People v. Derrick Duane Cornejo. 21PDJ085 (consolidated with 22PDJ026 and 22PDJ057). June 13, 2023.

Following a disciplinary hearing, a hearing board disbarred Derrick Duane Cornejo (attorney registration number 29438), effective August 1, 2023.

Cornejo 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. He also 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.

Through this conduct, Cornejo violated Colo. RPC 1.3 (a lawyer must act with reasonable diligence and promptness when representing a client); Colo. RPC 1.15A(a) (a lawyer must hold client property separate from the lawyer's own property): Colo. RPC 3.4(c) (a lawyer must not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 8.4(b) (it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The case file is public per C.R.C.P. 242.41(a). Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DERRICK DUANE CORNEJO, #29438	Case Number: **21PDJ085 (consolidated with 22PDJ026 and 22PDJ057)**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31	

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.[1]

[1] 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.[2] 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.[3]

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

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 Schwartze, corresponded by email about preparing for trial call on May 18, 2020.[6] 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.[7]

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

[2] Although Respondent failed to include Rodriguez on his witness list, the People did not object to Rodriguez's testimony.

[3] 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.

[4] Order on Summ. J. at 1.

[5] C.R.C.P. 242.1(a).

[6] *See also* Ex. S1 at 1.

[7] *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.
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> 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.
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> Due to the current pandemic and staffing demands, counsel is instructed to contact the Court by email. The Division Clerks email address is: Elizabeth.Schwartze@judicial.state.co.us.[8]

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."[9] 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."[10] 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.[11]

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[8] Order on Summ. J. at 3-4.
[9] Order on Summ. J. at 4.
[10] Order on Summ. J. at 4.
[11] *See also* Ex. S1 at 5.

At a hearing date of September 18, 2020, M.M. appeared but Respondent did not.[12] 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.[13] 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

[12] *See also* Ex. S1 at 7-8.

[13] 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."[14]

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.[15] 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,[16] 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.[17] 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[18]

Rodriguez Matter Findings of Fact

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

[14] Order on Summ. J. at 7; *see also* Ex. S41.
[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.
[19] 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.[21] 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.[22] Judge Gonzales continued Rodriguez's warrant and deemed speedy trial issues waived based on Rodriguez's no-show.[23] 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.[24] 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.[25]

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

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[20] Ex. S2 at 5.
[21] Ex. S36 at 1; Ex. S38 at 1063.
[22] Ex. S38 at 1069.
[23] Ex. S36 at 1.
[24] Ex. S36 at 1.
[25] 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.
[26] Ex. S38 at 1063.
[27] Ex. S36 at 2.

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

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.[30] After attending to a few other matters, Respondent left the courthouse around 11:45 a.m.

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[28] Rodriguez also testified that Respondent never explained to him why Respondent failed to appear.

[29] Ex. S38 at 1063.

[30] 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.[31] 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.[32] But Respondent did not attend in person or virtually, even though the court clerk attempted to contact him several times.[33] After explaining to Gallegos-Medina that Respondent was not present, Judge Madden continued the case to the next business day.[34] 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."[35]

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.[36] 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.[37]

On Tuesday, January 11, 2022, Cunningham again coordinated Gallegos-Medina's virtual attendance at the status review.[38] 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.[39]

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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.

[31] Ex. S28 at 986.

[32] Ex. S38 at 1065.

[33] *See* Ex. S36 at 1.

[34] Ex S38 at 1065.

[35] Ex. S28 at 987.

[36] Ex. S28 at 989-90.

[37] Ex. S38 at 1066.

[38] Ex. S38 at 991-92.

[39] 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.[40] 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.[41] 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.[42] 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.[43] 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.[44] 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

[40] *See* Ex. S34 at 1, 16.
[41] *See* Ex. S34 at 7 (cell phone records reflecting Baker's call at 5:40 p.m.).
[42] Ex. S31 at 49 (referencing items 14-19).
[43] *See* Ex. 16 at 17-23.
[44] *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.[45] On May 24, 2021, Mr. Paiz filed pro se his own motion seeking a contempt of court citation against Ms. Paiz.[46] 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."[47] 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.[48] 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.[49] 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."[50] On August 26, 2021, Respondent deposited the check in his trust account at BOK Financial. At the end of August 2021, Respondent's trust

[45] 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.
[46] Ex. S31 at 55-57.
[47] 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.
[48] Ex. S17 at 904.
[49] Ex. S17 at 904.
[50] Ex. S11 at 698.

account held $11,188.18, including the $5,000.00 cashier's check from Mr. Paiz.[51] 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.[52] 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.[53]

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.[54] 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.[55] Mr. Paiz failed to appear at that rescheduled hearing; the court issued a

[51] Ex. S11 at 726.
[52] Ex. S11 at 729.
[53] Ex. S40 at 620.
[54] *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).
[55] Ex. S17 at 903.

bench warrant for him and dismissed his motion for contempt.[56] 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.[57]

Ms. Paiz texted Respondent on November 9, 2021, asking, "Have you set up a mediation yet?"[58] 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.[59] 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.[60] The mediation was set for February 21, 2022.[61]

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.[62] 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.[63] 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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[56] Ex. S17 at 903.
[57] Ex. S17 at 902.
[58] Ex. S8 at 4.
[59] Ex. S19.
[60] Ex. S20.
[61] Ex. S20.
[62] Ex. S11 at 702.
[63] *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.[64] 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.[65] Even so, the parties did not reach a mediated settlement, and the case remained on track for the contempt hearing on April 1, 2022.[66]

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.[67] 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.[68] 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.[69]

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[64] Ex. S32 at 18 (Ms. Paiz texted on February 18, 2022, "I need that check soon . . .").

[65] Ex. S37.

[66] 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.

[67] *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").

[68] 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").

[69] *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.[70] 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.[71] 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."[72]

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.[73] 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.[74] 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.[75] Respondent refused and insisted that he would compile a bill, the amount for which he would deduct from the funds Mr. Paiz sent him.[76] 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.[77] 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

[70] *See* Ex. S32 at 32-33.
[71] *See* Ex. S30 (audio recording).
[72] Ex. S70.
[73] *See* Ex. S17 900-01.
[74] Ex. S17 at 901.
[75] 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").
[76] Ex. S32 at 39.
[77] 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."[78]

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."[79] 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!"[80] 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."[81] 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."[82]

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.[83] The following day, he sent Ms. Paiz a second invoice.[84] 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.[85] In that invoice, Respondent

[78] 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]").
[79] Ex. S8 at 22.
[80] Ex. S8 at 22.
[81] *See, e.g.,* Ex. S9 at 506-07; Ex. S8 at 24-29; Ex. S7 at 454-456; Ex. S32 at 48-51.
[82] 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.
[83] Ex. S40 at 633; Ex. S11 at 742.
[84] Ex. S5. Respondent sent Ms. Paiz a first invoice on December 30, 2021. *See* Ex. S4.
[85] 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.[86] 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.[87] On April 15, 2022, he sent Ms. Paiz a certified check for $2,860.00.[88]

Meanwhile, on April 14, 2022, Respondent moved to withdraw as Ms. Paiz's counsel of record.[89] 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.[90] 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,[91] and was permitted to withdraw on April 29, 2022.[92]

Between August 11, 2021, and May 27, 2022—during which he represented Paiz—Respondent wrote seventeen checks to "cash" from his trust account.[93] From his trust account he also cut one check to the clerk of the Colorado Supreme Court to pay his 2022 attorney registration fee.[94] 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).

[86] Ex. S5 at 526; *see also* Ex. S7 at 453.

[87] Ex. S7 at 451-52.

[88] Ex. S11 at 794.

[89] Ex. S21.

[90] Ex. S22.

[91] Ex. S23.

[92] Ex. S24.

[93] Ex. S11 at 662-87.

[94] 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.[95]

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.

[95] 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.[96]

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."[97] 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

[96] *Accord* Colo. RPC 1.15C(a).

[97] 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,[98] 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

[98] 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.[99] 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.[100] Neither the lawyer's motive in taking the money nor the lawyer's intent to return the funds is relevant to a conversion inquiry.[101] 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.[102] 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.[103]

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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[99] *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").

[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).

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).[104]

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.[105]

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*")[106] and Colorado Supreme Court case law.[107] 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

[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).

[106] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).

[107] *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.[108]

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.[109]

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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[108] *In re Attorney F.*, 2012 CO 57, ¶ 15 (Colo. 2012).

[109] *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*.[110] 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.[111] 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

[110] 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.
[111] *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.[112]

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.

[112] *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.[113] In so doing, we are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[114] 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.[115]

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

[113] *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).
[114] *Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[115] *Id.* ¶ 15.

disbarment unless extraordinary mitigating factors apply.[116] 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."[117] When conversion is coupled with other acts of deceit, dishonesty, or fraud, it is all the more apparent that serious disciplinary action is required.[118]

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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[116] *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, comingled 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).

[117] *People v. Buckles*, 673 P.2d 1008, 1012 (Colo. 1984).

[118] *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."[119]

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.

[119] 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 13th DAY OF JUNE, 2023.

SHERRY A. CALOIA
PRESIDING OFFICER

MARGARET C. CORDOVA
HEARING BOARD MEMBER

JAMES R. CHRISTOPH
HEARING BOARD MEMBER