***People v. Anthony Litt Sokolow*. 19PDJ025. September 10, 2019.**

Following a sanctions hearing, the Presiding Disciplinary Judge suspended Anthony Litt Sokolow (attorney registration number 10312) for one year and one day, effective October 15, 2019. Sokolow is required to formally petition for reinstatement and prove by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

Although Sokolow submitted the appropriate paperwork to appeal the denial of his client's social security disability claim, he did not seek to expedite the appeal, even though his client may have been granted an expedited hearing due to the imminent foreclosure on her house. Sokolow also repeatedly failed to respond to his client's numerous attempts to communicate about the status of her appeal for months at a time. Through this misconduct, Sokolow violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a) (a lawyer shall reasonably communicate with the client); and Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation).

The case file is public per C.R.C.P. 251.31. 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:** ANTHONY LITT SOKOLOW, #10312	Case Number: **19PDJ025**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Anthony Litt Sokolow ("Respondent") was hired in September 2015 to represent a client with a social security disability claim. He failed to file paperwork to rush the appeal, even though the client was facing imminent eviction proceedings and may have qualified for an expedited hearing on that basis. He also failed to communicate regularly with the client, letting many months pass without responding to her numerous attempts to contact him. Respondent failed to act with reasonable diligence in pursuing the case, and failed to promptly and sufficiently communicate with her. His misconduct violated Colo. RPC 1.3 and 1.4(a) and (b), which warrants a suspension for one year and one day.

I. PROCEDURAL HISTORY

On April 5, 2019, Erin R. Kristofco of the Office of Attorney Regulation Counsel ("the People") filed a citation and complaint with the Presiding Disciplinary Judge ("the Court") and sent copies via certified mail and regular mail the same day to Respondent at his registered home and business addresses. When the due date for Respondent's answer had passed, the People sent him a letter on April 26, 2019, reminding him to answer.

Respondent did not file an answer or otherwise appear in the case, and the People moved for entry of default on May 7, 2019. The Court granted the People's motion and issued an "Order Entering Default under C.R.C.P. 251.15(b)" on May 31, 2019. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.[1] The Court set a sanctions hearing for August 8, 2019.

[1] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

At that sanctions hearing held under C.R.C.P. 251.15(b), Kristofco represented the People. Respondent appeared pro se. The Court admitted the People's exhibits 1-2 and heard testimony from Elizabeth Ternes and Respondent.

II. FACTUAL FINDINGS AND RULE VIOLATIONS

Facts and Rule Violations Established on Default

Respondent was admitted to practice law in Colorado on April 30, 1980, under attorney registration number 10312. He is thus subject to the Court's jurisdiction in this disciplinary proceeding.[2]

Respondent, a specialist in social security disability law,[3] was hired by Elizabeth Ternes to represent her with a social security disability claim ("SSD claim") in September 2015. Ternes told Respondent her SSD claim was urgent, as her home was going into foreclosure due to her inability to work or pay her mortgage.

After Ternes's initial SSD claim was denied, Respondent filed the proper forms to appeal the SSD denial. Respondent did not apply for an expedited hearing or otherwise try to qualify Ternes's case as critical under the Social Security Administration's rules. Ternes's claim may have qualified as a critical case—and thus may have been entitled to an expedited hearing schedule—based on the imminent foreclosure of her home.

Respondent stopped communicating with Ternes in April 2016 while her SSD appeal was pending. Ternes made numerous attempts to contact Respondent by phone, email, and regular mail, but she did not receive any response from Respondent until October 2016. At that time, Ternes again told Respondent that her home would be foreclosed upon imminently unless she prevailed on her claim at the hearing and received SSD benefits to make her mortgage payments.

Respondent again failed to communicate or respond to Ternes's emails and phone calls between October 2016 and March 2017. Ternes terminated Respondent's representation in late March 2017.

Foreclosure proceedings began on Ternes's house in March 2017, and she was forced to sell her home. Ternes hired a new lawyer to represent her in the SSD claims in April 2017. Her appeal of the SSD claim was ultimately successful, and she was able to obtain SSD benefits after a hearing in August 2017. Because the foreclosure process had already occurred, however, Ternes could not recover her house. And because of housing prices, Ternes had to move to Pueblo, Colorado, several hours away from her family.

[2] *See* C.R.C.P. 251.1(b).

[3] The Court accepted Respondent as an expert in social security disability law based on Respondent's testimony at the sanctions hearing held on August 8, 2019.

Through the conduct described above, Respondent violated Colo. RPC 1.3, which provides a lawyer must act with reasonable diligence and promptness in representing a client. Respondent also violated Colo. RPC 1.4(a) and Colo. RPC 1.4(b), which provide that a lawyer must promptly comply with reasonable requests for information, keep the client reasonably informed about the status of the matter, and explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation.

Factual Findings at Sanctions Hearing

At the sanctions hearing on August 8, 2019, Ternes testified about her efforts to reach Respondent during his representation of her. Ternes verified the notes she kept documenting her attempts to communicate with Respondent.[4] She also testified as to her financial losses from hiring substitute counsel, her distrust of the legal system as a result of this episode, and the emotional stress and personal hardship caused by the foreclosure of her home due to the delay in getting her social security benefits. Ternes stated that she was homeless for several months after the foreclosure and that she suffered additional medical problems as a result of those living conditions. Ternes also testified as to why she moved to Pueblo, Colorado, and the hardship she experiences from being so far away from her children and grandchildren.

Respondent testified that at the time of Ternes's SSD claim, the Social Security Administration was taking approximately eighteen months from the date of filing an appeal to the scheduled hearing date. Respondent also opined that 75 to 85 percent of his clients were extremely stressed financially because they could not work and were facing homelessness. Respondent stated that he had to be extremely circumspect when filing a request for an expedited hearing or otherwise asking for something outside of the normal procedures. Additionally, Respondent noted that an application for an expedited hearing had never been granted during his many years litigating SSD claims.

In closing argument, Respondent stated that he did not object to the People's requested suspension of one year and one day.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[5] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[6] When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

[4] Ex. 2.
[5] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[6] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

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

Duty: "[M]embers of our profession must adhere to the highest moral and ethical standards."[7] By engaging in a pattern of neglect through his failure to promptly and adequately communicate with Ternes over a period of eighteen months, Respondent violated his duty to communicate with his client and his duty to act with reasonable diligence.

Mental State: The Court concludes that Respondent knew Ternes was repeatedly attempting to communicate with him yet he knowingly failed to respond to her.[8]

Injury: Respondent's failure to respond to Ternes's repeated attempts to communicate caused her significant emotional and mental stress.[9] Additionally, Respondent's inaction potentially caused Ternes injury, as there was some chance her appeal may have been expedited had he made the request.[10]

ABA *Standard* 4.4 – Presumptive Sanction

The presumptive sanction here is suspension under ABA *Standard* 4.42, which applies when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client, or when a lawyer engages in a pattern of neglect and causes injury or potential injury to the client.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.[11] Five aggravating factors are present here: prior disciplinary offenses; a pattern of misconduct; multiple offenses; vulnerability of the victim; and substantial experience in the practice of law.[12] Of significant weight is that Respondent's prior discipline, a private admonition, was imposed based on a finding that he had violated Colo. RPC 1.3 and 1.4(a), the same rules at issue here.

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[7] *In re Pautler*, 47 P.3d 1175, 1176 (Colo. 2002).

[8] Knowing misconduct occurs when a lawyer acts with "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA *Annotated Standards for Imposing Lawyer Sanctions*, xxi (2d ed. 2019).

[9] In some cases, inconvenience or psychic harm to clients caused by a lawyer's delay or failure to communicate has been considered "injury." *See In re Schaffner*, 939 P.2d 39, 41 (Or. 1997) (finding actual injury to a client in the form of anxiety and frustration when a lawyer refused to return original documents); *In re Johnson*, 936 P.2d 258, 260 (Kan. 1997) (noting the time, money, and emotional strain caused by a lawyer's delay in an adoption context).

[10] The injury resulting from the lawyer's misconduct need not be actually realized. Courts also examine the potential for injury caused by the lawyer's misconduct. *See In re Johanning*, 111, P.3d 1061 (Kan. 2005) (the potential for injury existed in that the outcome of cases might have been different had the lawyer provided diligent representation).

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

[12] ABA *Standards* 9.22(a), (c), (d), (h) and (i), respectively.

Respondent did not offer any mitigating factors at the sanctions hearing for the Court to consider.

Analysis Under ABA *Standards* and Colorado Case Law

The Court recognizes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[13] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[14] Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[15]

Here, the People request suspension of one year and one day. Respondent does not object to the requested suspension.

Where suspension is the presumptive sanction, a served suspension of six months typically is viewed as a baseline sanction, to be adjusted upward or downward in consideration of aggravating or mitigating factors.[16] The Court has found five factors in aggravation and no mitigating factors. Given these circumstances—particularly Respondent's prior misconduct which bears significant resemblance to the current misconduct at issue here—and Respondent's position as to sanctions, the Court determines that the appropriate sanction is a suspension of one year and one day.

IV. CONCLUSION

Respondent knowingly failed to perform services for a client and otherwise engaged in a pattern of neglect, thereby injuring his client. Respondent's misconduct warrants a served suspension of one year and one day.

V. ORDER

The Court therefore **ORDERS**:

1. **ANTHONY LITT SOKOLOW**, attorney registration number **10312**, will be **SUSPENDED** from the practice of law for a period of **ONE YEAR AND ONE**

[13] *See In re Attorney F.*, 2012 CO 57; *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).
[14] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[15] *In re Attorney F.*, ¶ 15.
[16] *See* ABA *Standard* 2.3; *see also In re Cummings*, 211 P.3d 1136, 1140 (Alaska 2009); *In re Moak*, 71 P.3d 343, 348 (Ariz. 2003); *In re Stanford*, 48 So. 3d 224, 232 (La. 2010); *Hyman v. Bd. of Prof'l Responsibility*, 437 S.W.3d 435, 449 (Tenn. 2014); *In re McGrath*, 280 P.3d 1091, 1101 (Wash. 2012).

DAY. The suspension **SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[17]

2. To the extent applicable, Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.

3. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Suspension," an affidavit complying with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motions **on or before Tuesday, September 24, 2019**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Tuesday, October 1, 2019**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Tuesday, September 24, 2019**. Any response thereto **MUST** be filed within seven days.

DATED THIS 10th DAY OF SEPTEMBER, 2019.

Original Signature on File
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

Erin R. Kristofco Office of Attorney Regulation Counsel	Via Email e.kristofco@csc.state.co.us
Anthony Litt Sokolow Respondent 6705 N. Yucca Trail Parker, CO 80138	Via First-Class Mail
Cheryl Stevens Colorado Supreme Court	Via Hand Delivery

[17] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.