Colorado Supreme Court
Office of Attorney Regulation Counsel

Information from the Colorado Supreme Court Office of Attorney Regulation Counsel 2011 Annual Report:

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
2011	4,081	-.001%
2010	4,089	-.02%
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 thirteenth full year of operation (2011), central intake handled 4,081 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
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
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 request for investigation was pending at the intake level; and
- The handling of requests for investigation at intake:
  - Number of requests for investigation dismissed at intake,
  - Number of requests for investigation resolved at intake by diversion,
  - Number of requests for investigation processed for investigation.

Six experienced litigation attorneys, along with one non-attorney investigator and four support-staff members, work in central intake. 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 requests for investigation as quickly and efficiently as possible. At its inception, central intake set the inspirational goal of ten days to review complaints. In 2011, the average time from the original call to central intake and an intake resolution was 1.6 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)	
2011	1.6
2010	1.7
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 Colorado Rule of Civil Procedure 251.13, the intake attorney may offer diversion;[1]
- 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 pursuant to Colorado Rule of Civil Procedure.

Critical to the evaluation of the effectiveness 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 2011, central intake handled 4,081 complaints; 377 of those cases were processed for further investigation. *See* Table 4.

[1]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.

Table 4

Year	Investigations Initiated	% Change From Prior Year
2011	377	-.07%
2010	407	+.01%
2009	401	+11%
2008	360	-3%
2007	372	-7%
2006	402	+14%
2005	353	-11%

Diversion

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 Account School,[2] 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 2011, at the central intake stage, 42 matters were resolved by diversion agreements. *See* Table 5. (A representative summary of diversion agreements is published quarterly in *The Colorado Lawyer*, the official publication of the Colorado Bar Association.)

[2]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 as a condition of a disciplinary case. Trust Account School is a half-day program presented by the Office of Attorney Regulation Counsel. The school is available to all 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
2011	42
2010**	51(52)*
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 6.

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.

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 2011,

224 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 these dismissals require attendance at Ethics School or Trust Account School. *See* Table 6.

Table 6

Dismissals With Educational Language			
Year	Intake Stage	Investigative	Total
2011	199	25	224
2010	223	29	252
2009	159	27	186
2008	128	55	183
2007	116	66	182
2006	173	62	235
2005	133	81	214

COLORADO RULES – CENTRAL INTAKE

Attorney Regulation Counsel has broad discretion with regard to allegations of ethical misconduct and investigation of those allegations.

Colorado Rule of Civil Procedure 251.9

REQUEST FOR INVESTIGATION

(a) Commencement. Proceedings as provided in these Rules shall be commenced:

(1) Upon a request for investigation made by any person and directed to the Regulation Counsel; or

(2) Upon a report made by a judge of any court of record of this state and directed to the Regulation Counsel, as provided in C.R.C.P. 251.4;

(3) By the committee upon its own motion; or

(4) By the Regulation Counsel with the concurrence of the Chair or Vice-Chair of the committee.

(b) Determination to Proceed. Immediately upon receipt of a request for investigation, a report made by a judge, or a motion made by the committee, as

provided in subsection (a) of this Rule, the matter shall be referred to the Regulation Counsel to determine:

(1) If the attorney in question is subject to the disciplinary jurisdiction of the Supreme Court;

(2) If there is an allegation made against the attorney in question which, if proved, would constitute grounds for discipline; and

(3) If the matter should be investigated as provided by C.R.C.P. 251.10 or addressed by means of an alternative to discipline as provided by C.R.C.P. 251.13.

In making a determination whether to proceed, the Regulation Counsel may make inquiry regarding the underlying facts and consult with the Chair of the committee. The decision of the Regulation Counsel shall be final, and the complaining witness shall have no right to appeal. (Emphasis added.)

Amended and adopted June 25, 1998, effective July 1, 1998.

When Regulation Counsel determines that clear and convincing evidence of a Rule violation exists, Regulation Counsel retains broad discretion to address issues of minor misconduct.

Colorado Rule of Civil Procedure 251.13
ALTERNATIVES TO DISCIPLINE

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

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

be diverted under this Rule when:

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

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

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

(4) The misconduct involves family violence;

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

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

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

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

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

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

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

(d) Costs of the Diversion. The attorney shall pay all the costs incurred in connection with participation in any diversion program. The attorney shall also pay the administrative cost of the proceeding as set by the Supreme Court.

(e) Effect of Diversion. When the recommendation for diversion becomes final, the attorney shall enter into the diversion program(s) and complete the requirements thereof. Upon the attorney's entry into the diversion programs(s), the

underlying matter shall be placed in abeyance, indicating diversion. Diversion shall not constitute a form of discipline.

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

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

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

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

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

pending before the committee or Supreme Court for consideration, the Presiding Disciplinary Judge shall prepare findings of fact and recommendations and forward them to the body which originally approved the diversion agreement for its determination of the matter.

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

(i) Confidentiality. All the files and records resulting from the diversion of a matter shall not be made public except by order of the Supreme Court. Information of misconduct admitted by the attorney to a treatment provider or a monitor while in a diversion program is confidential if the misconduct occurred before the attorney's entry into a diversion program.

Amended and adopted June 25, 1998, effective July 1, 1998; entire rule amended and effective September 1, 2000; (c) and (i) corrected January 8, 2001, effective September 12, 2000; (d) amended and adopted October 6, 2005, effective January 1, 2006.

CONFIDENTIALITY OF ATTORNEY REGULATION MATTERS

Colorado Rule of Civil Procedure 251.31

Rule 251.31. Access to Information Concerning Proceedings Under These Rules.

(a) Availability of Information. Except as otherwise provided by these rules, all records, except (i) the work product, deliberations and internal communications of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, the Hearing Boards, and the Supreme Court, and (ii) the lists of clients and copies of client notices referred to in C.R.C.P. 251.28(d)(2), shall be available to the public after the committee determines that reasonable cause to believe grounds for discipline exists and the Regulation Counsel files and serves a complaint as provided in C.R.C.P. 251.14, unless the complainant or the respondent obtains a protective order.

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

(b) Confidentiality. Before the filing and service of a complaint as provided in C.R.C.P. 251.14, the proceedings are confidential within the Office of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, and the Supreme Court, except that the pendency, subject matter, and status of an investigation under C.R.C.P 251.10 may be disclosed by the Regulation Counsel if:

(1) The respondent has waived confidentiality;

(2) The proceeding is based upon allegations that include either the conviction of a crime or discipline imposed by a foreign jurisdiction;

(3) The proceeding is based on allegations that have become generally known to the public;

(4) There is a need to notify another person or organization, including the fund for client protection, to protect the public, the administration of justice, or the legal profession; or

(5) A petition for immediate suspension has been filed pursuant to C.R.C.P. 251.8.

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

(1) The deliberations of the Presiding Disciplinary Judge, the Hearing Board, or the Supreme Court; and,

(2) Information with respect to which a protective order has been issued.

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

(e) Protective Orders. To protect the interests of a complainant, witness, third party, or respondent, the Presiding Disciplinary Judge or a Hearing Board, may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or

confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(f) Disclosure to Law Firms. When the Regulation Counsel obtains an order transferring the attorney to disability inactive status or immediately suspending the attorney, or is authorized to file a complaint as provided by C.R.C.P. 251.12, the attorney shall make written disclosure to the attorney's current firm and, if different, to the attorney's law firm at the time of the act or omission giving rise to the matter, of the fact that the order has been obtained or that a disciplinary proceeding as provided for in these rules has been commenced. The disclosures shall be made within 14 days of the date of the order or of the date the Regulation Counsel notified the attorney that a disciplinary proceeding has been commenced.

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

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

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

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

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

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

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

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

(3) An attorney discipline enforcement agency;

(4) A criminal justice agency; or,

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

(m) Notice to the Attorney. Except as provided in subsection (l)(5) of this Rule, if the Regulation Counsel is permitted to provide nonpublic information requested, and if the attorney has not signed a waiver permitting the requesting agency to obtain nonpublic information, the attorney shall be notified in writing at his or her last known address of that information which has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the attorney that the information shall be released at the end of 21 days following mailing of the notice unless the attorney objects to the disclosure. If the attorney timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains an order from the Supreme Court requiring its release.

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

(1) The request is made in furtherance of an ongoing investigation into misconduct by the attorney;

(2) The information is essential to that investigation; and

(3) Disclosure of the existence of the investigation to the attorney would seriously prejudice that investigation.

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

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

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

HISTORY: Source: Amended and adopted June 25, 1998, effective January 1, 1999; entire rule amended and effective September 1, 2000; (a) amended and adopted October 6, 2005, effective January 1, 2006; (b) amended and effective and committee comment added and effective February 5, 2009; (f) and (m) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b).

Editor's note: This rule was previously numbered as 241.24.

COMITTEE COMMENT

The confidentiality rule set forth in C.R.C.P. 251.31(b) seeks to strike a balance between the protection of attorneys against publicity predicated upon unfounded accusations and the protection of clients and prospective clients and the effective administration of justice from harm caused by attorneys who are unwilling or unable to fulfill their professional obligations. C.R.C.P. 251.31(b) also recognizes that restrictions on confidentiality no longer serve their purpose when allegations that would ordinarily be confidential have become generally known through disclosure in the public record, publicity or otherwise.

The Regulation Counsel frequently receives inquiries from judges, clients or prospective clients and the media asking if an attorney is the subject of a pending disciplinary investigation. Ordinarily, this rule prohibits the Regulation Counsel from providing information about a pending investigation or even confirming that an investigation is pending. C.R.C.P. 251.31(b) sets forth exceptions when the Regulation Counsel may reveal the pendency, subject matter, and status of an investigation under C.R.C.P. 251.10.

Certain exceptions are clear. For example, when the attorney has waived confidentiality or when the proceeding against the attorney is based on a criminal conviction, discipline imposed on the attorney in another jurisdiction, or a petition for immediate suspension filed by the Regulation Counsel against the attorney under C.R.C.P. 251.8.

Other exceptions require the Regulation Counsel to exercise discretion. C.R.C.P. 251.31(b)(3) requires the Regulation Counsel to determine whether otherwise confidential allegations against an attorney have become generally known. Factors that the Regulation Counsel should consider in these circumstances include but are not limited to the nature and extent of media coverage, the nature and extent of inquiries from the media and the public, the nature and status of any related judicial proceedings, the number of people believed to have knowledge of the allegations, and the seriousness of the allegations.

Another important exception requiring the Regulation Counsel to exercise discretion is C.R.C.P. 251.31(b)(4), which allows disclosure when there is a need to notify another person or organization in order to protect the public, the administration of justice, or the legal profession. In determining whether a need to notify exists, the Regulation Counsel should consider factors including but not limited to the nature and seriousness of the conduct under investigation, the attorney's prior disciplinary history and whether the attorney has previously been disciplined for conduct similar to the alleged conduct under investigation, and the potential harm to a client or prospective client, the public or the judicial system. In those instances in which the Regulation Counsel determines that disclosure is permitted based on C.R.C.P. 251.31(b)(4) alone, the Regulation Counsel is authorized to disclose the pendency, subject matter, and status of an investigation in response to inquiry, but also to disclose this information affirmatively to those persons having a need to know the information in order to avoid potential harm.