Jill Perry Fernandez	CBA Elder Law Attys	Trust Account Basics for Elder Law Attorneys	12/17/2015	Denver

# Appendix O

## **1<sup>ST</sup> REGULATORS' WORKSHOP ON PROACTIVE, RISK-BASED REGULATION**

**Cosponsored by the ABA Center for Professional Responsibility, Colorado Supreme Court Office of Attorney Regulation Counsel, and the Maurice Deane School of Law at Hofstra University<sup>1</sup>**

**REPORT OF PROCEEDINGS  
May 30, 2015, 9:00 a.m. – 3:00 p.m.  
Colorado Supreme Court Building  
2 East 14<sup>th</sup> Avenue  
Supreme Court Conference Room, 4<sup>th</sup> Floor  
Denver, CO 80203**

### **Attendees:**

- Deborah Armour, Chief Legal Officer, Law Society of British Columbia;
- Lawrence Bloom, Senior Staff Attorney, District of Columbia Court of Appeals Office of Bar Counsel;
- Charles Centinaro, Director, New Jersey Office of Attorney Ethics;
- Nancy Cohen, Principal, MiletichCohen PC;
- Felice Congalton, Associate Director, Washington State Bar Office of Disciplinary Counsel;
- Steve Couch, President & CEO, Ohio Bar Liability Insurance Company (OBLIC);
- James Coyle, Attorney Regulation Counsel, Colorado Supreme Court Office of Attorney Regulation Counsel;
- Dolores Dorsainvil, Senior Staff Attorney, District of Columbia Court of Appeals Office of Bar Counsel;
- Doug Ende, Director, Washington State Bar Office of Disciplinary Counsel;
- Dawn Evans, Disciplinary Counsel and Director, Oregon State Bar Director of Regulatory Services;
- Susan Fortney, Howard Lichtenstein Distinguished Professor of Legal Ethics & Director of the Institute for the Study of Legal Ethics, Maurice A. Deane School of Law at Hofstra University;
- Paula Frederick, General Counsel, State Bar of Georgia;
- Art Garwin, Director, ABA Center for Professional Responsibility;

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<sup>1</sup> Members of the Regulators' Conference Planning Committee were Jim Coyle, Susan Fortney, Art Garwin, Zeynep Onen, Darrel Pink, Ellyn Rosen, and Laurel Terry.

- Cori Ghitler, Director, Professionalism & Access, The Law Society of Alberta;
- Tahlia Gordon, Counsel, Creative Consequences Pty Ltd.;
- Linda Gosnell, Attorney & Lecturer, Eastern Kentucky University;
- Theresa Gronkiewicz, Deputy Regulation Counsel, ABA Center for Professional Responsibility;
- John Hicks, General Shareholder & Assistant Counsel, Baker Donelson;
- Honorable William Hood, III, Justice, Colorado Supreme Court;
- James Kawachika, Partner, O'Connor Playdon & Guben LLP;
- Tracy Kepler, Assistant Solicitor, Office of General Counsel, United States Patent & Trademark Office;
- Jerome Larkin, Administrator, Illinois Attorney Registration & Disciplinary Commission;
- Leslie Levin, Professor of Law, University of Connecticut Law School;
- Steven Mark, Counsel, Creative Consequences Pty Ltd.;
- Honorable Monica Marquez, Justice, Colorado Supreme Court;
- Kellyn McGee, Associate Dean of Students and Associate Professor, Savanna Law School;
- Wendy Muchman, Chief of Litigation & Professional Education, Illinois Attorney Registration & Disciplinary Commission;
- Zeynep Onen, Executive Director, Professional Regulation, The Law Society of Upper Canada;
- Margaret Plane, City Attorney, Salt Lake City Corporation;
- Darrel Pink, Executive Director, Nova Scotia Barristers' Society;
- Victoria Rees, Director, Professional Responsibility, Nova Scotia Barristers' Society;
- Amy Rehm, Deputy Chief Bar Counsel, Arizona State Bar;
- David Rolewick, Attorney, Rolewick & Gutzke, P.C.;
- Arnold Rosenfeld, Senior Counsel, Sarrouf Law, LLP;
- Ellyn Rosen, Deputy Director and Regulation Counsel, ABA Center for Professional Responsibility;
- Ted Schneyer, Professor of Law Emeritus, University of Arizona James E. Rogers College of Law;
- Gene Shipp, Bar Counsel, District of Columbia Court of Appeals Office of Bar Counsel;
- William Slease, Chief Disciplinary Counsel, New Mexico Supreme Court;
- David Stark, Partner, Faegre Baker Daniels;
- Laurel Terry, Harvey A. Feldman Distinguished Faculty Scholar and Professor of Law, Penn State Dickinson School of Law;
- Don Thompson, Executive Director, The Law Society of Alberta;
- Maret Vessella, Chief Bar Counsel, Arizona State Bar; and
- Lish Whitson, Attorney, Lish Whitson PLLC.

## **1. Welcome and Introduction to the Workshop (9:00-9:10)**

Ellyn Rosen welcomed participants to the workshop. Ms. Rosen is Deputy Director and Regulation Counsel of the American Bar Association Center for Professional Responsibility. Ms. Rosen thanked workshop cosponsors, the Colorado Supreme Court and its Office of Attorney Regulation Counsel and Professor Susan Fortney and Hofstra University for their help in making the workshop possible. She thanked the planning committee, and in particular Cheryl Lilburn of the Colorado Office of Attorney Regulation Counsel. She thanked Art Garwin, Director of the ABA Center for Professional Responsibility.

Ms. Rosen thanked workshop participants for their responses to the pre-conference questionnaire.

Ms. Rosen stated that the McKay Commission recommendations explored a new frontier and an expanded system of regulation. We will explore an expanded regulatory system today. We will think about the future of lawyer regulation as a cradle-to-grave proposition encompassing the beginning, middle, and end stages of lawyers' professional life. Currently, we think about the first stage and the end stage (discipline). Today, we will focus on middle stage. Ms. Rosen compared this type of regulation to preventive care at a doctor's office.

Ms. Rosen referred to a cartoon described in Susan Fortney's article on proactive regulation, in which a doctor asks a patient, "What fits your busy schedule better, exercising one hour a day or being dead 24 hours a day?"

Ms. Rosen explained that all jurisdictions have some form of proactive regulation, but it is often ad hoc and piecemeal. She encouraged participants to think in terms of evolution, not revolution, with respect to the current system. A shift to proactive regulation can be collaborative, not confrontational. Proactive regulation is not a "gotcha." We can look at some U.S. jurisdictions that are focusing on preventing problems, not responding to them, through risk-based schemes. These tools are designed to help lawyers practice better and avoid risks. We have good data—the experience in New South Wales suggests proactive regulation can result in a drop in disciplinary complaints by two thirds. These measures are cost effective to implement—for example, a secure portal with an automated process for self-assessment, which allows follow-up where needed. Data also shows that those who have gone through the process and were skeptical feel pretty good about it afterward.

Ms. Rosen suggested that today's goal should be to think about whether we in the U.S. should consider adding this kind of complementary regulatory program, after having seen what's going on in the world. Could it work here? If so, how?

## **2. Developing a Vocabulary and Surveying the Landscape (9:10-10:40)**

### **a. Welcome and Introduction – Susan Fortney and Zeynep Onen**

Susan Fortney is the Howard Lichtenstein Distinguished Professor of Legal Ethics at the Maurice Deane School of Law at Hofstra University.<sup>2</sup>

Zeynep Onen is the Executive Director of Professional Regulation at the Law Society of Upper Canada.

### **b. Introduction to Proactive Regulation and Questionnaire Results**

Professor Fortney introduced proactive, risk based regulation as those regulatory measures that help lawyers develop ethical infrastructures to address consumer concerns. The goal is to be ahead of the problem, rather than waiting to respond to complaints.

She reviewed the results of the pre-conference questionnaire. According to the questionnaire responses, respondents understand they are moving away from the “police” regulator role, and instead are being a “partner” with firms and lawyers to improve practices and lower the likelihood that misconduct will occur.

Many of the programs now considered proactive are educational, for example “bridge-the-gap” programs or “end-of-career” programs. All jurisdictions have ethics hotlines. Many jurisdictions are analyzing complaint data, and most jurisdictions are using it for educational purposes, i.e. to identify areas where complaints arise. Other jurisdictions are doing more in terms of risk-profiling. For example, Colorado has a program for changes in practice areas. A 2011 ABA conference opening session was about lawyers who are victims of the recession. Many of those lawyers transitioned from big firms to solo practice. Now Colorado is systematically evaluating those practice changes and reaching out to those individuals. Colorado takes reports of attorneys’ practice areas, and then automatically sends a packet when changes are made. Mr. Coyle pointed out that this program was Attorney Regulation Advisory Committee Chair David Stark’s idea.

Professor Fortney explained that Alberta is designating a lawyer to be responsible for each firm’s trust accounts, which has to do with entity regulation. In sum, different jurisdictions have different measures. Steve Mark and Tahlia Gordon drove change in New South Wales when working for the Office of the Legal Services Commissioner, and continue to do so now from the private sector.

### **c. Introductory Round**

Professor Fortney asked attendees to break into groups of two and discuss two questions: (1) why are you interested in this workshop; and (2) why are you interested in proactive regulation?

Upon reconvening, some of the attendees’ responses were as follows:

- A representative from the first group made three points: (1) change is the only constant; (2) regulation is ours to lose—changes in Australia were brought about by legislation, not

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<sup>2</sup> After the workshop, Professor Fortney joined the faculty at Texas A&M School of Law.

the courts; and (3) there has not been a period for reflection until now. These three days of conferences (ie., the ABA National Conference on Professional Responsibility) have allowed us to reflect. We all want to be proactive.

- A representative of the second group suggested compiling a list of what other jurisdictions are doing as far as proactive regulation. Who has done it successfully? That could be the model. This group would like to hear about models other than New South Wales. This group is in favor of proactive regulation because we all want to get ahead of problems before they happen.
- A representative of the third group suggested the problems we are attempting to address through proactive regulation were easily identified three decades ago. There are issues around lawyer performance, some of which involve ethics issues, but most involve managing relationships with clients, staff, and other lawyers. Regulators have done little to address those issues. We need a coherent plan.
- A representative of the fourth group stated they are here to take in this whole subject and try to help figure out how proactive regulation can work. This representative noted that insurance companies have been preaching this same message to insured lawyers—but usually after the fact, after problems arise. There is currently education on the front end, but it is purely voluntary.
- A representative of the fifth group stated his group is very interested in proactive work. It is a way to manage risk and serve clients. This representative asked how we can implement proactive regulation in smaller firms.
- A representative of the sixth group reported New South Wales's (NSW) regulatory system is a creature of legislation. The first principal NSW established in the office that took complaints was that the purpose of the office was to *reduce* complaints. To do so, they had to be proactive. This representative pointed out that small firms believe regulation is aimed only at them. This representative believes this proactive regulation has been very helpful to small firms.
- A representative from the seventh group stated they were here to “reflect, test, share, and learn.” This representative writes about regulation and has research interests in solo and small firm lawyers, as well as how to understand lawyer behavior and how to measure what's happening. This group asked whether we can follow up on the solos who receive transition packets in Colorado.

- A representative from the eighth group wants his office to become a resource, rather than a place to be feared. Another representative from this group noted that Oregon is the only state with mandatory legal malpractice coverage. There is a “wall” between the Professional Liability Fund (PLF), the insurer, and the disciplinary system. This representative is excited about a potential self-assessment tool. This representative finds it easy to be discouraged about recidivism.
- A representative from the ninth group focused on New Jersey programs. New Jersey was one of the first states to have a random audit program, an ethics hotline, and a diversion program. Entity-based regulation is natural extension of these proactive programs. This representative’s concern is, how do we implement such a program? We need buy-in from the bar. We need to convince the bar that the benefit outweighs the cost.
- A representative from the tenth group stated that the participants are interested in values, and how to incorporate values and ethics into everyday lives. Practically, from regulatory standpoint, this representative says proactive regulation reduces frequent flyers and reduces workload. This representative wondered how we can reduce our membership’s suspicion and build trust.
- A representative from the eleventh group reported that he works for a court that is willing to go where no supreme court has gone before. That court is interested in new ways to protect the public.

#### **d. Experiences in Other Countries**

Professor Fortney suggested thinking about the language we use. As an example, Mr. Coyle stressed that he is “regulation counsel,” not “disciplinary counsel.” The group wondered whether we should call the attorney regulation system an “attorney integrity system” or some other appropriate name.

Professor Fortney explained that New South Wales’ regulatory system grew out of legislation that required incorporated firms to appoint a director and to implement and maintain appropriate management systems. The idea was to make sure there are safeguards in place. Steve Mark and Tahlia Gordon, while with the Office of the Legal Services Commissioner met with lawyers, insurers, and others to define “appropriate management systems.” They developed ten objectives of sound legal practice, which are ten areas that commonly lead to complaints.

In order to determine if the objectives are met, New South Wales implemented a self-assessment process (SAP). Firms rate themselves from “noncompliant” to “complaint plus.” The regulator can then provide resources to firms who are not compliant. This system translates to reduced complaints and better client service.



One early quantitative study showed that complaints against participating firms went down by two thirds. Those firms generated only one third the complaints of those firms that had not gone through the process.

This idea is spreading throughout Australia, for example, to Queensland.

Professor Fortney found the first study suggested there could be a follow-up study. The first study did not address *why* complaints went down. In a second study, she found 50% of firms adopted new systems in response to the self-assessment process. The most significant impact was on supervision and risk management. There was less impact on client satisfaction and firm morale. Professor Fortney found that firms learned from the process. This is the basis of the idea of “education toward compliance,” or ETC.

Professor Fortney suggested looking at how firms embraced proactive regulation in terms of a pyramid chart. 12% of firms resisted such regulation, and viewed it as “checking boxes.” More firms, though, embraced the idea. Implementation creates compliance, helps clients, manages risk, and develops business. Some firms have sought to obtain ISO certification for their management systems with the view that such certification can be used for business development purposes. .

Ms. Onen reported on the situation in England and Wales: in 2007, Parliament enacted the Legal Services Act, which places the focus on the firm, not the lawyer, and on outcomes-based regulation. Outcomes are identified through codes of conduct for firms and individuals. Regulation is risk-based, so a lot of information is collected about the entities. Firms appoint compliance officers to manage an ethical framework and trust accounts. The regulator conducts active monitoring of all firms. A risk framework guides interventions. Ms. Onen noted that some firms complain they are not getting enough information and support.

Ms. Onen has had difficulty determining what it costs to have thirty people in a risk-management office. England and Wales may have costs that the New South Wales system does not.

The Solicitors Regulation Authority (SRA) investigates firms. Its less-intrusive type of regulation results in more diversion programs. Intervention—the more-intrusive regulation—is rigorous; the individual and the firm are immediately suspended and client property is transferred to the SRA.

Nova Scotia is in process of implementing proactive regulation. British Columbia established a Law Firm Regulation Task Force in 2015. Alberta adopted a rule applicable to firms, including rules for trust accounts. Other Canadian provinces are also exploring proactive regulation.

#### **e. Small Group Discussion with Reports – Mega-Planning**

Professor Fortney and Ms. Onen asked attendees to split into groups and discuss the following questions: what are your objectives for today? What guidance and tools do we need going forward? What are the challenges?

Some group comments were as follows:

- There was discussion about getting buy-in. What can attendees take back to their states to build support for proactive regulation?
- There was discussion about resources. How can attendees address concerns about the resources needed for proactive regulation? There was also some debate about the cost effectiveness of proactive regulation.
- There was discussion about overcoming political barriers.
- There was discussion about giving tools to solos and small firms. Some attendees expressed doubt that this will be cheap. Mr. Mark stated proactive regulation need not be expensive. Professor Fortney concurred. She noted that she helped develop a self-assessment checklist for a Texas insurer. Attendees wondered whether “build” costs for programs to help solos and smalls will be high. There was discussion about whether we can refocus resources we already have.
- There was discussion about addressing mental health and addiction issues earlier in the process.
- There was discussion about access to justice: the challenge is to make the case that proactive regulation is a key to help promote access to justice.

Ms. Onen concluded by noting the Law Society of Upper Canada has seen a reduction in the number of disciplinary complaints. The Law Society is developing a report as part of its implementation of entity regulation.

### **3. Break (10:40-11:00)**

### **4. Exploring Implementation Possibilities (11:00-12:30)**

#### **a. Introduction**

Jim Coyle introduced Justice Marquez and Justice Hood of the Colorado Supreme Court. Justices Marquez and Hood are attending for part of the workshop.

Ellyn Rosen Introduced Ted Schneyer of the University of Arizona James E. Rogers College of Law.

Mr. Schneyer stated that he started thinking about proactive regulation before many other people did. Rule 5.1 helped put in place proactive measures.

Mr. Schneyer suggested there should be law firm discipline because there are certain responsibilities that cut across the entire firm. We need some overarching firm response. Some rules have been adopted in New York and New Jersey, but it is disappointing how little they are used. Mr. Schneyer suggested there might be too many uses of the word “reasonable” in the rules, which makes enforcement difficult. Also, these are “second order” rules – they do not establish duties running to clients. Complaints do not come in about, for example, the lack of an “adequate calendaring system.”

These firm rules require governance through proactive systems, ones that do not focus on discipline. This is the idea behind “education toward compliance.” We do not necessarily want to *discipline* firms for violating these kinds of policies. There can still be discipline, but this is an additional program.

Also, proactive regulation can help clients who have grievances that do not necessarily rise to the level of discipline.

#### **b. The Canadian Experience**

Darrel Pink is the Executive Director of the Nova Scotia Barristers’ Society.

Mr. Pink stated proactive regulation is not a one-size-fits-all approach. We need to understand our own jurisdiction’s culture—what are the authorities, rules, and attitudes?

In Nova Scotia, there was an “epiphany” when the governing board was doing strategic planning. Mr. Pink asked, “Does what you do as a regulator make any difference? Does it improve the quality of legal services offered to the public?” The Society began to invest time and energy in looking at how the system works.

The Barristers’ Society had authority to regulate and discipline law firms for over ten years. Law firms have designated responsible lawyers for years. Firms have reported on trust accounts for years.

In Alberta, the Law Society of Alberta is the regulatory body. The Law Society itself adjudicates complaints. But the Law Society has said it adjudicates too much. If we could change things in attorneys’ practices earlier, those attorneys would not end up with complaints filed against them. The Law Society currently has employee assistance programs, addiction programs, practice management advisors, and loss prevention (it operates its own insurance company). But there is no overarching strategy to deal with all these issues.

The Law Society has said we need to become more proactive in regulating. For individual practitioners, that means setting up ways to find out when something is wrong earlier. For entity regulation, it means restructuring law practices to minimize the risk profile.

To identify risk, we need to change our organizational structure to prevent minor complaints. We need to change the organizational culture of the regulator.

In Ontario, the Law Society of Upper Canada is the regulatory body. The Law Society oversees 47,000 lawyers and 7,000 paralegals.

The Law Society of Upper Canada processes complaints and discipline, as well as a large number of remedial resolutions. The Law Society puts on professional development and competence programs, which means licensing and twelve hours of education annually (including three hours on professionalism). There is also an audit system; the Law Society does practice audits and spot trust account audits, on both a random and targeted basis. If significant information, such as fraud, becomes apparent during an audit, the Law Society can investigate. This happens, but there hasn't been a loss of trust in the Law Society. Some significant frauds have been caught early. Generally, though, the auditor is seen as helping hand. This all provides better service to the public, especially for small firms and solo practitioners.

The Law Society Act does not currently give the Law Society authority to regulate entities, but a committee is expected to recommend such regulation.

The regulator in Nova Scotia is taking baby steps toward entity regulation. The idea is to regulate for "the public interest," which also enhances access to justice. Regulators in Nova Scotia researched what is happening around the world and looked at future of the legal profession in order to design a system that is effective not just today, but for the next ten or twenty years. Council (the Board of Directors) hired Mr. Mark and Ms. Gordon, who did an "environmental scan" of legislation, rules, and culture in Nova Scotia. This is important because a jurisdiction cannot simply use another jurisdiction's model. Nova Scotia bar counsel created six regulatory objectives, which will be the road map for the organization. They are calling this a "management system for ethical legal practice." Council will ask firms to complete a self-assessment process. They are meeting with a risk consultant in August to develop risk tools.

Mr. Mark and Ms. Gordon completed four reports for the Nova Scotia Barristers' Society: (1) an overview and environmental scan; (2) a report on complaints (major areas of complaints, compared to demographics, including insurance claims); (3) suggestions for regulatory objectives, in relation to complaints and conduct rules (this report was presented to counsel and focus groups); and (4) a report refining the ethical infrastructure and developing self-assessment tools. Total cost for this work was somewhere between \$25,000 and \$60,000.

### **c. Creating an Appetite for Change**

The group considered the following questions: what is the most organic or achievable in terms of change? What is being done now in different jurisdictions that could be a model for a different approach to regulation?

Mr. Coyle reported he would like to build a self-assessment form. The self-assessment process would get lawyers engaged. We would then have data on what we as regulators need to do to be more effective. We could catch red flags early and could offer help. The self-assessment could use a web-based program. This would primarily help solo and small-firm practitioners. There would be some pushback, but a self-assessment program could be accomplished. Mr. Coyle suggested the self-assessment would not need to be mandatory, at least in the beginning.

Professor Laurel Terry noted the importance of building trust with regulated lawyers.

Some other comments were as follows:

- “Boot camps” and diversion schools are examples of existing proactive regulation that could be expanded.
- Proactive regulation can be remedial in nature. The regulator can pick up the phone, call a person at a firm, and let them know they have a problem.
- It is important to expand outreach by reaching out to new firms. Should there be a new firm checklist?
- Mr. Coyle expressed interest in developing regulatory objectives, sound business management objectives, and an online self-assessment form. Should it be voluntary or mandatory? Interactive?
- An attendee pointed out Professor Terry’s, Mr. Mark’s and Ms. Gordon’s article on regulatory objectives.
- An attendee noted that some work can be done through piloting or sampling. Mr. Pink agreed and added that early adopters can become advocates.

Ms. Rosen and Mr. Pink asked the attendees to break into small groups and consider (1) how could establishment of ethical infrastructure requirements improve individual or firm practice? (2) Is entity regulation a requirement to move forward w/ ethical infrastructure?

Comments from breakout groups included the following:

- There was discussion of differences in the entities we are regulating. Entities vary from jurisdiction to jurisdiction.
- One participant pointed out that the ten regulatory objectives are broad enough that they should apply to everyone. If some do not apply to you, that's fine. They are not one size fits all, but they can meet the need for each firm. Then, a self-assessment process can help lawyers decide how to comply with the objectives. Mr. Mark has rarely seen firms disciplined for failure to comply based on the self-assessment. The firms that have been disciplined were the worst of the worst, because they wouldn't cooperate with the process.
- Another participant stated that, as a member of a large firm, he would not want to participate in entity regulation; his firm already does this. Could there be an option to exempt firms who are, for example, ALAS members? He reiterated that one size does not fit all.
- A related concern is the appearance of picking on solos and small firms, and letting big firms off.
- A third participant commented that regulators who are implementing this type of regulation do not *tell* firms what they have to do to meet the objectives. That would create a bigger burden for smaller firms.
- There was discussion about the value of appointing a designated legal director to comply with entity regulation requirements. The designated legal director might or might not have increased liability and responsibility.
- There was general agreement that regulating proactively is much better than trying to fix problems retroactively.

Ms. Rosen and Mr. Pink asked the attendees to again break into small groups and consider the first thing they would want to do if they wanted to continue this discussion at home. Some comments were as follows:

- One participant stated he would talk to the chair of his Advisory Committee; there are several areas he would like to move forward in.
- Another participant suggested making a list of the people who need to be involved in this conversation.
- A third participant noted that British Columbia has legislation for regulating law firms and has established a task force, which has met five times and created objectives for regulating

firms. It would be useful to go back to that group after picking out nuggets from this workshop.

- A fourth participant suggested engaging with insurers on this topic.
- There was a suggestion to take time for reflection. Proactive regulation is a chance to bring people closer. Disciplinary systems are often segregated; it can be difficult to get out of that box.
- A fifth participant suggested informing the court, and then putting together a strategic plan. This would include identifying stakeholders and figuring out how to collaborate.
- An overarching concern was receiving buy-in from lawyers and the courts.

## **5. Lunch (12:30-1:30)**

## **6. States as Laboratories – Articulating Steps for Moving Forward (1:30-3:00)**

Jim Coyle is Regulation Counsel at the Colorado Supreme Court Office of Attorney Regulation Counsel. Laurel Terry is Harvey A. Feldman Distinguished Faculty Scholar and Professor of Law at Penn State Dickinson School of Law.

Mr. Coyle and Professor Terry confirmed that attendees agree that focusing on preventing problems, as well as responding to problems, is appropriate. The question then becomes, how do we develop a systematic approach, rather than a piecemeal approach, to proactive regulation?

They reviewed some of the top ideas from before the lunch break:

- Build trust
- Be jurisdiction-specific
- One size does not fit all
- Talk to and work with stakeholders
- Know where problems are (top 10 risks)
- Entity regulation can help but may not be necessary
- Know what you want to achieve – i.e. regulatory objectives or “purpose”

Comments from the group based on those points included the following:

- Rule of professional conduct 5.1 is an example of proactive regulation, but it is nearly impossible to enforce retroactively.
- We should build trust in 2 ways: the regulated need to understand what regulators want to achieve, and the regulators need to understand what the regulated want to achieve.
- We should develop a good plan before implementing proactive regulation.
- It might make sense to establish a separate group or entity that lawyers can call for advice, other than the regulator.
- We should start with a data-driven framework, and mine what data we have.
- The form of regulation will depend on the size of firm – this is another example of the lack of a one-size-fits-all solution.
- A participant noted that the word “help” has been used more than “regulate” today.
- One participant noted we are talking about a holistic approach to regulating the practice of law.

Mr. Coyle and Professor Terry listed some of the top ideas from previous sessions for implementing a proactive regulation action plan:

- Educating yourself
- Establishing goals
- Educating stakeholders
- Addressing funding issues

Some comments from the group on this list were as follows:

- We should aim to educate the public, not just ourselves and stakeholders. We should not just educate stakeholders, but collaborate with them. We must ensure their input is heard and create a partnership.
- One participant talked about the “power interest matrix.” The power interest matrix describes groups that need to be involved. This participant will post the matrix for people



to look at. This participant commented that Nova Scotia is doing a newsletter and using social media. This participant advised using social media as tools; their reach is great and can result in exponential growth of information.

Mr. Coyle asked, what if we took bold action and moved toward proactive risk-based regulation? What would we do? He stressed getting buy-in. This could be achieved through committees. There is a need to get the right stakeholders at the table. The committee would then present the idea to the court.

Mr. Coyle would like to implement regulatory objectives and a web-based self-assessment form, and he would like to designate an ethics compliance officer from each firm. All this would require rulemaking through the Supreme Court. The more Mr. Coyle talks about regulatory objectives, the more he realizes he needs them.

Mr. Coyle wondered what these changes would require. Amending the attorney registration rule? Amending the registration form? When would this need to be done? Is only one ethics compliance officer per firm enough? What are the operational needs? What are the software needs for the required databases? What are the human resources needs? Can we use volunteers from our committees? It's a useful exercise to think through these steps.

Mr. Mark and Ms. Gordon discussed funding and resources. Mr. Mark was given the responsibility to develop this program with no extra resources. He came up with the idea of self-assessment to save money. Self-assessment should catch the right people while spending the least amount of money, much like trust account audits.

First, Mr. Mark held workshops consisting of academics, lawyers, and others. That involved minimal cost. Then he built out the ten points and self-assessment. That cost nothing because it was done with existing staff. Then he ran a trial of these ideas – that involved minimal cost but took some time. Once the program is in place, there is more cost. Currently in New South Wales, one third of firms are incorporated, or about 5,000 firms. That means 5,000 forms coming in. The firms respond to the self-assessment because it is mandatory. The letter tells firms that if they complete the self-assessment form and become compliant, they will not be audited. Cost is minimal; it only requires one person to process these forms. The regulator had to build a technology system, or portal, which cost \$90,000. Once that is established, everything comes in electronically and automatically goes into the system. The regulator is only notified by the system when lawyers do not comply. That generates a report. The staff person calls up those firms, and then writes to find out what we can do to help. The letter gives the firms three months to get the things they need and encourages firms to call us for help with resources for getting into compliance. The person answering the phone cannot give advice on how to comply because they are the regulator. No staff person actually physically goes to the firm, but we can refer them to resources – software help, ethics hotline, etc.

Mr. Mark reported that often, a small firm or sole practitioner will receive the self-assessment form and tell staff to complete it. The staff does not know how to do so, which creates a conversation that itself solves many of the problems. Mr. Mark noted that he does not impose systems. The firms have to come up with the system.

Mr. Pink stressed the importance of marketing proactive regulation.

Ms. Onen noted that in Ontario, women and small firm lawyers saw this as help, not regulation. This kind of regulation is easy to do in small populations but can be hard to do on a large scale.

Professor Terry said the ABA state toolkit provides steps on how to create a committee and get broad representation.

Mr. Mark said his entire budget came out of the IOLTA fund.

Attendees discussed collaboration. What can the ABA do for us? How do we build coalitions?

Ms. Rosen pointed out that NOBC and the ABA Center for Professional Responsibility are partners. They work on programming together. NOBC is putting together a page on entity regulation. The ABA is working on gathering information, creating resources, and building coalitions. This working group has an international flavor. We are a global profession now.

A participant proposed that when a group decides to look at these issues, the ABA could provide a central location for “experts.”

Professor Fortney stated she is working on making this a regular working group. She has thought about when is easiest for everyone. This year, we held the workshop together with the Center for Professional Responsibility conference. We could discuss this at the upcoming International Conference of Legal Regulators in Toronto.

Ms. Rosen stated there will be a follow-up survey that will include this issue.

Mr. Coyle wondered whether there is an advantage to building consortiums. For example, western states could help each other. They might draw in a justice and a regulator from each jurisdiction. A participant pointed out that Canada is doing something similar. This depends in part on how far along different jurisdictions are and on geography.

The question was raised whether there is an ABA framework for proactive regulation. Ms. Rosen replied that the ABA, through the Standing Committee on Professional Discipline, is looking at that. The ABA Commission on the Future of Legal Services is studying regulatory objectives; there might be a comment draft within the month. The Commission is looking at regulatory objectives from the 10 or 12 countries that have implemented them.

Professor Terry has found that chief justices are more open to ideas like this. The Conference of Chief Justices might be open to this.

## **7. Closing (3:00)**

Ms. Rosen reminded participants that follow-up information will be distributed. There will be a survey, links to issues we talked about, and copies of PowerPoint slides.

An online forum could be created if people are interested. There could be continued education. The Conference of Chief Justices has a professionalism committee we could work through.

Professor Fortney encouraged participants to look at the questionnaire responses to see what different jurisdictions are doing.

Professor Fortney encouraged participants to consider their use of language. Think “branding.” She has used the term “audit” in the past, and will not use that term anymore. “Practice reviews” might be better. “Compliance” is also not a great term; it has baggage. Terminology can inform the discourse.

Professor Fortney urged participants to consider things they currently do that can include aspects of proactive regulation.

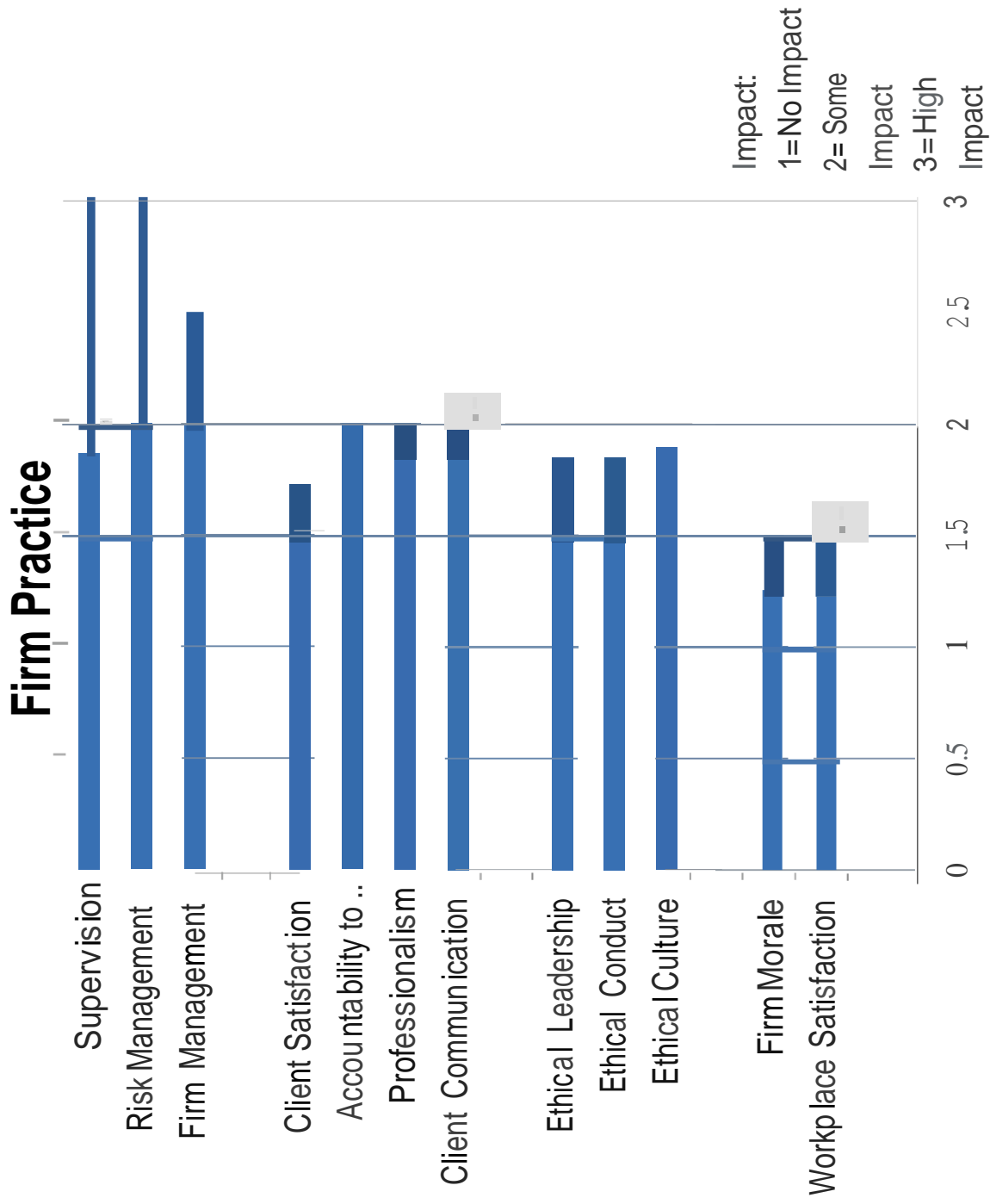
She suggested possibly giving CLE credit for completing self-assessment forms. Legal malpractice insurers, including NABRICO members, could give premium credits for insureds that complete a self-assessment form.

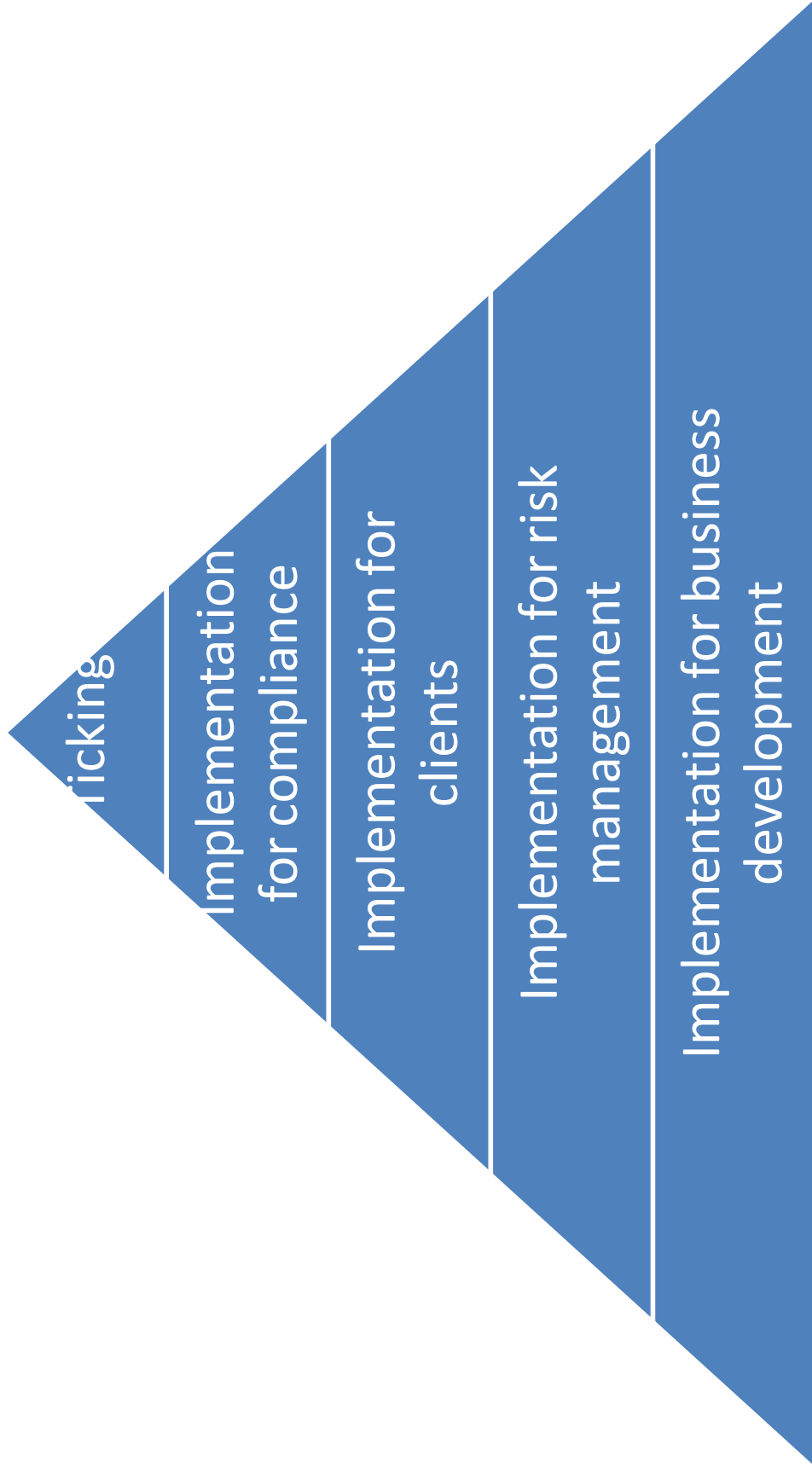
She anticipated resistance to proactive regulation. This might include concerns about discovery. Might it be necessary to rework rules, or create a statutory privilege for self-evaluation?

Professor Terry encouraged thinking of the questionnaire summary as living document. Participants should respond with comments on issues they think of in the future.

The workshop concluded at 3:00 p.m.

# Rating of Impact of SAP in Improving Aspects of Firm Practice





## **Session 3** - States as Laboratories: Articulating Steps for Moving Forward

PROACTIVE RISK BASED REGULATION WORKSHOP  
DENVER, CO, MAY 30, 2015

Slides collectively generated  
by the moderators & participants

### **Session 1 Posed This Question:**

- Are we being the best regulators we can be?
  - Are we doing our jobs?

## Plan for this Session

- **The Overarching Question:** Do you believe that it is appropriate for your jurisdiction to focus on preventing problems and responding to problems?
- Step 1: Developing Your Jurisdiction's Agenda & Action Plan to have a more proactive system
- Step 2: Implementing your Agenda & Action Plan
- Step 3: How can we collaborate & share Info
- Step 4: Recap & Missing Info

3

## Step 1: Creating Your Action Plan

- **Ask yourself:** Is my jurisdiction doing the best job it can in regulating lawyers in the public interest?
- Many jurisdictions have aspects of proactive regulation tools that try to prevent problems.
  - BUT.... These tools seem to have been developed on a rather ad hoc, piecemeal basis.
- Would I like it if my jurisdiction viewed itself as BOTH trying to PREVENT problems and responding to problems?
- **If so.. How could my jurisdiction go about building a more systematic approach to proactive regulation and trying to prevent problems?**

4

## Creating an Action Plan that Takes Proactive Regulation from an *Ad Hoc* System to a *Systemic Approach*

- Develop a commitment to a systemic approach
- Regulate proactive *and* responsively

5

## **Top Ideas That Emerged Before Lunch:** ***BIG IDEAS*** if you want a more Comprehensive Approach to Proactive (Preventative Regulation)

- Build on what you have, e.g. Rule 5.1
- Build trust
- Be jurisdiction specific
- It isn't a one-size fits all
- Talk to and work with your stakeholders
- Know where your problems are (top 10 risks)
- Entity regulation can help but may not be necessary
- It helps to know what you want to achieve – i.e. regulatory objectives or your “purpose”

6



### **Top Ideas That Emerged Before Lunch: to Develop More Systematic Proactive Regulation (cont.)**

- Evaluating metrics and cost
- Educating two ways:
  - regulator – others and
  - Lawyers to regulators
  - Be able to sell it
- Build a plan
- Do we need a separate entity that lawyers can call equivalent to a firm general counsel? – logistics of how it works (cf. an ethics hotline)
- Data driven Framework and mining what we have
- Regarding one size not fitting all – think solos
- It's about changing the conversation and relationships – emphasize helping

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### **Some specifics:**

- Change your organization
- Change your name; your structure; your thoughts?
- Change the relationship with lawyers and the public in your Jurisdiction
  - Use a “cradle to grave” approach; resources
- Consider the value of self-assessments as a preventative tool
- Consider entity regulation
- Identify a firm “Compliance Officer” or point of contact
- Create “objectives of sound legal practice”
- Develop packets for new law firm
- Have expanded diversion programs
- Be a resource to the public and lawyers

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## Remember...

- It will be easier if you...
  - **build from what you have!**

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## Step 2: Implementing your Action Plan

- Educate yourself
- Establish your goals (with a feedback loop)
- Engage your stakeholders
- Consider the following:
  - Authorization issues
  - Operation issues
  - Funding issues
  - Education, outreach & accountability
- **OVERARCHING ISSUE:** *How do we build trust as we try to implement a more comprehensive systematic approach to proactive (preventative) regulation*

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## **Costs to Build a New System in NSW**

- 2 one-day stakeholder sessions to develop the top 10 risk problem areas
- Designed to minimize costs since they had no extra resources
- 5,000 firms got a letter; there were no audits if the firm completed a self-assessment
- Implemented with 1 person
- Built a portal with \$90K

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## **Step 2: Implementing your Action Plan (continued)**

- Find out what data and help you need
  - Consultants?
- Figure out what is going on in your jurisdiction that you could hitch your wagon to
- Sharing info among jurisdictions
- Don't forget the public as a stakeholder – more public protection
- Learn from your stakeholders and collaborate
  - power of interest matrix and timing; social media
- Know why you are talking to stakeholders

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### **Step 3: Collaboration to Consider**

- What can the ABA do for us?
- Consolidating existing information
- Getting new information
  - e.g. cost effectiveness of preventative work
- Building coalitions (within a jurisdiction and across jurisdictions)
- Educational steps (avoid reinventing the wheel)

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### **Possible Future Steps**

- ABA CPR clearinghouse role (along with NOBC)
- Develop a list of experts to call upon
- Develop an ongoing workshop
- Have an ICLR Toronto workshop breakfast
- Aggregate information about other resources
  - any consulting available?
- Sharing post-workshop plans
- Develop an ABA Model Framework for Proactive Regulation?
- Have the high court Chiefs educate each other

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