



Insights from Attorney Regulation: *Trends, Tips and Updates*

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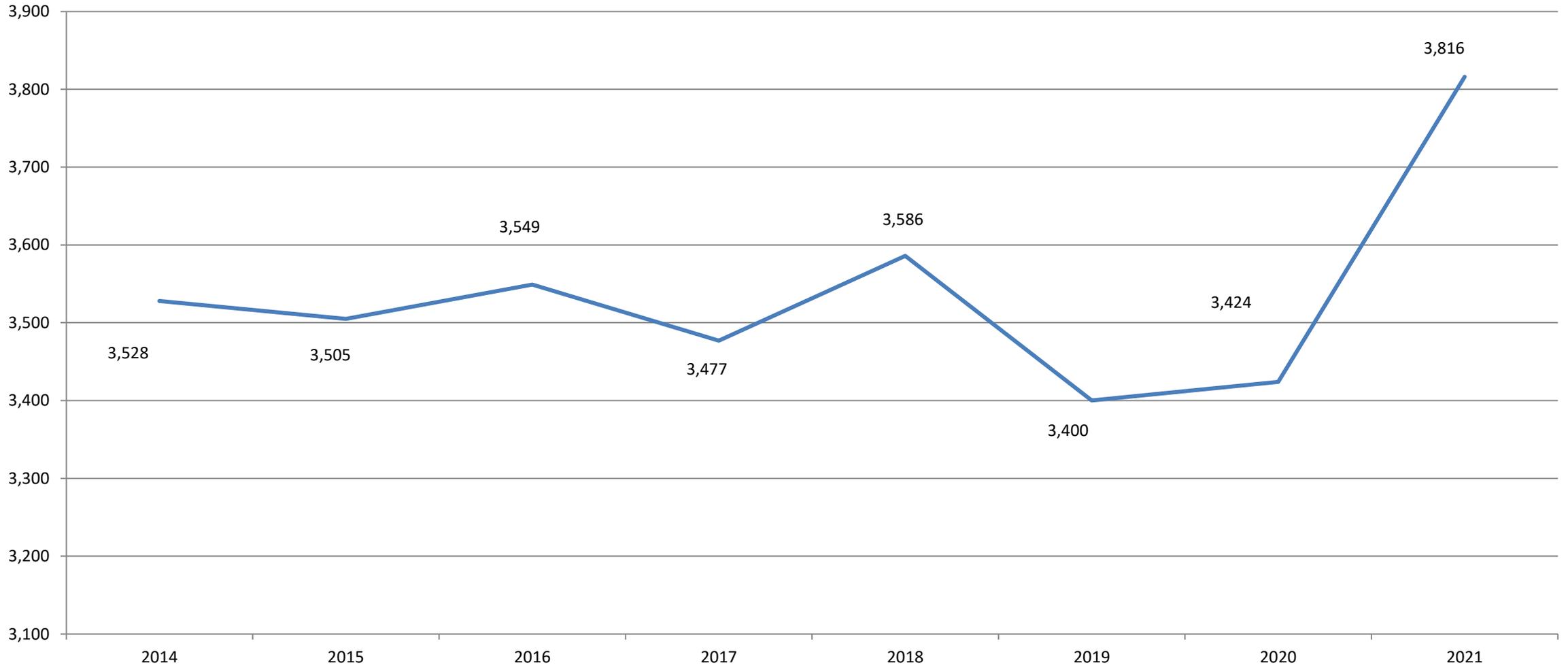
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A magnifying glass with a black frame and handle is positioned over a bright yellow background. The word "TRENDS" is written in bold, black, uppercase letters within the lens of the magnifying glass. The background of the entire image is a solid blue color.

TRENDS

Complaints Filed

From 2014 to 2021



Complaints Filed in 2021

3,816 complaints filed (“Requests for Investigation”) in 2021

- ✓ 3,318 resolved by Intake Division
 - 3,092 dismissed
 - 38 dismissed with Ethics or Trust Account School
 - 159 dismissed with Educational Language
 - 29 Placed on Intake Diversion Agreements
- ✓ 265 processed to the Trial Division

Final Dispositions of Proceedings in 2021

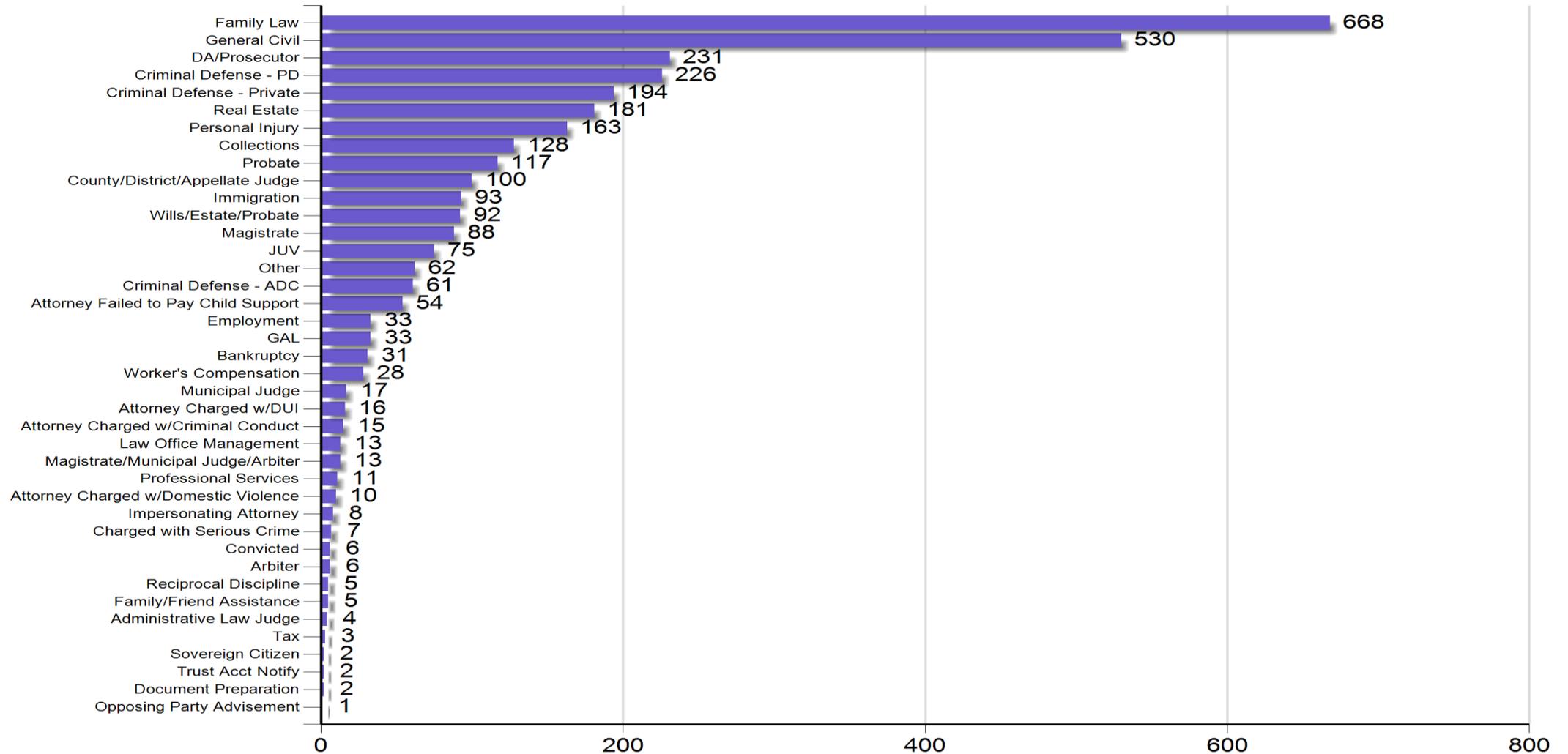
265 cases assigned to Trial Division

- 94 dismissals recommended, 30 with educational language

Approved by the Legal Regulation Committee:

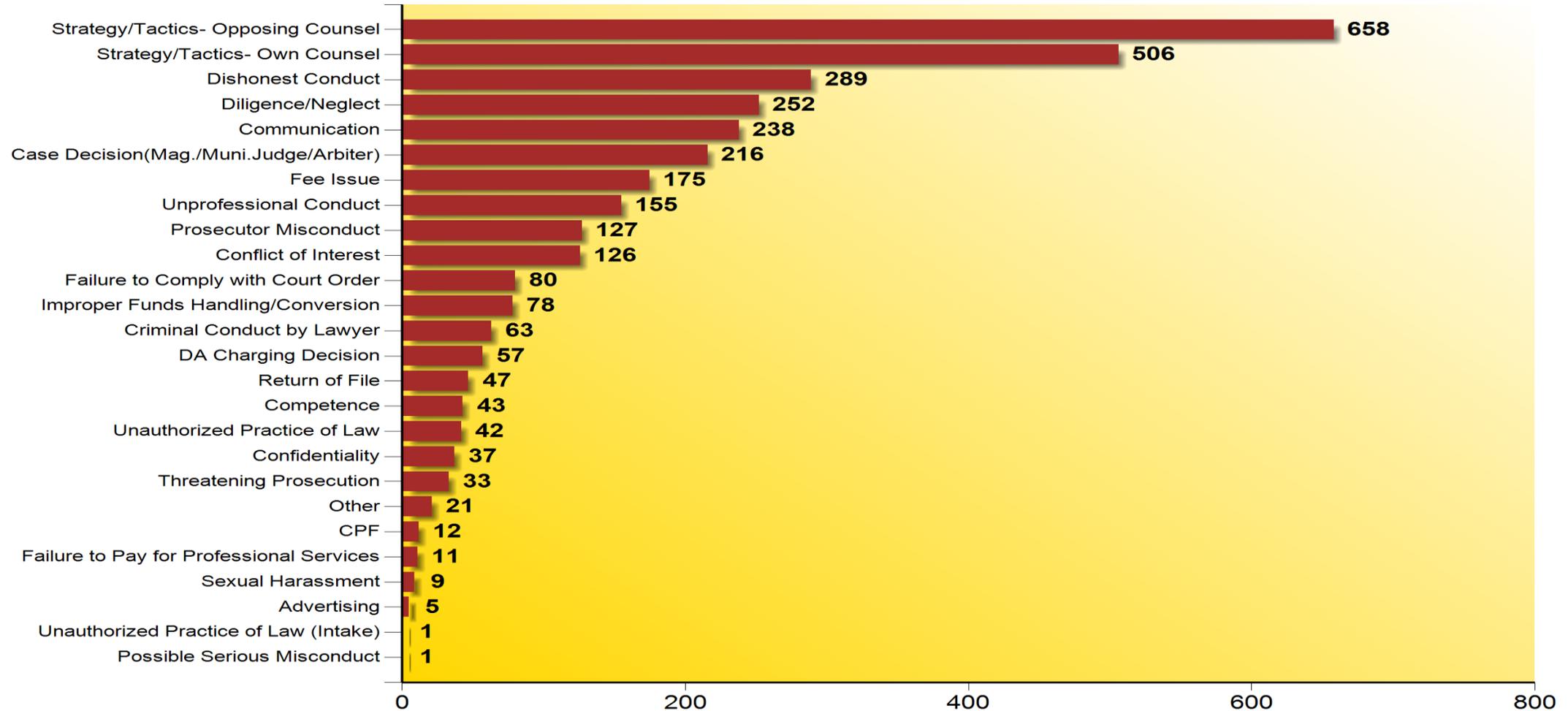
- 23 diversions, concerning 30 matters
- 12 Private Admonitions
- 33 formal complaints, concerning 56 matters

Central Intake Complaints Complaint by Practice Area



Central Intake Complaints

Nature of Complaint



TRENDING TOPIC: COMMUNICATION

Issue	Rule	Best Practice
<p>Client is confused about what was decided and complains lawyer didn't have authority to take certain actions/failed to take certain actions.</p>	<ul style="list-style-type: none">• Colo. RPC 1.4 addresses communication (inform, consult, respond and explain)• Colo. RPC 1.2(a)(lawyer shall abide by client's decision concerning the objectives of representation and as required by Rule 1.4 shall consult with the client about the means by which to pursue those objectives)	<ul style="list-style-type: none">• Confirm decisions in writing to the client.• Make note(s) to the file to memorialize what was discussed and whether client agreed or not.• For any misunderstandings, document and follow up with client in writing to clarify.• Pro tip: if you text, have an app that captures that communication in a format that shows dates/times/caller.

TRENDING TOPIC: LIMITED SCOPE REPRESENTATION

Issue	Rule	Best Practice
Lawyer has agreed to do part of the representation (unbundled/limited scope).	Colo. RPC 1.2(c) Limiting scope of representation is permissible. The limitation must be reasonable under the circumstances and the client must give informed consent.	Confirm in writing the scope of representation (see also 1.5(b)) and when the representation is complete.
Opposing counsel is confused about lawyer's role.	Colo. RPC 4.2, cmt. 9A: A pro se party to whom limited representation has been provided in accordance with C.R.C.P. 11(b) or C.R.C.P. 311(b), and Rule 1.2, is considered to be unrepresented for purposes of this Rule unless the lawyer has knowledge to the contrary.	Confer with opposing counsel if you're unsure about whether they still represent the opposing party. Start with the lawyer first.

TRENDING TOPIC: UNREPRESENTED PARTIES

Issue	Rule	Best Practice
<p>Opposing party is unrepresented. That person complains about lawyer's strategy and tactics and/or professionalism.</p>	<p>Colo. RPC 4.3 In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.</p>	<ul style="list-style-type: none">• Clarify your role and confirm in writing, as needed, to avoid confusion and to create a record of communication.• Carefully consider phrasing: "Opposing party is ____." v. "Mother maintains father has not complied with the parenting agreement..."

TRENDING TOPIC: FEES

Issue	Rule	Best Practice
Confusion regarding the fees, billing, and costs.	<p>Colo. RPC 1.5(a)(reasonableness) and (b)(before or within a reasonable time after commencing the representation, the lawyer shall communicate in writing the basis or rate of the fee and expenses for which the client will be responsible, except when the lawyer will continue to charge a regularly represented client on the same basis or rate, and scope)</p> <ul style="list-style-type: none">any change to basis or rate of fees and expenses needs to be conveyed in writing <p>(note that as of 1/1/22, scope is now required to be conveyed in writing)</p>	<ul style="list-style-type: none">Clearly identify fee arrangement in a signed, dated fee agreement. Identify when client will be invoiced (and honor that). Consider including a provision for fee arbitration (and honor that).See OARC's website for flat fee and contingent fee form agreements in Word format: coloradosupremecourt.com, CO lawyers, practice management, practice resources, fee agreementsSee CBA Ethics Op. 143 Foundations of a Fee Agreement

Tips for
understanding
the process and
responding



OUR ANALYSIS

- ✓ Rules implicated
- ✓ By clear and convincing evidence
- ✓ And also, lawyer's mental state and process



In the event of a complaint

- ✓ Timely respond; if more time is needed, ask
- ✓ Provide relevant information and documents (be sure to address specific questions)
- ✓ Don't make assumptions
- ✓ Consider whether you need outside counsel
 - ✓ Resource: CBA Ethics Committee Assistance Program: <https://cobar.org/For-Members/Committees/Ethics-Committee/OARC-Hearing-Assistance-for-Lawyers>





WHAT'S NEW?

NEW RULES: CLE

- ✓ Rules and Regulations governing continuing legal and judicial education were amended effective July 1, 2021.
- ✓ Total required number of CLEs for 3-year reporting period remains 45.
- ✓ Starting with compliance periods that **begin 1/1/21 and end 12/31/23**, Colorado attorneys will need to complete two (2) credit hours in equity, diversity and inclusivity (EDI) AND
- ✓ Five (5) credit hours in legal ethics or legal professionalism.
- ✓ For information about what qualifies, visit the FAQs on our website: coloradosupremecourt.com



NEW RULES: DISCIPLINE AND DISABILITY

- ✓ Rules governing the attorney discipline and disability system in Colorado were amended by the Court in May 2021 and effective July 1, 2021.
- ✓ Structure of the system remains the same, but a number of amendments were made.



NEW RULES: DISCIPLINE AND DISABILITY

- ✓ Self-reporting duties now include the requirement to report charges for serious crimes within 14 days of the charges. C.R.C.P. 242.11(c)
- ✓ Expanded discussion of disability. C.R.C.P. 243
- ✓ Expanded discussion for protective appointment of counsel. C.R.C.P. 244



LICENSED PARAPROFESSIONALS

- ✓ Supreme Court has directed Advisory Committee to develop implementation plan for a 2021 proposal to license legal paraprofessionals.
- ✓ Focus is non-complex domestic relations cases with relatively low net marital assets – target client is the one who otherwise would be pro se.
- ✓ Participating paraprofessionals would be licensed, regulated through exam and ethical rules.
- ✓ Court appearances without in-court advocacy
- ✓ More information about proposal and FAQs at <https://www.coloradosupremecourt.us/AboutUs/PALS.asp>



For more information: coloradosupremecourt.com

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