



FILED  
Aug 22 2024

THE BOARD of DISCIPLINARY APPEALS  
Appointed by the Supreme Court of Texas

**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
APPOINTED BY  
THE SUPREME COURT OF TEXAS**

<b>IN THE MATTER OF</b>	§	
<b>DERRICK DUANE CORNEJO</b>	§	<b>CAUSE NO. 69445</b>
<b>STATE BAR CARD NO. 24048049</b>	§	

**FIRST AMENDED PETITION FOR RECIPROCAL DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Derrick Duane Cornejo, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this First Amended Petition for Reciprocal Discipline at Derrick Duane Cornejo, 3033 Blake Street, Unit 105, Denver, Colorado 80205.

3. On or about December 20, 2023, an Opinion Imposing Sanctions under C.R.C.P. 242.31 dated June 13, 2023 (Exhibit 1) was filed in the Supreme Court, State of Colorado, Original Proceeding in Discipline Before the Office of the Presiding Disciplinary Judge in a matter styled, *Complainant: The People of the State of Colorado, Respondent: Derrick Duane Cornejo, #29438*, Case Number 21PDJ085 (consolidated with 22PDJ026 and 22PDJ057), which states in pertinent part as follows:

## **II. M.M. MATTER (CASE NUMBER 21PDJ085)**

### **Legal Analysis**

#### **Claim I (Colo. RPC 1.3)**

On summary judgment, the PDJ found as a matter of law that Respondent violated Colo. RPC 1.3, which provides that a lawyer must act with reasonable diligence and promptness in representing a client. The PDJ reasoned that Respondent was provided notice, via the court's online filing system, that he was required to appear on September 18, 2020, and September 22, 2020, yet Respondent failed to appear for those settings and failed to read the served orders. The PDJ also noted that the undisputed material facts conclusively establish that the setting for September 18, 2020, was listed as a pretrial readiness conference, which the PDJ found to be a significant event in a criminal case. Further, the PDJ observed that M.M. entered into a plea agreement with the district attorney's office at the appearance on September 22, 2020—an outcome-determinative event in M.M.'s case. The PDJ thus concluded that Respondent's failure to appear with M.M. at these scheduled court appearances constituted a failure to act with reasonable diligence and promptness in representing his client in violation of Colo. RPC 1.3.

#### **Claim II (Colo. RPC 1.4(a)(3))**

The People's second claim in case number 21PDJ085 alleges that Respondent violated Colo. RPC 1.4(a)(3), which mandates that a lawyer keep a client reasonably informed about the status of the client's matter. The People argue that Respondent violated this rule by failing to tell M.M. that he would not appear in court on September 18, 2020.

The Hearing Board concludes that the People's evidence is scant on this claim—too scant, in fact, to find a violation. At the hearing, the People did not adduce additional evidence relevant to this matter. And the facts established on summary judgment include only that on September 18, 2020, M.M. reported he had not spoken to Respondent in the prior few days and that on September 22, 2020, M.M. said he had talked to Respondent recently and was surprised Respondent was not present. These facts alone do not clearly and convincingly show that Respondent failed to keep M.M. reasonably informed about the status of the matter. Thus, a finding of misconduct is not warranted here.

### **III. FLORENCE CORNEJO MATTER (CASE NUMBER 22PDJ026)**

#### **Legal Analysis**

On summary judgment, the PDJ concluded as a matter of law that the undisputed material facts conclusively established Respondent's violation of Colo. RPC 8.4(b). That rule provides it is professional misconduct for a lawyer to commit a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

The PDJ found that the undisputed facts demonstrated Respondent was convicted of neglect of an at-risk person in violation of C.R.S. § 18-6.5-103(6)(a), a class-one misdemeanor in Colorado.<sup>15</sup> Because Respondent indisputably entered a guilty plea acknowledging that he "unlawfully and knowingly committed caretaker neglect or knowingly acted in a manner likely to be injurious to the physical or mental welfare" of his mother, an at-risk person,<sup>16</sup> the PDJ held that Respondent's conduct resulted in a conviction that reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects.<sup>17</sup> The PDJ opined that this conclusion was bolstered by the fact that Respondent pleaded guilty to having committed this criminal conduct with a knowing mental state. The PDJ thus concluded that Respondent violated Colo. RPC 8.4(b).

### **IV. CASE NUMBER 22PDJ057<sup>18</sup>**

#### **Legal Analysis**

##### **Claim II (Colo. RPC 1.3)**

The People's Claim II in case number 22PDJ057 alleges that in three separate client matters Respondent violated Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness when representing a client. The People argue that Respondent violated this rule in the Gallegos-Medina matter by failing to appear in court on two occasions; in the Rodriguez matter by failing to appear in court on two occasions; and in the Paiz matter

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15 The PDJ noted that the People had filed a copy of the court-certified copy of the stipulation for deferred judgment, sentence order, and plea agreement, conclusively establishing the conviction and proving Respondent's commission of that crime under C.R.C.P. 242.42(d).

16 Order on Summ. J. at 7.

17 The PDJ cited comment 2 to Colo. RPC 8.4, which provides that offenses involving violence and breach of trust reflect adversely on a lawyer's fitness to practice law.

18 Factual findings are drawn from testimony offered at the hearing where not otherwise indicated.

1<sup>st</sup> Amended Petition for Reciprocal Discipline

*Derrick Duane Cornejo*

Page 3 of 14

by failing to appear at the contempt hearing on July 1, 2021, failing to timely arrange mediation in accordance with the court's order, failing to prepare for the contempt hearing on January 10, 2022, and repeatedly failing to appear for scheduled meetings with Ms. Paiz and failing to respond to her attempts to contact him.

We first address the Gallegos-Medina allegations. Respondent undoubtedly failed to appear for the virtual restitution hearing on the afternoon of January 7, 2022, and failed to appear for the status review on January 10, 2022. He argues, though, that these absences were not a result of a lack of diligence but instead a byproduct of the theft of his phone. That theft, he claims, had cascading effects, locking him out of his email account and thereby effectively preventing him from receiving the notice of the January 10 status review.

We credit Respondent's testimony that his cell phone was stolen in the early afternoon of January 7, 2022, particularly because it is well supported by other evidence, including records showing that his cell phone carrier charged him for a new handset in January 2022. Even more persuasively, Baker provided credible testimony that he placed the sole telephone call that Respondent received after noon on January 7, which was answered by an unknown man who hung up after Baker volunteered to collect the phone. We give Respondent the benefit of the doubt that the theft likely occasioned some confusion and logistical difficulty and thus that his absence from court on the afternoon of January 7, 2022, was excusable.<sup>95</sup>

As for whether Respondent was unable to access his email and thus never received notice of the January 10 status review, the evidence is more equivocal. Though Respondent insisted that he was locked out of his email account, we are somewhat skeptical that he was unable to access his email account simply because his phone was stolen. Baker's testimony also gives us pause about Respondent's defense. Baker's account that Respondent responded via email "within no time" to Baker's own email about the stolen phone goes some way to undercutting Respondent's testimony that he had no email access. Even so, no clear or convincing evidence demonstrates that Respondent emailed Baker before the status review on the morning of January 10, 2022. And, in any event, we are not clearly persuaded that Respondent reasonably could have learned about the status review, which was scheduled for the Monday morning following the theft of his phone, before the review

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<sup>95</sup> We are nonplussed, however as to why, when the People questioned Respondent about the Gallego-Medina case during his deposition in July 2022, he did not mention that his cell phone had been stolen in January 2022.

<sup>1st</sup> Amended Petition for Reciprocal Discipline

*Derrick Duane Cornejo*

Page 4 of 14

actually took place. Accordingly, we do not find that Respondent violated Colo. RPC 1.3 in the Gallegos-Medina matter.

Turning to the Rodriguez matter, Respondent agrees that he failed to appear for the virtual pretrial conference on September 18, 2020, and for the jury trial on September 23, 2020. But these failures to appear do not reflect a lack of diligence, he says; rather, they were excusable absences due to a death in his family. We disagree. Unlike the Gallegos-Medina matter-where an immediate and unforeseen circumstance plausibly stood in the way of Respondent's efforts to contact the court or to receive notice of the next appearance-no such exigent circumstance existed in the Rodriguez case. Respondent knew of the two court dates, and he presented no evidence that he was physically incapable of contacting the court. To the contrary, he made no effort to cancel the appearances, notify the court or the prosecutor, or attempt to log in virtually from Leadville or some nearby area with reliable internet access. We find that these failures exhibited a lack of diligence violative of Colo. RPC 1.3.

Finally, we consider each of the People's allegations in the Paiz matter.

- The People allege that Respondent exhibited a lack of diligence when he failed to appear at the contempt hearing on July 1, 2021. We agree. Respondent was aware of the contempt hearing on that date but decided against attending it based on his unfounded assumption that the court would consolidate the matters and vacate the hearing. We find without hesitation that his failure to move to consolidate the contempt cases or to take any other clarifying action, coupled with his decision not to appear, constituted a basic lack of diligence.
- The People claim that Respondent failed to act with diligence by failing to timely arrange for mediation in accordance with the court's order of October 15, 2021. Again, we agree. As discussed below in our analysis of the People's fourth claim, Respondent acknowledged that he did not timely arrange for mediation, yet he neither alerted the court that he would not meet its deadline nor endeavored to extend that deadline. We conclude that Respondent violated Colo. RPC 1.3 on this score.
- The People assert that Respondent failed to prepare for the contempt hearing on January 10, 2022. We find that the People did not prove by clear and convincing evidence that Respondent was unprepared for the January 2022 hearing. Indeed, the People failed to overcome Respondent's reasonable claim that he could

not move forward with the hearing on that date, knowing that if he did, Ms. Paiz might be held in contempt.

- The People maintain that Respondent repeatedly failed to appear for scheduled meetings with Ms. Paiz or to respond to her attempts to contact him. We conclude that the People did not muster clear and convincing evidence to show that Respondent's interactions with Ms. Paiz fell below a minimum threshold of diligence. We recognize Ms. Paiz testified that Respondent canceled their planned meetings at least seven times. Her testimony lacked specificity, however, and was not clearly supported by other evidence. We also acknowledge that their text exchanges, which are rather lopsided, suggest that Respondent did not always respond to Ms. Paiz's texts or telephone calls. But the People failed to demonstrate that, in the context of Ms. Paiz's relatively straightforward contempt matter, Respondent's laconic communications with Ms. Paiz failed to adequately inform her about the stages of her case. Without such a showing, we are not convinced that Respondent's intermittent responses evidence a lack of diligence so much as a business practice of communicating with his client only when absolutely necessary. We cannot find that the People met their burden here.

### Claim III (Colo. RPC 1.15A(a))

Next, the People allege that Respondent violated Colo. RPC 1.1 SA(a), which provides that a lawyer must hold property belonging to clients or third parties that is in a lawyer's possession in connection with a representation separate from the lawyer's own property in a trust account that complies with Colo. RPC 1.15B. Respondent ran afoul of this rule in the Paiz matter, the People say, by failing to maintain the funds Mr. Paiz sent him in his trust account until the funds could be appropriately disbursed.

We have no trouble concluding that Respondent violated this rule. In August 2021, Respondent deposited the \$5,000.00 cashier's check from Mr. Paiz into his trust account at BOK Financial. These funds did not belong to Respondent and thus should have been kept in trust. But Respondent depleted his trust account over the course of the next month such that the account's balance at the end of September 2021 was just \$370.66. In doing so, Respondent failed to keep the Paiz funds in a trust account, separate from his own property. This failure to keep funds in trust is underscored by the seventeen checks Respondent wrote to "cash" from his trust account between August 2021 and May 2022, during the time that he should have held the Paiz funds in trust. When he wrote these checks, he

did not track which client's funds he consumed. He thereby failed to keep property belonging to Ms. Paiz or third parties in a trust account and separate from his own property, which should have been removed from his trust account before it was used.<sup>96</sup>

In defense, Respondent argued at the disciplinary hearing that at the time he received the checks from Mr. Paiz, he recognized the funds were the subject of competing claims and interests and thus could not, under Colo. RPC 1.1 SA(c), be disbursed to Ms. Paiz or anyone else until there was a "resolution of the claims and, when necessary, a severance of the interests."<sup>97</sup> Those interests, contended Respondent, included Ms. Paiz's interests, her creditors' interests, and Respondent's own interests. But this defense is a red herring. Whether Respondent was obligated to resolve competing claims and sever interests before disbursing the funds from the cashier's checks is immaterial to the question of where Respondent should have kept those funds before the competing claims were resolved. Colo. RPC 1.1 SA(a) categorically answers that question: in trust. Because Respondent did not hold the Paiz funds in trust during the representation and instead used them for his own purposes-whether through transfers to his operating account or through checks payable to "cash"-he failed to hold the funds separate from his own property in violation of Colo. RPC 1.15A(a).

#### Claim IV (Colo. RPC 3.4(c))

Claim IV of the People's complaint in case number 22PDJ057 alleges that Respondent violated Colo. RPC 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. The People argue that Respondent contravened this rule in the Paiz matter by failing to arrange for and hold a mediation by December 17, 2021, as the court directed in its order of October 15, 2021.

We conclude that Respondent violated Colo. RPC 3.4(c) by knowingly disobeying the court's directive of October 15, 2021, to arrange for mediation within two months' time. Respondent attended the hearing on October 15, 2021, and he was present when the court ordered him to set up mediation by December 17, 2021. He therefore knew of the court's expectations. Indisputably, he did not meet those

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<sup>96</sup> *Accord* Colo. PRC 1.15C(a).

<sup>97</sup> In his testimony, Respondent also contended that he could not disburse the funds to Ms. Paiz until the matter had concluded and the court issued a final written order, reasoning without support that her use of the funds would have been tantamount as a matter of law to accepting an offer of settlement and withdrawing her contempt motion.

<sup>1st</sup> Amended Petition for Reciprocal Discipline

*Derrick Duane Cornejo*

Page 7 of 14

expectations: when he appeared again before the court on January 10, 2022, he acknowledged that he had not made the necessary arrangements. Worth noting, too, is that within three days of that January 2022 appearance, Respondent had managed to schedule the mediation, demonstrating that, when pressed, he was able to promptly comply.

Respondent argues that arranging for mediation within the allotted window would have worked to his client's detriment, as she had not yet complied with her obligation to remove her former spouse from her car title. To set up the mediation would have positioned Ms. Paiz to be held in contempt of court, he maintains. But whether he failed to comply strategically, in order to elongate his client's timeframe to comply,<sup>98</sup> or whether he simply shirked his duty to timely follow through, he never alerted the court that he would not or could not do what it had ordered him to do. Nor did he seek an extension of time to arrange for mediation. In short, he took no action to comply with or even address the court's mediation order and thus knowingly disobeyed it, contravening Colo. RPC 3.4(c).

#### Claim V (Colo. RPC 8.4(c))

The People next claim that Respondent violated Colo. RPC 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation. They argue that Respondent violated this rule in two ways: first, by signing Ms. Paiz's name to the checks that Mr. Paiz made out to her, depositing them into his trust account without her authorization, and failing to promptly notify Ms. Paiz about the checks; and second, by knowingly converting the funds from Mr. Paiz's cashier's checks by removing the funds from his trust account and using them for his own purposes.

The Hearing Board begins by addressing the first set of allegations—that Respondent acted dishonestly by delaying in notifying Ms. Paiz about the cashier's checks, falsely endorsing her signature on the checks, and depositing the checks in his trust account without her knowledge. As discussed above, we conclude that Respondent knowingly delayed in alerting Ms. Paiz to the existence of the cashier's checks.<sup>99</sup> We also find that Respondent

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<sup>98</sup> We are uncertain whether Ms. Paiz had come into compliance with her obligations by January 13, 2022, when Respondent finally filed a notice of mediation, though Respondent himself testified that Ms. Paiz had not removed Mr. Paiz from her car's title until shortly before the February 2022 mediation.

<sup>99</sup> See *In re Storey*, CO 48, ¶ 64 (finding that an omission, including a failure to disclose information that should be disclosed, can constitute a violation of Colo. RPC 8.4(c)); *People v. Redman*, 819 P.2d 495,496 (Colo. 1991) (ruling that a suspended lawyer had an affirmative duty to inform his client of his suspension, and that a suspended lawyer's

1<sup>st</sup> Amended Petition for Reciprocal Discipline

*Derrick Duane Cornejo*

Page 8 of 14



endorsed the checks by signing Ms. Paiz's signature and that he deposited those checks in his trust account, knowing that he did not have her authorization to take either action. These knowing acts and omissions violated Colo. RPC 8.4(c).

The People's Colo. RPC 8.4(c) claim is also premised on their allegation that Respondent knowingly converted Ms. Paiz's funds. Knowing conversion occurs when a lawyer takes money that has been entrusted to the lawyer by another person, knowing that the money belongs to another person, and knowing that the lawyer has not been authorized to use the money.<sup>100</sup> Neither the lawyer's motive in taking the money nor the lawyer's intent to return the funds is relevant to a conversion inquiry.<sup>101</sup> Even an unauthorized temporary use of another's funds for the lawyer's own purposes, regardless of whether the lawyer personally benefits from that use, constitutes conversion.<sup>102</sup> Unlike other violations of Colo. RPC 8.4(c), to establish a claim of knowing conversion the People must demonstrate that the lawyer had a knowing mental state, which requires a showing of actual knowledge of the fact in question.<sup>103</sup>

Under these standards, Respondent undoubtedly violated Colo. RPC 8.4(c) by knowingly converting the funds from Mr. Paiz's cashier's checks. He knew the checks were made payable to Ms. Paiz and thus the funds presumptively belonged to her. He also knew that he did not have Ms. Paiz's permission to use the funds—indeed, she was not aware of the checks' existence until after he fraudulently endorsed her signature and deposited the checks in his trust account. And he knew he was using these funds for his own purposes, for instance when, by September 30, 2021, he had withdrawn all but approximately \$370.00 of the \$5,000.00 August 2021 cashier's check from his trust account.

Respondent asserts that he cannot be culpable of knowing conversion because his operating account, which held the proceeds from the sale of his house, always contained funds sufficient to cover the amount of the Paiz cashier's checks. This defense fails. Even though Respondent's own personal funds may have been at his

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failure to notify his client of his suspension constituted conduct involving dishonesty, fraud, deceit, or misrepresentation); *see also In re Roose*, 69 P.3d 43, 46 (Colo. 2003) ("Acts or omissions by an attorney constituting misconduct ... are grounds for discipline").

100 *In re Kleinsmith*, 2017 CO 101, ¶ 14 (citing *People v. Varallo*, 913 P.2d 1, 10-11 (Colo. 1996)).

101 *See Varallo*, 913 P.2d at 10-11.

102 *Id.* at 11.

103 *See People v. Small*, 962 P.2d 258, 260 (holding that a lawyer's knowing misappropriation of another's property requires the lawyer's actual knowledge, rather than a merely reckless state of mind); Colo. RPC 1.0(f) (defining "knowing" and noting that a person's knowledge may be inferred from the circumstances).

1<sup>st</sup> Amended Petition for Reciprocal Discipline

*Derrick Duane Cornejo*

Page 9 of 14

disposal to replenish his trust account, he nevertheless exercised unauthorized possession and control over Ms. Paiz's funds, even if temporarily, thereby violating Colo. RPC 8.4(c).<sup>104</sup>

#### Claim VI (Colo. RPC 8.4(d))

Finally, the People allege that Respondent violated Colo. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. They maintain that Respondent engaged in prejudicial conduct in the Rodriguez and Gallegos-Medina matters by failing to appear in court on several occasions, forcing Judge Gonzales to reset and convene additional court proceedings.

We decline to find that Respondent engaged in conduct prejudicial to the administration of justice in the Gallegos-Medina case or the Rodriguez case. Because the People did not prove that Respondent's failures to appear resulted from a lack of diligence in the Gallegos-Medina matter, we find that his failures to appear in this case likewise did not prejudice the administration of justice. In the Rodriguez matter, we reject the People's claim that Respondent's absence adversely affected the course of Rodriguez's case, as we saw no evidence that Judge Gonzales had to reset or hold additional hearings.<sup>105</sup>

### **V. CONCLUSION**

Respondent's cavalier disregard of court appearances and directives degrades the dignity and authority of the judicial system. His criminal conviction for knowingly neglecting his elderly mother reflects poorly on his decision making. But it is his fraudulent endorsement of two client checks, temporary conversion of his client's funds, and pattern of trust account mismanagement that render him utterly unfit to continue representing clients. Such misconduct has no place in the legal profession and warrants disbarment.

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104 *See People v. Dickinson*, 903 P.2d 1132, 1136 (Colo.1995) {finding that a lawyer violated Colo. RPC 8.4(c) when he deposited client funds into his operating account, wrote checks from that account, and reimbursed the client with other funds}; *see also People v. Harutun*, 470 P.3d 1083, 1087 (Colo. O.P.D.J. 2017) (finding a violation of Colo. RPC 8.4(c), even though the respondent lawyer transferred her own personal funds into her trust account to cover a shortfall).

105 *See In re Friedman*, 23 P.3d 620, 628 (Alaska 2001) (finding no rule violation when a lawyer's conduct did not adversely affect litigation proceedings or a process fundamental to the administration of justice).

1<sup>st</sup> Amended Petition for Reciprocal Discipline

*Derrick Duane Cornejo*

Page 10 of 14

## VI. ORDER

The Hearing Board therefore **ORDERS**:

1. **DERRICK DUANE CORNEJO**, attorney registration number **29438**, is **DISBARRED**. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."<sup>119</sup>
2. Respondent **MUST** promptly comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.
3. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41 (b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.
4. The parties **MUST** file any posthearing motions no later than **Tuesday, June 27, 2023**. Any response thereto **MUST** be filed within seven days thereafter.
5. The parties **MUST** file any application for stay pending appeal **no later than the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.
6. Respondent **MUST** pay the reasonable costs of this proceeding. The People **MUST** submit a statement of costs **no later than Tuesday, June 27, 2023**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days after.

4. On or about August 2, 2023, an Order and Notice of Disbarment (Exhibit 2) was entered in the Supreme Court, State of Colorado, Original Proceeding in Discipline Before the Office of the Presiding Disciplinary Judge in a matter styled, *Complainant: The People of the State*

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<sup>119</sup> In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 242.31 (a)(6). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 242.35, C.R.C.P. 59, or other applicable rules.

*of Colorado, Respondent: Derrick Duane Cornejo, #29438, Case Number 21PDJ085*

(consolidated with 22PDJ026 and 22PDJ057), which states in pertinent part as follows:

From April 18-20, 2023, the Hearing Board in this matter held a disciplinary hearing under C.R.C.P. 242.30. On June 13, 2023, the Hearing Board issued an "Opinion Imposing Sanctions Under C.R.C.P. 242.31," disbarring Derrick Duane Cornejo ("Respondent") from the practice of law.

Under C.R.C.P. 242.31 (a)(6), the Presiding Officer ORDERS that DERRICK DUANE CORNEJO, attorney registration number 29438, is DISBARRED from the practice of law in the State of Colorado, EFFECTIVE IMMEDIATELY. Respondent MUST NOT engage in the practice of law or aid others to practice law in violation of Colo. RPC 5.5(b).

Within 14 days after issuance of this "Order and Notice of Disbarment," Respondent MUST file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41 (b)(S), lists of pending matters, lists of clients, and .copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.

5. On or about February 7, 2024, an Order and Mandate (Exhibit 3) was entered by the Colorado Supreme Court in a matter styled, Supreme Court Case No: 2023SA160, Original Proceeding in Discipline, Office of the Presiding Disciplinary Judge, 2021PD085, 2022PD026, 2022PD057, *In the Matter of Attorney-Respondent: Derrick Cornejo.*, which states in pertinent part as follows:

This cause having been brought to this court on an appeal of an Original Proceeding in Discipline to review the order of the Hearing Board, and having been heretofore submitted to the consideration and judgment of the court, and now being sufficiently advised in the premises,

IT IS ORDERED AND ADJUDGED that the order of the Hearing Board is AFFIRMED WITHOUT OPINION.

NOW THEREFORE, jurisdiction of this cause is returned to the Office of the Presiding Disciplinary Judge.

6. Copies of the Opinion and Decision Imposing Sanctions, Order and Notice of Disbarment, and Order and Mandate, are attached hereto as Petitioner's Exhibits 1, 2, and 3, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1, 2, and 3, at the time of hearing of this cause.

7. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Colorado and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

**Seana Willing**  
Chief Disciplinary Counsel

**Amanda M. Kates**  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711  
Telephone: 512.427.1350  
Telecopier: 512.427.4253  
Email: amanda.kates@texasbar.com



Amanda M. Kates  
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**


I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this First Amended Petition for Reciprocal Discipline and the Order to Show Cause on Derrick Duane Cornejo by personal service.

Derrick Duane Cornejo  
3033 Blake Street, Unit 105  
Denver, Colorado 80205



Amanda M. Kates

**Supreme Court**  
State of Colorado  
Certified to be a full, true and correct copy

<p>SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	<p>DEC 20 2023</p> <p>Office of the Presiding Disciplinary Judge</p> <p>By </p>
<p><b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO</p> <p><b>Respondent:</b> DERRICK DUANE CORNEJO, #29438</p>	<p>Case Number: 21PDJ085 (consolidated with 22PDJ026 and 22PDJ057)</p>
<p><b>OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31</b></p>	

Derrick Duane Cornejo ("Respondent") forged his client's name to endorse two checks, deposited the checks in his trust account without his client's permission, and knowingly converted over \$5,000.00. Additionally, he disobeyed a court directive and failed to appear in court on five occasions in three different client matters. Finally, he pleaded guilty to neglect of an at-risk person after he left his disabled mother outside his downtown Denver apartment in her wheelchair in the middle of the night. This misconduct warrants disbarment.

**I. PROCEDURAL HISTORY**

On November 24, 2021, Alan C. Obye of the Office of Attorney Regulation Counsel ("the People") filed with the Office of the Presiding Disciplinary Judge ("the Court") a two-claim complaint in case number 21PDJ085, alleging violations of Colo. RPC 1.3 (Claim I) and Colo. RPC 1.4(a)(3) (Claim II). Through his then-counsel Kevin C. Flesch, Respondent answered on December 22, 2021. On May 24, 2022, the People filed with the Court a one-claim complaint in case number 22PDJ026, alleging that Respondent had violated Colo. RPC 8.4(b). On June 1, 2022, the Court consolidated the two cases. Through Flesch, Respondent answered the complaint in case number 22PDJ026 on June 8, 2022. Flesch also moved to withdraw from the consolidated cases the same day, and the Court allowed Flesch to withdraw on June 24, 2022.

On July 5, 2022, Troy R. Rackham entered his appearance as Respondent's counsel, and the parties set a two-day hearing for the consolidated cases to take place in mid-October 2022. On August 23, 2022, the People moved for partial summary judgment on Claim I in case number 21PDJ085 and on Claim I in case number 22PDJ026. Then, in late August 2022, the parties filed a "Joint Motion to Continue Hearing and Other Deadlines." The parties contended that the case should be continued because the People might file against Respondent another



complaint, which could be consolidated with the other two cases. The Court granted the joint motion and placed the People's motion for partial summary judgment in abeyance.

On September 30, 2022, the People filed a six-claim complaint in case number 22PDJ057, charging that Respondent violated Colo. RPC 1.2(a) (Claim I); Colo. RPC 1.3 (Claim II); Colo. RPC 1.15A(a) (Claim III); Colo. RPC 3.4(c) (Claim IV); Colo. RPC 8.4(c) (Claim V); and Colo. RPC 8.4(d) (Claim VI). On October 5, 2022, the Court consolidated case number 22PDJ057 with the other two consolidated cases (hereinafter the "consolidated cases"). In late November 2022, the Court issued an amended scheduling order, establishing various deadlines and setting the consolidated cases for a hearing on March 13-15, 2023. In the amended scheduling order, the Court removed the People's motion for partial summary judgment from abeyance. But Respondent never filed a response to the People's summary judgment motion, even after the Court's administrator inquired by email to determine if a response was forthcoming. The Court entered summary judgment in the People's favor on January 12, 2023.

On February 8, 2023, Presiding Disciplinary Judge Bryon M. Large ("the PDJ") disqualified himself from these consolidated cases after Respondent moved for the PDJ's recusal. The Court's administrator appointed Barbara W. Laff to preside over the consolidated cases on February 17, 2023. Respondent moved to disqualify Presiding Officer Laff on February 24, 2023. Presiding Officer Laff granted that motion and disqualified herself on February 27, 2023. The same day, the Court's administrator appointed Sherry A. Caloia to preside over these consolidated cases. On March 1, 2023, Respondent moved to continue the three-day hearing, arguing that his successful efforts to disqualify the PDJ and Presiding Officer Laff had effectively stayed this matter since February 7, 2023, during which time several deadlines had elapsed. Presiding Officer Caloia granted the motion and continued the hearing until mid-April 2023.

On April 13, 2023, the People moved to dismiss Claim I of the complaint in case number 22PDJ057 (alleging a violation of Colo. RPC 1.2(a)). The next day, Presiding Officer Caloia granted that motion and dismissed the first claim of case number 22PDJ057.

From April 18 to 20, 2023, a Hearing Board comprising Presiding Officer Caloia and lawyers Margaret C. Cordova and James R. Christoph held a disciplinary hearing under C.R.C.P. 242.30. Obye represented the People, and Rackham appeared on behalf of Respondent, who also attended. Presiding Officer Caloia entered a sequestration order. During opening statements, Respondent moved to vacate the entry of summary judgment as to Claim I in case number 22PDJ026, reasoning that new information—the imminent dismissal of Respondent's criminal charge—warranted reconsideration of the summary judgment finding. Presiding Officer Caloia denied that motion.<sup>1</sup>

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<sup>1</sup> Respondent relied on *Haco v. Waco Scaffolding & Equip. Co.*, 797 P.2d 790, 796 (Colo. App. 1990) to support his motion, but Presiding Officer Caloia concluded that the case is inapposite and that Respondent's motion lacked merit at that procedural juncture, noting that his arguments should have been raised during summary judgment briefing.



At the hearing, the Hearing Board received in-person testimony from Judge Clarice Gonzales, Caitlin Cunningham, Dania Paiz, Michael Rodriguez, Anthony Baker, and Respondent.<sup>2</sup> The Hearing Board also heard remote testimony via the Zoom videoconferencing platform from David (Justin) Middaugh. Presiding Officer Caloia admitted the parties' stipulated exhibits S1-S41 and Respondent's exhibit 16.<sup>3</sup>

Respondent was admitted to the practice of law in Colorado on May 18, 1998, under attorney registration number 29438.<sup>4</sup> He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.<sup>5</sup>

## **II. M.M. MATTER (CASE NUMBER 21PDJ085)**

### **Facts Established on Summary Judgment**

Respondent represented client M.M. in a driving under the influence ("DUI") case in Douglas County court. A hearing in M.M.'s case was set for March 13, 2020. That hearing was continued due to COVID-19 and then was continued several more times. Respondent and the court clerk, Elizabeth Schwartz, corresponded by email about preparing for trial call on May 18, 2020.<sup>6</sup> Respondent used the email address that he had provided the court in his entry of appearance for this correspondence. A trial call was held May 18, 2020. Respondent appeared but his client M.M. did not. The matter was reset for May 27, 2020. Respondent and his client appeared. M.M. waived speedy trial, and the court instructed the parties to reset the trial off the record.

On May 27, 2020, the clerk emailed counsel for the parties, including Respondent, with proposed trial dates. The clerk emailed Respondent at the email address he provided in his entry of appearance. The Deputy District Attorney responded the same day. Respondent did not respond to the clerk's email dated May 27, 2020.<sup>7</sup>

On June 17, 2020, the court entered an "Order re: Trial Setting," which stated:

This matter came before the Court on May 18, 2020 for a pre-trial readiness conference. On that date, the defendant did not appear. As a result the Court continued the matter for a status conference on May 27, 2020. At the status

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<sup>2</sup> Although Respondent failed to include Rodriguez on his witness list, the People did not object to Rodriguez's testimony.

<sup>3</sup> The parties' amended exhibit list does not include exhibit S41, which was admitted at the hearing. This opinion does not address stipulated exhibits S3, S6, S12-13, S15-16, S25, S27, or S29, which relate only to the People's dismissed Claim I in case number 22PDJ057.

<sup>4</sup> Order on Summ. J. at 1.

<sup>5</sup> C.R.C.P. 242.1(a).

<sup>6</sup> See also Ex. S1 at 1.

<sup>7</sup> See also Ex. S1 at 3.

conference, the defendant appeared by telephone, a waiver of speedy was made on the record, and the case was set for a Disposition Hearing. The Court instructed the parties to coordinate with the Division Clerk, after the hearing, to have the matter set for trial off the record.

On May 27, 2020 the Division clerk emailed the parties regarding potential dates to reset trial. The district attorney responded the same day noting there were "[n]o known bad dates at this time." The Division Clerk then sent a follow up email to the District Attorney and Counsel requesting Counsel to let the court know as soon as possible which dates would work best with is calendar. Having received no response from defense counsel, the Division Clerk sent a third email on June 5, 2020 to both defense counsel and the District Attorney asking to clear trial dates. As of today June 17, 2020, the court has still not heard from defense counsel in regard to resetting the matter for trial. The court will give counsel until June 26, 2020 to contact the Division Clerk in order to clear trial dates. Absent any response, the Court will set the matter for trial without the input of defense counsel.

Due to the current pandemic and staffing demands, counsel is instructed to contact the Court by email. The Division Clerks email address is: [Elizabeth.Schwartz@judicial.state.co.us](mailto:Elizabeth.Schwartz@judicial.state.co.us).<sup>8</sup>

The court's minute order of June 17, 2020, was served on Respondent by e-service through the Colorado Courts E-Filing System ("CCEFS"). As of the date of the People's complaint, the CCEFS e-service transaction history for Respondent's receipt of this minute order remained "unread."

The court issued a minute order on June 29, 2020, stating the case was reset for trial "without input from attorney."<sup>9</sup> On June 30, 2020, the court issued a "Notice of Future Court Appearance," setting the case for trial to take place September 18, 2020. The notice contained the following notation: "Atty never emailed Re dates to Set. Emailed on 5/27/20, 5/28/20, 6/5/20, order issued 6/17/20."<sup>10</sup> The court served the "Notice of Future Court Appearance" on Respondent though CCEFS. As of the date of the People's complaint, the CCEFS e-service transaction history for Respondent's receipt of the notice remained "unread."

The parties appeared by Webex for a disposition hearing on August 13, 2020, during which Respondent indicated his client would likely plead to a new offer.<sup>11</sup>

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<sup>8</sup> Order on Summ. J. at 3-4.

<sup>9</sup> Order on Summ. J. at 4.

<sup>10</sup> Order on Summ. J. at 4.

<sup>11</sup> See also Ex. S1 at 5.

At a hearing date of September 18, 2020, M.M. appeared but Respondent did not.<sup>12</sup> There, M.M. told the court that he had not been able to get in touch with his lawyer in the prior few days. The Deputy District Attorney reported that he had been unable to reach Respondent for weeks. On September 18, 2020, the court issued a "Notice of Appearance," notifying the parties that the matter was set for a status conference on September 22, 2020. The notice was served on Respondent through CCEFS. As of the date of the People's complaint, the CCEFS e-service transaction history for Respondent's receipt of the notice remained "unread."

Respondent failed to appear at the status conference on September 22, 2020.<sup>13</sup> M.M. appeared and told the court that he had talked to Respondent recently and that he was surprised Respondent was not present. The court passed the matter and recalled it later that day. Respondent still was not present. M.M. said he wanted to take the prosecution's plea offer. The court allowed M.M. to withdraw Respondent from the case and to take the plea offered by the prosecution. On September 23, 2020, without Respondent's signature, the parties filed a plea agreement to driving while ability impaired ("DWAI") – 2nd.

### **Facts Adduced at the Hearing**

At the hearing, Respondent explained his absence at both the September 18 and September 22 court dates as precipitated by a family emergency. He said that his uncle had died a few days before, and he was in Leadville, Colorado, consoling his aunt. Though he acknowledged that he "should've been more diligent" about notifying the court clerk that he would not be able to appear, he justified his failure to do so by noting, first, that he had "spotty" cell phone service in Leadville and, second, that the Colorado state courts' COVID-19 protocols in place in autumn 2020 rendered telephone contact with court clerks nearly impossible.

### **Legal Analysis**

#### Claim I (Colo. RPC 1.3)

On summary judgment, the PDJ found as a matter of law that Respondent violated Colo. RPC 1.3, which provides that a lawyer must act with reasonable diligence and promptness in representing a client. The PDJ reasoned that Respondent was provided notice, via the court's online filing system, that he was required to appear on September 18, 2020, and September 22, 2020, yet Respondent failed to appear for those settings and failed to read the served orders. The PDJ also noted that the undisputed material facts conclusively establish that the setting for September 18, 2020, was listed as a pretrial readiness conference, which the PDJ found to be a significant event in a criminal case. Further, the PDJ observed that M.M. entered

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<sup>12</sup> See also Ex. S1 at 7-8.

<sup>13</sup> In their complaint and in their motion for partial summary judgment, the People state that the status conference occurred on September 22, 2018. In his answer, Respondent admits the People's allegation. Nonetheless, we assume that the parties intended to peg the date of the status conference as September 22, 2020. See Ex. S1.

into a plea agreement with the district attorney's office at the appearance on September 22, 2020—an outcome-determinative event in M.M.'s case. The PDJ thus concluded that Respondent's failure to appear with M.M. at these scheduled court appearances constituted a failure to act with reasonable diligence and promptness in representing his client in violation of Colo. RPC 1.3.

#### Claim II (Colo. RPC 1.4(a)(3))

The People's second claim in case number 21PDJ085 alleges that Respondent violated Colo. RPC 1.4(a)(3), which mandates that a lawyer keep a client reasonably informed about the status of the client's matter. The People argue that Respondent violated this rule by failing to tell M.M. that he would not appear in court on September 18, 2020.

The Hearing Board concludes that the People's evidence is scant on this claim—too scant, in fact, to find a violation. At the hearing, the People did not adduce additional evidence relevant to this matter. And the facts established on summary judgment include only that on September 18, 2020, M.M. reported he had not spoken to Respondent in the prior few days and that on September 22, 2020, M.M. said he had talked to Respondent recently and was surprised Respondent was not present. These facts alone do not clearly and convincingly show that Respondent failed to keep M.M. reasonably informed about the status of the matter. Thus, a finding of misconduct is not warranted here.

### **III. FLORENCE CORNEJO MATTER (CASE NUMBER 22PDJ026)**

#### **Facts Established on Summary Judgment**

On August 3, 2021, Respondent was charged in Denver District Court with one count of assault in the third degree on an at-risk person, a class-six felony; one count of unlawful abandonment of an at-risk person, a class-one misdemeanor; and one count of neglect of an at-risk person, also a class-one misdemeanor. The charges were based on an incident involving Respondent's mother, Florence Cornejo, who was born in 1946. Ms. Cornejo is confined to a wheelchair, partially paralyzed on the entire left side of her body, and unable to walk. She is unable to navigate her wheelchair on her own, requiring assistance to be moved.

On June 9, 2021, at 12:36 a.m., Ms. Cornejo called 911 and requested assistance; she stated that she and Respondent got into a verbal argument and that he then assaulted her by slapping her around and pinching her. She further stated that Respondent pushed her in her wheelchair out of their residence, pushed her out of the gated building, and left her on the sidewalk, where the lawn sprinklers were turned on. When officers arrived, Ms. Cornejo was still being sprayed by the sprinklers. She was locked out of the housing complex and did not have the gate code to access the courtyard.

Respondent was arrested on June 15, 2021, and advised on June 16, 2021. On December 2, 2021, Respondent pleaded guilty to Count 3, neglect of an at-risk person, a class-

one misdemeanor, under C.R.S. § 18-6.5-103(6)(a), which provided, "Between and including approximately March 1, 2021, and June 9, 2021, DERRICK D CORNEJO unlawfully and knowingly committed caretaker neglect or knowingly acted in a manner likely to be injurious to the physical or mental welfare of FLORENCE B CORNEJO, an at-risk person, in violation of 18-6.5-103(6)(a), C.R.S."<sup>14</sup>

Respondent's judgment of conviction was deferred for two years. He was sentenced to sixty days in jail, all suspended, and was required to pay fees and costs.

### **Legal Analysis**

On summary judgment, the PDJ concluded as a matter of law that the undisputed material facts conclusively established Respondent's violation of Colo. RPC 8.4(b). That rule provides it is professional misconduct for a lawyer to commit a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

The PDJ found that the undisputed facts demonstrated Respondent was convicted of neglect of an at-risk person in violation of C.R.S. § 18-6.5-103(6)(a), a class-one misdemeanor in Colorado.<sup>15</sup> Because Respondent indisputably entered a guilty plea acknowledging that he "unlawfully and knowingly committed caretaker neglect or knowingly acted in a manner likely to be injurious to the physical or mental welfare" of his mother, an at-risk person,<sup>16</sup> the PDJ held that Respondent's conduct resulted in a conviction that reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects.<sup>17</sup> The PDJ opined that this conclusion was bolstered by the fact that Respondent pleaded guilty to having committed this criminal conduct with a knowing mental state. The PDJ thus concluded that Respondent violated Colo. RPC 8.4(b).

## **IV. CASE NUMBER 22PDJ057**<sup>18</sup>

### **Rodriguez Matter Findings of Fact**

On July 3, 2019, Michael Rodriguez was charged with a DUI in Denver.<sup>19</sup> He retained Respondent on July 10, 2019.<sup>20</sup> According to Rodriguez, up through the onset of the COVID-19

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<sup>14</sup> Order on Summ. J. at 7; *see also* Ex. S41.

<sup>15</sup> The PDJ noted that the People had filed a copy of the court-certified copy of the stipulation for deferred judgment, sentence order, and plea agreement, conclusively establishing the conviction and proving Respondent's commission of that crime under C.R.C.P. 242.42(d).

<sup>16</sup> Order on Summ. J. at 7.

<sup>17</sup> The PDJ cited comment 2 to Colo. RPC 8.4, which provides that offenses involving violence and breach of trust reflect adversely on a lawyer's fitness to practice law.

<sup>18</sup> Factual findings are drawn from testimony offered at the hearing where not otherwise indicated.

<sup>19</sup> Ex. S2 at 1.

pandemic, Respondent worked to find experts in accident reconstruction and field sobriety testing for Rodriguez's defense. COVID-19 measurably slowed the progress of the case, however.

Denver County Court Judge Clarice Gonzales convened a conference in Rodriguez's matter on June 12, 2020. Respondent and Rodriguez appeared by telephone. The parties set a pretrial conference for September 18, 2020, and a jury trial for September 23, 2020. Respondent knew about and cooperated in setting these dates.

The pretrial conference on September 18, 2020, was held via the Teams videoconferencing platform. Neither Respondent nor Rodriguez appeared. During the conference, the prosecutor stated that the District Attorney's office had not been able to contact Respondent. Judge Gonzales then directed her clerk to call and email Respondent, but Respondent did not answer his telephone and his voicemail was not set up.<sup>21</sup> Ultimately, Judge Gonzales issued a warrant for Rodriguez's arrest and set a bond for \$500.00. She also preserved the jury trial date of September 23, 2020, reasoning that Respondent and Rodriguez might appear, in which case the parties could address speedy trial issues. At the scheduled trial on September 23, 2020, however, Respondent and Rodriguez again failed to appear.<sup>22</sup> Judge Gonzales continued Rodriguez's warrant and deemed speedy trial issues waived based on Rodriguez's no-show.<sup>23</sup> But she could not set any future court date; she had to wait for Rodriguez and Respondent to appear.

At the disciplinary hearing, Judge Gonzales testified that Respondent's failures to appear caused her to grow concerned for his well-being. She called the emergency number for the Denver Police Department and asked that an officer stop by Respondent's residence to conduct a welfare check.<sup>24</sup> According to Judge Gonzales, sometime soon after the trial date, an officer knocked on Respondent's door and reported that it appeared as though no one was home.<sup>25</sup>

On October 6, 2020, Respondent requested that he be given time on Judge Gonzales's docket.<sup>26</sup> He was permitted to appear virtually with Rodriguez for a warrant hearing on October 8, 2020.<sup>27</sup> At that hearing, said Judge Gonzales, Respondent represented that his client

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<sup>20</sup> Ex. S2 at 5.

<sup>21</sup> Ex. S36 at 1; Ex. S38 at 1063.

<sup>22</sup> Ex. S38 at 1069.

<sup>23</sup> Ex. S36 at 1.

<sup>24</sup> Ex. S36 at 1.

<sup>25</sup> Ex. S36 at 1. Respondent questions whether a welfare check ever occurred, since Denver Police Department records do not reflect a visit to his residence around September 23, 2020. *See* Ex. S35. But we do not doubt that Judge Gonzales requested that an officer check on Respondent. And, in any event, whether the police stopped for a welfare check is immaterial to the claims we must decide.

<sup>26</sup> Ex. S38 at 1063.

<sup>27</sup> Ex. S36 at 2.

had forgotten to attend the court dates in September 2020 but never addressed his own failure to appear.<sup>28</sup> Judge Gonzales quashed Rodriguez's warrant and converted the bond to a personal recognizance bond.<sup>29</sup>

Respondent continued to represent Rodriguez, who eventually pleaded guilty to a misdemeanor DWAI charge and was sentenced as a first-time offender. "He rolled with me through the entire thing," Rodriguez said approvingly, noting that Respondent represented him "to the best of [Respondent's] ability."

At the disciplinary hearing, Respondent explained that he missed these two court dates in September 2020 due to his family emergency in Leadville. Respondent acknowledged that he never emailed the court clerk, and he could not recall whether he tried to contact the prosecutor in the case. He defended his failure to call the court clerk with various justifications: that he had "sporadic" cell phone service in Leadville; that he was staying with his aunt, who did not have a landline he could use to place a call; and that reaching court personnel on the phone was not possible when courts were operating remotely.

### **Gallegos-Medina Matter Findings of Fact**

Respondent represented J.J. Gallegos-Medina in a Denver County Court misdemeanor DUI case arising from a serious highway collision between Gallegos-Medina's vehicle and a truck pulling a large trailer with two horses. The accident caused the horse trailer to turn over on its side, killing at least one animal. In October 2021, the case was tried before a jury in Judge Gonzales's courtroom, and Gallegos-Medina was found guilty. During a virtual hearing on December 10, 2021, Gallegos-Medina was sentenced to six months in jail. The same day, Judge Gonzales also scheduled an in-person restitution hearing for January 7, 2022.

On the morning of January 7, 2022, Respondent learned from the district attorney's office that it had just received new exhibits relevant to restitution. Soon after, around 8:30 a.m. that day, Respondent checked in with Caitlin Cunningham, Judge Gonzales's clerk. Respondent testified that he arrived early because he knew Judge Gonzales was "watching" him. Cunningham told Respondent that it would be a while before his client's case was called; she explained that cases with in-custody defendants, like Gallegos-Medina, were delayed due to staffing shortages and difficulties coordinating defendants' virtual appearances with the Denver Sheriff's Department ("DSD"). Cunningham excused Respondent with the understanding that he would appear virtually for the hearing later in the day.<sup>30</sup> After attending to a few other matters, Respondent left the courthouse around 11:45 a.m.

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<sup>28</sup> Rodriguez also testified that Respondent never explained to him why Respondent failed to appear.

<sup>29</sup> Ex. S38 at 1063.

<sup>30</sup> Respondent testified that he believed the court clerk would call him that day when he needed to appear. Later, however, Respondent said that he understood he need not appear that day at all because the case was going to be reset, given that the District Attorney's office had just

At 2:54 p.m. on January 7, 2022, Cunningham emailed Respondent to alert him that the court would soon call Gallegos-Medina's matter.<sup>31</sup> She notified him that she had given his number to DSD, which would facilitate a private call between him and Gallegos-Medina, and that his client's matter would likely be heard shortly thereafter. Cunningham also attached a log-in link for the Teams videoconferencing platform so Respondent could appear virtually.

Judge John Madden, who was covering the docket for Judge Gonzales that day, soon called the case. Gallegos-Medina, who was in custody, appeared and was assisted by a Spanish-speaking interpreter.<sup>32</sup> But Respondent did not attend in person or virtually, even though the court clerk attempted to contact him several times.<sup>33</sup> After explaining to Gallegos-Medina that Respondent was not present, Judge Madden continued the case to the next business day.<sup>34</sup> Cunningham then emailed Respondent at 3:27 p.m. on January 7, 2022: "After unsuccessful attempts by both the court & DSD to get ahold of you, Judge Madden has continued the matter for a status review for Monday, 1/10/22 at 8:30am."<sup>35</sup>

Judge Gonzales was on the bench the morning of Monday, January 10, 2022, and Cunningham arranged to have Gallegos-Medina attend the status review virtually.<sup>36</sup> Again, Respondent did not appear. After Cunningham and DSD attempted without success to contact Respondent, Judge Gonzales set the matter over for the next day.<sup>37</sup>

On Tuesday, January 11, 2022, Cunningham again coordinated Gallegos-Medina's virtual attendance at the status review.<sup>38</sup> Judge Gonzales called the case, and Respondent appeared on Gallegos-Medina's behalf. Though Respondent did not explain on the record why he failed to attend the hearing on January 7 or the status review on January 10, Cunningham recalled that he told her privately his cell phone had gone missing or had been stolen.

Ultimately, Judge Gonzales recused from the case because she contacted disciplinary authorities to voice her concerns about Respondent's repeated failures to appear. Respondent went on to represent Gallegos-Medina at the restitution hearing on January 24, 2022.<sup>39</sup>

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received additional restitution evidence. We reject these narratives as internally inconsistent, and we consider the latter version discordant with Cunningham's action in emailing Respondent later that afternoon. We adopt Cunningham's testimony as credible on this point.

<sup>31</sup> Ex. S28 at 986.

<sup>32</sup> Ex. S38 at 1065.

<sup>33</sup> See Ex. S36 at 1.

<sup>34</sup> Ex. S38 at 1065.

<sup>35</sup> Ex. S28 at 987.

<sup>36</sup> Ex. S28 at 989-90.

<sup>37</sup> Ex. S38 at 1066.

<sup>38</sup> Ex. S38 at 991-92.

<sup>39</sup> Ex. S28 at 993.



At the disciplinary hearing, Respondent expounded on his reasons for failing to appear on January 7 and 10, 2022. After Respondent left the courthouse shortly before noon on Friday, January 7, 2022, he visited a fast-food restaurant. There, his cell phone was stolen, he said. Perhaps because of the theft, he reasoned, he was also locked out of his Gmail email account; to unlock his email account, he was prompted to use a two-factor authentication that required access to his cell phone. He ordered a new cell phone, which he said he received the afternoon of January 10, 2022—the same day he visited the Denver.gov website and learned that Gallegos-Medina's case had been continued to the next day.

Respondent supported this account with his cell phone records, which reflect that he was charged for a new handset in January 2022.<sup>40</sup> He also elicited testimony from Anthony Baker, one of his clients. Baker recounted that on the evening of January 7, 2022, he called Respondent, whose phone was answered by an unknown man.<sup>41</sup> When Baker offered to retrieve the phone and pay the man a reward, the man hung up. Though Baker was somewhat unsure about the timing, he stated that he believed he emailed Respondent immediately after his colloquy with the unknown man and that Respondent, who responded via email "within no time," reported that he would be getting a new phone in the following twenty-four hours.

### **Paiz Matter Findings of Fact**

Dania and Eddie Paiz finalized their divorce in December 2019. The couple's dissolution of marriage decree provided, among other things, that within 180 days Mr. Paiz was required to pay \$5,908.00 to Ms. Paiz, who would then apply those funds to satisfy marital debt.<sup>42</sup> The decree also directed both parties to remove the other's name from their allocated vehicles within forty-five days of the decree. The decree referenced a protection order that had entered prohibiting communication between the parties.

By January 2021, Mr. Paiz had satisfied only about \$420.00 of his obligation to Ms. Paiz.<sup>43</sup> Ms. Paiz decided to hire counsel to recoup the remaining funds, and a mutual friend of both Respondent and Ms. Paiz put the two in touch. On January 15, 2021, Respondent and Ms. Paiz met and signed a fee agreement whereby Respondent agreed, for \$100.00 per hour, to bring a contempt action against Mr. Paiz.<sup>44</sup> Ms. Paiz gave Respondent a \$300.00 retainer and agreed that he could charge her credit card \$150.00 every two weeks. Ms. Paiz was aware that Respondent had substantially discounted his rate for her. Respondent promised to file a contempt motion within a month or two.

Several months later, on May 5, 2021, Respondent entered his appearance in the case. On May 7, 2021, he filed on Ms. Paiz's behalf a motion and affidavit for citation of contempt of

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<sup>40</sup> See Ex. S34 at 1, 16.

<sup>41</sup> See Ex. S34 at 7 (cell phone records reflecting Baker's call at 5:40 p.m.).

<sup>42</sup> Ex. S31 at 49 (referencing items 14-19).

<sup>43</sup> See Ex. 16 at 17-23.

<sup>44</sup> See Ex. S10.

court, arguing that Mr. Paiz had failed to pay the full \$5,908.00 by the deadline of June 20, 2020, and seeking to compel Mr. Paiz to pay that amount as well as to cover Ms. Paiz's attorney's fees.<sup>45</sup> On May 24, 2021, Mr. Paiz filed pro se his own motion seeking a contempt of court citation against Ms. Paiz.<sup>46</sup> Mr. Paiz's motion stated that both parties were to "remove each other's name from their allocated vehicle," suggested that the vehicle for which Ms. Paiz was responsible may have been repossessed, and alleged that this debt was "in [his] collections."<sup>47</sup> Respondent testified at the disciplinary hearing that he interpreted the motion to demand that Ms. Paiz remove Mr. Paiz from her vehicle's title—which would require her to refinance the car in her name only—as his name on the title was affecting his credit score.

A hearing on Ms. Paiz's contempt motion was set for July 1, 2021, while a hearing on Mr. Paiz's contempt motion was set for July 15, 2021. Respondent told Ms. Paiz that they need not attend the hearing on July 1, 2021, so neither appeared on that date. As a result, the court denied Ms. Paiz's contempt motion and dismissed the matter for a lack of progress.<sup>48</sup> On July 15, 2021, however, both Respondent and Ms. Paiz appeared for the hearing on Mr. Paiz's motion for contempt. Respondent told the court that neither he nor his client appeared for the hearing on July 1, 2021, because he believed that both contempt motions would be heard together on the later date, and he requested that the court reinstate Ms. Paiz's contempt motion.<sup>49</sup> The court agreed to do so and reset the hearing on both matters for August 30, 2021.

At the disciplinary hearing, Respondent testified that he indeed believed the cases would be consolidated and the court would hold only the hearing set for July 15, 2021. But he could not explain why he believed the former date would be vacated, rather than the latter. He also conceded that he never received any order continuing the hearing on July 1 or consolidating the two matters, and he acknowledged that he "should've probably filed something" with the court to clarify his expectations about consolidation.

On August 19, 2021, Mr. Paiz mailed to Respondent a \$5,000.00 cashier's check, which was made out to Ms. Paiz. Respondent received the check within a few days of its mailing. Respondent endorsed the back of the check "Dania Paiz" and, on the following line, wrote something resembling "Derrick Law LLC."<sup>50</sup> On August 26, 2021, Respondent deposited the check in his trust account at BOK Financial. At the end of August 2021, Respondent's trust

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<sup>45</sup> Ex. S18. The motion observed that the amount Mr. Paiz owed was to be used to pay unsecured credit card debts and that the outstanding balance on those credit cards had since substantially increased due to the interest charged by the credit card companies.

<sup>46</sup> Ex. S31 at 55-57.

<sup>47</sup> Ex. S31 at 56. On April 28, 2021, Mr. Paiz filed a submission that appeared to be a precursor to his contempt motion. Because it was not clearly denominated as a motion for contempt, the court did not issue a contempt citation. *See* Ex. S17 at 905.

<sup>48</sup> Ex. S17 at 904.

<sup>49</sup> Ex. S17 at 904.

<sup>50</sup> Ex. S11 at 698.

account held \$11,188.18, including the \$5,000.00 cashier's check from Mr. Paiz.<sup>51</sup> He drew down these funds over the next days and months. On September 20, 2021, Respondent's trust account balance was \$4,279.79, and on September 30, 2021, the balance was just \$370.66.<sup>52</sup> Respondent's business operating account, however, received a significant infusion of money from the sale of his house on September 21, 2021; that day, a wire transfer deposited \$285,613.60 into his operating account.<sup>53</sup>

According to Respondent, soon after he received the cashier's check Ms. Paiz verbally authorized him to endorse the check on her behalf and to deposit it into his trust account. But he also recognized in his testimony that endorsing the check for Ms. Paiz without obtaining her contemporaneous written approval was "risky." Further, he agreed that he could have easily obtained her signature on the check when they met to discuss her case on August 29, 2021, or at the hearing on August 30, 2021; "I know I should have met with her personally" before depositing the check, Respondent allowed. Ms. Paiz, in contrast, insisted that she never gave Respondent approval and, in fact, was not even aware of the check's existence until several weeks after Mr. Paiz mailed it. She testified that she learned Respondent put the funds in his trust account only toward the end of 2021 and discovered he had signed her name in early 2022. The Hearing Board credits Ms. Paiz's account. Her communications during those timeframes support her testimony that she was initially unaware of the check and that she continued to be uncertain about its amount and location for months thereafter.<sup>54</sup> Moreover, the Hearing Board casts a jaundiced eye on Respondent's testimony. The absence of any writing memorializing Ms. Paiz's consent to Respondent's endorsement of the check in her name, along with the absence of any compelling reason why Respondent would not have waited just a few more days to secure Ms. Paiz's own signature on the check in person, leads us to conclude his version of events is unbelievable.

At Ms. Paiz's underlying contempt hearing on August 30, 2021, Respondent appeared fifteen minutes late, and the court ran out of time to entertain the matter, which was continued to October 1, 2021.<sup>55</sup> Mr. Paiz failed to appear at that rescheduled hearing; the court issued a

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<sup>51</sup> Ex. S11 at 726.

<sup>52</sup> Ex. S11 at 729.

<sup>53</sup> Ex. S40 at 620.

<sup>54</sup> See Ex. S8 at 5 (December 2021 text from Ms. Paiz to Respondent, rebuking him for failing to mention the check until two weeks after he received it); Ex. S8 at 19 (text from Ms. Paiz on March 30, 2022, requesting that Respondent confirm what Mr. Paiz had paid and that he send pictures of the payment); Ex. S30 (audio recording of a late March 2022 conversation requesting the precise amount Mr. Paiz had paid); Ex. S8 at 22 (text from Ms. Paiz to Respondent on April 5, 2022, explaining that she needed proof of what Mr. Paiz had paid); Ex. S7 at 456 (email from Ms. Paiz on April 12, 2022, retorting, "forging my signature on two cashiers checks isn't very professional"); *Cf.* Ex. S4 (an invoice Respondent sent to Ms. Paiz in December 2021 that did not list the \$5,000.00 cashier's check he received from Mr. Paiz).

<sup>55</sup> Ex. S17 at 903.

bench warrant for him and dismissed his motion for contempt.<sup>56</sup> The matter was ultimately reset for October 15, 2021, during which Mr. Paiz's warrant was canceled and his contempt motion was reinstated. On that date, the court also ordered the parties to mediate the matter by December 17, 2021, placing the responsibility to schedule the mediation squarely on Respondent's shoulders.<sup>57</sup>

Ms. Paiz texted Respondent on November 9, 2021, asking, "Have you set up a mediation yet?"<sup>58</sup> Respondent did not text back. According to Ms. Paiz, Respondent falsely told her that he had not yet set up the mediation because his mother had recently passed away. At the disciplinary hearing, Respondent acknowledged receiving Ms. Paiz's text and explained that he did not begin to solicit mediators for the matter until late November 2021, at which point no one was available to mediate due to the holidays. But Respondent also insisted that Ms. Paiz was not ready to mediate in autumn 2021, as she had not yet shown him that she had removed Mr. Paiz from her vehicle title and thus could be held in contempt herself. Despite his failure to comply with the court's order to mediate by December 17, 2021, Respondent never apprised the court of the matter's status or requested an extension of the deadline. At the disciplinary hearing, Respondent admitted that he "should have moved for an extension of time" to let the court know the parties needed more time to mediate.

On January 10, 2022, the court convened a contempt trial via Webex. While Mr. Paiz appeared and was ready for trial, the court noted that Respondent was not prepared. Respondent told the court that he had not been able to secure a mediator, citing "ODR's complete unavailability," and the court expressed disapproval that Respondent had failed to obey its order to mediate by December 17, 2021.<sup>59</sup> At Respondent's request, the court continued the contempt trial to April 1, 2022. It also ordered Respondent to file a notice of mediation within four days or face dismissal of Ms. Paiz's contempt action. Three days later Respondent filed a mediation notice, having gotten in touch with a mediator he frequently engages.<sup>60</sup> The mediation was set for February 21, 2022.<sup>61</sup>

Around the same time—on January 7, 2022—Mr. Paiz issued a second cashier's check, this time for \$488.00, payable to Ms. Paiz but delivered to Respondent.<sup>62</sup> According to Respondent, he received the check around January 10, 2022, and it "sat on [his] counter" until early March 2022, when he deposited it into his trust account.<sup>63</sup> Respondent testified that he signed Ms. Paiz's name to endorse the check, claiming that he did so with her full knowledge and approval. Ms. Paiz emphatically denied that she authorized him to sign her name.

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<sup>56</sup> Ex. S17 at 903.

<sup>57</sup> Ex. S17 at 902.

<sup>58</sup> Ex. S8 at 4.

<sup>59</sup> Ex. S19.

<sup>60</sup> Ex. S20.

<sup>61</sup> Ex. S20.

<sup>62</sup> Ex. S11 at 702.

<sup>63</sup> See Ex. S11 at 701.

Again, we credit Ms. Paiz's account. Respondent cannot point to any written communication in which he alerts her to receiving the check or any written authorization in which Ms. Paiz permits him to sign her name and deposit the check in trust. Further, Respondent's story runs counter to at least one contemporaneous communication from Ms. Paiz seeking to access the funds from Mr. Paiz's August 2021 check; we find it quite unlikely that Ms. Paiz would authorize Respondent to retain a second check when she was simultaneously trying to recover from him the first check's funds.<sup>64</sup> Finally, although Respondent could have brought the check to the February 2022 mediation to obtain Ms. Paiz's endorsement, he did not; his failure to do so speaks volumes, we believe, about his willingness to apprise Ms. Paiz about this second check.

On February 21, 2022, the parties attended mediation. By that point, Ms. Paiz testified, she had resolved her vehicle financing issues and removed Mr. Paiz from the title of her car.<sup>65</sup> Even so, the parties did not reach a mediated settlement, and the case remained on track for the contempt hearing on April 1, 2022.<sup>66</sup>

As the date of the contempt hearing approached, Ms. Paiz and Respondent's relationship began to fray more visibly. Ms. Paiz gave voice to her mounting frustrations that Respondent was not responsive, diligent, or considerate of her time.<sup>67</sup> She also grew more upset that Respondent refused to disburse to her the funds from Mr. Paiz's two cashier's checks. On March 24, 2022, Ms. Paiz instructed Respondent not to take money from Mr. Paiz's August 2021 cashier's check but instead to send that check to her, promising to pay Respondent's fees via a separate money order.<sup>68</sup> As Ms. Paiz explained at the disciplinary hearing, she did not trust Respondent's accounting and thus did not want him to deduct his fees from those funds.<sup>69</sup>

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<sup>64</sup> Ex. S32 at 18 (Ms. Paiz texted on February 18, 2022, "I need that check soon . . .").

<sup>65</sup> Ex. S37.

<sup>66</sup> At the mediation, Ms. Paiz told Respondent that she was facing three pending criminal cases and thus needed to wrap up the contempt case as quickly as possible. On March 2, 2022, Respondent entered his appearance on all three criminal cases. *See* Exs. S14, S26, and S31 at 71. The parties appear to dispute whether Ms. Paiz in fact asked Respondent to represent her in those cases, but that factual dispute is not germane to the claims before us.

<sup>67</sup> *See* Ex. S8 at 15 (Ms. Paiz texted on March 25, 2022, "Good morning Derrick i need a call today this is ridiculous and unprofessional . . . i know I'm not your only client but as a lawyer comm[unication] is the key with your clients we have to be prepared for next Friday"). Ms. Paiz testified that, in general, Respondent never responded to about half of her attempts to communicate and that he failed to appear for seven of their scheduled in-person meetings. *See* Ex. S8 at 7 (Ms. Paiz texted on December 30, 2021, "i know a lot of hours were not put into this case especially all the times you no showed to meetings and took time out of my day").

<sup>68</sup> Ex. S8 at 14-15; *see also* Ex. 32 at 27 (Ms. Paiz texted on March 24, 2022, "So we will be meeting before the 1st to give you money and I will be getting mine it's been long enough").

<sup>69</sup> *See also* Ex. S32 at 25 (Ms. Paiz texted on March 22, 2022, "your numbers are not adding up").

On March 28, 2022, Respondent and Ms. Paiz met at a local fast-food restaurant to prepare for the contempt hearing.<sup>70</sup> During that meeting, Respondent did not tender to Ms. Paiz the funds from Mr. Paiz's two cashier's checks. Three days later, on the eve of the hearing, Respondent and Ms. Paiz squabbled during a telephone conversation, which Ms. Paiz recorded.<sup>71</sup> Among other things, Ms. Paiz noted that she had waited patiently for her money for several months, that Respondent had been holding her funds without her approval, and that she never received records of the checks Mr. Paiz sent. Respondent reassured her that he was holding her funds in trust and told her she need not have her "panties in a bunch."<sup>72</sup>

At the contempt hearing on April 1, 2022, the parties and Respondent appeared in person, gave opening statements, and then were invited to discuss a possible agreement.<sup>73</sup> Ultimately, they agreed to a resolution: Mr. Paiz acceded to pay \$2,500.00 of Respondent's attorney's fees in eight installments over the following six months, and both parties agreed to drop their contempt motions. Mr. Paiz refused to send the payments to Respondent, however, instead electing to mail the payments to Ms. Paiz's mother. The court accepted the parties' oral stipulation, directed Respondent to reduce the stipulation to writing, and ordered Respondent to file the stipulation within fourteen days.<sup>74</sup> The court also dismissed both contempt motions.

Over the following two weeks, a fusillade of heated texts flew between lawyer and client. Ms. Paiz demanded her money and insisted on meeting at Respondent's bank to ensure that she could cash the check she wanted him to write.<sup>75</sup> Respondent refused and insisted that he would compile a bill, the amount for which he would deduct from the funds Mr. Paiz sent him.<sup>76</sup> Ms. Paiz then began to more closely review an invoice Respondent had generated in late December 2021, questioning the rate he was charging and the items for which he billed.<sup>77</sup> She also mentioned that she would seek the assistance of disciplinary authorities if Respondent failed to turn over her money; Respondent retorted, "Don't threaten me. There is a process. You

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<sup>70</sup> See Ex. S32 at 32-33.

<sup>71</sup> See Ex. S30 (audio recording).

<sup>72</sup> Ex. S70.

<sup>73</sup> See Ex. S17 900-01.

<sup>74</sup> Ex. S17 at 901.

<sup>75</sup> Ex. S8 at 21; Ex. S32 at 38 (Ms. Paiz texted, "Well, what doesn't work is you putting money into your account that i never allowed you to . . . idk why it's so hard for you to show proof of some money that was supposed to [b]e made out to me and you putting it into your account . . . I'm tired of chasing you around for some money that's mine and you not following through . . ."); Ex. S32 at 40 (Ms. Paiz texted, "idk if you spent the money but you are acting like you have something to hide and i have talked to other lawyers and you putting a check into a [sic] account should [o]f never happened . . . this waiting around and around for some money is getting old").

<sup>76</sup> Ex. S32 at 39.

<sup>77</sup> Ex. S32 at 44.

will receive an updated invoice which will only increase your amounts owed which will be deducted from the amount that [Mr. Paiz] has paid.”<sup>78</sup>

Their colloquy then devolved further. On April 11, 2022, Respondent told Ms. Paiz that he would issue a full invoice with a certified check for any amount that he concluded he should refund to her. He ended his volley with, “On the criminal pending cases, your [sic] going to do 6 months in the cooler.”<sup>79</sup> Ms. Paiz parried, “Over \$500.00 is a felony and you did [\$]5,488 in your account with me signing who’s going in the cooler!”<sup>80</sup> But Respondent continued to mock Ms. Paiz at least ten times more with some variant of “6 months in the cooler” or “Your [sic] going to jail.”<sup>81</sup> During this exchange, he also tried to take advantage of what he perceived was Ms. Paiz’s immediate need for cash, texting, “You need money, let’s meet now. 2K cash we are done. We have a deal. YOUR [sic] GOING TO JAIL.”<sup>82</sup>

At the disciplinary hearing, Respondent testified disingenuously that he repeated these taunts because Ms. Paiz “had to realize” what would likely come to pass in her criminal cases. He contended that she needed to hear she was facing jail time so that she would not be taken by surprise when she was placed in handcuffs. “Sometimes you need to be honest with your client,” he moralized. But Ms. Paiz did not receive this message as Respondent claimed to have intended it. She testified that she found Respondent’s communications “frustrating, upsetting, [and] traumatizing,” particularly because “he was the one who did something wrong.” She was also irritated that Respondent tried to “bargain” with her money, holding it “hostage.”

On April 13, 2022, Respondent transferred \$5,500.00 from his operating account into his trust account, bringing his trust account balance up to \$5,609.44.<sup>83</sup> The following day, he sent Ms. Paiz a second invoice.<sup>84</sup> At the disciplinary hearing, Respondent recounted that he drafted the invoice in April 2022 by looking through his telephone bills to determine when and for how long he communicated with Ms. Paiz and by reviewing his case file, which helped him compile a running log of tasks he says he performed throughout the case.<sup>85</sup> In that invoice, Respondent

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<sup>78</sup> Ex. S8 at 22; Ex. S32 at 40 (“Don’t threaten me. The money is in a trust account. We will settle up and it will be dispurzed [sic]”).

<sup>79</sup> Ex. S8 at 22.

<sup>80</sup> Ex. S8 at 22.

<sup>81</sup> See, e.g., Ex. S9 at 506-07; Ex. S8 at 24-29; Ex. S7 at 454-456; Ex. S32 at 48-51.

<sup>82</sup> Ex. S32 at 47. This aggressive messaging culminated on April 15, 2022, when Ms. Paiz crowed, “I’ll gladly show them the police report and give them the case number of you stealing from a client,” and Respondent replied, “as a warning, you may have violated CRS 18-3-207 which is Colorado’s criminal extortion statute by posting on social media to attempt to get money out of me.” Ex. S33 at 1.

<sup>83</sup> Ex. S40 at 633; Ex. S11 at 742.

<sup>84</sup> Ex. S5. Respondent sent Ms. Paiz a first invoice on December 30, 2021. See Ex. S4.

<sup>85</sup> The second invoice contains several errors, at a minimum. Respondent billed Ms. Paiz 1.2 hours to attend the contempt advisement on July 1, 2021, even though he failed to appear for that hearing. See Ex. 17 at 904. He charged 2.5 hours for drafting a proposed final order on

charged \$3,590.00 for his attorney's fees, offset by \$1,050.00, which he calculated Ms. Paiz had already paid him, as well as \$5,400.00 that he received from Mr. Paiz.<sup>86</sup> In submitting his second invoice, Respondent asserted an attorney's lien to justify deducting money from the cashier's checks to pay his own fees, but he also offered to arbitrate his figures through the Colorado Bar Association.<sup>87</sup> On April 15, 2022, he sent Ms. Paiz a certified check for \$2,860.00.<sup>88</sup>

Meanwhile, on April 14, 2022, Respondent moved to withdraw as Ms. Paiz's counsel of record.<sup>89</sup> But the court disallowed his withdrawal because he had failed to reduce the parties' oral stipulation to writing, as he had been directed to do.<sup>90</sup> Instead, the court ordered Respondent to file the stipulation within seven days of its order. Respondent submitted the one-page proposed order on April 20, 2022,<sup>91</sup> and was permitted to withdraw on April 29, 2022.<sup>92</sup>

Between August 11, 2021, and May 27, 2022—during which he represented Paiz—Respondent wrote seventeen checks to “cash” from his trust account.<sup>93</sup> From his trust account he also cut one check to the clerk of the Colorado Supreme Court to pay his 2022 attorney registration fee.<sup>94</sup> Respondent stated that he used the cash withdrawals to pay for lunch, gas and other expenses, explaining that he viewed the funds he withdrew as “earned money” that he could “use for personal expenses.” He acknowledged that because these withdrawals were made to “cash,” they were not tied to any specific client matter and could not be attributed to any particular client's funds. He testified, “I probably should be more diligent about my trust account,” adding, “but like I said, I've never had a problem with money, about my trust.”

## Legal Analysis

### Claim II (Colo. RPC 1.3)

The People's Claim II in case number 22PDJ057 alleges that in three separate client matters Respondent violated Colo. RPC 1.3, which requires a lawyer to act with reasonable

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April 15, 2022, though he did not provide that order to Ms. Paiz or file it on that day. *See* Ex. S22. And he reported having received only \$5,400.00 from Mr. Paiz, whereas he actually received \$5,488.00. Ms. Paiz also challenged what Respondent recorded as her total payments. *See* S7 at 453. Whereas he listed her payments toward his fees as \$1,050.00, Ms. Paiz insists she contributed \$1,450.00—a sum Respondent admitted in legal pleadings that Ms. Paiz paid him. *See* Answer ¶ 35 (Nov. 2, 2022) (case number 22PDJ057).

<sup>86</sup> Ex. S5 at 526; *see also* Ex. S7 at 453.

<sup>87</sup> Ex. S7 at 451-52.

<sup>88</sup> Ex. S11 at 794.

<sup>89</sup> Ex. S21.

<sup>90</sup> Ex. S22.

<sup>91</sup> Ex. S23.

<sup>92</sup> Ex. S24.

<sup>93</sup> Ex. S11 at 662-87.

<sup>94</sup> Ex. S11 at 680.



diligence and promptness when representing a client. The People argue that Respondent violated this rule in the Gallegos-Medina matter by failing to appear in court on two occasions; in the Rodriguez matter by failing to appear in court on two occasions; and in the Paiz matter by failing to appear at the contempt hearing on July 1, 2021, failing to timely arrange mediation in accordance with the court's order, failing to prepare for the contempt hearing on January 10, 2022, and repeatedly failing to appear for scheduled meetings with Ms. Paiz and failing to respond to her attempts to contact him.

We first address the Gallegos-Medina allegations. Respondent undoubtedly failed to appear for the virtual restitution hearing on the afternoon of January 7, 2022, and failed to appear for the status review on January 10, 2022. He argues, though, that these absences were not a result of a lack of diligence but instead a byproduct of the theft of his phone. That theft, he claims, had cascading effects, locking him out of his email account and thereby effectively preventing him from receiving the notice of the January 10 status review.

We credit Respondent's testimony that his cell phone was stolen in the early afternoon of January 7, 2022, particularly because it is well supported by other evidence, including records showing that his cell phone carrier charged him for a new handset in January 2022. Even more persuasively, Baker provided credible testimony that he placed the sole telephone call that Respondent received after noon on January 7, which was answered by an unknown man who hung up after Baker volunteered to collect the phone. We give Respondent the benefit of the doubt that the theft likely occasioned some confusion and logistical difficulty and thus that his absence from court on the afternoon of January 7, 2022, was excusable.<sup>95</sup>

As for whether Respondent was unable to access his email and thus never received notice of the January 10 status review, the evidence is more equivocal. Though Respondent insisted that he was locked out of his email account, we are somewhat skeptical that he was unable to access his email account simply because his phone was stolen. Baker's testimony also gives us pause about Respondent's defense. Baker's account that Respondent responded via email "within no time" to Baker's own email about the stolen phone goes some way to undercutting Respondent's testimony that he had no email access. Even so, no clear or convincing evidence demonstrates that Respondent emailed Baker before the status review on the morning of January 10, 2022. And, in any event, we are not clearly persuaded that Respondent reasonably could have learned about the status review, which was scheduled for the Monday morning following the theft of his phone, before the review actually took place. Accordingly, we do not find that Respondent violated Colo. RPC 1.3 in the Gallegos-Medina matter.

Turning to the Rodriguez matter, Respondent agrees that he failed to appear for the virtual pretrial conference on September 18, 2020, and for the jury trial on September 23, 2020.

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<sup>95</sup> We are nonplussed, however, as to why, when the People questioned Respondent about the Gallego-Medina case during his deposition in July 2022, he did not mention that his cell phone had been stolen in January 2022.

But these failures to appear do not reflect a lack of diligence, he says; rather, they were excusable absences due to a death in his family. We disagree. Unlike the Gallegos-Medina matter—where an immediate and unforeseen circumstance plausibly stood in the way of Respondent’s efforts to contact the court or to receive notice of the next appearance—no such exigent circumstance existed in the Rodriguez case. Respondent knew of the two court dates, and he presented no evidence that he was physically incapable of contacting the court. To the contrary, he made no effort to cancel the appearances, notify the court or the prosecutor, or attempt to log in virtually from Leadville or some nearby area with reliable internet access. We find that these failures exhibited a lack of diligence violative of Colo. RPC 1.3.

Finally, we consider each of the People’s allegations in the Paiz matter.

- The People allege that Respondent exhibited a lack of diligence when he failed to appear at the contempt hearing on July 1, 2021. We agree. Respondent was aware of the contempt hearing on that date but decided against attending it based on his unfounded assumption that the court would consolidate the matters and vacate the hearing. We find without hesitation that his failure to move to consolidate the contempt cases or to take any other clarifying action, coupled with his decision not to appear, constituted a basic lack of diligence.
- The People claim that Respondent failed to act with diligence by failing to timely arrange for mediation in accordance with the court’s order of October 15, 2021. Again, we agree. As discussed below in our analysis of the People’s fourth claim, Respondent acknowledged that he did not timely arrange for mediation, yet he neither alerted the court that he would not meet its deadline nor endeavored to extend that deadline. We conclude that Respondent violated Colo. RPC 1.3 on this score.
- The People assert that Respondent failed to prepare for the contempt hearing on January 10, 2022. We find that the People did not prove by clear and convincing evidence that Respondent was unprepared for the January 2022 hearing. Indeed, the People failed to overcome Respondent’s reasonable claim that he could not move forward with the hearing on that date, knowing that if he did, Ms. Paiz might be held in contempt.
- The People maintain that Respondent repeatedly failed to appear for scheduled meetings with Ms. Paiz or to respond to her attempts to contact him. We conclude that the People did not muster clear and convincing evidence to show that Respondent’s interactions with Ms. Paiz fell below a minimum threshold of diligence. We recognize Ms. Paiz testified that Respondent canceled their planned meetings at least seven times. Her testimony lacked specificity, however, and was not clearly supported by other evidence. We also acknowledge that their text exchanges, which are rather lopsided, suggest that Respondent did not always respond to Ms. Paiz’s texts or telephone calls. But the People failed to demonstrate that, in the context of Ms. Paiz’s relatively straightforward contempt matter, Respondent’s laconic communications with Ms. Paiz

failed to adequately inform her about the stages of her case. Without such a showing, we are not convinced that Respondent's intermittent responses evidence a lack of diligence so much as a business practice of communicating with his client only when absolutely necessary. We cannot find that the People met their burden here.

### Claim III (Colo. RPC 1.15A(a))

Next, the People allege that Respondent violated Colo. RPC 1.15A(a), which provides that a lawyer must hold property belonging to clients or third parties that is in a lawyer's possession in connection with a representation separate from the lawyer's own property in a trust account that complies with Colo. RPC 1.15B. Respondent ran afoul of this rule in the Paiz matter, the People say, by failing to maintain the funds Mr. Paiz sent him in his trust account until the funds could be appropriately disbursed.

We have no trouble concluding that Respondent violated this rule. In August 2021, Respondent deposited the \$5,000.00 cashier's check from Mr. Paiz into his trust account at BOK Financial. These funds did not belong to Respondent and thus should have been kept in trust. But Respondent depleted his trust account over the course of the next month such that the account's balance at the end of September 2021 was just \$370.66. In doing so, Respondent failed to keep the Paiz funds in a trust account, separate from his own property. This failure to keep funds in trust is underscored by the seventeen checks Respondent wrote to "cash" from his trust account between August 2021 and May 2022, during the time that he should have held the Paiz funds in trust. When he wrote these checks, he did not track which client's funds he consumed. He thereby failed to keep property belonging to Ms. Paiz or third parties in a trust account and separate from his own property, which should have been removed from his trust account before it was used.<sup>96</sup>

In defense, Respondent argued at the disciplinary hearing that at the time he received the checks from Mr. Paiz, he recognized the funds were the subject of competing claims and interests and thus could not, under Colo. RPC 1.15A(c), be disbursed to Ms. Paiz or anyone else until there was a "resolution of the claims and, when necessary, a severance of the interests."<sup>97</sup> Those interests, contended Respondent, included Ms. Paiz's interests, her creditors' interests, and Respondent's own interests. But this defense is a red herring. Whether Respondent was obligated to resolve competing claims and sever interests before disbursing the funds from the cashier's checks is immaterial to the question of *where* Respondent should have kept those funds before the competing claims were resolved. Colo. RPC 1.15A(a) categorically answers that question: in trust. Because Respondent did not hold the Paiz funds in trust during the representation and instead used them for his own purposes—whether through transfers to his

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<sup>96</sup> *Accord* Colo. RPC 1.15C(a).

<sup>97</sup> In his testimony, Respondent also contended that he could not disburse the funds to Ms. Paiz until the matter had concluded and the court issued a final written order, reasoning without support that her use of the funds would have been tantamount as a matter of law to accepting an offer of settlement and withdrawing her contempt motion.

operating account or through checks payable to “cash”—he failed to hold the funds separate from his own property in violation of Colo. RPC 1.15A(a).

#### Claim IV (Colo. RPC 3.4(c))

Claim IV of the People’s complaint in case number 22PDJ057 alleges that Respondent violated Colo. RPC 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. The People argue that Respondent contravened this rule in the Paiz matter by failing to arrange for and hold a mediation by December 17, 2021, as the court directed in its order of October 15, 2021.

We conclude that Respondent violated Colo. RPC 3.4(c) by knowingly disobeying the court’s directive of October 15, 2021, to arrange for mediation within two months’ time. Respondent attended the hearing on October 15, 2021, and he was present when the court ordered him to set up mediation by December 17, 2021. He therefore knew of the court’s expectations. Indisputably, he did not meet those expectations: when he appeared again before the court on January 10, 2022, he acknowledged that he had not made the necessary arrangements. Worth noting, too, is that within three days of that January 2022 appearance, Respondent had managed to schedule the mediation, demonstrating that, when pressed, he was able to promptly comply.

Respondent argues that arranging for mediation within the allotted window would have worked to his client’s detriment, as she had not yet complied with her obligation to remove her former spouse from her car title. To set up the mediation would have positioned Ms. Paiz to be held in contempt of court, he maintains. But whether he failed to comply strategically, in order to elongate his client’s timeframe to comply,<sup>98</sup> or whether he simply shirked his duty to timely follow through, he never alerted the court that he would not or could not do what it had ordered him to do. Nor did he seek an extension of time to arrange for mediation. In short, he took no action to comply with or even address the court’s mediation order and thus knowingly disobeyed it, contravening Colo. RPC 3.4(c).

#### Claim V (Colo. RPC 8.4(c))

The People next claim that Respondent violated Colo. RPC 8.4(c), which proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation. They argue that Respondent violated this rule in two ways: first, by signing Ms. Paiz’s name to the checks that Mr. Paiz made out to her, depositing them into his trust account without her authorization, and failing to promptly notify Ms. Paiz about the checks; and second, by knowingly converting the funds from

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<sup>98</sup> We are uncertain whether Ms. Paiz had come into compliance with her obligations by January 13, 2022, when Respondent finally filed a notice of mediation, though Respondent himself testified that Ms. Paiz had not removed Mr. Paiz from her car’s title until shortly before the February 2022 mediation.

Mr. Paiz's cashier's checks by removing the funds from his trust account and using them for his own purposes.

The Hearing Board begins by addressing the first set of allegations—that Respondent acted dishonestly by delaying in notifying Ms. Paiz about the cashier's checks, falsely endorsing her signature on the checks, and depositing the checks in his trust account without her knowledge. As discussed above, we conclude that Respondent knowingly delayed in alerting Ms. Paiz to the existence of the cashier's checks.<sup>99</sup> We also find that Respondent endorsed the checks by signing Ms. Paiz's signature and that he deposited those checks in his trust account, knowing that he did not have her authorization to take either action. These knowing acts and omissions violated Colo. RPC 8.4(c).

The People's Colo. RPC 8.4(c) claim is also premised on their allegation that Respondent knowingly converted Ms. Paiz's funds. Knowing conversion occurs when a lawyer takes money that has been entrusted to the lawyer by another person, knowing that the money belongs to another person, and knowing that the lawyer has not been authorized to use the money.<sup>100</sup> Neither the lawyer's motive in taking the money nor the lawyer's intent to return the funds is relevant to a conversion inquiry.<sup>101</sup> Even an unauthorized temporary use of another's funds for the lawyer's own purposes, regardless of whether the lawyer personally benefits from that use, constitutes conversion.<sup>102</sup> Unlike other violations of Colo. RPC 8.4(c), to establish a claim of knowing conversion the People must demonstrate that the lawyer had a knowing mental state, which requires a showing of actual knowledge of the fact in question.<sup>103</sup>

Under these standards, Respondent undoubtedly violated Colo. RPC 8.4(c) by knowingly converting the funds from Mr. Paiz's cashier's checks. He knew the checks were made payable to Ms. Paiz and thus the funds presumptively belonged to her. He also knew that he did not have Ms. Paiz's permission to use the funds—indeed, she was not aware of the checks' existence until after he fraudulently endorsed her signature and deposited the checks in his trust account. And he knew he was using these funds for his own purposes, for instance when, by September 30,

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<sup>99</sup> See *In re Storey*, CO 48, ¶ 64 (finding that an omission, including a failure to disclose information that should be disclosed, can constitute a violation of Colo. RPC 8.4(c)); *People v. Redman*, 819 P.2d 495, 496 (Colo. 1991) (ruling that a suspended lawyer had an affirmative duty to inform his client of his suspension, and that a suspended lawyer's failure to notify his client of his suspension constituted conduct involving dishonesty, fraud, deceit, or misrepresentation); see also *In re Roose*, 69 P.3d 43, 46 (Colo. 2003) ("Acts or omissions by an attorney constituting misconduct . . . are grounds for discipline").

<sup>100</sup> *In re Kleinsmith*, 2017 CO 101, ¶ 14 (citing *People v. Varallo*, 913 P.2d 1, 10-11 (Colo. 1996)).

<sup>101</sup> See *Varallo*, 913 P.2d at 10-11.

<sup>102</sup> *Id.* at 11.

<sup>103</sup> See *People v. Small*, 962 P.2d 258, 260 (holding that a lawyer's knowing misappropriation of another's property requires the lawyer's actual knowledge, rather than a merely reckless state of mind); Colo. RPC 1.0(f) (defining "knowing" and noting that a person's knowledge may be inferred from the circumstances).

2021, he had withdrawn all but approximately \$370.00 of the \$5,000.00 August 2021 cashier's check from his trust account.

Respondent asserts that he cannot be culpable of knowing conversion because his operating account, which held the proceeds from the sale of his house, always contained funds sufficient to cover the amount of the Paiz cashier's checks. This defense fails. Even though Respondent's own personal funds may have been at his disposal to replenish his trust account, he nevertheless exercised unauthorized possession and control over Ms. Paiz's funds, even if temporarily, thereby violating Colo. RPC 8.4(c).<sup>104</sup>

#### Claim VI (Colo. RPC 8.4(d))

Finally, the People allege that Respondent violated Colo. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. They maintain that Respondent engaged in prejudicial conduct in the Rodriguez and Gallegos-Medina matters by failing to appear in court on several occasions, forcing Judge Gonzales to reset and convene additional court proceedings.

We decline to find that Respondent engaged in conduct prejudicial to the administration of justice in the Gallegos-Medina case or the Rodriguez case. Because the People did not prove that Respondent's failures to appear resulted from a lack of diligence in the Gallegos-Medina matter, we find that his failures to appear in this case likewise did not prejudice the administration of justice. In the Rodriguez matter, we reject the People's claim that Respondent's absence adversely affected the course of Rodriguez's case, as we saw no evidence that Judge Gonzales had to reset or hold additional hearings.<sup>105</sup>

#### **IV. SANCTIONS**

In determining sanctions, the Hearing Board is guided by the framework established by the American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA Standards")<sup>106</sup> and Colorado Supreme Court case law.<sup>107</sup> That framework counsels us to consider the duty the lawyer violated, the lawyer's mental state, and the actual or potential injury caused by the

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<sup>104</sup> See *People v. Dickinson*, 903 P.2d 1132, 1136 (Colo.1995) (finding that a lawyer violated Colo. RPC 8.4(c) when he deposited client funds into his operating account, wrote checks from that account, and reimbursed the client with other funds); see also *People v. Harutun*, 470 P.3d 1083, 1087 (Colo. O.P.D.J. 2017) (finding a violation of Colo. RPC 8.4(c), even though the respondent lawyer transferred her own personal funds into her trust account to cover a shortfall).

<sup>105</sup> See *In re Friedman*, 23 P.3d 620, 628 (Alaska 2001) (finding no rule violation when a lawyer's conduct did not adversely affect litigation proceedings or a process fundamental to the administration of justice).

<sup>106</sup> Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).

<sup>107</sup> See *Roose*, 69 P.3d at 46-47.

lawyer's misconduct. These three variables yield a presumptive sanction that we may then adjust, in our discretion, based on aggravating and mitigating factors.<sup>108</sup>

### **ABA Standard 3.0 – Duty, Mental State, and Injury**

Duty: Respondent ignored the duty he owed to his clients to exercise diligence in handling their matters. He violated his client-centered duty of loyalty and candor when he misappropriated Ms. Paiz's funds and endorsed her signature on checks without her permission. He failed to honor his duty to the legal system when he declined to appear at hearings and to follow a court order. And through his criminal conviction, he disregarded the duty he owed to the public to maintain his personal integrity.

Mental State: The PDJ's order on summary judgment established that Respondent knowingly committed caretaker neglect; this culpable mental state was an element of his criminal conviction. The Hearing Board concludes that Respondent knowingly failed to exercise diligence in the M.M., Rodriguez, and Paiz matters. In the Paiz matter, the Hearing Board finds that Respondent knowingly disobeyed the court's orders to arrange mediation, knowingly mishandled his trust account, knowingly converted Paiz's funds, and intentionally fraudulently endorsed her two checks.

Injury: Respondent's dishonest conduct in the Paiz matter and his knowing conversion of the cashier's checks harmed Ms. Paiz. By omitting timely mention of the checks, dishonestly endorsing the checks by forging Ms. Paiz's signature, and depositing the checks into his trust account, Respondent robbed Ms. Paiz of her right to argue that those funds were hers, deprived Ms. Paiz of the ability to decide how to dispose of those funds, and took away her use of those funds between August 2021 to April 2022. With access to that money, she could have paid her credit card debt and arrested further monthly accumulation of interest. Finally, by comingling Ms. Paiz's funds with his own, Respondent risked subjecting her funds to the claims of his creditors.<sup>109</sup>

In contrast, very little to no client injury eventuated from Respondent's lack of diligence in the M.M., Rodriguez, and Paiz matters. Respondent's disobedience of the court's order to timely arrange for mediation in the Paiz matter likewise did not result in any actual harm to the parties or the court. Similarly, we find no evidence of actual injury resulting from Respondent's criminal conduct, although the potential for random acts of violence or adverse physical health effects was present, given that Respondent left his elderly wheelchair-bound mother locked outside of his downtown Denver apartment building, after midnight, where she was exposed to water sprayed from sprinklers.

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<sup>108</sup> *In re Attorney F.*, 2012 CO 57, ¶ 15 (Colo. 2012).

<sup>109</sup> *See People v. McGrath*, 780 P.2d 492, 493-94 (Colo. 1989) (noting that comingling is dangerous to the client "because the act of [comingling] subjects the client's funds to the claims of the lawyer's creditors.").

### **ABA Standards 4.0-8.0 – Presumptive Sanction**

At least two ABA *Standards* are clearly relevant here. ABA *Standard* 4.11 applies to Respondent's dishonesty and knowing conversion. That *Standard* calls for disbarment when a lawyer knowingly converts client property and causes the client injury or potential injury. Respondent's violation of Colo. RPC 8.4(b) is addressed by ABA *Standard* 5.12, which provides that suspension is appropriate when a lawyer knowingly engages in criminal conduct that does not involve elements listed in ABA *Standard* 5.11 but that seriously adversely reflects on the lawyer's fitness to practice law.

As for Respondent's failure to obey a court order and his several instances of lack of diligence, no ABA *Standard* presents a solid fit. Although Respondent acted knowingly when he committed these rule violations, little injury resulted. As such, colorable arguments could be made for applying a wide array of ABA *Standards*.<sup>110</sup> We need not dwell on this question, however, since the answer would not be outcome determinative. This is because the ABA *Standards* counsel that when multiple types of misconduct are at issue, the ultimate sanction should be at least consistent with the sanction for the most serious instance of misconduct. Given that ABA *Standard* 4.11 squarely applies to some types of Respondent's misconduct, we embark on the remainder of our sanctions analysis with a presumptive sanction of disbarment.

### **ABA Standard 9.0 – Aggravating and Mitigating Factors**

Aggravating circumstances include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the sanction.<sup>111</sup> As explained below, we apply seven factors in aggravation, assigning three great weight and two very little weight. Six factors merit mitigation, to which we apply weight ranging from minimal to moderate.

#### Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): Because Respondent has been disciplined several times, we give this factor substantial weight.

In April 2010, Respondent was publicly censured for two DWAI convictions that occurred in quick succession in 2007, violating Colo. RPC 8.4(b). Respondent failed to report those convictions.

Respondent then stipulated in summer 2011 to a nine-month suspension, all stayed upon successful completion of an eighteen-month period of probation, with conditions. Respondent agreed that he knowingly failed to represent clients with diligence, neglected to

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<sup>110</sup> For instance, both ABA *Standards* 4.42 and 4.44, calling for suspension and private admonition, respectively, arguably could apply when considering Respondent's lack of diligence.

<sup>111</sup> See ABA *Standards* 9.21 and 9.31.



adequately communicate with clients, failed to provide clients with a written basis for his fees, did not provide accountings upon client request, disobeyed judicially imposed obligations, and engaged in conduct prejudicial to the administration of justice. A condition of his probation was monitored sobriety. But Respondent's probation was revoked due to positive alcohol tests; the PDJ lifted the stay and activated Respondent's nine-month suspension, effective February 24, 2012. Respondent was reinstated to law practice on November 29, 2012.

Finally, in July 2015, Respondent was suspended for eighteen months. He was found to have violated his order of discipline in his earlier case by continuing to practice law during his suspension, including by negotiating a fee agreement, offering legal advice to clients, and holding himself out as authorized to practice law. He was again reinstated to the practice of law on May 24, 2018.

*Dishonest or Selfish Motive – 9.22(b)*: Respondent dishonestly failed to timely disclose to Ms. Paiz that her former spouse sent two checks. Respondent then forged Ms. Paiz's signature on those checks and deposited them in his trust account without her knowledge or permission. This aggravating factor is entitled to great weight.

*Pattern of Misconduct – 9.22(c)*: Respondent mismanaged his trust account for a span of nine months. During that period, he cut checks to "cash" no less than seventeen times from the funds he held in trust. This pattern, coupled with his tendency to disregard inconvenient court dates, leads us to conclude that his misconduct is significantly aggravated by its repeated nature.

*Multiple Offenses – 9.22(d)*: The Hearing Board finds several violations of the Colorado Rules of Professional Conduct under the rubric of three distinct types of offenses: Respondent's lack of diligence, as evidenced in his disregard of court dates and court orders; his criminal conduct; and his dishonest handling and unauthorized use of the Paiz funds. This factor warrants average weight in aggravation.

*Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g)*: On several occasions during his testimony, Respondent conceded that he should have approached certain matters with more diligence or attention to detail. On this basis, we cannot find that he has utterly refused to acknowledge the wrongful nature of his misconduct, so we will not apply this aggravator.

*Vulnerability of Victim – 9.22(h)*: The People urge us to apply this factor, arguing that Respondent's mother is a vulnerable victim of her son's criminal conduct. Because Respondent left his elderly mother for a brief time in a physically vulnerable situation, we apply this factor, but we give it little aggravating import, as Respondent's mother had access to a cell phone and the wherewithal to self-advocate by calling 911.

*Substantial Experience in the Practice of Law – 9.22(i)*: Respondent was admitted as a Colorado lawyer in 1998 and has practiced law for around two decades. As a longstanding

practitioner, Respondent should have been well attuned to his client- and court-centered duties, particularly given that he had already been disciplined for some of the same types of infractions. We choose to give this aggravating factor average weight.

*Illegal Conduct – 9.22(k)*: Respondent pleaded guilty to a class-one misdemeanor of neglect of an at-risk person, which warrants applying this factor. But because Respondent's criminal conduct forms one of the bases for the People's charges, we assign this factor little weight in aggravation.<sup>112</sup>

#### Mitigating Factors

*Absence of Dishonest or Selfish Motive – 9.32(b)*: Respondent argues that he did not act with a selfish motive. Because we agree that Respondent did not act selfishly when he failed to appear in his clients' cases, we give him minimal mitigating credit for this factor.

*Full and Free Disclosure or Cooperative Attitude Toward the Proceeding – 9.32(e)*: During their rebuttal closing the People conceded that this mitigating factor should apply, but they did not offer any supportive reasoning. We thus accord it only modest weight.

*Character and Reputation – 9.32(g)*: Respondent elicited testimony from three witnesses, all of whom he has represented in legal matters. David (Justin) Middaugh stated that he retained Respondent for several cases and that he would be willing to hire Respondent again based on Respondent's reasonable rates and good results. Rodriguez testified on Respondent's behalf, describing Respondent as "attentive" and his rates as "more than reasonable." Rodriguez found Respondent to be communitive, trustworthy, and competent. Finally, Baker relayed that he has "nothing but praise" for Respondent, extolling Respondent as "overresponsive," "diligent," "very trustworthy," and a "total professional." According to Baker, Respondent attended to all of his legal matters "to a T." Notwithstanding some of the more distasteful aspects of Respondent's unprofessional interactions with Ms. Paiz, these witnesses' testimony convinces us that we should apply this factor, giving it moderate mitigating credit in recognition that Respondent meets a need for affordable legal services by assisting families of modest means to access the justice system.

*Delay in Disciplinary Proceedings – 9.32(j)*: Respondent argues that he is entitled to mitigation for the delay in this proceeding. We disagree; Respondent requested or agreed to the hearing's continuances, which were granted to conserve judicial and party resources or to secure the parties' rights. We do not apply this mitigating factor.

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<sup>112</sup> See *People v. Olson*, 470 P.3d 789, 806 (Colo. O.P.D.J. 2016) (finding that a lawyer's domestic violence and efforts to dissuade the victim from testifying at the disciplinary hearing were illegal, but giving little weight to this aggravating factor because the criminal conduct formed the basis of the disciplinary charges).

Remorse – 9.32(l): As we mentioned, Respondent recognized on several occasions that he could have handled aspects of his clients' cases differently or better. We do not presume to gauge his sincerity or measure the depth of his contrition. At the same time, we note that he never actually apologized or acknowledged that his actions may have inconvenienced his clients or judicial staff, leaving us with the impression that on the whole he has not internalized the consequences of his careless approach to lawyering. Taking these considerations into account, we accord this factor only modest weight.

Remoteness of Prior Offenses – 9.32(m): Respondent was disciplined in 2010 and 2011 for misconduct similar to that established in these consolidated cases. Because his prior cases were decided nearly a decade or more before his underlying misconduct here, and because the crux of Respondent's discipline in 2015 involved his unlicensed practice of law, which is not alleged in this proceeding, we find that Respondent is entitled to limited mitigation.

Additional Mitigation – 9.32: Because ABA *Standard* 9.32 sets forth a non-exhaustive list of mitigating factors, we consider one additional factor in mitigation not yet enumerated: that despite his lack of diligence in the Rodriguez and Paiz matters, Respondent ultimately saw both cases through to completion, securing favorable results. After his September 2020 failures to appear in Rodriguez's matter, Respondent continued to represent Rodriguez, who was satisfied with his case's outcome. Likewise, Respondent ultimately achieved very good results for Ms. Paiz; not only did he collect the full \$5,488.00 that Mr. Paiz owed but he also secured \$2,500.00 to cover a substantial portion of his attorney's fees.

### **Analysis Under ABA Standards and Case Law**

The Colorado Supreme Court directs the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.<sup>113</sup> In so doing, we are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."<sup>114</sup> We are charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis, but we recognize that prior cases can guide us by analogy.<sup>115</sup>

In our analysis, we begin with a presumptive sanction of disbarment. This presumption is not altered when we consider the surrounding circumstances, as the applicable aggravating factors both slightly outnumber and outweigh the factors in mitigation. Case law, likewise, does nothing to call that presumptive sanction into question. Canonical authority holds that a lawyer's knowing misappropriation of funds, whether belonging to a client or third party, warrants

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<sup>113</sup> See *In re Attorney F.*, 2012 CO 57, ¶ 20; see also *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

<sup>114</sup> *Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

<sup>115</sup> *Id.* ¶ 15.

disbarment unless extraordinary mitigating factors apply.<sup>116</sup> This is, in part, because “[m]isuse of funds by a lawyer strikes at the heart of the legal profession by destroying public confidence in lawyers.”<sup>117</sup> When conversion is coupled with other acts of deceit, dishonesty, or fraud, it is all the more apparent that serious disciplinary action is required.<sup>118</sup>

In these consolidated cases, Respondent’s misconduct—the gravamen of which is dishonesty and conversion—is serious. His misconduct ranged widely in type and across several client matters. And his misconduct was preceded by three separate disciplinary cases, one of which ended in the revocation of his probation due to his failure to adhere to probationary conditions. Given this constellation of misconduct, we fear that a suspension of any length would eventually lead to Respondent’s appearance before another hearing board. While we do

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<sup>116</sup> See *Varallo*, 913 P.2d at 10-11; *People v. Lavenhar*, 934 P.2d 1355, 1359 (Colo. 1997) (collecting cases); see also *People v. Heaphy*, 470 P.3d 728, 729 (Colo. O.P.D.J. 2015) (disbarring a lawyer who knowingly converted settlement funds, commingled his client’s funds with his own, failed to act diligently or respond to his client’s communications, and ultimately paid full restitution to his client plus interest after his law license was threatened with immediate suspension).

<sup>117</sup> *People v. Buckles*, 673 P.2d 1008, 1012 (Colo. 1984).

<sup>118</sup> See *People v. Kiley*, 463 P.2d 880, 881 (Colo. 1969) (concluding that disbarment was required when a lawyer forged the signature of his client to a check and thereafter converted the check’s proceeds to his own use); see also *People v. Barringer*, 61 P.3d 495, 498-99 (Colo. O.P.D.J. 2001) (disbarring a lawyer who knowingly converted client funds, forged his client’s signature to a settlement document, and falsely notarized the settlement document, even though he was not an active notary); *In re Swokowski*, 796 N.W.2d 317, 319-26 (Minn. 2011) (disbarring a lawyer who misappropriated \$1,000.00, forged a client’s endorsement on a settlement check, failed to cooperate with disciplinary authorities, and neglected client matters); *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872, 879 (Pa. 1986) (“Where an attorney converts and commingles entrusted funds, accomplishes this breach of trust by the use of forged documents, and employs misrepresentations to mask this covert activity, the magnitude of the derelictions and its impact upon the legal profession and the administration of justice requires the imposition of the most severe sanction at our command.”); cf. *People v. Gerdes*, 891 P.2d 995, 996-98 (Colo. 1995) (disbarring under ABA *Standards* 4.41 and 5.11 a lawyer without a disciplinary record who drove while impaired, possessed marijuana, executed the signature of an insurance agent on an indemnity agreement without the agent’s permission, represented that the agent signed the agreement, engaged in a pattern of neglecting client matters and abandoned his practice, failed to inform clients of legal proceedings, and failed to respond to disciplinary authorities’ requests); *In re Nichols*, 723 So.2d 410, 413-14 (La. 2018) (suspending a lawyer for three years, with one year deferred, for forging a client’s endorsement on a check made out to the client, depositing it in his trust account without her knowledge, and converting her funds for over twenty days yet ultimately making full restitution; the court noted that the baseline sanction for the misconduct ranged from disbarment to a three-year suspension but assigned the more lenient sanction because of mitigating factors, including the lawyer’s mental problems at the time of his misconduct and his criminal prosecution for the misconduct).

not relish the prospect of imposing this ultimate sanction, particularly because Respondent provides much-needed legal services to those who might otherwise fall into an access to justice gap, we have little confidence that any sanction short of disbarment will avert further harm to members of the public.

## V. CONCLUSION

Respondent's cavalier disregard of court appearances and directives degrades the dignity and authority of the judicial system. His criminal conviction for knowingly neglecting his elderly mother reflects poorly on his decisionmaking. But it is his fraudulent endorsement of two client checks, temporary conversion of his client's funds, and pattern of trust account mismanagement that render him utterly unfit to continue representing clients. Such misconduct has no place in the legal profession and warrants disbarment.

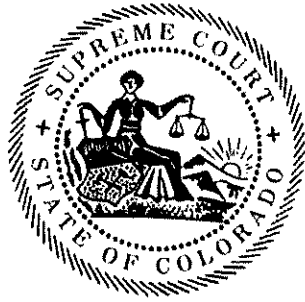
## VI. ORDER

The Hearing Board therefore **ORDERS**:

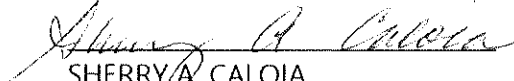
1. **DERRICK DUANE CORNEJO**, attorney registration number **29438**, is **DISBARRED**. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."<sup>119</sup>
2. Respondent **MUST** promptly comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.
3. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41(b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.
4. The parties **MUST** file any posthearing motions **no later than Tuesday, June 27, 2023**. Any response thereto **MUST** be filed within seven days thereafter.
5. The parties **MUST** file any application for stay pending appeal **no later than the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.
6. Respondent **MUST** pay the reasonable costs of this proceeding. The People **MUST** submit a statement of costs **no later than Tuesday, June 27, 2023**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days after.


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<sup>119</sup> In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 242.31(a)(6). In some instances, the order and notice may issue later than the thirty-five days by operation of C.R.C.P. 242.35, C.R.C.P. 59, or other applicable rules.



DATED THIS 13<sup>th</sup> DAY OF JUNE, 2023.

  
SHERRY A. CALOIA  
PRESIDING OFFICER

  
MARGARET C. CORDOVA  
HEARING BOARD MEMBER

  
JAMES R. CHRISTOPH  
HEARING BOARD MEMBER

Copies to:

Alan C. Obye  
Office of Attorney Regulation Counsel

Via Email  
[a.obye@csc.state.co.us](mailto:a.obye@csc.state.co.us)

Troy R. Rackham  
Respondent's Counsel

Via Email  
[trackham@spencerfane.com](mailto:trackham@spencerfane.com)

James R. Christoph  
Margaret C. Cordova  
Hearing Board Members

Via Email

Cheryl Stevens  
Colorado Supreme Court

Via Email

# Supreme Court

State of Colorado  
Certified to be a full, true and correct copy

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203		DEC 20 2023 Office of the Presiding Disciplinary Judge
Complainant: THE PEOPLE OF THE STATE OF COLORADO		Case Number: 21PDJ085 (consolidated with 22PDJ026 and 22PDJ057)
Respondent: DERRICK DUANE CORNEJO, #29438		
ORDER AND NOTICE OF DISBARMENT		

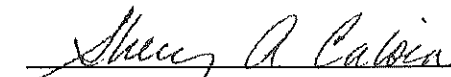
From April 18-20, 2023, the Hearing Board in this matter held a disciplinary hearing under C.R.C.P. 242.30. On June 13, 2023, the Hearing Board issued an "Opinion Imposing Sanctions Under C.R.C.P. 242.31," disbaring Derrick Duane Cornejo ("Respondent") from the practice of law.

Under C.R.C.P. 242.31(a)(6), the Presiding Officer **ORDERS** that **DERRICK DUANE CORNEJO**, attorney registration number **29438**, is **DISBARRED** from the practice of law in the State of Colorado, **EFFECTIVE IMMEDIATELY**. Respondent **MUST NOT** engage in the practice of law or aid others to practice law in violation of Colo. RPC 5.5(b).

Within 14 days after issuance of this "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41(b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.



DATED THIS 2<sup>nd</sup> DAY OF AUGUST, 2023.

  
SHERRY A. CALOIA  
PRESIDING OFFICER



**Respondent's Counsel**

Troy R. Rackham  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
[trackham@spencerfane.com](mailto:trackham@spencerfane.com)

Via Email

**Office of Attorney Regulation Counsel**

Alan C. Obye  
[a.obye@csc.state.co.us](mailto:a.obye@csc.state.co.us)

Via Email

**Hearing Board Members**

James R. Christoph  
Margaret C. Cordova

Via Email

**American Bar Association**

c/o Kevin Hanks  
Office of Attorney Regulation Counsel  
[k.hanks@csc.state.co.us](mailto:k.hanks@csc.state.co.us)

Via Email

**Board of Continuing Legal Education and Colorado Attorney Registration**

Elvia Mondragon  
Office of Attorney Registration  
1300 Broadway, Suite 510  
Denver, CO 80203  
[e.mondragon@csc.state.co.us](mailto:e.mondragon@csc.state.co.us)

Via Email

**Colorado Bar Association**

Amy Larson, Executive Director  
Margaret Haywood, Membership Director  
1290 Broadway, 17<sup>th</sup> Floor  
Denver, CO 80203  
[alarson@cobar.org](mailto:alarson@cobar.org)  
[mhaywood@cobar.org](mailto:mhaywood@cobar.org)

Via Email

**Colorado Supreme Court**

Cheryl Stevens  
2 East 14<sup>th</sup> Avenue  
Denver, CO 80203  
[cheryl.stevens@judicial.state.co.us](mailto:cheryl.stevens@judicial.state.co.us)  
[heather.petercarroll@judicial.state.co.us](mailto:heather.petercarroll@judicial.state.co.us)  
[liz.cunningham@judicial.state.co.us](mailto:liz.cunningham@judicial.state.co.us)

Via Email

**IRS, Office of Professional Responsibility**

Kathy Gibbs  
SE: OPR, 1111, Constitutional Ave., N.W.  
Washington, DC 20224  
[kathy.a.gibbs@irs.gov](mailto:kathy.a.gibbs@irs.gov)

Via Email

**Martindale-Hubbell**

Attn: Editorial Dept.  
121 Chanlon Road, Suite 110  
New Providence, NJ 07974  
[disciplinaryaction@lexisnexis.com](mailto:disciplinaryaction@lexisnexis.com)

Via Email

**Supreme Court of the United States**

Perry Thompson, Admissions Office  
1 First Street Northeast  
Washington, D.C. 20543  
[pthompson@supremecourt.gov](mailto:pthompson@supremecourt.gov)  
[ptadmit@supremecourt.gov](mailto:ptadmit@supremecourt.gov)

Via Email

**United States Bankruptcy Court**

Laura Guice  
721 19<sup>th</sup> Street, Room 117  
Denver, CO 80202-2508  
[laura\\_guice@cob.uscourts.gov](mailto:laura_guice@cob.uscourts.gov)  
[cobml\\_training@cob.uscourts.gov](mailto:cobml_training@cob.uscourts.gov)

Via Email

**United States Court of Appeals for the Tenth Circuit**

Byron White United States Courthouse  
1823 Stout Street  
Denver, CO 80257  
[disciplinaryorders@ca10.uscourts.gov](mailto:disciplinaryorders@ca10.uscourts.gov)

Via Email

**United States District Court, District of Colorado**

Alfred A. Arraj U.S. Courthouse  
Mark Fredrickson, Atty Services Coordinator  
901 19<sup>th</sup> Street, Room A-105  
Denver, CO 80294-3589  
[mark\\_fredrickson@cod.uscourts.gov](mailto:mark_fredrickson@cod.uscourts.gov)  
[ashley\\_sheehan@cod.uscourts.gov](mailto:ashley_sheehan@cod.uscourts.gov)

Via Email

**United States Department of Justice,  
Executive Office for Immigration Review**

*Office of the General Counsel*  
Allison Minor, Disciplinary Counsel  
5107 Leesburg Pike, Suite 2600  
Falls Church, VA 22041  
[lea.minor@usdoj.gov](mailto:lea.minor@usdoj.gov)

Via Email

**United States Department of Justice, Trustee's Office**

Gregory Garvin, Assistant U.S. Trustee  
999 18<sup>th</sup> Street, Suite 1551  
Denver, CO 80202  
[gregory.garvin@usdoj.gov](mailto:gregory.garvin@usdoj.gov)

Via Email



Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 25, 2024
Original Proceeding in Discipline Office of the Presiding Disciplinary Judge 2021PD085, 2022PD026, 2022PD057	
<b>In the Matter of Attorney-Respondent:</b>  Derrick Cornejo.	Supreme Court Case No: 2023SA160
ORDER AND MANDATE	

This cause having been brought to this court on an appeal of an Original Proceeding in Discipline to review the order of the Hearing Board, and having been heretofore submitted to the consideration and judgment of the court, and now being sufficiently advised in the premises,

IT IS ORDERED AND ADJUDGED that the order of the Hearing Board is AFFIRMED WITHOUT OPINION.

NOW THEREFORE, jurisdiction of this cause is returned to the Office of the Presiding Disciplinary Judge.

WITNESS, the HONORABLE BRIAN D. BOATRIGHT, Chief Justice of our Supreme Court in the City and County of Denver, January 25, 2024.

CHERYL STEVENS  
CLERK, COLORADO SUPREME COURT

SUPREME COURT  
STATE OF COLORADO  
Certified to be a full, true and correct copy

FEB - 7 2024

Court Seal By CHERYL STEVENS  
Clerk of the Supreme Court  
Deputy Clerk



# INTERNAL PROCEDURAL RULES

## BOARD OF DISCIPLINARY APPEALS

*Current through June 21, 2018*

### Contents

<b>I. GENERAL PROVISIONS.....</b>	<b>1</b>
Rule 1.01. Definitions.....	1
Rule 1.02. General Powers .....	1
Rule 1.03. Additional Rules in Disciplinary Matters .....	1
Rule 1.04. Appointment of Panels .....	1
Rule 1.05. Filing of Pleadings, Motions, and Other Papers.....	1
Rule 1.06. Service of Petition .....	2
Rule 1.07. Hearing Setting and Notice .....	2
Rule 1.08. Time to Answer .....	2
Rule 1.09. Pretrial Procedure .....	2
Rule 1.10. Decisions .....	3
Rule 1.11. Board of Disciplinary Appeals Opinions.....	3
Rule 1.12. BODA Work Product and Drafts .....	3
Rule 1.13. Record Retention.....	3
Rule 1.14. Costs of Reproduction of Records.....	3
Rule 1.15. Publication of These Rules.....	3
<b>II. ETHICAL CONSIDERATIONS.....</b>	<b>3</b>
Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases.....	3
Rule 2.02. Confidentiality.....	4
Rule 2.03. Disqualification and Recusal of BODA Members .....	4
<b>III. CLASSIFICATION APPEALS .....</b>	<b>4</b>
Rule 3.01. Notice of Right to Appeal .....	4
Rule 3.02. Record on Appeal.....	4
<b>IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS.....</b>	<b>4</b>
Rule 4.01. Perfecting Appeal.....	4
Rule 4.02. Record on Appeal.....	5
Rule 4.03. Time to File Record.....	6
Rule 4.04. Copies of the Record .....	6
Rule 4.05. Requisites of Briefs .....	6
Rule 4.06. Oral Argument.....	7
Rule 4.07. Decision and Judgment .....	7
Rule 4.08. Appointment of Statewide Grievance Committee.....	8
Rule 4.09. Involuntary Dismissal.....	8
<b>V. PETITIONS TO REVOKE PROBATION.....</b>	<b>8</b>
Rule 5.01. Initiation and Service.....	8
Rule 5.02. Hearing.....	8

<b>VI. COMPULSORY DISCIPLINE.....</b>	<b>8</b>
Rule 6.01. Initiation of Proceeding .....	8
Rule 6.02. Interlocutory Suspension .....	8
<b>VII. RECIPROCAL DISCIPLINE .....</b>	<b>9</b>
Rule 7.01. Initiation of Proceeding .....	9
Rule 7.02. Order to Show Cause.....	9
Rule 7.03. Attorney’s Response.....	9
<b>VIII. DISTRICT DISABILITY COMMITTEE HEARINGS .....</b>	<b>9</b>
Rule 8.01. Appointment of District Disability Committee .....	9
Rule 8.02. Petition and Answer .....	9
Rule 8.03. Discovery .....	9
Rule 8.04. Ability to Compel Attendance.....	10
Rule 8.05. Respondent’s Right to Counsel .....	10
Rule 8.06. Hearing.....	10
Rule 8.07. Notice of Decision.....	10
Rule 8.08. Confidentiality.....	10
<b>IX. DISABILITY REINSTATEMENTS .....</b>	<b>10</b>
Rule 9.01. Petition for Reinstatement .....	10
Rule 9.02. Discovery .....	10
Rule 9.03. Physical or Mental Examinations .....	10
Rule 9.04. Judgment .....	10
<b>X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS .....</b>	<b>11</b>
Rule 10.01. Appeals to the Supreme Court.....	11

# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Current through June 21, 2018*

### I. GENERAL PROVISIONS

#### Rule 1.01. Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

#### Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

#### Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

#### Rule 1.04. Appointment of Panels

- (a) BODA may consider any matter or motion by panel,

except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

#### Rule 1.05. Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

- (1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

- (2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

- (4) Exceptions.

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

- (ii) The following documents must not be filed electronically:

- a) documents that are filed under seal or subject to a pending motion to seal; and
- b) documents to which access is otherwise restricted by court order.

- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

- (5) Format. An electronically filed document must:

- (i) be in text-searchable portable document format (PDF);
- (ii) be directly converted to PDF rather than scanned, if possible; and
- (iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

#### **Rule 1.06. Service of Petition**

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent’s signature.

#### **Rule 1.07. Hearing Setting and Notice**

(a) **Original Petitions.** In any kind of case initiated by the CDC’s filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the

request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

#### **Rule 1.08. Time to Answer**

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

#### **Rule 1.09. Pretrial Procedure**

##### **(a) Motions.**

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

#### **Rule 1.10. Decisions**

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

#### **Rule 1.11. Board of Disciplinary Appeals Opinions**

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in

the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

#### **Rule 1.12. BODA Work Product and Drafts**

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

#### **Rule 1.13. Record Retention**

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

#### **Rule 1.14. Costs of Reproduction of Records**

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

#### **Rule 1.15. Publication of These Rules**

These rules will be published as part of the TDRPC and TRDP.

## **II. ETHICAL CONSIDERATIONS**

#### **Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases**

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

## **Rule 2.02. Confidentiality**

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

## **Rule 2.03. Disqualification and Recusal of BODA Members**

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

## **III. CLASSIFICATION APPEALS**

### **Rule 3.01. Notice of Right to Appeal**

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

### **Rule 3.02. Record on Appeal**

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and

all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

## **IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS**

### **Rule 4.01. Perfecting Appeal**

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

#### **Rule 4.02. Record on Appeal**

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

#### **(c) Responsibility for Filing Record.**

##### **(1) Clerk's Record.**

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

##### **(2) Reporter's Record.**

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

- a) a notice of appeal has been filed;
- b) a party has requested that all or part of the reporter's record be prepared; and
- c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

#### **(d) Preparation of Clerk's Record.**

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties'

written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

#### **(f) Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for



perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6<sup>1</sup>) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

<sup>1</sup> So in original.

#### **Rule 4.03. Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless

a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

#### **(b) If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

#### **(c) Extension of Time to File the Reporter's Record.**

When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

#### **Rule 4.04. Copies of the Record**

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

#### **Rule 4.05. Requisites of Briefs**

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

**(c) Contents.** Briefs must contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
- (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
- (5) a statement, without argument, of the basis of BODA's jurisdiction;
- (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
- (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
- (8) the argument and authorities;
- (9) conclusion and prayer for relief;
- (10) a certificate of service; and
- (11) an appendix of record excerpts pertinent to the issues presented for review.

**(d) Length of Briefs; Contents Included and Excluded.**

In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

**(e) Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

**(f) Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's

failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

**Rule 4.06. Oral Argument**

**(a) Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

**(b) Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

- (1) the appeal is frivolous;
- (2) the dispositive issue or issues have been authoritatively decided;
- (3) the facts and legal arguments are adequately presented in the briefs and record; or
- (4) the decisional process would not be significantly aided by oral argument.

**(c) Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

**Rule 4.07. Decision and Judgment**

**(a) Decision.** BODA may do any of the following:

- (1) affirm in whole or in part the decision of the evidentiary panel;
- (2) modify the panel's findings and affirm the findings as modified;
- (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
- (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:
  - (i) the panel that entered the findings; or
  - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

**(b) Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

#### **Rule 4.08. Appointment of Statewide Grievance Committee**

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

#### **Rule 4.09. Involuntary Dismissal**

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

### **V. PETITIONS TO REVOKE PROBATION**

#### **Rule 5.01. Initiation and Service**

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

#### **Rule 5.02. Hearing**

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

### **VI. COMPULSORY DISCIPLINE**

#### **Rule 6.01. Initiation of Proceeding**

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

#### **Rule 6.02. Interlocutory Suspension**

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

- (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
- (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

## VII. RECIPROCAL DISCIPLINE

### Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

### Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

### Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

## VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

### Rule 8.01. Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

### Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

### Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

#### **Rule 8.04. Ability to Compel Attendance**

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

#### **Rule 8.05. Respondent's Right to Counsel**

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

#### **Rule 8.06. Hearing**

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

#### **Rule 8.07. Notice of Decision**

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

#### **Rule 8.08. Confidentiality**

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

### **IX. DISABILITY REINSTATEMENTS**

#### **Rule 9.01. Petition for Reinstatement**

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension

contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

#### **Rule 9.02. Discovery**

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

#### **Rule 9.03. Physical or Mental Examinations**

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

#### **Rule 9.04. Judgment**

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

## **X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS**

### **Rule 10.01. Appeals to the Supreme Court**

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.