

## **List of Practices of the Legal Regulation Committee**

- 1) The Committee requests the Attorney Regulation Counsel to provide information about pending investigations and prior discipline:
  - a) when information about investigations of one attorney is relevant to the Committee's decision about another lawyer,
  - b) to assist the Committee in keeping track of the number and length of pending investigations, and,
  - c) when the existence of investigations—including any prior offer of diversion made to the respondent in conjunction with the investigation and that the respondent has rejected --and prior private discipline is relevant to the Committee's decision to approve diversion, order the imposition of a private admonition or approve formal proceedings.
  
- 2) Requests for Investigation Involving Attorneys Employed by the Office of Attorney Regulation Counsel, the Office of the Presiding Disciplinary Judge, the Colorado Lawyer Assistance Program, and the Colorado Attorney Mentoring Program:
  - a) When a request for investigation is received alleging a violation of the Rules of Professional Conduct and the information received does not appear to be a request for the Office of Attorney Regulation Counsel to reconsider a dismissal by its intake division, does not appear to constitute a claim of general unfitness to practice, or that the attorney poses a substantial danger to continually engage in misconduct, the matter is referred to the Attorney Regulation Counsel for his or her review.
  - b) It is the policy of the Attorney Regulation Counsel to defer reviewing the investigation until any underlying proceeding involving a person who is not an employee of the Office of Attorney Regulation Counsel is resolved. This ensures that requests for investigation do not become a vehicle by which parties can undermine speedy resolution on pending proceedings.
  - c) Upon his or her review, the Attorney Regulation Counsel either decides that the matter should be investigated and requests the Committee to appoint special counsel or makes a decision that the request for investigation should be dismissed.
  - d) If the Attorney Regulation Counsel decides that the request should be dismissed, the person filing the request would be informed and then that person may request that the Legal Regulation Committee review the dismissal pursuant to C.R.C.P. 242.15(b). If the Committee disagrees with the dismissal, the Committee will appoint a special counsel who would investigate and present findings and recommendation to the Committee.

- 3) Requests for Investigation Involving Attorney Regulation Counsel
  - a) When a request for investigation alleging a violation of the Rules of Professional Conduct is received relating to conduct in an underlying proceeding and which does not appear to constitute a claim of a general unfitness to practice or that the Attorney Regulation Counsel poses a substantial danger to continually engage in misconduct, the Committee shall defer taking action on a request investigation. Consideration shall be deferred until the underlying proceeding is resolved to ensure that requests for investigation do not become a vehicle by which parties can undermine speedy resolution of pending proceedings.
  - b) When consideration of a matter is not deferred, the Committee shall review the matter and decide whether the matter should be investigated by special counsel appointed pursuant to Rule 242.4(e). Upon conclusion of an investigation, the Committee shall proceed pursuant to Rule 242.16 and treat the matter as if it was an investigation referred by Attorney Regulation Counsel. If the Committee concludes that a complaint should be filed, it will appoint or re-appoint a special prosecutor to file and prosecute the complaint.
  - c) If the Committee decides that the request should be dismissed, the person filing the request will be informed by the Committee.
- 4) In making its determinations pursuant to C.R.C.P. 242.16, the Legal Regulation Committee will not consider nor be informed whether the person has previously successfully completed a diversion as an alternative to discipline.
- 5) Respondents may file a memo up to five pages in length in response to any matter pending before the Committee. Memos should be filed no later than ten days before the date set for the Committee's review of the matter. Neither respondents, nor their counsel, may attend meetings during which the Committee considers reports of investigation or requests of diversions.
- 6) The Office of Attorney Regulation Counsel will regularly report to the Committee the status of any investigation pending longer than eight months.
- 7) Dismissal of Allegations

It is the best practice of the Committee to consider the issuance of a "better practices" letter and dismissal as an alternative to approval of a diversion when the Committee determines that allegations of misconduct are not appropriate for diversion.
- 8) Review of Diversion Agreements and Investigation Reports

Pursuant to Rule 242.16(a)(3) and Rule 242.17(c)(2)(B), the Committee may approve the diversion of the matter. Routinely, matters appropriate for diversion are presented to the

Committee by Attorney Regulation Counsel after an agreement has been reached between the parties. Pursuant to the rule, the Committee can approve such an agreement or reject the agreement and direct the filing of a formal complaint. A respondent who has agreed to a diversion is not barred from asserting, in the alternative, that the Committee should dismiss the complaint and issue a “better practices” letter as an alternative. The Committee will not consider such assertions as weighing against a respondent in deciding whether to accept a proposed diversion. The Committee will consider the issuance of a “better practices” letter as an alternative to a diversion or a formal complaint when the Committee believes that any alleged misconduct was only technical in nature or was lesser misconduct.

9) It is the practice of the Committee to still consider a diversion agreement in favor of a more severe sanction or condition when matters were initially proposed as diversion agreements at the Office of Attorney Regulation Counsel intake division, unless the subsequent investigation reveals conduct for which a diversion is generally not approved by the Committee.

10) C.R.C.P. 242.17 (b) states that conduct involving domestic violence, elder abuse, or child abuse “generally will not be diverted.” In considering whether such misconduct constitutes an exception to this “general” prohibition, the Committee will consider, in part:

- a) Whether there is evidence of early entry into a Domestic Violence treatment program,
- b) Whether there is little or minor injury,
- c) Whether the violence or abuse occurred in the presence of children or other vulnerable persons,
- d) Whether there was provocation,
- e) Whether there was a display of immediate remorse,
- f) Whether there was a lack of domestic violence history,
- g) Whether the case only involved non-physical misconduct (trespass, criminal mischief, etc), and,
- h) If violations of restraining orders are involved, whether they were technical and nonthreatening.

11) When special counsel is appointed, they should be informed by the Chair or Vice-Chair that pursuant to C.R.C.P. 242.5(d) they are empowered to take all actions that Regulation Counsel might take in similar circumstances.