People v. Douglas Leo Romero. 22PDJ025 (consolidated with 22PDJ048). September 5, 2023.

Following a disciplinary hearing, a hearing board disbarred Douglas Leo Romero (attorney registration number 35464). The disbarment is scheduled to take effect on September 5, 2023.

In 2018, Romero charged an immigration client $3,500.00 to obtain a U visa, even though Romero knew that the client was likely ineligible for a U visa. During the nineteen months that followed, neither Romero nor his firm performed any work of value on the client's matter. In 2019, the client terminated the representation and demanded a refund of her fee, but Romero attempted to settle the matter by mailing the client a check for $500.00 and keeping $3,000.00 of the client's money. Later, Romero informed disciplinary authorities on four separate occasions that a lawyer at his firm spent over 50 hours on the client's case. But Romero's firm kept no contemporaneous records showing what work it had performed for the client; moreover, the firm's case file contained only two brief memoranda and an invoice, prepared after the representation ended, purporting to show that Romero's staff worked just 21.6 hours on the client's case.

In another matter, while Romero was suspended from the practice of law, he advised his firm's client that she needed a prenuptial agreement and drafted the agreement for the client without the supervision of a licensed lawyer.

Finally, Romero failed to timely pay the costs he was ordered to pay in a prior disciplinary case until months after the deadline elapsed, despite knowing of the order and the deadline it imposed on him.

Through this conduct, Romero violated Colo. RPC 1.5(a) (a lawyer must not charge an unreasonable fee or an unreasonable amount for expenses); Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation, including by returning unearned fees and any property to which the client is entitled); Colo. RPC 3.4(c) (a lawyer must not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 5.5(a)(2) (a lawyer must not practice law where doing so violates regulations of the legal profession); Colo. RPC 8.1(a) (a lawyer must not knowingly make a false statement of material fact in connection with a disciplinary matter); 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:** DOUGLAS LEO ROMERO, #35464	Case Number: **22PDJ025 (consolidated with 22PDJ048)**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31(a)	

Douglas Leo Romero ("Respondent") charged an immigration client $3,500.00 to obtain a U visa, even though he knew that the client likely was not eligible for a U visa. During the nineteen-month-long representation, neither he nor his firm performed any work of value on the client's case. When the client demanded that Respondent refund her fee, Respondent's firm attempted to settle the matter by sending the client a check for $500.00, keeping $3,000.00 of the client's money. Later, Respondent informed disciplinary authorities on four separate occasions that a lawyer at his firm spent over 50 hours on the client's matter. He made this report even though his firm kept no contemporaneous records showing what work it had performed for the client and the firm's case file contained only two brief memoranda and an invoice, which was prepared after the representation ended and purported to show that 21.6 hours had been expended on the case. But the documents did not accurately show that any work had been undertaken on the client's behalf. In another matter, while Respondent was suspended from the practice of law, he advised his law firm's client that she needed a prenuptial agreement and drafted the agreement for the client without the supervision of a licensed lawyer. Finally, Respondent knowingly disobeyed an order to pay costs in a prior disciplinary case until months after the deadline elapsed. Respondent's misconduct warrants disbarment.

I. PROCEDURAL HISTORY

On May 19, 2022, Justin P. Moore of the Office of Attorney Regulation Counsel ("the People") filed a complaint with the Office of the Presiding Disciplinary Judge ("the PDJ") in disciplinary case number 22PDJ025, alleging six violations of the Colorado Rules of Professional Conduct. Specifically, the People alleged that Respondent violated Colo. RPC 1.5(a) (Claim I), Colo. RPC 1.16(d) (Claim II), Colo. RPC 8.1(a) (Claim III), Colo. RPC 8.4(c) (Claim IV), Colo. RPC 3.4(c) (Claim V), and Colo. RPC 5.5(a)(2) (Claim VI). Respondent answered the complaint through his counsel, Gerald D. Pratt, on June 16, 2022. The PDJ set a three-day hearing to take place from November 14 through 16, 2022.

On August 12, 2022, the People filed an amended complaint against Respondent in disciplinary case number 22PDJ048,[1] alleging that in one matter Respondent violated Colo. RPC 3.4(c) (Claim I) and Colo. RPC 5.5(a)(2) (Claim II) and in a second matter violated Colo. RPC 3.4(c) (Claim III). On September 2, 2022, the PDJ consolidated case number 22PDJ048 with case number 22PDJ025. The PDJ then reset the three-day hearing for February 13-15, 2023.

On December 21, 2022, the PDJ granted the People's unopposed motion to dismiss Claims I and II of the amended complaint in case number 22PDJ048. On January 27, 2023, the PDJ *sua sponte* continued the hearing due to a scheduling conflict and reset the hearing for April 24-26, 2023. On February 2, 2023, the PDJ granted in part and denied in part the People's motion for summary judgment, entering judgment on Claim VI in case number 22PDJ025 and the remaining claim in case number 22PDJ048, Claim III.

From April 24-26, 2023, a Hearing Board comprising Presiding Disciplinary Judge Bryon M. Large ("the PDJ") and lawyers James L. Cox Jr. and Wendell B. Porterfield Jr. held a disciplinary hearing under C.R.C.P. 242.30. Moore and Jonathan P. White appeared on behalf of the People,[2] and Pratt represented Respondent. The Hearing Board received testimony from Respondent, Karla Garcia,[3] Valeria Lujan, Jean Abrahamson Pirzadeh, Amanda Cisneros, Stephen J. Alexander, Donald Martin, and James Sudler. The Hearing Board also received remote testimony from Lorena Sanchez-Garcia and Marisela Mendoza via the Zoom videoconferencing platform. The PDJ accepted the parties' stipulated exhibits S2-S12[4] and the parties' stipulated facts 1-19. The PDJ admitted the People's exhibits 3-4 and Respondent's exhibits A, G, H, and N.

II. KARLA GARCIA'S MATTER (CASE NUMBER 22PDJ025)

Findings of Fact[5]

Respondent was admitted to the practice of law in Colorado on May 24, 2004, under attorney registration number 35464.[6] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[7]

In 2005, Respondent established the Law Office of Douglas L. Romero, which became Colorado Christian Defense Counsel ("CCDC") that year. According to Respondent, he managed CCDC until he was suspended from the practice of law in 2019.[8]

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[1] The People filed the initial complaint in case number 22PDJ048 on August 3, 2022.

[2] White entered his appearance on December 13, 2022.

[3] Garcia testified with the assistance of a Spanish-speaking interpreter.

[4] The parties intentionally omitted exhibit S1.

[5] Unless otherwise indicated, the findings of fact in this opinion are drawn from testimony offered and evidence admitted at the hearing.

[6] Compl. at 1 (case number 22PDJ025); Answer at 1.

[7] C.R.C.P. 242.1(a)(1).

Garcia Retains CCDC to Obtain a U Visa

In November 2018, Karla Garcia,[9] a Mexican national who has resided in the United States since at least the 1990s, contacted CCDC with the goal of finding a way to remain in the country legally and avoid deportation. Garcia and her parents, Manuel Garcia and Maria Flores Torres, had obtained work authorizations in the 1990s. Garcia said that her father sought for twenty years to change her family's immigration status and to obtain documentation for his family.

At the hearing, Respondent testified that the Garcia family went to CCDC for help with their immigration goals. According to Respondent, Manuel and Maria brought a bankers box full of documents to CCDC that contained a "morass of materials that needed collating" to piece together the family's history and options. Respondent confirmed that CCDC invoiced Manuel in April 2018 for a telephone conference with a lawyer at CCDC, who discussed an avenue potentially open to the Garcia family: U visas. Respondent explained that U visas are issued to victims of a crime who participate in the government's investigation of the crime. Respondent testified that his immigration department concluded that Manuel and Marie could be eligible for U visas based on letters they received from the U. S. Immigration and Naturalization Services ("INS") identifying them as potential government witnesses.[10] The firm, Respondent added, believed that Garcia could be eligible for a U visa as a derivative beneficiary if her parents qualified for a U visa.

Respondent acknowledged that his firm advised Manuel in April 2018 about the significant obstacles to obtaining a U visa in his case, as the investigation supporting the U visa had been terminated years before. CCDC staff also advised Manuel at the time that even if he qualified for a U visa, his family, as his derivative beneficiaries, would not receive a U visa for at least five years due to the limited annual quota. Despite the difficult path outlined by CCDC's lawyers, Manuel and Maria each paid $1,500.00 on November 19, 2018, to hire the firm to pursue a U visa in their case.[11]

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[8] Respondent was twice suspended in 2019. Effective August 27, 2019, Respondent's probation was revoked and the stay on his seven-month suspension was lifted in case number 16PDJ057. *See* Ex. 3 at 40. Respondent was also suspended for three years in case number 18PDJ063 (consolidated with case number 19PDJ042), effective September 3, 2019. *See* Ex. 3 at 51-52.

[9] To avoid confusion, we hereafter refer to Karla Garcia as "Garcia" and refer to Garcia's parents by their first names.

[10] At the hearing, Respondent said that the letters were signed by Special Agent William Wallace and concerned an investigation into a fraudulent asylum application operation. We saw only one letter, dated November 23, 1998, which was signed by Special Agent Wallace and addressed to Maria. *See* Ex. 4. On the first day of the hearing, Garcia testified that her mother gave her the letter that morning and that Garcia provided the letter to the People at the hearing. Respondent testified that the Garcia family's file included a letter from Special Agent Wallace addressed to Manuel similar to the letter Maria had received.

[11] Ex. S11; *see also* Ex. S12 at 27, 29. Manuel had also retained CCDC for a criminal case, paying the firm $2,500.00 for that matter on November 3, 2018. *See* Ex. S11; Ex. S12 at 31.

Garcia testified that CCDC's staff recommended that she join her parents' matter and advised her that the firm could work on her case at a reduced fee if they bundled the representations together.[12] Garcia's case, Respondent explained at the hearing, was "intertwined inextricably" with her parents' case because Garcia would be eligible for a U visa only if the government issued a U visa to her parents. The firm thus could fold any work on Garcia's application into her parents' case, Respondent said, reducing or eliminating the fee for legal work performed on Garcia's behalf.

At the hearing, Garcia said that despite the firm's recommendation to consolidate the representations, she wanted CCDC to handle her case separately from her parents' matter.[13] Respondent testified that his firm agreed to handle Garcia's case separately for $3,500.00, which he said was the firm's standard fee for such matters. On November 20, 2018, one day after her parents paid their retainers, Garcia visited CCDC[14] and paid $2,000.00 to hire the firm to handle her case.[15] That day, Garcia signed a fee agreement with the firm, which read, in part:

> I, Karla Garcia, the client signing this agreement, authorize the firm to represent me for the following immigration matter(s), in relation to the following services indicated: U-Visa.
>
> . . .
>
> I UNDERSTAND THE FOLLOWING: 1. The law office of Douglas L. Romero cannot guarantee that it will confer the benefit being sought from [U.S. Citizenship and Immigration Services] or the Immigration Court, including after providing legal counsel and successfully submitting the necessary applications and documents.
>
> 1) The law office of Douglas L. Romero will pursue my case with all possible diligence, but cannot guarantee results. Thus, the legal counsel provided by Douglas Romero cannot be guaranteed to confer the benefit sought or to obtain desired results. . . .[16]

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[12] Garcia did not explain whether a lawyer or other staff at CCDC provided this advice. Moreover, we are not certain from the evidence if Manuel and Maria were jointly represented in their immigration cases, as Garcia's testimony implies, or individually represented, as their retainer agreements and payment records suggest. *See* Ex. S11; Ex. S12 at 27, 29.

[13] Garcia did not elaborate as to why she sought to separate her matter from her parents' case, stating only that she decided against joining the representation because her sister, Gladys, did not want to be included in their case.

[14] *See* Ex. G at 2 (CCDC sign in sheet).

[15] *See* Ex. S4 at 4; Ex. S10 at 3. In addition, CCDC's client sign in sheet reflects that Garcia visited the firm on November 20, 2018. *See* Ex. G. Garcia testified that she signed the fee agreement on November 19 or 20, 2018.

[16] Ex. S10 at 1 (copy of Garcia's fee agreement translated to English); *see also* Ex. S4 at 1 (copy of Garcia's original fee agreement written in Spanish); Stip. Fact 1 (stipulating that exhibit S10 is a reasonable English translation of Garcia's fee agreement).

The fee agreement also set forth rates for hourly work, as follows:

- $300.00 per hour for Doug Romero, Owner;
- $300.00 per hour for associate attorney work;
- $200.00 per hour for paralegal services;
- $125.00 per hour for legal assistant work.[17]

Garcia agreed to pay CCDC a flat fee of $3,500.00 for her case.[18] She testified that when she signed the fee agreement neither Respondent nor any lawyer at CCDC explained the representation to her.[19] She did not know what a U visa is, she said, and she understood only that she was seeking one as a derivative beneficiary of her parents. Garcia acknowledged that no one at CCDC promised her a U visa but neither did anyone explain to her why she might not qualify for one, she said.

Garcia ultimately paid CCDC a total of $3,900.00 in legal fees on the following schedule:

- $2,000.00 on November 20, 2018;
- $250.00 on December 11, 2018;
- $350.00 on January 29, 2019;
- $250.00 on March 1, 2019;
- $300.00 on April 6, 2019;
- $250.00 on May 3, 2019;
- $250.00 on June 6, 2019;
- $250.00 on July 8, 2019.[20]

At the hearing, Garcia expressed frustration with the representation and complained that no one at the firm kept her informed about her case despite her attempts to get information from staff. She said that no lawyer or other staff talked with her about her matter on any of the dates she made payments to the firm. Garcia added that she drove from her home in Avon to Denver to make some payments in person, even though she could submit the payments by telephone, because she hoped to talk with someone at CCDC about her case. But between 2018 and 2020, she said, no lawyer from the firm spoke with her about any work on her matter, about research into her case, or about the status of the U visa. Respondent confirmed Garcia's account,

[17] Stip. Fact 5.

[18] Ex. S10 at 3. Garcia's Spanish-language fee agreement uses the term "tarifa plana," which translates to "flat rate." Ex. S4 at 4.

[19] Garcia said that CCDC's paralegal, Marisela Mendoza, was present when she signed the fee agreement. At the hearing, Mendoza confirmed that she took Garcia's initial payment, adding that she drafted Garcia's fee agreement. Respondent acknowledged that he did not meet with Garcia at that time, though he stated that he was involved in the intake of her case.

[20] Stip. Fact 3; *see also* Ex. S9 at 10-14. We did not hear any evidence as to whether CCDC staff deposited Garcia's funds into the firm's trust account.

testifying that no lawyer at the firm met with Garcia or explained her options to her. It is undisputed that Respondent did not work on Garcia's matter.[21]

By mid-2020, Garcia said, she was concerned that CCDC was not working on her matter and would not be able to obtain a U visa for her. Garcia recalled that she went to CCDC sometime between May and July 2020 and met with Respondent for the first time. During that visit, Garcia said, she requested a refund of her money. On June 10, 2020, CCDC refunded Garcia $400.00 via a check drawn on Respondent's trust account.[22] But Garcia had overpaid her bill and was owed that amount anyway.

Shortly after CCDC returned the $400.00, Garcia terminated the firm. On July 18, 2020, after Garcia ended the representation, CCDC sent her a check for $500.00 drawn on Respondent's trust account, with the words "Settlement on Refund" written on the memo line.[23] Respondent, who by that time was serving a three-year suspension from the practice of law,[24] said his supervising lawyer, Jean Pirzadeh, made the decision to refund the money. Though Respondent stated that he believed CCDC and Garcia had arrived at an agreement to settle the dispute for $500.00, Garcia testified that she never cashed the check because she believed that the firm simply sent the check to appease her. At the hearing, Respondent acknowledged that he never verified whether Garcia deposited the check's funds from his trust account.

According to Respondent, CCDC agreed to take Garcia's case based on the 1998 INS letters and information her family reported to the firm, adding that the firm would have refunded Garcia's money if she did not qualify for a U visa. But, somewhat discordantly, Respondent acknowledged that CCDC did not have specific documentation to support Garcia's eligibility for a U visa when she hired the firm, and he testified that he knew CCDC could not do anything to reach the outcome sought by Garcia or her family. It was "common knowledge," Respondent observed, that work on immigration matters could "go for naught."

Garcia's Case File

Garcia testified that CCDC returned her file to her when she ended the representation.[25] At the hearing, Garcia said that the only contents in her file were two memoranda.[26] The first is a four-page document captioned "To File Status: Garcia."[27] The memorandum is neither signed

[21] Stip. Fact 17.

[22] Ex. S9 at 15; *see also* Stip. Fact 4.

[23] Ex. S9 at 16; *see also* Stip. Fact 4.

[24] *See* Ex. 3 at 51-52.

[25] Respondent testified that CCDC sent Garcia's file to a lawyer, Ted Hess, but did not dispute that the firm provided Garcia with the file when she ended the representation.

[26] Though Garcia did not recall at the disciplinary hearing if the file contained the memoranda when CCDC returned it to her, she conceded that she testified at her deposition in this proceeding that the file contained the documents.

[27] Ex. S5.

nor dated. Though the memorandum states that a U visa was the Garcia family's best option to adjust their immigration status, it outlines the obstacles in obtaining a U visa in their case:

> [T]he U Visa was difficult to obtain. 1) There is a quota on such visas so the waiting period could by over 10 or 20 years, during which time if [the Garcia family] were in proceedings by INS they could be deported although that was not now the status of their case. 2) More importantly the U Visa required law enforcement to sign a "supplemental" form verifying that the Garcias had assisted in prosecution. This would be extremely problematic as the US Attorney had written his letter over 20 years prior and other than the letter, the Garcias had no knowledge about the case. Additionally, [the Garcia family] did not do anything to prosecute the case as they were never called. This was their last resort, and we informed them of that.[28]

The second memorandum, titled "History and Status of Karla Garcia and Manuel Garcia," is also unsigned and undated.[29] The four-page document contains twenty-four paragraphs and makes only fleeting reference to Garcia, stating that she thrice applied for work authorization in 1997 and 1998.[30] Paragraphs twenty through twenty-two are the only paragraphs that discuss a U visa:

> 20) [T]he firm provided another path to green card and citizenship. [The Garcia family] could apply for a U visa and then once granted apply to adjust the status and then citizenship. On the surface they qualified for a U visa as the victims of a crime in which they had assisted the courts and the prosecutor.
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> 21) Using the November 1998 letter informing [Manuel and Maria that they] were to assist the US attorney in prosecuting asylum fraud, [the Garcia family] had the qualifications for the U visa but to file they would need a supplemental filing from the prosecutor, police, or FBI, and they would need to give information about the case. It should also be noted that U visas are under quota and it might take 10 or 20 years to extend the quota to cover them. However, as they were not now in proceedings and were waiting anyway it really wasn't a risk.
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> 22) The office attempted to get information to prepare the U visa and met with the client many times. However, without the supplement it would not be possible to file. So far the prosecutor was either unwilling to give information or sign or prepare the supplement so the U visa was not filed.[31]

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[28] Ex. S5 at 3.

[29] Ex. S6 ¶ 1.

[30] Garcia's name appears only twice more in the memorandum—once in the title, and once erroneously naming her as the mother of Gladys, her sister. Ex. S6 ¶ 2.

[31] Ex. S6 ¶¶ 20-22 (cleaned up).

Respondent testified that he did not know who drafted the memoranda in Garcia's file but said that he believed that Bryan Ferrick and Stephen Alexander created them. Ferrick, who worked at CCDC from 2017 to 2019, was CCDC's primary immigration lawyer during that time.[32] Respondent testified that Ferrick was responsible for CCDC's immigration department and managed the staff working in that department, including Alexander, a nonlawyer who worked at CCDC in the role of a paralegal,[33] and Marisela Mendoza, who worked at CCDC from 2008 to 2019 performing paralegal work, administrative duties, and translation services for the firm's Spanish-speaking clients.

Though Respondent testified that he saw no work product in Garcia's matter "with the mark or signature of Ferrick," he pointed to accounts from CCDC staff stating that Ferrick worked on Garcia's case. During his testimony, Alexander confirmed that he and Ferrick collaborated on the memoranda, which Alexander described as a "whole-office work product." Mendoza also testified that Ferrick worked on Garcia's matter. According to Mendoza, Ferrick spoke with Garcia and conducted in-person consultations with Garcia and her parents. Mendoza said that she attended the meetings and translated for Ferrick. But Garcia did not recall ever meeting Ferrick between 2018 and 2020, nor did she recall that anyone at CCDC mentioned Ferrick's name to her in relation to her case or told her that Ferrick worked on her case.

At the hearing, Garcia testified that no one at CCDC discussed with her the contents of the memoranda in her file or explained why the firm had not applied for a U visa. Garcia never obtained a U visa, she said, and she does not believe that she received anything of value from CCDC in the nineteen months that the firm represented her. Respondent disputed that assessment, stating that Garcia benefitted because the firm conducted an investigation into, research for, and analysis of her case and rendered a conclusion and a legal opinion.

Garcia's Billing Statement

After Garcia ended the representation, CCDC sent her a billing statement dated July 20, 2020.[34] It was the first billing statement she received from the firm for her case, she said. The billing statement invoiced 21.4 hours of lawyer billing on Garcia's matter and 0.2 hours of paralegal work, for a total of 21.6 hours.[35] The billing statement identifies the lawyer who billed on Garcia's case only as "ATT."[36] At the hearing, Respondent stated that he had "a good-faith belief" that the entries under ATT before September 2019 were Ferrick's, based on Ferrick's role as the primary immigration lawyer at CCDC at that time and on statements from CCDC staff confirming that Ferrick worked on Garcia's case.[37]

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[32] Stip. Fact 6. According to Respondent, at least one other lawyer appeared at immigration hearings on behalf of CCDC's clients during Ferrick's time with the firm.

[33] *See* Stip. Fact 7.

[34] Ex. S7.

[35] Ex. S7 at 6.

[36] *See generally* Ex. S7.

[37] Respondent said that CCDC fired Ferrick in September 2019.

The billing statement contains twenty-nine entries attributed to ATT, seventeen of which include detailed notes reflecting research and analysis into the Garcia family's cases. Notably, virtually all of these entries—sixteen of them—claim exactly one billable hour each. Thirteen of those same entries contain notes that also appear in the "History and Status of Karla Garcia and Manuel Garcia" memorandum Garcia found in her file. The language in these entries is substantially similar and in some instances verbatim to paragraphs in the memorandum.[38]

Garcia testified that she did not speak with any lawyers from CCDC about the information or the documents discussed in the billing statement, including the entry of November 28, 2018, describing her family's twenty-year history of efforts to change their immigration status; the entry of November 29, 2018, about asylum claims; the entry of November 30, 2018, about the INS investigation of immigration fraud conducted in 1998 and Special Agent Wallace, who contacted Garcia's parents about the investigation; the entry of December 17, 2018, stating that a lawyer at the firm advised the Garcia family that they had few options to change their immigration status without risking deportation proceedings; the entry of December 19, 2018, about the Garcia family's work authorizations, lack of green card status, and inability to leave the United States; the entry of January 15, 2019, discussing leveraging the INS letter to obtain a U visa and noting that U visas are under a quota, resulting in a wait time of ten-to-twenty years; and the entry of January 17, 2019, opining that securing a U visa would not be possible without obtaining the supplemental law enforcement certification related to the 1998 immigration fraud matter.[39] According to Garcia, she did not receive the legal opinion letter referenced in the entry dated May 27, 2019, that purported to describe "the history[,] research and opinion where the Garcia family now stood."[40] At the hearing, Respondent admitted that his firm does not have a copy of the legal opinion letter referenced in the billing statement.

We heard equivocal evidence that CCDC requested the supplemental law enforcement certification referenced in the billing statement. Mendoza testified that she worked with Ferrick on a letter to immigration authorities in California about a U visa for the Garcia family. She did not have a copy of the letter but stated that it should be in Respondent's office. According to Respondent, the letter requesting the supplemental certification "went out," but he acknowledged that Garcia's file did not contain a copy of the letter. Alexander confirmed that CCDC mailed such a letter but added that no one at the firm documented the event. We did not hear evidence describing when the letter was purportedly sent.

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[38] *Compare* Ex. S6 ¶ 1, *with* Ex. S7 at 1-2 (billing entry dated November 19, 2018); Ex. S6 ¶ 2, *with* Ex. S7 at 2 (billing entry dated November 20, 2018); Ex. S6 ¶ 6, *with* Ex. S7 at 2-3 (billing entry for November 28, 2018); Ex. S6 ¶¶ 7-8, *with* Ex. S7 at 3 (billing entries for November 29-30, 2018); Ex. S6 ¶¶ 11-12, *with* Ex. S7 at 4 (billing entries dated December 3-4, 2018); Ex. S6 ¶¶ 16-17, *with* Ex. S7 at 4-5 (billing entries dated December 12-13, 2018); and Ex. S6 ¶¶ 18-24, *with* Ex. S7 at 5-6 (billing entries dated December 17 and 19, 2018; and January 15 and 17, 2019).

[39] *See* Ex. S7 at 3-6.

[40] Ex. S7 at 6.

At the hearing, Respondent stated that CCDC generated the billing statement in 2020 after Garcia expressed dissatisfaction to him about her case and requested a refund. The firm did not notate the billing statement contemporaneously with the events the statement purported to document, he said. By this time, Ferrick was no longer with CCDC. Respondent claimed that Ferrick kept no notes or timesheets regarding the work he did for Garcia's case, stating, "that was typical of Mr. Ferrick and the way he practiced." Thus, Respondent testified, CCDC's staff recreated the information in the billing statement from calendars, legal pads, office notes, and appointment sheets. From that information, Respondent said, CCDC's staff claimed that fifty hours were expended on Garcia's case. Respondent acknowledged that he could not point to documentation showing that Ferrick personally performed fifty hours of work on the matter.

Respondent testified that sometime after CCDC's staff pieced together Garcia's billing statement, he concluded that the billing statement contained "a lot more padding than I thought" and pared down the hours the firm's staff claimed on Garcia's case from 50 to 21.6. Respondent cut work that he determined was duplicative or that "intermingled with the recitation of the Garcias' [case]." Respondent stated that he did not send Garcia an invoice reflecting the additional work. He kept no records of the excised hours or any document demonstrating that fifty hours of work had been expended on Garcia's case.

Respondent conceded that no notes or work product now exist to back up the work claimed on Garcia's billing statement except the billing statement itself and the two memoranda in Garcia's file. He added, however, that his review of the detailed memoranda led him to conclude that work had been done to prepare them. In addition, Alexander testified that before he left CCDC in early 2019, he personally expended fifty to sixty hours on the Garcia family's cases by talking with the family, talking with Ferrick, and researching the family's options for status adjustment.[41]

At the hearing, Garcia complained that CCDC did not treat her as a client because they handled her case and her parents' case as a single matter, even though she signed a separate fee agreement and paid the firm to pursue her own objectives.[42] She observed that CCDC even stored her file inside the file for her parents' case. Indeed, Garcia's billing statement includes entries for consultations with her family and work purportedly performed on November 3, 17, and 19, 2018,[43] but Garcia testified that she did not meet with Respondent or any lawyer from CCDC before she came in to sign the fee agreement on November 20, 2018. Moreover, the entries dated December 3-13, 2018, discuss Manuel's history of efforts to adjust his family's

[41] Alexander said that he did not track his time on the Garcia family's cases because he was salaried.

[42] Including their retainers, Garcia's parents paid $4,500.00 in total for CCDC's work on their immigration matter from November 2018 to March 2019. *See* Ex. S11; *see also* Ex. S12.

[43] *See* Ex. S7 at 1.

immigration status, and the entries of December 17 and 19, 2018, reflect additional consultations with the Garcia family.[44]

During his testimony, Alexander confirmed what Garcia suspected, stating that he viewed the family's cases as a package rather than as separate matters. Alexander even questioned whether a separate invoice for work on Garcia's matter alone would have been feasible. Indeed, during his testimony about the work the firm itemized in Garcia's billing statement, Respondent acknowledged that "everything stemmed from the [Garcia family's] file." He struggled to cogently reconcile CCDC's joint handling of the Garcia family's cases with his firm's agreement with Garcia to handle her case separately. Respondent could only reiterate that the cases were interrelated and stated that the firm "equitably divided" the work between Garcia's case and her parents' matter. But that information was not communicated to Garcia, he admitted.

Overall, we are simply unable to find the billing statement credible. The document is largely indecipherable and contains a recitation of facts rather than evidence that CCDC completed work on Garcia's case. Moreover, the billing statement reflects charges for work done for the Garcia family as a whole, not for Garcia herself. Respondent admits, and it is obvious to us, that the time was not contemporaneously recorded but instead recreated from notes about the Garcia family's case history. In addition, the repetitive use of one-hour billing increments is improbable lacks credibility. In short, we find that Respondent created the billing statement to justify CCDC's fees. We therefore do not accord it any credibility.

Respondent's Statements During the People's Investigation

On August 15, 2020, Garcia mailed a request for investigation ("RFI") to disciplinary authorities.[45] About two weeks later, on August 28, 2020, the People sent Respondent questions about Garcia's RFI.[46] One of those questions was, "What work did you perform for Ms. Garcia, when was the work performed and how long did it take you to perform such work? Please explain what benefit Ms. Garcia received from such work."[47] On September 15, 2020, Respondent authored a response,[48] including the following response to the People's query:

> Please see the attached memos and invoice to the file and to the family, and the basis for such work. Our former immigration [a]ttorney Bryan Ferrick, spent over 50 hours working through the file involving the work of several prior attorneys and paralegals which involved I-140's, labor certifications, and asylum claims. Mr. Ferrick pursued several avenues to obtain further adjustment of status.

[44] *See* Ex. S7 at 3-5.
[45] Stip. Fact 9.
[46] Stip. Fact 9.
[47] Stip. Fact 10.
[48] Stip. Fact 11; *see also* Ex. S9 at 55-56.

> We worked through the benefits, risks, and determination of immigration relief besides the U Visa route.[49]

In response to the People's question, Respondent attached and referenced the two memoranda contained in Garcia's file, the firm's billing statement dated July 20, 2020, and receipts for Garcia's payments to CCDC.[50] Respondent did not indicate in his response that he pared down the 50 hours he claimed his firm had worked on Garcia's case.

On December 14, 2020, the People interviewed Respondent and asked him directly about who was working on Garcia's matter.[51] Respondent answered, "Mr. Ferrick. I did not work on [Garcia's] matter."[52]

In May 2021, Garcia filed a claim with the Board of Trustees of the Attorneys' Fund for Client Protection ("CPF").[53] Respondent responded to Garcia's CPF claim on June 21, 2021.[54] In exhibit A to his response, Respondent included the same statement he provided in his response to the RFI, stating:

> Please see the attached memos and invoice to the file and to the family, and the basis for such work. Our former immigration [a]ttorney Bryan Ferrick, spent over 50 hours working through the file involving the work of several prior attorneys and paralegals which involved I-140's, labor certifications, and asylum claims. Mr. Ferrick pursued several avenues to obtain further adjustment of status. We worked through the benefits, risks, and determination of immigration relief besides the U Visa route.[55]

Respondent's counsel, Pratt, attached a letter to the CPF response[56] and stated on Respondent's behalf that Ferrick "prepared" the two memoranda marked as exhibits C and D to the response,[57] the same memoranda from Garcia's file.[58] This representation was based on information Respondent provided.[59]

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[49] Stip. Fact 11.

[50] *See* Stip. Fact 11. The contents of these documents are the same as those described in exhibits S5-S9.

[51] Stip. Fact 15.

[52] Stip. Fact 15.

[53] Stip. Fact 12.

[54] Stip. Fact 12; *see also* Ex. S8.

[55] *See* Stip. Fact 12.

[56] *See* Ex. S8 at 329-330.

[57] Stip. Fact 14.

[58] Exhibit C to Respondent's response to Garcia's CPF claim is the memorandum captioned "To File Status: Garcia," and exhibit D is the memorandum captioned "History and Status of Karla Garcia and Manual Garcia." Stip. Fact 13; *see also* Exs. S5-S6.

[59] Stip. Fact 14.

Finally, during a conversation with the People's investigators on February 22, 2022, Respondent stood by his previous representation that Ferrick performed over fifty hours of work on Garcia's matter, but he indicated that Ferrick had "said" this.[60]

At the hearing, Respondent repeated his representation that Ferrick or his staff performed fifty hours of work on Garcia's case. He admitted that his statements to the People in September 2020 and June 2021 about Ferrick's work were not accurate, however, though he denied that he intended to make any misrepresentations. Respondent "presumed" Ferrick's entire department worked on Garcia's case and asserted that it was a "matter of semantics whether Ferrick or his staff" worked on the matter. Yet Respondent also acknowledged he did not actually know that Ferrick's department performed fifty hours of work on Garcia's case and did not recall discussing with Ferrick how much time Ferrick worked on the case, stating, "I don't remember speaking with him, I just remember the time sheets." Indeed, Respondent said that he had not spoken with Ferrick since 2019 and that he took no steps between June 2021 and February 2022 to investigate Ferrick's work on the case.

Rule Violations

Colo. RPC 1.5(a) (Claim I)

The People's first claim in connection with the Garcia matter asserts that Respondent violated Colo. RPC 1.5(a). As relevant here, that rule provides that "[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

The People contend that Respondent violated this rule when his firm collected $3,900.00 for Garcia's case and treated $3,000.00 of the fee as earned, even though Respondent's firm did not perform the agreed-upon services outlined in the fee agreement and no lawyer at the firm performed substantial work on the case. Respondent disputes that his fee was unreasonable, arguing that even though lawyers at the firm ultimately determined that Garcia could not obtain a U visa, the research conducted in her case represented work performed for her and provided a benefit that she did not otherwise have, thus warranting the fees that Respondent kept.

The Hearing Board agrees with the People that Respondent collected an unreasonable fee in violation of Colo. RPC 1.5(a). We begin by rejecting Respondent's argument that his fee agreement shields him from a rule violation here because it stated that CCDC did not guarantee it could obtain a U visa or other status adjustment for Garcia. When charging a client a flat fee, "[t]he funds may be earned only as the lawyer performs specified legal services or confers benefits on the client as provided for in the written statement of the basis of the fee . . . ."[61] Here, CCDC charged Garcia a flat fee of $3,500.00—Respondent's "standard fee"—to help Garcia obtain a U visa. Though Garcia paid the fee in full, CCDC never filed the U visa after determining that it was unable to reach the outcome Garcia sought. Moreover, CCDC was on notice as early

[60] Stip. Fact 16.

[61] Colo. RPC 1.5 cmt. 12.

as April 2018 that Garcia's parents were unlikely to qualify for a U visa, thus undermining Garcia's own chances to receive a U visa as a derivative beneficiary. And even if Garcia qualified for a U visa as a derivative beneficiary, the firm knew she would be subject to a minimum five-year waiting period due to annual quotas. But CCDC agreed to take Garcia's case anyway without advising her of these issues or explaining why she likely would not qualify for a U visa, including their own doubt as to whether the Garcia family could get the law enforcement certification that was essential to the U visa application. We thus find that CCDC collected Garcia's fee despite knowing that Garcia's goal was unlikely and without advising Garcia that her case was not likely to succeed.

On the other side of the ledger, we saw no evidence that CCDC performed any substantive work on Garcia's matter. Respondent himself did not work on the case, and we credit Garcia's testimony, which Respondent confirmed, that neither Respondent nor any other CCDC lawyer met with Garcia during the representation or discussed her options with her. In addition, Respondent failed to rebut Garcia's testimony, which we also credit, that the firm collected no information or documents from her about her own case.[62] We also are persuaded by the absence of documentation demonstrating work on Garcia's case. For instance, we saw no documents showing that CCDC staff requested the supplemental law enforcement certification on Garcia's behalf. Nor do any documents exist that log the time or work CCDC staff spent creating the two memoranda in Garcia's file, which, in any event, discuss the family's immigration matter rather than Garcia's separate case. And though Garcia's billing statement purports to show that the firm spent 21.6 hours working on her case, we do not believe that the billing statement reflects time spent on her matter. Our reasons are fourfold: Garcia credibly testified that she did not speak with CCDC lawyers about the billing statement contents or provide anyone at CCDC with the information and documents referenced in the billing statement; the majority of entries in the billing statement discuss the Garcia family's matter; the statement includes entries that predate Garcia's representation; and CCDC did not create and maintain the statement during the representation but cobbled it together after Garcia complained to Respondent about her case. Deepening our skepticism are the repeated billing entries claiming exactly one hour of lawyer work. We conclude that the time claimed in these entries, which account for virtually all of the substantive work purportedly performed on Garcia's case, was artificial and arbitrary. In sum, Respondent showed no evidence that CCDC performed work for Garcia's matter alone, and he failed to maintain any contemporaneous billing records in the case. We thus have no basis to find that his firm performed the work he charged to Garcia.

Though no convincing evidence suggests that CCDC performed work on Garcia's case, clear evidence shows that the firm expended significant time on her parents' matter. Alexander testified that he spent 50-60 hours on the parents' case, and Alexander and Mendoza each testified that Ferrick worked on the matter. In addition, Respondent stated that Manuel and

[62] Though the firm appeared to have documents related to Garcia's applications for work authorization in 1998, Garcia's billing statement reflects that the firm obtained the information before her representation began, possibly from Garcia's parents.

Maria provided CCDC with a "morass of material" that the firm's staff reviewed, organized, and referenced to establish the Garcia family's immigration history.

Finally, we note Respondent's testimony that his firm would have charged a reduced fee for Garcia's matter if she had joined her parents' representation. Because the firm agreed to represent Garcia separately, he said, it charged her its standard fee of $3,500.00. But CCDC did *not* treat Garcia's case as a separate matter from her parents' case. Alexander testified that he handled the matters as a single case, and Respondent repeatedly acknowledged that the representations were "inextricably entwined." That CCDC invoiced work on Garcia's parents' matter to Garcia, and that Garcia's file from her nineteen-month-long representation consisted only of two brief memoranda summarizing CCDC's research, analysis, and opinion regarding the family's collective immigration history and options with scant reference to Garcia, further convince us that the firm treated Garcia's case as a mere extension of her parents' matter all while taking advantage of an opportunity to double dip on attorney's fees. In fact, the only evidence that CCDC even considered *Garcia's* circumstance is a single paragraph noting that she thrice applied for work authorization in 1998, information that she presumably already knew. In short, the firm performed minimal work on Garcia's case while attributing to her matter work from her parents' case.

Garcia paid the firm's standard fee for her separate representation but obtained no separate benefit. Indeed, because CCDC never filed a U visa in Garcia's case, the firm did not complete any work on her behalf that it would not have otherwise performed in her parents' case, including the analysis and opinion on the family's collective eligibility for a U visa. In other words, CCDC charged Garcia $3,500.00 yet conferred essentially no benefit to Garcia herself. In our view, this exemplifies an unreasonable fee. We therefore have no trouble concluding that Respondent violated Colo. RPC 1.5(a).

Colo. RPC 1.16(d) (Claim II)

The People next allege that Respondent violated Colo. RPC 1.16(d), which provides in pertinent part, "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred."

The People argue that Respondent breached this rule by declining to promptly return Garcia's fee even though CCDC did no substantive work on her case. Respondent states that he returned $900.00 to Garcia, $500.00 of which he considered a courtesy refund. He disputes that his firm did not perform work on Garcia's matter, pointing to the two memoranda and the billing invoice showing that his firm expended 21.6 hours on the case.

As we explained, we agree with the People that CCDC performed no substantive work for Garcia herself. We reach this conclusion in part by finding that Garcia's billing statement does

not accurately reflect what work, if any, was undertaken on her case, and by noting that CCDC produced no discernible work product on Garcia's matter separate from her parents' matter.

Because the People proved that CCDC earned none of Garcia's fee, and because a "lawyer's fees are always subject to refund if either excessive or unearned,"[63] we find that Garcia was entitled to a full refund of her payments to CCDC. By retaining Garcia's fee without performing any appreciable work for her, Respondent violated Colo. 1.16(d). As a corollary, we find that restitution to Garcia for her $3,500.00 fee is warranted.

Colo. RPC 8.1(a) and Colo. RPC 8.4(c) (Claims III and IV)

The People bring their third claim in connection with the Garcia matter under Colo. RPC 8.1(a), which provides that in connection with a disciplinary matter, a lawyer must not "knowingly make a false statement of material fact." They assert their fourth claim under Colo. RPC 8.4(c), which proscribes "conduct involving dishonesty, fraud, deceit, or misrepresentation." Unlike Colo. RPC 8.1(a), Colo. RPC 8.4(c) does not require the People to demonstrate that Respondent acted with actual knowledge.[64] Rather, a reckless state of mind is sufficient to establish a violation of Colo. RPC 8.4(c).[65] Lawyers act recklessly when they close their eyes to information they have a duty to see or when they recklessly state as facts things of which they are ignorant.[66]

The People allege that Respondent violated both rules when, in responding to Garcia's RFI on September 15, 2020, he informed the People that Ferrick conducted over fifty hours of work on Garcia's case. The People say that Respondent violated the rule again when, during an interview with the People on December 14, 2020, he said that Ferrick worked on Garcia's case; when he again claimed that Ferrick worked over fifty hours on Garcia's case in the documents he provided to the People on June 21, 2021, in connection with Garcia's CPF claim; and when he repeated that claim during in a conversation with the People's investigators on February 22, 2022, adding that Ferrick had "said" this. Respondent denies that he knowingly made a false statement of material fact to the People, arguing that he believed his statements were true and accurate at the time he made them, based on the information he had.

Respondent admits that on September 15, 2020, and June 21, 2021, he inaccurately reported to the People that Ferrick spent more than fifty hours working on Garcia's case. Respondent repeated his inaccurate statement to the People on February 22, 2022, and he admits that he did not actually speak with Ferrick about the matter as he claimed. Respondent's

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[63] Colo. RPC 1.5 cmt. 18; *cf. Matter of Gilbert*, 2015 CO 22, ¶ 27 (A lawyer "is entitled to a portion of [a flat] fee in quantum meruit for the reasonable value of *services rendered* . . . .") (emphasis added).

[64] *In re Storey*, 2022 CO 48, ¶ 64; Colo. RPC 1.0 cmt. 7A ("[W]here a Rule of Professional Conduct specifically requires the mental state of 'knowledge,' recklessness will not be sufficient to establish a violation of that Rule . . . .").

[65] *Storey*, ¶ 64.

[66] *People v. Radar*, 822 P.2d 950, 953 (Colo. 1992).

inaccurate statements were material to the People's case, as they were investigating whether CCDC earned the fees it charged Garcia.

Because we find it likely that Ferrick's staff spent at least fifty hours on the Garcia family's case, though not on Garcia's matter alone, we are persuaded that Respondent's misrepresentation on September 15, 2020, in response to the RFI was the result of careless phrasing and thus was merely negligent.[67] Accordingly, we do not find that Respondent acted with a mental state to support a violation of either Colo. RPC 8.1(b) or Colo. RPC 8.4(c) as to that misrepresentation.

In the months that followed, however, Respondent continued to inaccurately state that Ferrick performed the work on the Garcia case without undertaking any investigation to confirm the truth of his statements. Because Respondent has a duty to cooperate with the People's investigation,[68] we deem that he acted at least recklessly when he provided false responses about Ferrick's work on Garcia's case to the People on December 14, 2020, and on June 21, 2021, thereby violating Colo. RPC 8.4(c). Because Respondent persisted in his dishonest conduct in what we deem to be a prolonged pattern of misrepresentation, we find that he acted willfully by February 22, 2022, when he falsely claimed a fourth time that Ferrick performed fifty hours of work on Garcia's case and told the People that Ferrick had "said" this.[69] Bolstering our determination is Respondent's admission that he had not actually spoken with Ferrick about the matter. We thus find that Respondent's conduct violated Colo. RPC 8.1(a) and Colo. RPC 8.4(c).

III. LORENA SANCHEZ-GARCIA'S MATTER (CASE NUMBER 22PDJ025)

Facts Established on Summary Judgment

On September 3, 2019, Respondent began serving a three-year disciplinary suspension.[70] During that time, Respondent continued to work at CCDC as a law clerk for Pirzadeh, CCDC's immigration lawyer. During Respondent's suspension, around June 10, 2020, Lorena Sanchez-Garcia retained CCDC to adjust the status of Alonso Antonio Morales-Martinez, who had entered the United States some years before as a temporary worker. Sanchez-Garcia said she wanted to marry Morales-Martinez and have him remain in the United States with her. Sanchez-Garcia owned property that she acquired before meeting Morales-Martinez. When Sanchez-Garcia came to CCDC on June 10, 2020, she did not meet with a lawyer in good standing but

[67] We wholly reject Respondent's contention that his statement about Ferrick was false because of "semantics" and instead attribute it to careless phrasing.

[68] *See In re Attorney E.*, 78 P.3d 300, 305 (Colo. 2003) ("Once [the People] initiate[] the investigation, the target attorney has a duty to cooperate and participate throughout the investigation."); *In re Weisbard*, 25 P.3d 24, 28 (Colo. 2001) ("An attorney has a duty to cooperate with disciplinary proceedings . . . .").

[69] *See People v. Silvola*, 915 P.2d 1281, 1284 (Colo. 1996) (deeming willful a lawyer's repeated misconduct over an extended period); *People v. Williams*, 824 P.2d 813, 814 (Colo. 1992) (finding that a lawyer's chronic and extended negligence amounted to willful misconduct).

[70] *See* case number 18PDJ063.

had contact with non-lawyers Amanda Cisneros and Ariana Venzor, who worked at CCDC in administrative capacities.[71] Sanchez-Garcia also met with Respondent. When Respondent met with Sanchez-Garcia in June 2020, he did so without another licensed lawyer present at the meeting. Respondent and Sanchez-Garcia discussed a prenuptial agreement to protect the property that Sanchez-Garcia acquired before she married Morales-Martinez. No other lawyer was present in Respondent's office when Sanchez-Garcia came in and started telling Respondent what she wanted to do with respect to Morales-Martinez.

At a deposition in November 2022, Respondent described his encounters with Sanchez-Garcia, testifying that she walked into his office unannounced to talk about performing legal work for her significant other. Respondent said that he walked Sanchez-Garcia out of his office and told her he was suspended and unable to perform legal work. Respondent testified at the deposition that Sanchez-Garcia came to his office a second time, at which time he told her to make an appointment with the firm. Respondent added that during this visit, he informed Pirzadeh that the firm had a potential new client on an immigration matter and that the client wanted a prenuptial agreement. Pirzadeh gave Respondent approval to prepare a draft of a prenuptial agreement. Pirzadeh did not provide Respondent with instructions about what to put in the document. Neither Pirzadeh nor Respondent had ever prepared a prenuptial agreement before.

In June 2020, during a meeting with Sanchez-Garcia, Respondent drafted by hand a document titled "Prenuptial Agreement."[72] Respondent prepared the handwritten document on a sheet of yellow paper. Respondent wrote not only the contents of the prenuptial agreement, but he also wrote signature lines on the prenuptial agreement. A lawyer in good standing was not present when Respondent drafted the document.

Pirzadeh was the only lawyer who would have reviewed Respondent's work product in this matter. Respondent did not hand the document to Pirzadeh. He did not see Pirzadeh review the document. Respondent never spoke with Pirzadeh about the prenuptial agreement after Sanchez-Garcia left the office, which was the same day Respondent wrote the prenuptial agreement.

Pirzadeh stated that Venzor brought the draft back to Pirzadeh's office to review. Pirzadeh never made edits to the document; according to Respondent, "She never had a chance to review it."[73] Respondent is not aware of any lawyer in good standing who provided any input on the document. No lawyer, aside from Respondent, wrote any portion of the document.

Both Sanchez-Garcia and Morales-Martinez signed the handwritten document. Cisneros notarized the written document with Sanchez-Garcia's and Morales-Martinez's signatures on it. According to Respondent, the document was neither signed nor notarized in front of him.

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[71] *See also* Stip. Fact 8.

[72] *See also* Ex. S2.

[73] Order on Summ. J. at 10.

Respondent testified at his deposition that he recognizes the reason a prenuptial agreement is signed and notarized is so that it has legal effect. Respondent also acknowledged that a prenuptial agreement involves legal discretion, is not common knowledge, and involves the independent judgment and discretion of a lawyer.

At all times relevant to the Sanchez-Garcia matter, Respondent knew he was suspended through disciplinary orders. Respondent knew he was forbidden from practicing law, including providing legal analysis or legal advice, by virtue of his order of suspension.

Rule Violation Established on Summary Judgment

Colo. RPC 5.5(a)(2) (Claim VI)

On summary judgment, the PDJ concluded as a matter of law that these undisputed facts established that Respondent violated Colo. RPC 5.5(a)(2), which provides that a lawyer must not "practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction." The PDJ found that Respondent engaged in the unauthorized practice of law by consulting with Sanchez-Garcia about her legal rights and by drafting the prenuptial agreement. The PDJ also found that Respondent did not consult with a lawyer in good standing when he concluded that a prenuptial agreement would address Garcia-Sanchez goals and concerns, and that Respondent exercised legal knowledge, skill, and ability beyond that possessed by a layperson by drafting the prenuptial agreement. Though Respondent notified Pirzadeh of the matter, and though Pirzadeh granted Respondent permission to draft the agreement, the PDJ concluded that the communications did not constitute direct supervision of Respondent's work. Moreover, the PDJ found immaterial that Respondent advised Sanchez-Garcia that he was suspended and could not practice law, finding that Respondent's conduct after that statement was what mattered in the analysis.

Having found that Respondent engaged in the unauthorized practice of law, the PDJ entered summary judgment in the People's favor on Claim VI in case number 22PDJ025, establishing that Respondent violated Colo. RPC 5.5(a)(2).

Facts Established at the Disciplinary Hearing

At the hearing, Sanchez-Garcia testified that she first met Respondent when she retained CCDC to work on a custody matter. In June 2020, she recalled, she consulted with CCDC about an immigration matter. That month, she telephoned Respondent to discuss protecting her property before marrying Morales-Martinez. Respondent testified that after Sanchez-Garcia described her concerns, he told her that she would "probably have to get a [prenuptial agreement]." According to Sanchez-Garcia, she and Respondent first discussed using a prenuptial agreement to protect her property during the telephone conversation. She then visited CCDC, she said, and the prenuptial agreement was the "first thing" she discussed with Respondent, adding that Respondent agreed to charge the work to Sanchez-Garcia's

immigration case rather than as a separate matter. Sanchez-Garcia testified that she did not discuss the prenuptial agreement with anybody at CCDC other than Respondent, though she stated that Morales-Martinez and Respondent's secretary were present during the meeting. Respondent confirmed Sanchez-Garcia's account, agreed that no other lawyer was present during their meeting, and he acknowledged that his supervising lawyer, Pirzadeh, did not speak with Sanchez-Garcia. Respondent also acknowledged that he knew his law license was suspended when he conferred with Sanchez-Garcia.

According to Respondent, he told Pirzadeh that Sanchez-Garcia wanted a prenuptial agreement and sought Pirzadeh's permission to draft the document. He said that Pirzadeh responded, "if you want to do a [prenuptial agreement], go ahead, if you think you can do so ethically." Respondent noted that he, not Pirzadeh, had discussed the agreement with Sanchez-Garcia, and so Pirzadeh left it to him to spot red flags and to use his legal judgment in the matter. Pirzadeh confirmed Respondent's account, testifying that she never met with Sanchez-Garcia or discussed the prenuptial agreement with Sanchez-Garcia. Pirzadeh stated that she left the decision to draft the agreement to Respondent "as long as it was ethical" and that she did not instruct him as to what to include in the document.

Both Respondent and Sanchez-Garcia testified that Respondent asked Sanchez-Garcia about her assets and, without a lawyer in good standing present, started drafting the prenuptial agreement.[74] Respondent added that he wrote the signature lines and the dates beneath the signature lines.[75] According to Sanchez-Garcia, Respondent told her that the handwritten document would be typed. He did not mention that another lawyer needed to review the agreement, she said, nor did she recall that Respondent ever referred to any other lawyer when he drafted the document. Respondent acknowledged that he knew his law license was suspended when he drafted the agreement.

Respondent testified that when he finished drafting the document he handed it to Venzor. "My job was done once I drafted [the prenuptial agreement,]" he said. He stated that he did not take the handwritten document to Pirzadeh because it was not yet typed, adding that the typist should have given a typed copy to Pirzadeh. Respondent did not know whether Pirzadeh or any lawyer reviewed the prenuptial agreement, nor did he follow up with Pirzadeh in any way about the agreement.[76]

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[74] *See* Ex. S2.

[75] Beneath each signature line is written "June 17, 2020." Ex. S2. Sanchez-Garcia testified that she does not recall whether the dates were written on the document when she signed it.

[76] We decline to credit Pirzadeh's testimony that Venzor gave her the document Respondent had prepared and that she reviewed the document but did not edit it. When considering Pirzadeh's uncorroborated account, we are mindful of her testimony describing a conversation with the People on March 9, 2022. During that conversation, said Pirzadeh, she did not remember Sanchez-Garcia, nor did she recall talking with anyone at CCDC about a prenuptial agreement. At the hearing, Pirzadeh explained that her memory in 2023 was better than her memory in 2022 despite intervening and significant health issues. Even so, she appeared uncertain about her testimony.

At the hearing, Sanchez-Garcia verified her signature on the document Respondent had drafted. She said that she recalls Morales-Martinez signing the document. Sanchez-Garcia and Respondent agreed that Respondent was not present when Sanchez-Garcia and Morales-Martinez signed the document.

The document includes Cisneros's notary stamp accompanied by a handwritten notary certificate[77] signed by Cisneros attesting that she witnessed Sanchez-Garcia and Morales-Martinez sign the agreement on June 17, 2020.[78] But according to Sanchez-Garcia, she did not sign the document in the presence of a notary, nor did she see a notary sign the document. She left the document in her immigration file for safekeeping at CCDC after she signed it, she said, and she learned that the document had been notarized when she picked up her file at a later date.[79] Sanchez-Garcia stated that Respondent had assured her she would receive a typed copy of the prenuptial agreement, but when she retrieved her file it contained the handwritten document only. Trusting that Respondent had taken care of her legal matter, Sanchez-Garcia nevertheless believed that the prenuptial agreement was valid.

At the hearing, Respondent acknowledged that drafting a prenuptial agreement has binding legal effect and is a legal action that a lawyer undertakes requiring independent judgment and discretion. He added that he knew that he was "forbidden" from providing legal advice during his suspension.

Respondent Claims that Sanchez-Garcia Received Notice of His Suspension

Sanchez-Garcia testified that she did not know Respondent's law license was suspended when they discussed her legal matter and when Respondent drafted the prenuptial agreement. According to Sanchez-Garcia, Respondent told her "nothing" about his inability to practice law at that time. She said she learned that Respondent was suspended in 2021 while conferring with another lawyer, who informed her of the suspension and advised her that the prenuptial agreement was not valid.[80]

[77] Respondent testified that he did not draft the handwritten notary certificate.

[78] Ex. S2.

[79] In contrast, Cisneros testified that Sanchez-Garcia and Morales-Martinez signed the agreement in front of her, that she notarized it, and that the couple then took the notarized document with them. Cisneros said that she believed the handwritten document had been approved because Venzor had handed it to her and asked her to notarize it. She explained that she believed the handwritten document was the final prenuptial agreement because "these people were in a hurry to get married" and Sanchez-Garcia first needed to protect her property. Because Cisneros continues to work at CCDC, and because Cisneros is a commissioned notary, we find Cisneros's testimony to be self-serving, and we credit Sanchez-Garcia's testimony that Cisneros was not present when they signed the document.

[80] Sanchez-Garcia did not explain the lawyer's bases for concluding that the prenuptial agreement was not valid or otherwise elaborate on the lawyer's advisement about the prenuptial agreement.

In contrast, Respondent testified that during a meeting at CCDC in summer 2020 he told Sanchez-Garcia he was suspended. Cisneros also testified that she overheard Respondent tell Sanchez-Garcia that he was suspended. Specifically, said Cisneros, Respondent told Sanchez-Garcia, "I am not working as an attorney. Are you okay working with another attorney?"

In addition, Respondent said, CCDC provided Sanchez-Garcia a notice informing clients that Respondent was suspended and that he "may not advise you, negotiate, nor transact business on your behalf."[81] The notice, titled "RE: Notice Pursuant to 5.5(d)(1),"[82] is signed by lawyer Donald Martin, who works at CCDC, on behalf of himself and Pirzadeh.[83] Martin writes in the notice, "the purpose of this letter is to notice you that [Respondent] is not allowed to practice law but will be helping us address your legal issue along going forward."[84] Referring to himself, Pirzadeh, and Respondent, Martin assures clients that "[a]mongst the three of us, I believe you will be in good hands."[85]

Valeria Lujan worked on CCDC's staff from January 2020 until approximately January 2021. Lujan said that she made sure clients were aware of, understood, and signed the notice. Lujan said that this policy was in effect in June 2020. According to Lujan, she advised Sanchez-Garcia about the notice, which had been signed either by Sanchez-Garcia or Morales-Martinez. Lujan did not recall when she advised Sanchez-Garcia of the notice or when Sanchez-Garcia signed the notice. In addition, Cisneros said that Sanchez-Garcia received the notice about Respondent's suspension when she paid her retainer, but Cisneros did not say when that occurred.

Rule Violation

Colo. RPC 3.4(c) (Claim V)

Colo. RPC 3.4(c) provides that a lawyer must not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." The People allege that Respondent knowingly violated disciplinary orders in case number 16PDJ057 and in case number 18PDJ063 (consolidated with case number 19PDJ042) suspending him from practicing law when, while he was suspended, he engaged in the unauthorized practice of law by consulting with Sanchez-Garcia about her legal rights and by drafting the prenuptial agreement without a licensed lawyer's supervision.

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[81] Ex. A.

[82] C.R.C.P. 5.5(d)(1) provides that a lawyer may not allow a suspended lawyer to "have any professional contact with clients of the lawyer or of the lawyer's firm" unless, before work commences, the lawyer "gives written notice to the client for whom the work will be performed" that the suspended lawyer is not permitted to practice law.

[83] Ex. A.

[84] Ex. A.

[85] Ex. A.

Respondent disputes that he knowingly disobeyed the order suspending him, stating that he did not "want to cross any lines" because he must petition to reinstate his license if he wishes to practice law after his suspension. Respondent said he "believed [he] was working within the confines" of the order suspending him from the practice of law. He maintained that he did not offer legal advice to Sanchez-Garcia about the prenuptial agreement but instead "gathered information" from her so that Pirzadeh, his supervising lawyer, could make a final decision as to what course to take in Sanchez-Garcia's case. Further, said Respondent, he believed that he could prepare Sanchez-Garcia's prenuptial agreement under a lawyer's supervision, as allowed under Colo. RPC 5.5(c).[86]

We first take a moment to credit Sanchez-Garcia's testimony that Respondent told her nothing about his ability to practice law in relation to the prenuptial agreement. Though we heard testimony from Lujan and Cisneros that Sanchez-Garcia received notice of Respondent's suspension—whether from Respondent or from CCDC's written letter—we deem their testimony as former and current employees loyal to Respondent to be self-serving. Further, neither witness recalled when Sanchez-Garcia received that notice. Nor did their testimony address whether Sanchez-Garcia received the notice during her immigration case or her earlier custody matter, or whether the notice related to Respondent's seven-month suspension that took effect in August 2019 or his three-year suspension that took effect in September 2019. In light of these unanswered questions from Lujan's and Cisneros's testimony, and given our concerns about their credibility on this matter, we decline to credit their accounts that Sanchez-Garcia had been notified of Respondent's suspension when she consulted with him about the prenuptial agreement and when he drafted the agreement for her and Martinez-Morales.

As we have discussed, the PDJ's summary judgment order established that Respondent engaged in the unauthorized practice of law when he advised Sanchez-Garcia about her legal matter and when he drafted the prenuptial agreement, violating the orders suspending him from the practice of law. We agree with the People that the evidence clearly and convincingly shows that Respondent acted with a knowing mental state when he violated his disciplinary orders. Respondent testified that he knew he was suspended from the practice of law when he worked on Garcia-Sanchez's matter, that he was not authorized to provide legal advice during his suspension, and that he knew drafting a prenuptial agreement is a legal action that requires a lawyer's legal discretion. In addition, we need look no further than CCDC's notice letter for evidence that Respondent was aware of the limitations of his ability to practice law, including that he was not permitted to advise CCDC's clients about their legal matters or to transact business on their behalf. Yet that is just what Respondent did when he told Sanchez-Garcia that

[86] This rule provides that "a lawyer may employ, associate professionally with, allow or aid" a suspended lawyer "to perform research, drafting or clerical activities," including "[l]egal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents" as well as "[d]irect communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages . . . ."

she would "probably have to get a [prenuptial agreement]" and when he drafted the agreement without consulting with a lawyer in good standing.

We reject Respondent's contention that he merely gathered information for Pirzadeh. Respondent's and Pirzadeh's accounts belie that claim. Neither intimated that Pirzadeh exercised any decision-making authority; instead, their testimony created the impression that she deferred to Respondent in virtually every aspect of the matter. Respondent, in the exercise of his own legal judgment, decided to draft the agreement and determined what information to include in it. Moreover, Respondent testified that he never sought to follow up with Pirzadeh about the agreement. In light of Pirzadeh's total lack of involvement in the matter, Respondent's acknowledgment convinces us that he did not believe Pirzadeh would meaningfully review the agreement. Instead, we find by clear and convincing evidence that Respondent expected Pirzadeh to rubber-stamp his work, in essence operating under her imprimatur as a licensed lawyer in order to provide legal services to CCDC's clients during his suspension. We thus do not hesitate to find that Respondent was aware he was practicing law in violation of the disciplinary orders suspending him, contravening Colo. RPC 3.4(c).

IV. THE COSTS MATTER (CASE NUMBER 22PDJ048)

Facts and Rule Violation Established on Summary Judgment

On December 7, 2021, the People filed a statement of costs in disciplinary case number 20PDJ067, requesting $5,324.68 for costs associated with that case.[87] Respondent did not oppose that amount and submitted a filing on December 13, 2021, stating that he did not object to the costs the People requested. On December 28, 2021, the PDJ entered an order requiring Respondent to pay those costs no later than January 25, 2022.

Respondent knew of the PDJ's order and deadline. Respondent did not file a motion to extend the deadline or otherwise request to arrange a payment plan before the deadline elapsed. Respondent did not pay any portion of the costs on or before January 25, 2022, nor did he file any pleading or motion with the PDJ openly challenging the order. On March 21, 2022, the People contacted Respondent's counsel about the delinquent costs. Respondent's counsel and the People corresponded about the costs in subsequent emails.[88] Between April and August 2022, Respondent made untimely payments that satisfied the amount of costs owed.[89]

Respondent testified at a deposition that he fully intended to pay the costs but did not have the financial wherewithal to timely do so. He said that he could not pay the costs in January 2022 because he was not earning much money.

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[87] On November 23, 2021, a hearing board issued an opinion and decision in case number 20PDJ067, suspending Respondent for two years and ordering Respondent to pay the costs of that proceeding.

[88] *See also* Stip. Fact 18.

[89] *See also* Stip. Fact 19.

In relation to these facts, the People alleged in Claim III in case number 22PDJ048 that Respondent violated Colo. RPC 3.4(c), which proscribes a lawyer from "knowingly disobey[ing] an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." On summary judgment, the PDJ found that Respondent confessed the People's claim.[90] The PDJ thus entered judgment in favor of the People on this claim, finding that Respondent violated Colo. RPC 3.4(c).

V. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[91] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[92] When imposing a sanction after a finding of lawyer misconduct, the Hearing Board must consider the duty the lawyer violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that the Hearing Board may then adjust based on aggravating and mitigating factors.

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

Duty: By collecting an unreasonable fee from Garcia and by failing to refund the unearned portion of that fee, Respondent violated his duty to his client. Respondent then breached his duty to the legal profession to act with honesty and to maintain personal integrity by repeatedly making false statements about the work Ferrick performed on Garcia's case. Finally, by disregarding orders suspending him from the practice of law and directing him to pay the costs of his previous disciplinary proceeding, Respondent failed to adhere to his duty to the legal profession.

Mental State: On summary judgment, the PDJ found that Respondent acted knowingly when he disobeyed the PDJ's order to timely pay the costs in case number 20PDJ057, thereby violating Colo. RPC 3.4(c).[93]

In the Sanchez-Garcia matter, we have already concluded that Respondent acted with a knowing mental state by practicing law even though he knew his law license was suspended, breaching Colo. RPC 3.4(c) We also find that Respondent acted knowingly when he advised Sanchez-Garcia about the prenuptial agreement and when he drafted the agreement for her signature in violation Colo. RPC 5.5(a)(2). We make this finding because Respondent knew that

[90] *See* Order on Summ. J. at 15 ("Respondent does not dispute the People's claim, stating that 'because [he] did not pay the costs by the date set by the court, summary judgment on this claim is appropriate as a technical violation.'").

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

[92] *See In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

[93] Indeed, Respondent testified that he had "no ambiguity in [his] mind" about the deadline to pay the costs and he did not pay them because he needed the funds for family expenses.

he was under an order suspending him from the practice of law and he knew that, without the supervision of a lawyer in good standing, he was exercising legal skills, discretion, and judgment.

As described above, we have already found that Respondent contravened Colo. RPC 8.1(a) and Colo. RPC 8.4(c) by willfully misrepresenting to the People in February 2022 that Ferrick told him that Ferrick had worked fifty hours on Garcia's case. As for Respondent's misrepresentations in December 2020 and June 2021 about Ferrick's work on Garcia's matter, we determine that Respondent acted at least recklessly, violating Colo. RPC 8.4(c). Finally, we deem Respondent's collection of an unreasonable fee in Garcia's matter and his failure to refund the unearned portion of that fee, violating Colo. RPC 1.5(a) and Colo. RPC 1.16(d) respectively, to be knowing; Respondent was aware of but did not advise Garcia that her case was unlikely to be successful when she retained CCDC, and he kept her fee even though he knew CCDC performed no documented work on her individual case.

Injury: Respondent harmed Garcia by charging her an unreasonable fee and by failing to return the unearned portion of her fee. We also deem injurious his failure to keep Garcia informed about her case and his disregard for her request that CCDC handle her case separately from her family's matter. In addition, Respondent's cavalier attitude regarding the orders suspending him from the practice of law and his failure to abide by the rule prohibiting the unauthorized practice of law undermined the authority and dignity of the judicial system.

We also find that Respondent's conduct potentially harmed the legal profession and actually harmed the reputation of lawyers. He jeopardized the integrity of the People's investigation by misrepresenting Ferrick's work on Garcia's case. And Garcia testified that her experience with CCDC lowered her opinion of the legal profession, stating that she now "doesn't believe in lawyers."

Garcia-Sanchez echoed Garcia's comment, stating that her experience with Respondent negatively changed her view of lawyers. Moreover, she trusted Respondent to protect her assets as she asked him to do, she said, and she believed she had an enforceable agreement, only to later learn from another lawyer that the document Respondent drafted may not have been valid as a prenuptial agreement. We thus find that Respondent's unauthorized work on Sanchez-Garcia's matter created actual harm to Sanchez-Garcia's legal interests, though we saw no evidence that Sanchez-Garcia experienced more than minimal harm.

ABA *Standards* 4.0-8.0 – Presumptive Sanction

Under multiple ABA *Standards*, the presumptive sanction for Respondent's misconduct is disbarment. Disbarment is presumed under ABA *Standard* 8.1(a) when a lawyer intentionally or knowingly violates the terms of a prior disciplinary order, causing injury or potential injury to a client, the public, the legal system, or the profession. ABA *Standard* 8.1(b) also recommends disbarment where a lawyer has been suspended for the same or similar misconduct—here, practicing law during a suspension, knowingly violating court orders, engaging in dishonest conduct, charging an unreasonable fee, and failing to return a client's unearned funds—and

intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. Disbarment is presumed under a third ABA *Standard*, *Standard* 5.11(b), which calls disbarment when a lawyer engages in "intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice." Finally, Respondent's conduct also implicates ABA *Standard* 6.22, which provides that suspension is generally appropriate "when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding."

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating factors 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.[94] As explained below, we apply seven factors in aggravation, according substantial weight to one factor, and find that no mitigating factors are warranted.

Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): Respondent has been disciplined in four previous matters. We accord this factor substantial aggravating weight.

In 2012, Respondent was publicly censured in case number 12PDJ033 for failing to advise his clients that their interests might be compromised by being called as witnesses against one another, and for neglecting to adequately track disbursements made on behalf of one of the clients, possibly resulting in the negligent conversion of the disbursements and of another client's funds.[95]

In case number 16PDJ057, Respondent was suspended for one year, with five months served and seven months to be stayed upon the successful completion of a three-year probationary period with conditions.[96] Respondent was disciplined for misconduct in several separate matters, including failing to act competently and diligently; charging an unreasonable fee; revealing information related to the representation of a client; knowingly making a false statement of material fact or law to a court; failing to implement measures to ensure that all lawyers at Respondent's firm complied with the Rules of Professional Conduct; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and engaging in conduct prejudicial to the administration of justice.[97] The suspension took effect on February 1, 2017; Respondent was reinstated to the practice of law and began serving his three-year period of probation on October 1, 2017.[98]

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[94] *See* ABA *Standards* 9.21 and 9.31.

[95] *See* Ex. 3 at 1-8.

[96] *See* Ex. 3 at 10-11.

[97] Ex. 3 at 13-23.

[98] *See* Ex. 3 at 26-27.

As described above, the PDJ revoked Respondent's three-year probation on July 23, 2019, vacated the stay on his seven-month period of suspension, and suspended him for seven months, effective August 27, 2019. The PDJ revoked Respondent's probation after finding that he had violated the terms of his probation by contravening various Rules of Professional Conduct, including failing to act diligently in a client matter; knowingly making a false statement of material fact or law to a tribunal; knowingly disobeying an obligation under the rules of a tribunal; engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and engaging in conduct prejudicial to the administration of justice.[99]

Shortly thereafter, on September 3, 2019, Respondent was suspended for three years in case number 18PDJ063 (consolidated with case number 19PDJ042); Respondent served the suspension concurrently with his seven-month suspension in case number 16PDJ057.[100] Respondent's three-year suspension was based on extensive misconduct that included practicing law during his suspension by engaging in settlement negotiations with opposing counsel in a personal injury matter and drafting a legal document for a client; engaging in dishonest conduct by concealing his suspension from jail personnel, thereby gaining access to the jail that otherwise would have been denied; writing and signing checks from his firm's operating and trust accounts during his suspension without supervision by a Colorado-licensed lawyer in good standing; writing checks from his trust account to "Cash"; charging two clients an unreasonable fee and failing to return to a client unearned funds that Respondent had transferred from his trust account to his operating account; failing to act with diligence in several client matters; disobeying a court order directing him to participate in the drafting of a proposed case management order and misrepresenting to the court why he had not participated; and failing to maintain proper financial records, keeping his clients' earned fees in his trust account, and comingling his firm's earned money with client money.[101]

Finally, Respondent was suspended for two years in case number 20PDJ067 after he recklessly mismanaged funds that he should have held in trust for the benefit of two children under his client's legal guardianship.[102] Respondent's suspension ran concurrent with his three-year suspension imposed in September 2019 and carried the requirement that Respondent take and pass the multistate professional responsibility exam as a condition to his reinstatement to the practice of law.[103]

Dishonest or Selfish Motive – 9.22(b): We apply this factor because Respondent's motive in dishonestly stating to the People that Ferrick had worked fifty hours on Garcia's case was

[99] *See* Ex. 3 at 26-41.

[100] Ex. 3 at 51-52.

[101] *See* Ex. 3 at 43; *see also* "Second Amended Complaint" (Apr. 25, 2019) (case number 18PDJ063); "Complaint" (June 7, 2019) (case number 19PDJ042).

[102] *See* Ex. 3 at 54-75.

[103] Ex. 3 at 74.

selfish, as were his decisions to charge Garcia an unreasonable fee, to decline to refund her unearned fees, and to fail to pay the court-ordered costs in case number 20PDJ067.

Pattern of Misconduct – 9.22(c): We find that Respondent's repeated misrepresentations to the People regarding Ferrick's work on Garcia's case and Respondent's failure to obey multiple court orders demonstrate a pattern of misconduct. We thus apply this factor.

Multiple Offenses – 9.22(d): Through his misconduct in this case, Respondent violated six Rules of Professional Conduct in multiple client matters. Accordingly, we apply this aggravating factor.

Submission of False Evidence, False Statements, or Other Deceptive Practices During the Disciplinary Process – 9.22(f): The People argue that we should apply this factor because Respondent provided false information about Ferrick's work on Garcia's matter during their investigation in this proceeding and during their investigation of Garcia's CPF claim. But we conclude that applying this factor as the People request would penalize Respondent twice for the same misconduct, as we have found that his dishonest responses violated Colo. RPC 8.1(a) and Colo. RPC 8.4(c).[104] Moreover, we view the People's investigation of Garcia's CPF claim as a matter separate from the portion of this proceeding arising from Garcia's request to investigate Respondent. We thus decline to apply this factor.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): At the hearing, Respondent did not acknowledge that CCDC charged an unreasonable fee for the work performed on Garcia's case. Instead, he maintained that CCDC never guaranteed Garcia that the firm could achieve the outcome she sought. Respondent similarly downplayed his misrepresentations to the People regarding Ferrick's work on Garcia's case, calling his statements a "matter of semantics." Likewise, Respondent evinced no understanding of the wrongfulness of his conduct in Sanchez-Garcia's matter, testifying that his "job was done" after he drafted the prenuptial agreement and handed it to Venzor. Because Respondent does not recognize that he engaged in misconduct in either matter, we apply this factor.

Vulnerability of Victim – 9.22(h): We find that Garcia, as a person living in the United States without legal status, is vulnerable. Indeed, Respondent acknowledged that Garcia was "very vulnerable." We thus apply this factor.

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[104] *See In re Whitt*, 72 P.3d 173, 180 (Wash. 2003) (finding that submission of false evidence could not be an aggravating factor where the act was also the factual basis for the count of misconduct); *In re Gallagher*, 26 P.3d 131, 139 (Or. 2001) (holding that "the misconduct constituting a [rule] violation should not be the same conduct that justifies applying ABA Standard 9.22(f)" and noting that doing otherwise would be "double-counting" the misconduct against a respondent); *see also People v. Olson*, 470 P.3d 789, 805 (Colo. O.P.D.J. 2016) (declining to apply ABA *Standard* 9.22(f) for the lawyer's intentional witness tampering during the disciplinary hearing where that conduct was the basis for rule violations).

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the practice of law in 2004. Even so, he has been suspended for more than four of the last six years, and his disciplinary history leads us to question whether he ever developed a mature understanding that legal practice should not involve lapses in adhering to the Rules of Professional Conduct. Though a lawyer with Respondent's tenure "should know better than to engage in misconduct,"[105] we observe that Respondent's disciplinary history demonstrates to us that he clearly does not. In our view, however, the imposition of sanctions against a lawyer should heighten the lawyer's observance of the rules governing the practice of law. Thus, exercising our discretion, we apply this additional aggravator.

Mitigating Factors

Absence of a Dishonest or Selfish Motive – 9.22(b): Respondent argues that we should apply this factor because CCDC returned $900.00 to Garcia, retaining just $3,000.00, which, he says, was less than the value of work CCDC performed on her matter, as set forth in the July 2020 billing statement. But we disagree that the billing statement does in fact reflect the work that CCDC undertook on Garcia's individual matter. We thus decline to apply this factor.

Personal or Emotional Problems – 9.32(c): At the hearing, Respondent testified that he was experiencing financial difficulties when the costs from case number 20PDJ067 came due, stating that he prioritized payment of his family's bills over paying the ordered costs. Further, he said, he was "deflated" by the suspension imposed in that case. He added that he did not ask to extend the payment deadline or request a payment plan, fearing that he would have to pay the costs sooner if his request were denied. We are not convinced, particularly given that he was able to pay the costs once the People raised the issue with his counsel. Overall, Respondent did not demonstrate a nexus between the problems he described and his misconduct in this case. Accordingly, we do not apply this mitigating factor.

Timely Good Faith Effort to Make Restitution or to Rectify Consequences of Misconduct – 9.22(d): Respondent argues that we should apply this factor in mitigation, pointing to his eventual payment of the costs order in case number 20PDJ067. But Respondent did not timely pay the costs as ordered. Moreover, his failure to recognize the wrongfulness of his conduct in the Garcia and Sanchez-Garcia matters demonstrates to us that he did not attempt to rectify the consequences of his misconduct. We refuse to apply this factor.

Cooperation with Disciplinary Proceedings – 9.32(e): Respondent asks that we give him credit because he responded to the People's investigations, answered their requests for additional information, and voluntarily attended interviews and a deposition with the People. He also argues that he freely admitted that he did not pay the costs ordered in case number

[105] ABA *Annotated Standards* at 480 (citing *In re Stepovich*, 386 P.3d 1205 at 1212); *see also People v. Mason*, 212 P.3d 141, 148 (Colo. O.P.D.J. June 15, 2009) (finding that a lawyer's experience of practicing law for over twenty years "should have given him a better perspective on the activities that he could and could not perform as a result of his suspension").

20PDJ067, thereby simplifying and expediting the proceedings. We disagree on both counts. First, though Respondent participated in the People's investigations in the Garcia case, he failed to provide accurate responses. Second, we decline to credit Respondent's disclosure that he failed to timely pay costs as ordered in case number 20PDJ067, as that fact is undeniable. Otherwise stated, admitting the obvious does not equate to cooperation. We decline to apply this factor.

Character or Reputation – 9.32(g): We heard testimony from Respondent's former and current colleagues that he is motivated to provide affordable legal services to a community that is normally priced out of representation. Mendoza said that Respondent is "very caring for his employees and his clients," and Donald Martin testified that Respondent has a "passion for the law." Martin also complimented Respondent's deep religious faith, noting that Respondent organizes prayer meetings at CCDC every Thursday afternoon. But Martin, who began working with CCDC approximately three years ago and at the time of the hearing was negotiating to purchase CCDC from Pirzadeh,[106] acknowledged that his opinion of Respondent's character had changed "a bit" after learning about Respondent's prior discipline and the allegations in this case, and he appeared troubled that Respondent had engaged in the unauthorized practice of law while suspended.[107]

Respondent's former practice monitor, James Sudler, echoed Martin's comments that religion plays an important role in Respondent's life. But Sudler offered no opinion about Respondent's honesty in his law practice. Further, when Sudler learned about the misconduct established on summary judgment in this proceeding, he expressed concern about Respondent returning to the practice of law. And Sudler conceded that he believed Respondent continued to cultivate a relationship with him so as to rely on him as a character witness.[108]

Overall, we find that Sudler's frank account of his experience with Respondent outweighs other testimony in Respondent's favor, including the testimony praising Respondent's religious faith. And although Respondent's goal of providing legal services to low-income clients is laudable, we cannot ignore that the clients he seeks to serve are especially vulnerable to his misconduct, which gives us significant pause. And apart from the testimony of Respondent's current and former employees, who all seem to like working for him, we saw no evidence of charity work, giving of time, pro bono efforts, or Respondent's reputation in the legal profession. For these reasons, we decline to apply this mitigating factor.

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[106] Respondent testified that after his second suspension Pirzadeh took ownership of CCDC, though we did not see evidence detailing the firm's ownership structure.

[107] At the hearing, Martin confirmed that Respondent will continue to work at CCDC as a paralegal and said that he would put guardrails in place so that Respondent will not provide unauthorized legal advice or services to CCDC's clients. Martin was not able to describe how he plans to protect CCDC's clients, however, stating only that he would take an active role in supervising Respondent while also conceding that he spends most of his workdays in court.

[108] Sudler noted that he gave character testimony on Respondent's behalf during the hearing on the sanctions in case number 20PDJ067.

Analysis Under ABA *Standards* and Case Law

The Hearing Board observes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[109] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases.'"[110] Though prior cases can inform through analogy, the Hearing Board is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[111]

The ABA *Standards* point to a presumptive sanction of disbarment. Case law also calls for disbarment as the appropriate sanction when, as here, a lawyer knowingly practices law in violation of a disciplinary suspension order. For instance, in *People v. Redman*, the Colorado Supreme Court disbarred a lawyer who knowingly engaged in the practice of law while under a disciplinary suspension.[112] Later, in *People v. Zimmermann*, the Colorado Supreme Court made clear that disbarment, not suspension, is warranted when a lawyer who is serving a disciplinary suspension engages in the unauthorized practice of law.[113]

Although prior hearing board decisions are not binding,[114] we observe for purposes of consistency that a hearing board disbarred a lawyer in *People v. Maynard* for misconduct that included practicing law in violation of a disciplinary suspension order.[115] Likewise, in *People v. McMenaman*, a hearing board disbarred a lawyer who misrepresented his ability to provide legal services and engaged in the unauthorized practice of law while he was serving a disciplinary suspension, thereby violating Colo. RPC 3.4(c), Colo. RPC 5.5(a)(1), and Colo. RPC 8.4(c).[116]

Here, we consider Respondent's misconduct to be serious, as it includes practicing law during his suspension, disobeying court orders, violating his duties to his client, and dishonest conduct. Seven factors aggravate his misconduct, while no mitigating factors apply. Notably, Respondent violated multiple rules of professional conduct in two client matters, and his misconduct was preceded by four separate disciplinary cases, three of which resulted in significant suspensions and one of which involved Respondent's unauthorized practice of law while he was suspended. Respondent also has been previously disciplined for collecting an unreasonable fee, failing to refund unearned fees, and dishonesty—misconduct that he has

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[109] *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).

[110] *Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

[111] *Id.* ¶ 15.

[112] 902 P.2d 839, 840 (Colo. 1995).

[113] 960 P.2d 85, 88 (Colo. 1988).

[114] *In re Roose*, 69 P.3d 43, 48 (Colo. 2003) ("The rationale of the Hearing Board in a particular case can neither serve as stare decisis precedent for future cases nor constitute the law of the jurisdiction.").

[115] 483 P.3d 289, 291 (Colo. O.P.D.J. 2021).

[116] 461 P.3d 16, 17 (Colo. O.P.D.J. 2020).

repeated here. In addition, Respondent's probation in one matter was revoked after he failed to meet probationary conditions. Based on notions of progressive discipline related to this disciplinary history, the guidelines set forth in the ABA *Standards*, authoritative case law, and the comparative nonbinding hearing board decisions, we find Respondent's misconduct warrants disbarment. Buttressing this determination is evidence demonstrating that Respondent is the central figure and dominant personality at CCDC and thus cannot be held in check or supervised by lawyers who serve as mere figureheads. Indeed, that Respondent edited the time claimed on Garcia's billing statement shows us that he exercised supervisory control at the firm during his suspension. And though Martin testified that he would take steps to ensure that Respondent would not engage in the unauthorized practice of law at CCDC, he was uncertain how to implement the protections he envisioned. As such, while we take no pleasure in imposing disbarment, we cannot ignore the risk of further harm to the public that would accompany a lesser sanction.

VI. CONCLUSION

Respondent violated his duty to his client by collecting from her $3,500.00 for legal work without advising her that his firm's lawyers had already determined that the work was unlikely to result in the benefit she sought. Nineteen months later, when the client complained to Respondent about the lack of progress on her case, Respondent refused her demand for a refund of her fee. Instead, his firm attempted to settle the matter for $500.00 and retained $3,000.00 of the client's money. When disciplinary authorities investigated the matter, Respondent flouted his duty to the legal profession by knowingly misrepresenting the work that his firm performed on the client's case. In two other matters, Respondent breached his duty to the legal system by disregarding court orders prohibiting him from practicing law while suspended and by failing to timely pay the court-ordered costs of his previous disciplinary case. In light of Respondent's extensive disciplinary history, which includes his knowing disobedience of court orders prohibiting him from practicing law while suspended, we find that his misconduct warrants disbarment.

VII. ORDER

The Hearing Board therefore **ORDERS:**

1. **DOUGLAS LEO ROMERO**, attorney registration number **35464**, is **DISBARRED** from the practice of law in Colorado. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."[117]

2. Respondent **MUST** pay restitution in the amount of $3,500.00 to Karla Garcia no later than **July 26, 2023**. Alternatively, if Karla Garcia receives payment under a

[117] 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.

claim submitted to the Attorneys' Fund for Client Protection, Respondent **MUST** reimburse the Fund no later than **July 26, 2023**.

3. To the extent applicable, 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.

4. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **MUST** file an affidavit with the PDJ 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.

5. The parties **MUST** file any posthearing motions **no later than July 5, 2023**. Any response thereto **MUST** be filed within seven days.

6. 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.

7. Respondent **MUST** pay the costs of this proceeding. The People **MUST** submit a statement of costs **no later than July 5, 2023**. Any response challenging those costs **MUST** be filed within seven days.

DATED THIS 21st DAY OF JUNE, 2023.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

JAMES L. COX JR.
HEARING BOARD MEMBER

WENDELL B. PORTERFIELD JR.
HEARING BOARD MEMBER