

# **2009 ANNUAL REPORT**

## **Colorado Supreme Court Office of Attorney Regulation Counsel**



**John S. Gleason, Regulation Counsel**

**Nancy L. Cohen, Chief Deputy Regulation Counsel**

**James C. Coyle, Deputy Regulation Counsel**

**1560 Broadway, Suite 1800**

**Denver, CO 80202**

**(303) 866-6400**

**Toll Free (877) 888-1370**

**Website: [www.coloradosupremecourt.com](http://www.coloradosupremecourt.com)**

**2009 ANNUAL REPORT OF THE  
OFFICE OF ATTORNEY REGULATION COUNSEL**

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**2009 ANNUAL REPORT OF  
THE COLORADO SUPREME COURT  
OFFICE OF ATTORNEY REGULATION COUNSEL**

The Colorado Supreme Court Office of Attorney Regulation Counsel performs multiple regulatory and administrative duties. These duties include:

1. Field and investigate approximately 4,500 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. Represent and counsel the Colorado State Board of Law Examiners in formal hearings regarding applicants denied admission to the Colorado Bar, C.R.C.P. 201.10;

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; and

13. Provide extensive educational opportunities to the practicing bar and the public on topics related to attorney ethics.

The various duties of the Office 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 and is available online.

In 2009, the Office of Attorney Regulation Counsel employed 14 full-time attorneys, including Regulation Counsel, Chief Deputy Regulation Counsel, and Deputy Regulation Counsel, as well as 5 full-time, non-attorney investigators.

## **ATTORNEY REGULATION**

### **I. CENTRAL INTAKE**

In 1999, the Office of Attorney Regulation Counsel implemented a central intake program to field all requests for investigation. Central intake receives requests for investigation through phone calls from concerned members of the public, judiciary and lawyers. Prior to implementation of central intake, all complaints against attorneys were in writing. Typically, the office annually mailed 5,000 to 6,000 complaint forms to individuals who inquired about filing a "grievance." Generally, complainants returned about 25 percent of the forms. Many potential complainants simply found the prior intake system too complex or burdensome to follow through with their complaint.

Central intake now reaches virtually every complainant. By eliminating the need to initiate a complaint in writing, the Office of Attorney Regulation Counsel is truly user friendly and available to a much broader range of the public. The Office of Attorney Regulation Counsel also accepts written and in-person complaints.

Table 1

Year	Complaints Filed	Percent Change From Prior Year
2009	4,169	+.01%
2008	4,119	+2%
2007	4,016	-12%
2006	4,570	+16%
2005	3,929	-8%

Prior to 1999, a yearly average of approximately 1,500 written complaints was filed and reviewed at the intake stage. In its eleventh full year of operation (2009), central intake handled 4,169 complaints. Nearly the same number of individuals who in the past called requesting written complaint forms (of which only 25%-30% were returned) now are provided the opportunity to speak with an intake attorney. *See* Table 2.

Table 2

Year	Intake Complaint Calls	Additional Intake Calls	Additional Miscellaneous Calls
2009	4,169	4,720	17,014
2008	4,119	5,142	18,850
2007	4,016	4,523	18,374
2006	4,570	4,904	16,740
2005	3,929	3,510	17,035

Measuring the efficiency and competency of central intake is critical to the Court, the public, and the Bar. Although there are many ways to evaluate the old system to central intake, it is important to ensure that the evaluation is statistically reliable. In this report, the following benchmarks are used:

- Number of intake matters past and present;
- The time a complaint was pending at the intake level; and
- The handling of complaints at intake:

- Number of complaints dismissed at intake,
- Number of complaints resolved at intake by diversion,
- Number of complaints processed for investigation.

Five experienced litigation attorneys, along with one non-attorney investigator and four support-staff members, work in central intake. The Regulation Counsel (or 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. At its inception, central intake set the inspirational goal of ten days to review complaints. In 2009, the average time from the original call to central intake and an intake resolution was 1.5 weeks. *See* Table 3. In 1998, prior to central intake, the average time matters spent at the intake stage was 13 weeks.

Table 3

Average Time (in weeks)	
2009	1.5
2008	1.5
2007	1.9
2006	1.5
2005	1.6

At central intake, three resolutions are possible:

- The intake attorney may dismiss the matter if it is clear that no misconduct occurred;
- If there is evidence of minor misconduct, and the misconduct fits within the guidelines set forth in C.R.C.P. 251.13, the intake attorney may offer diversion;<sup>1</sup>

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<sup>1</sup> C.R.C.P. 251.13 provides diversion as an alternative to discipline. The alternatives to discipline (diversion) program offers several programs designed to assist the attorney in resolving issues related to his/her misconduct. Participation in the program is limited to cases where there is little likelihood that the attorney will harm the public during the diversion and where the program is likely to benefit the attorney. A matter generally will not be diverted if the presumptive range of discipline is likely to be greater than public censure; if the misconduct involves misappropriation of funds; or if there is serious criminal conduct, family violence, or actual injury to a client or other person.

- If there is clear evidence of misconduct that falls outside of the diversion program or if the respondent-attorney rejects diversion offered at central intake, the matter is processed for further investigation and assigned to a trial attorney, C.R.C.P. 251.10.

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 2009, central intake handled 4,169 complaints; 401 of those cases were processed for further investigation. See Table 4.

Table 4

Year	Investigations Initiated	% Change From Prior Year
2009	401	+11%
2008	360	-3%
2007	372	-7%
2006	402	+14%
2005	353	-11%

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>2</sup> fee arbitration, an educational 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. Since the diversion program became effective on July 1, 1998, the first full year of measurement was 1999. In 2009, at the central intake stage, 53 matters were resolved by 45 diversion agreements. See Table 5. (A representative summary of diversion agreements is published quarterly in *The Colorado Lawyer*.)

<sup>2</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 his/her clients, courts, opposing parties and counsel, and the legal profession. The class also covers conflicts, fee issues, law office 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.

Table 5

Year	Central Intake Diversion Agreements
2009**	45(53)*
2008**	46(49)*
2007**	48(50)*
2006**	39(45)*
2005**	50(58)*

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

\*\*In 2004 the Office of Attorney Regulation Counsel undertook efforts to refine the use of diversions. The office carefully analyzes each case to determine if a dismissal letter with cautionary language will sufficiently address the misconduct. As such, the number of diversions has decreased and the number of dismissals with cautionary language has increased. *See* Table 7.

In cooperation with the Office of Attorney Regulation Counsel, the Colorado Bar Association (CBA) has established fee arbitration committees that accept referrals. Complaints that do not allege excessive fees, but rather a dispute regarding payment or the amount of attorney's fees, are referred to the CBA for handling. If the matter is not resolved at fee arbitration, it is referred back to the Office of Attorney Regulation Counsel for review.

The CBA and several local bar associations offer conciliation programs and voluntary panels that address issues of professionalism between and among lawyers. The programs do not address allegations of misconduct by an attorney.



## II. INVESTIGATION

Matters docketed for further investigation are assigned to trial counsel within the Office of Attorney Regulation Counsel. Trial counsel completed a total of 287 matters involving 307 separate requests for investigation alleging attorney misconduct in the year 2009. The possible resolutions following the investigation are:

- Trial counsel finds no violations of the Rules of Professional Conduct and submits a memorandum detailing the investigation to Regulation Counsel. *See* C.R.C.P. 251.11. Regulation Counsel may dismiss the matter or order further investigation;
- Trial counsel determines that misconduct occurred and submits a written report of investigation to the Attorney Regulation Committee with a recommendation of dismissal, private admonition, or formal disciplinary proceedings;
- Trial counsel determines that misconduct within the provisions of C.R.C.P. 251.13 occurred and submits a diversion agreement to the Attorney Regulation Committee for approval;
- Trial counsel submits a stipulation recommending public discipline to the Presiding Disciplinary Judge;
- Cases are placed in abeyance when an attorney is disbarred or is transferred to disability inactive status during the course of an investigation; or
- Cases go directly to the Presiding Disciplinary Judge or to the Supreme Court without the necessity of action by the Attorney Regulation Committee, e.g., criminal conviction cases, reciprocal discipline cases, and cases in which an order of immediate suspension has entered at the investigative stage. *See* Table 6.

Trial counsel also investigate 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
2009	401	140	25(33)*	115(122)*	8	7(12)*	0	229
2008	360	169	24(43)*	125(130)*	16(26)*	7	0	143
2007	372	141	18(40)*	138(143)*	13(14)*	46	0	157
2006	402	165	24(58)*	115(125)*	14(19)*	0	0	169
2005	353	163	12(19)*	111(116)*	14	13	0	134

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

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. Between January and December 2009, 186 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
2009	159	27	186
2008	128	55	183
2007	116	66	182
2006	173	62	235
2005	133	81	214

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
2009	4	4	0
2008	2	2	0
2007	2	2	0
2006	4	4	0
2005	3	3	0

### III. ATTORNEY REGULATION COMMITTEE (ARC)

The Attorney Regulation Committee<sup>3</sup> is comprised of nine members, six attorneys and three public members appointed by the Supreme Court with assistance from the Court's Advisory Committee.<sup>4</sup> 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.

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<sup>3</sup> The Attorney Regulation Committee is a permanent committee of the Supreme Court, and its members are selected by and serve at the pleasure of the Court, *see* C.R.C.P. 251.2. 2009 Attorney Regulation Committee members were Steven K. Jacobson, Esq., Chair (Boulder); John E. Mosby, Esq., Vice-Chair (Denver); Mac V. Danford (Fort Collins); Maria T. Fox, Esq. (Denver); Steven C. Lass, Esq. (Denver); Linda Midcap (Wiggins); Kurt L. Miller, D.M. (Aurora); Lori M. Moore, Esq. (Colorado Springs); and Walter J. Torres, Ph.D. (Denver)

<sup>4</sup> The Supreme Court Advisory Committee is a permanent committee of the Court. Members of the Advisory Committee are selected by and serve at the pleasure of the Court, *see* C.R.C.P. 251.34. 2009 members were Justice Nathan B. Coats (Denver); Justice Michael L. Bender (Denver); David W. Stark, Esq., Chair (Denver); Cynthia F. Covell, Esq., (Denver); Richard F. Hennessey, Esq., (Denver); Steven K. Jacobson, Esq., (Boulder); Barbara A. Miller (Denver); John E. Mosby, Esq., (Denver); Arthur S. Nieto, Esq., (Denver); Alexander R. Rothrock, Esq., (Englewood); and Daniel A. Vigil, Esq., (Denver). The general duties of the committee include coordination of administrative matters within all programs of the attorney regulation system.

In 2009, the Attorney Regulation Committee reviewed 122 matters.<sup>5</sup> See Table 9.

Table 9

Year	Cases reviewed By ARC
2009	122
2008	126
2007	143
2006	125
2005	116

Granting Regulation Counsel jurisdiction to dismiss cases following investigation resulted in a significant reduction in the number of cases presented to the Attorney Regulation Committee. See C.R.C.P. 251.11. Review and dismissal by Regulation Counsel in lieu of review by the Attorney Regulation Committee further reduces the time that matters not warranting formal proceedings spend in the attorney regulation system. See Tables 10 and 11.

Table 10

Number of Requests for Investigation Dismissed After Investigation By the Attorney Regulation Committee	
2009	0
2008	1
2007	4
2006	0
2005	0

Table 11

Number of Weeks from Case Assigned to Dismissal by Regulation Counsel/ARC	
2009	22.2
2008	19.4
2007	21.7
2006	17.1
2005	15.3

<sup>5</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

The Attorney Regulation Committee's disposition of the 122 matters presented to the Committee is detailed in Table 12.

Table 12

Year	Formal Proceedings	Diversion Agreements	Private Admonition	Conditional Admissions	Dismissals	Total Cases Acted Upon By ARC
2009	87	20(25)	2(10)	0	0	109(122)*
2008	95	24(28)*	6(7)*	0	1	126(131)*
2007	105	28(32)*	1(2)*	0	4	138(143)*
2006	89	22(27)*	4(9)*	0	0	115(125)*
2005	84	22(27)*	5	0	0	111(116)*

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

Trial counsel averaged 22.7 weeks from the time the case was assigned to completion of the report of investigation. *See* Table 13. The office responsibilities in the area of Board of Law Examiner matters, Unauthorized Practice of Law cases, and Attorneys' Fund for Client Protection investigations result in increased caseloads for trial counsel.

Table 13

Number of Weeks from Case Assigned to Completion of Report/Diversion/Stipulation	
2009	22.7
2008	19.6
2007	19.1
2006	18.0
2005	15.9

#### IV. FORMAL COMPLAINTS

In 87 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 2009 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
2009	44(68)*	13(15)*
2008	55(99)*	13(23)*
2007	52(115)*	2
2006	50(72)*	7(23)*
2005	48(92)*	8(18)*

\*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 2008, in the attorney discipline area resulted in 18 trials (16 attorney discipline, 1 attorney reinstatement/readmission trial and 1 Board of Law Examiner trial). The trial division also participated in 113 additional matters before the Presiding Disciplinary Judge (at issue conferences, status conferences, and pretrial conferences). Disposition of the matters is detailed in Table 15. In many cases, voluntary settlement officers are utilized in an effort to resolve pending matters. The voluntary settlement officers are generally senior judges, retired judges, or lawyers with significant experience in the area of attorney ethics.

Table 15

Year	Attorney Discipline Trials	Reinstatement Hearings	Conditional Admissions	Diversion Agreements	Dismissals	Abeyance
2009	16(32)*	1	42(65)*	0	3	4
2008	15(23)*	2	42(63)*	5(7)*	2	5
2007	17(32)*	7	34(70)*	1	5	1
2006	17(46)*	4	28(77)*	2(4)*	3(4)*	2
2005	16(56)*	3	30(78)*	3(4)*	2(5)*	11

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

In an effort to better protect the public, modifications in the attorney regulation system were directed toward a quicker resolution of the more serious matters. At the same time, matters that were less serious were more quickly resolved by diversion agreements at central intake, following investigation, or at the trial stage. *See* Table 16.

Table 16

Diversion Agreements at Intake Stage				
<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
52(58)*	39(45)*	50(51)*	49(51)*	46(52)*

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

Diversion Agreements at Investigative Stage Approved by the Attorney Regulation Committee				
<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
22(27)*	22(27)*	28(32)*	24(28)*	20(25)*

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

Diversion Agreements at Trial Stage Approved by the Presiding Disciplinary Judge				
<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
3(4)*	2(4)*	1	5(7)*	0

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

Conditional Admissions at Investigative Stage Approved by the Presiding Disciplinary Judge				
<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
12(19)*	24(58)*	18(40)*	24(43)*	25(33)

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

Conditional Admissions at Trial Stage Approved by the Presiding Disciplinary Judge				
<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
30(78)*	28(78)*	34(70)*	42(63)*	42(65)*

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

In 1999, the Supreme Court created the Office of the Presiding Disciplinary Judge. *See* C.R.C.P. 251.16. All formal attorney discipline matters are filed with the Presiding Disciplinary Judge. Attorney discipline matters proceed much the way a civil case is handled in district court. For instance, the rules of civil procedure and evidentiary rules apply in attorney discipline matters. After a formal complaint is filed with the Presiding Disciplinary Judge, and prior to trial, the Presiding Disciplinary Judge rules on all motions filed, conducts “at-issue” conferences, and resolves all pretrial issues. Prior to the trial, two hearing board members are appointed from a diverse pool of members of the Bar and members of the public. *See* C.R.C.P. 251.17. The two hearing board members, along with the Presiding Disciplinary Judge, hear the evidence presented at trial. The Presiding Disciplinary Judge rules on all motions, objections, and other matters presented at trial or following trial.

After a formal complaint is filed with the Presiding Disciplinary Judge, the matter may be resolved by dismissal, diversion, conditional admission of misconduct,<sup>6</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>6</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

Average Weeks From Filing of Formal Complaint to Conditional Admission/Diversion Filed		
2009	Presiding Disciplinary Judge	19.6 weeks
2008	Presiding Disciplinary Judge	18.7 weeks
2007	Presiding Disciplinary Judge	28.5 weeks
2006	Presiding Disciplinary Judge	19.9 weeks
2005	Presiding Disciplinary Judge	24.7 weeks

Average Weeks From Filing of Formal Complaint to Trial		
2009	Presiding Disciplinary Judge	41.6 weeks
2008	Presiding Disciplinary Judge	40.8 weeks
2007	Presiding Disciplinary Judge	34.8 weeks
2006	Presiding Disciplinary Judge	28.0 weeks
2005	Presiding Disciplinary Judge	28.5 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		
Year	Conditional Admission or Diversion Filed	Trial Held
2009	20.3 weeks	61.1 weeks
2008	24.6 weeks	57.2 weeks
2007	26.1 weeks	40.8 weeks
2006	21.7 weeks	36.3 weeks
2005	27.3 weeks	36.7 weeks

## V. APPEALS

In 1999, the Office of Attorney Regulation Counsel filed or answered four appeals filed with the Appellate Discipline Commission. In September 2000, the Appellate Discipline Commission was eliminated, and appeals are now filed directly with the Colorado Supreme Court. In 2009, four attorney discipline appeals were filed with the Court.

Table 19

Year	Appeal Filed With:		Number of Appeals		
2009	Colorado Supreme Court		4		
2008	Colorado Supreme Court		2		
2007	Colorado Supreme Court		8		
2006	Colorado Supreme Court		4		
2005	Colorado Supreme Court		0		

  

Year	Appeals Filed	Appeals Dismissed	Appeals Affirmed	Appeals Reversed	Appeals Pending
2009	4	0	4	0	3
2008	2	0	4	0	1
2007	8	0	2	0	6
2006	4	1	1	1	1
2005	0	0	1	0	0

## VI. ATTORNEY DISCIPLINE

Final dispositions of proceedings are reflected in Table 20.

Table 20

Year	Abeyance	Dismissals	Diversions	Public Censures	Suspensions	Probations	Disbarments
2009	4	3	0	9	52(54)*	28(29)*	8(11)*
2008	5	2	5(7)*	5	51	35	10
2007	1	5	1	9	42	18	9
2006	2	3(4)*	2(4)*	5	44	21	20
2005	11	2(5)*	3(4)*	1	42	19	19

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

## VII. IMMEDIATE SUSPENSIONS

In 2009, the Office of Attorney Regulation Counsel filed 17 petitions for immediate suspension.<sup>7</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. In 2009, there were two hearings related to petitions for immediate suspension. 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
2009	17	7	0	6	1	0	0	4	1
2008	15	10	0	4	1	0	0	4	1
2007	22	18	0	6	2	0	0	4	1
2006	17	7	0	2	3	0	1	1	3
2005	17*	6	1	4	3	0	0	5	0

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

\*One matter resulted in the attorney being transferred to disability inactive status and one matter resulted in a suspension of a year and a day.

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<sup>7</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.

## VIII. DISABILITY MATTERS

The Office of Attorney Regulation Counsel filed 13 petitions to transfer attorneys to disability inactive status in 2009. When an attorney is unable to fulfill his/her professional responsibilities because of physical, mental, or emotional illness, disability proceedings are initiated. Transfer to disability inactive status is not a form of discipline. Disability petitions are filed with the Presiding Disciplinary Judge. *See* C.R.C.P. 251.23. In 2009, there were fourteen hearings related to petitions for disability inactive status. 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
2009	13	14	2	2	1	2
2008	19*	12	1	2		5
2007	11	5	5	1		0
2006	12	7	3	2**		3
2005	11*	8	5			2

(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.

\*\*In one matter the respondent was placed on disability and later reinstated from disability during the course of one year.

## IX. CONTEMPT PROCEEDINGS

In 2009, the Office of Attorney Regulation Counsel did not file any motions recommending contempt with the Supreme Court; therefore, there were no findings of contempt or any hearings regarding contempt. 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
2009	0	0	0	0	0
2008	1	1	0	0	0
2007	1	1	0	0	0
2006	3	2	0	0	1
2005	1	1	1	0	0

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

## X. 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 2009, the Office of Attorney Regulation Counsel received 51 complaints against magistrates. *See* Table 24.

Table 24

Year	Complaints	Dismissed	Diversion	Investigation Initiated
2009	51	51	0	0
2008	49	49	0	0
2007	68	68	0	0
2006	60	60	0	0
2005	69	66	1	2

## XI. REINSTATEMENT AND READMISSION MATTERS

Six reinstatement or readmission matters were filed with the Office of Attorney Regulation Counsel in 2009. When an attorney has been suspended for at least one year and one day, has been disbarred, or the court's order requires reinstatement, they must seek reinstatement or apply for readmission to the Bar.<sup>8</sup> Reinstatement and readmission matters proceed much like an attorney discipline case. Extensive discovery is undertaken to ensure that the attorney seeking reinstatement or readmission has complied with all court orders in the underlying discipline case. Typically, the matters proceed to hearing regarding the attorney's fitness to return to active practice. An attorney denied readmission or reinstatement may not reapply for two years. Reinstatement from disability inactive status is governed by C.R.C.P. 251.30. Reinstatement from immediate suspension is governed by the rule applicable to the suspension. *See* C.R.C.P. 251.8, 251.8.5(d), 251.8.6(c).

Table 25

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Year	Filed	Readmitted	Reinstated	Dismissed	Withdrawn	Denied	Pending
2009	6	1	1	1	4	0	5
2008	10	1	7	0	0	0	2
2007	12	1	6	2	1	0	7
2006	12	0	4	0	2	1	6
2005	5	1	2	0	2	1	1

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

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<sup>8</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.

## **XII. TRUST ACCOUNT NOTIFICATION MATTERS**

On May 13, 1999, the Colorado Supreme Court amended Colo. RPC 1.15 effective July 1, 1999. The various amendments require modification of trust accounting practices by Colorado attorneys. Essentially, all Colorado attorneys in private practice must maintain a trust account in a financial institution doing business in Colorado. The financial institution must, however, be approved by Regulation Counsel. The only criteria for approval is the financial institution's agreement 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 2009, the Office of Attorney Regulation Counsel received 278 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 immediately assigned to trial counsel. If there is no evidence of intentional misconduct or inappropriate accounting practices, the matter is dismissed by Regulation Counsel.

In 2005, the trust account table was expanded to reflect more categories in order to provide more information regarding the statistics of trust account notifications. *See* Table 26 for an explanation of the trust account notification matters resolved in 2009.

Table 26

2005 - 2009

Year	Total Reports	Bank Errors	Bookkeeping/ Deposit Errors	Checks Cashed Prior To Deposit Clearing/Improper Endorsement***	Conversion/ Commingling Assigned to Trial Attorney	Diversions	Other <sup>9</sup>	Pending
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
2007	272	66(2)**	100(13)**	38(16)**	23	8(12)*	35(2)**	30
2006	348	81(7)**	124(24)**	42(21)**	32	7	57(7)**	32
2005	314	65	125(21)**	30(19)**	46	4(8)*	41(2)**	27

\*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 2009, four matters involved checks that were not endorsed or endorsed improperly.

1999-2004

Year	Total Reports	Bank Errors Bookkeeping/ Deposit Errors	Checks Cashed Prior To Deposit Clearing	Conversion/ Commingling Assigned to Trial Attorney	Diversions	Pending
2004	299	231	22	29	4(7)*	28
2003	288	214	40	19	10(16)*	18
2002	309	251		32	8(13)*	19
2001	342	313		27	2	6
2000	284	278		3	1(3)*	2
1999	210	164		10	3	2

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

<sup>9</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.



### **XIII. UNAUTHORIZED PRACTICE OF LAW (UPL)**

The Office of Attorney Regulation Counsel investigates and prosecutes allegations of the unauthorized practice of law. *See* C.R.C.P. 229.<sup>10</sup> In 2009, the Office of Attorney Regulation Counsel received 144 complaints regarding the unauthorized practice of law. *See* Table 27.

Table 27

Complaints Received	
2009	144
2008	97
2007	103
2006	68
2005	91

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 2009, the Unauthorized Practice of Law Committee took action on 37 unauthorized practice of law matters, and 33 complaints were dismissed by Regulation Counsel, for a total of 70 completed matters. *See* Table 28.

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<sup>10</sup> The Colorado Supreme Court Unauthorized Practice of Law Committee is a committee comprised of 9 members, including both attorneys and non-attorneys. The members are appointed and serve at the pleasure of the Supreme Court. The Unauthorized Practice of Law Committee members in 2009 were: David A. Mestas, Esq., Chair (Denver); Elizabeth A. Bryant, Esq. (Denver); Edward C. Gassman Esq., (Loveland); Elizabeth Espinosa-Krupa, Esq., (Denver); Michael B. Lupton (Highlands Ranch); William M. Ojile, Jr., (Denver); Cheryl Martinez-Gloria, Esq., (Denver); Brenda Mientka (Colorado Springs); and Martha Rubi (Englewood).

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)
2009	144	33(6) **	0	0	12	17(25)*
2008	97	25(17)**	0	0	4	17(26)*
2007	103	16(13)**	0	0	19(22)*	9(14)*
2006	68	22(18)**	0	0	12(16)*	8(10)*
2005	91	27	0	0	6	12

\*The first number represents actual files; the second 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.

(Matters filed in the previous calendar 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 two or three general inquiries on unauthorized practice of law matters each day. 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. 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 rule, C.R.C.P. 221 and C.R.C.P. 221.1 (Colorado’s *pro hac vice* rule), and C.R.C.P. 222 (Colorado’s single-client certification rule). 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. Regulation Counsel discusses the potential issues involving

types and levels of harm. 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). 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, 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 on 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, 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.

Regulation Counsel assigns trial counsel and non-attorney investigators to unauthorized practice of law matters. (The Office of Attorney Regulation Counsel does not receive any budget allocation for the assigned attorneys, investigator, or support staff.)

#### **XIV. COLORADO STATE BOARD OF LAW EXAMINERS**

The Office of Attorney Regulation Counsel represents the Board of Law Examiners Inquiry Panel in formal hearings. *See* C.R.C.P. 201.10. If an inquiry panel of the Board of Law Examiners finds probable cause to believe that an applicant for admission to the Colorado Bar is mentally unstable or ethically or morally unfit for admission, the applicant may request a formal hearing. A formal hearing proceeds much like an attorney discipline matter. Trial counsel conducts an investigation and engages in discovery with the applicant. In 2009, one formal trial was held, one stipulation was filed before a hearing panel of the Board of Law Examiners, and no matters were appealed to the Colorado Supreme Court. *See* Table 29.

Table 29

Matters referred to Regulation Counsel						
Year	Filed	Admitted	Not Admitted	Withdrawn	Abeyance	Pending
2009	3	1	0	0	0	3
2008	4	1	1	0	0	3
2007	2	2	0	0	0	2
2006	2	2*	2	0	0	2
2005	3	0	0	0	0	3

\*The hearing panel of the Board of Law Examiners denied admission to one applicant. The applicant appealed to the Colorado Supreme Court and was admitted.

The Office of Attorney Regulation Counsel does not receive any budget allocation to represent the Board of Law Examiners.

## **XV. INVENTORY COUNSEL**

In 2009, the Office of Attorney Regulation Counsel filed seven petitions for appointment of inventory counsel. When an attorney has been transferred to disability inactive status, or when an attorney has disappeared, or when an attorney has died and there is no partner, executor, or other party responsible for conducting the attorney's affairs, protective appointment of counsel is essential. With the assistance of attorneys and investigators from the Office of Attorney Regulation Counsel, inventory counsel reviews all of the files and takes any steps necessary to protect the interests of the attorney in question and the attorney's clients. It is not unusual that the review includes hundreds of client files. The file inventory and 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. The Office of Attorney Regulation Counsel relies on the assistance of the Colorado Bar Association, as well as local bar associations, in completing this important process. *See* C.R.C.P. 251.32(h). (There is no budget allocation provided to handle inventory counsel matters.)

## **XVI. PUBLIC SPEAKING**

The Office of Attorney Regulation Counsel presented 119 public speeches in 2009. The talks were to bar associations, law schools, civic organizations, and the general public throughout the State of Colorado. Literally thousands of attorneys and members of the public attended the various public-speaking engagements. Additionally, Regulation Counsel attorneys regularly participate as speakers in national forums. Attorneys within the office also participate in *pro bono* activities.

The attorneys and investigators within the Office of Attorney Regulation Counsel participate in many national and local professional activities. Many of the attorneys are also active in community organizations, youth sports organizations, college alumni organizations, and other community affairs.

## XVII. ETHICS SCHOOL

The Office of Attorney Regulation Counsel created, designed, and staffs an Ethics School. In 2009, 143 attorneys attended five ethics classes presented. *See* Table 30.

Table 30

Year	Classes Presented	Attendance
2009	5	143
2008	5	165
2007	5	135
2006	5	133
2005	5	157

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.

## **XVIII. TRUST ACCOUNTING 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. In 2009, 47 attorneys or legal support staff attended four classes presented. *See* Table 31.

Table 31

Year	Classes Presented	Attendance
2009	4	47
2008	5	56
2007	4	48
2006	4	56
2005	4	44

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.

## **XIX. PROFESSIONALISM SCHOOL – C.R.C.P. 201.14**

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 800 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 2009, the office participated in twelve separate presentations of the course.