People v. Patrick Westman. 23PDJ016. April 19, 2024.

Following a disciplinary hearing, a hearing board suspended Patrick Westman (attorney registration number 42606) for one year and one day, with six months to be served and six months and one day to be stayed pending Westman's successful completion of a two-year period of probation, which carries conditions. Westman's suspension is scheduled to take effect on May 24, 2024.

Westman neglected to fulfill his continuing legal education requirements. Unbeknownst to him, his law license was administratively suspended in 2021. He then inadvertently engaged in the unauthorized practice of law before realizing his error and rectifying the situation. In a separate matter, Westman engaged in criminal conduct when, at a self-checkout terminal at a local Walmart store, he failed to scan and pay for numerous items and then departed the self-scan area in the direction of the store's exit.

Through this conduct, Westman violated Colo. RPC 5.5(a)(1) (a lawyer may not practice law in Colorado without a valid license or other authorization issued by the Colorado Supreme Court) and Colo. RPC 8.4(b) (it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).

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:** PATRICK WESTMAN, #42606	Case Number: **23PDJ016**
OPINION IMPOSING SANCTIONS UNDER C.R.C.P. 242.31	

Patrick Westman ("Respondent") neglected to fulfill his continuing legal education requirements. Unbeknownst to him, his law license was administratively suspended. He then inadvertently engaged in the unauthorized practice of law before realizing his error and rectifying the situation. In a separate matter, Respondent engaged in criminal conduct when, at a self-checkout terminal at a local Walmart store, he failed to scan and pay for numerous items and then departed the self-scan area in the direction of the store's exit. This misconduct warrants suspension for one year and one day, with six months to be served and six months and one day to be stayed pending Respondent's successful completion of a two-year period of probation, which carries conditions.

I. PROCEDURAL HISTORY

Respondent was admitted to the practice of law in Colorado on October 25, 2010, under attorney registration number 42606. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[1]

On April 7, 2023, Michele L. Melnick of the Office of Attorney Regulation Counsel ("the People") filed a three-claim complaint in this disciplinary case, alleging that Respondent violated Colo. RPC 3.4(c) (Claim I), Colo. RPC 5.5(a)(1) (Claim II), and Colo. RPC 8.4(b) (Claim III). Respondent failed to file a timely answer, and the People moved for default on June 2, 2023. Three days later, the Presiding Disciplinary Judge Bryon M. Large ("the PDJ") ordered Respondent to respond to the People's default motion by June 23, 2023. Respondent did not comply. Instead, on June 23, 2023, Respondent requested a fourteen-day extension to answer

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

the complaint, citing a medical condition. The PDJ granted his request. On July 7, 2023, Respondent answered the People's complaint and responded to their motion for default.

During a scheduling conference on July 21, 2023, the People made an oral motion to withdraw their default motion, which the PDJ granted, and the parties set a two-day hearing for late November 2023. On November 8, 2023, the Court was forced to reset the hearing to February 26-27, 2024, due to unforeseen emergency circumstances. In early October 2023, the People moved for partial summary judgment on Claims I and II, but Respondent did not respond, even after the PDJ's administrator sent the parties an email noting that a response was due. On November 20, 2023, the PDJ granted in part and denied in part the People's motion for partial summary judgment, entering judgment on Claim II.

In the early morning of January 2, 2024, an intruder forced his way into the office building at 1300 Broadway in Denver, where the PDJ's courtroom is located. The intruder set a fire in the building, which resulted in extensive damage to the premises. The PDJ was thus forced to relocate the hearing. On January 12, 2024, the PDJ notified the parties that the hearing would take place on February 26 and 27, 2024, in the Colorado Supreme Court courtroom on the 4th floor of the Ralph L. Carr Judicial Center at 2 East 14th Avenue in Denver, Colorado.

At a scheduled prehearing conference conducted via the Zoom videoconferencing platform on January 23, 2024, the People appeared but Respondent did not. The People reported that they had not communicated with Respondent since September 2023, even though on several occasions in the intervening months they requested information from him.[2] Even so, the People orally moved to dismiss Claim I of the complaint due to evidentiary concerns. They also asked to shorten the hearing to one day to conserve judicial resources. The PDJ granted the People's motion, dismissed Claim I of the complaint, and converted the two-day hearing to a one-day hearing to take place on February 26, 2024.

On February 26, 2024, a Hearing Board comprising the PDJ and lawyers Robert H. Dodd Jr. and Dawn M. Weber held a hearing under C.R.C.P. 242.30 in the Colorado Supreme Court courtroom. Melnick attended for the People, and Respondent, who appeared pro se, made a record of his failure to meaningfully participate in the case. Thereafter, the Hearing Board received testimony from Cody Erickson, Laurie Seab, and Respondent, and the PDJ admitted the People's exhibits 1-3 and 6-7. After the People presented their case-in-chief, Respondent moved for a directed verdict under C.R.C.P. 50, which the PDJ denied in an oral ruling.

II. UNAUTHORIZED PRACTICE OF LAW MATTER

Respondent's registered business address is in Littleton, Colorado. In 2021, Respondent was a solo practitioner.

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[2] During the prehearing conference, the PDJ notified the People that in December 2023 Respondent told the Court's administrator during a telephone call that he planned to retain counsel to represent him. Respondent also requested a copy of his file, which the PDJ's administrator transmitted via email on December 22, 2023.

On June 18, 2021, the Committee of Continuing Legal & Judicial Education filed a statement of Respondent's noncompliance with the Colorado Supreme Court and served it on Respondent at his registered business address. At that time, Respondent had not completed forty-five units of general continuing legal education ("CLE") credit, including seven units of ethics credit, between January 1, 2017, and December 31, 2019. The Committee of Continuing Legal & Judicial Education had previously emailed Respondent a notice about his lack of compliance with his CLE requirements for that compliance period.

On June 21, 2021, the Colorado Supreme Court issued an "Order of Suspension in Re: Patrick Westman, #42606," suspending Respondent from the practice of law. Respondent received an electronic copy of the suspension order at his email address from the Colorado Courts E-Filing ("CCEF") system.

While Respondent's license was suspended, and after being served with the order of suspension, Respondent appeared in court on behalf of clients. On June 23, 2021, Respondent and one of his clients appeared in Jefferson County case number 21M353. Respondent requested a continuance and waived speedy trial during the appearance, and the case was reset to August 18, 2021. On July 20, 2021, Respondent appeared on behalf of a criminal defendant in a sentencing proceeding in Jefferson County case number 19T8813. During that proceeding, Respondent's client was sentenced to sixty days in jail with conditions.

On August 2, 2021, Respondent appeared at a pretrial readiness conference on behalf of the defendant in Arapahoe County case number 20CR768. During that court appearance, Respondent notified the court of his administrative suspension, and the court continued the case to August 23, 2021.

On August 9, 2021, Respondent emailed the Office of Continuing Legal and Judicial Education, attaching a cover letter and a petition for reinstatement. Respondent's signature block listed his Littleton address. On August 10, 2021, Respondent again emailed the Office of Continuing Legal and Judicial Education, stated that he was aware he needed to complete eleven more general credits to comply with his CLE requirements, and attached to the email an updated spreadsheet with the same petition for reinstatement he provided the day before. The email dated August 10, 2021, lists Respondent's Littleton address. On August 16, 2021, Respondent emailed the Office of Continuing Legal and Judicial Education, stated that he had not received any notice that his reinstatement petition had been submitted, and explained that he had court that week and did not want to announce his suspension in court. In his email of August 16, 2021, Respondent's signature block listed his Littleton address.

On August 17, 2021, the Board of Continuing Legal and Judicial Education filed a petition for reinstatement, and the Colorado Supreme Court reinstated Respondent to the practice of law the following day.

On summary judgment, the PDJ found as a matter of law that Respondent violated Colo. RPC 5.5(a)(1), which prohibits lawyers from practicing law in Colorado without a valid license or other authorization issued by the Colorado Supreme Court. The PDJ observed that on June 21, 2021, the Colorado Supreme Court suspended Respondent from the practice of law, and that while Respondent's law license was administratively suspended, he appeared in court on behalf of clients in two separate criminal matters. The PDJ reasoned that when Respondent acted on his clients' behalf to defend and protect his clients' legal rights while he was administratively suspended, he engaged in the practice of law without a valid law license.

III. CRIMINAL MISCHIEF CONVICTION

Findings of Fact

On August 9, 2020, shortly before 5:18 p.m., Respondent was shopping inside a Walmart Supercenter in Littleton. He loaded a cart with items and then proceeded to the self-checkout area of the store. He scanned and paid for some of the items in his cart. But Respondent did not scan all of the items in the cart. After he paid for the scanned items, he left the self-scan area and began walking toward the store's exit. Walmart's Loss Prevention Officer Dijon Thomas intercepted him and escorted him to the loss prevention office. Thomas examined the contents of Respondent's cart and compiled a list of more than three dozen items that he concluded Respondent had failed to scan and pay for.[3] Thomas also summoned the local police.

Police Officer Cody Erickson responded to Thomas's call. According to Erickson, he "routinely" responded to theft calls at that Walmart. Thomas provided Erickson the list of nonscanned items for which he believed Respondent had not paid. Based on that list, Erickson reviewed video footage of Respondent at the checkout area. Erickson's report noted that at one point, the video showed Respondent "grabbing three items from the cart, paying for two and placing three into a bag."[4] Erickson also interviewed Respondent, who said he had money to pay for all of the nonscanned items that he had not purchased. During that conversation, Respondent mentioned in passing that he was a lawyer. After observing Respondent, Erickson could detect no sign that Respondent was under the influence of alcohol or drugs.

Erickson concluded that Respondent had stolen the following items: one grass spreader, one target, one Spark Elite, two Lego sets, two MLB cards, one bag of "pellets," one area light, one plant bracket, eight planters, one game add-on, one oval tub, one Coke, five John Deere play tractors, ten nail pegs, three one-gallon jugs of distilled water, one "oblong," two lights, one cord clip, and one fastener.[5] The pre-tax total price of the nonscanned items was $244.50.[6] Erickson testified that because he believed a person could not have mistakenly failed to scan so

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[3] Ex. 3 (not admitted for the truth of the matter asserted).
[4] Ex. 2 at 22.
[5] Ex. 2 at 16-21; *see also* Ex. 7 (a video-frame shot of the items in Respondent's shopping cart from an MP4 video file captured by Erickson's body camera).
[6] Ex. 2 at 22.

many items, he concluded Respondent had intended to steal them. As such, Erickson issued Respondent a summons for theft, a third-degree misdemeanor, citing C.R.S. section 18-4-401(1)(A).[7] Respondent signed the summons and was served with trespass paperwork by Thomas, who then escorted Respondent off the property.

Respondent was unable to provide much detail about the Walmart incident. He testified that he was not under the influence of drugs or alcohol at the time but was in a "weird place" mentally. He said he visited Walmart to buy merchandise out of boredom. He paid for some items that were kept under lock and key at a register at the back of the store. Afterward, the clerk walked him to the self-checkout to pay on his own for the remaining items. Respondent described not remembering much after that, analogizing his scanning activities to driving right past an intended destination, almost as if on autopilot. He recalled having a cart, inside which was a container, "like a cart inside [his] cart." He said that he thought he could remember checking some items out at the self-checkout, but he could not say for sure. He mentioned that he has declined to rewatch the video of the incident, as it depicts someone unlike himself.

Respondent agreed that Walmart's loss prevention personnel confronted him and took him to an office for questioning. When the police arrived, he said, he was signing a document stating that he was being ejected from Walmart. He recalled that Erickson then advised him that he would be cited for theft. Respondent reported that in response, he advised Erickson that he was a lawyer. While Respondent alluded to a lack of sleep as a possible contributing factor in his behavior, he was unwilling to commit under oath that he had not slept the night before. Ultimately, he insisted, "I'm not a thief," emphasizing that his father, a former marine, had taught him that "thieves, liars, and welchers need to be treated differently."

On August 14, 2020, the Jefferson County District Attorney's Office filed a misdemeanor complaint against Respondent for theft as a class-three misdemeanor. On March 4, 2022, Respondent pleaded guilty to criminal mischief in violation of C.R.S. section 18-4-501(4)(a) (a third-degree misdemeanor), waiving a factual basis. Through that plea, Respondent agreed that he knowingly damaged the property of one or more persons in the course of a single criminal episode with an aggregate damage less than $300.00. The District Attorney's Office dismissed the theft count and the court assessed costs.

Legal Analysis

The People allege that Respondent's conviction contravenes Colo. RPC 8.4(b), which provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. "Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category."[8]

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[7] Ex. 1.

[8] Colo. RPC 8.4 cmt. 2.

Respondent was initially charged with theft. Under C.R.S. section 18-4-401(1)(a), a person commits the crime of theft if that person "knowingly obtains, retains, or exercises control over anything of value of another without authorization, or by threat or deception . . . and intends to deprive the other person permanently of the use or benefit of the thing of value." In the end, however, Respondent entered a guilty plea to criminal mischief under C.R.S. section 18-4-501(1), which is defined as the "[knowing damage of] the real or personal property of one or more other persons . . . in which another person has a possessory or proprietary interest, in the course of a single criminal episode." While we take into account the legal elements of Respondent's conviction, we are also free to look beyond that conviction to his underlying conduct, as "the actual nature of [a lawyer's] conduct is more important for disciplinary purposes then the statutory label put on it."[9]

We do not hesitate to find that a conviction for misdemeanor criminal mischief reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer. In doing so, we look beyond the definition of the criminal mischief statute to Respondent's conduct: he loaded his cart with items, scanned some but not all of those items, paid for the scanned items, and left the self-scanning area in the direction of the store exit. While we cannot find that the People proved Respondent committed theft, as the evidence before us is just shy of clearly and convincingly demonstrating that he consciously intended to deprive Walmart of its property, we have no doubt he committed a criminal act.[10] We also have no doubt that criminal act involved dishonesty and implicated Respondent's fitness as a lawyer; Respondent agreed, as part of his plea bargain, that he knowingly damaged Walmart's property in the course of a criminal episode—conduct that we adjudge to implicate not only his rectitude but also his good judgment in conducting himself, whether in the personal or professional realm. We therefore find that Respondent's conviction reflects adversely on his honesty, trustworthiness, and fitness as a lawyer and, accordingly, that his conduct transgressed Colo. RPC 8.4(b).

IV. SANCTIONS

In determining sanctions, we are guided by the framework established by the American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[11] and Colorado Supreme Court case law.[12] Following that framework, we 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 we may then adjust, in our discretion, based on aggravating and mitigating factors.[13]

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[9] *People v. Brailsford*, 933 P.2d 592, 595 (Colo. 1997).

[10] *See* C.R.C.P. 242.42(d) (noting that a court-certified copy of the judgment of conviction or order showing that a lawyer has been convicted in that court of a crime conclusively establishes the conviction and proves the lawyer's commission of that crime for disciplinary purposes).

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

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

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

ABA Standard 3.0 – Duty, Mental State, and Injury

Duty: Lawyers are trusted with clients' property, liberty, and lives. Therefore, they should exhibit the highest standards of integrity.[14] Through his misconduct, Respondent violated his duty to the public, including his duty to refrain from dishonest conduct reflecting adversely on his fitness to practice law. Further, by practicing law while he was administratively suspended, Respondent violated his duty to the profession to obey rules governing the practice of law.

Mental State: With regard to Respondent's unauthorized practice of law, we agree with Respondent that he acted negligently. Respondent testified that he failed to open his mail, including mail from regulatory authorities, and we credit that testimony. We do so in part because we are persuaded that Respondent took swift action to address his administrative suspension as soon as he became aware of it. As to Respondent's criminal conviction, Respondent pleaded guilty to the crime of criminal mischief, which includes as an element the knowing damage of property of others. We thus find that Respondent acted knowingly, as demonstrated by his conviction.

Injury: By practicing law while administratively suspended, Respondent harmed the legal profession and injured the reputation of lawyers. He also injured his client, who was unexpectedly left without representation, as well as the court, which was forced to continue the case. In his criminal matter, Respondent potentially injured Walmart by failing to pay for merchandise. More significant, Respondent injured Walmart, law enforcement personnel, and the public by diverting scarce resources and depleting officers' availability to attend to matters of more pressing public concern. Further, by readily identifying himself as a lawyer while speaking with Erickson, Respondent besmirched lawyers and the legal profession. Finally, a lawyer's commission of a crime inherently injures the public as a whole.

ABA Standards 4.0-8.0 – Presumptive Sanction

Respondent's unauthorized practice of law is governed by ABA *Standard* 7.3, which provides that public censure is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, thereby injuring or potentially injuring a client, the public, or the legal system.

As to Respondent's criminal conduct, ABA *Standard* 5.11 calls for disbarment when a lawyer engages in *serious* criminal conduct involving certain types of crimes, the most relevant here being fraud or theft. That *Standard* also recommends disbarment when a lawyer *intentionally* engages in conduct involving dishonesty, fraud, deceit, or misrepresentation, where that conduct seriously adversely reflects on the lawyer's fitness to practice law. In contrast, ABA *Standard* 5.12 suggests suspension when a lawyer *knowingly* engages in criminal conduct that does not involve the elements listed in *Standard* 5.11. We are not convinced that misdemeanor

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[14] ABA *Annotated Standards for Imposing Lawyer Sanctions*, xviii.

criminal mischief is the type of serious criminal conduct contemplated in ABA *Standard* 5.11, nor do we find that Respondent's conduct was clearly and convincingly intentional. Given the gap between the two *Standards*, we elect to apply ABA *Standard* 5.12 because we find that Respondent knowingly engaged in criminal conduct.[15]

Because we recognize that the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct,"[16] we begin with a presumptive sanction of suspension.

ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the sanction.[17] As explained below, we apply five factors in aggravation, assigning one relatively substantial weight and assigning two very little weight. Three factors merit mitigation, two of which we give minimal weight.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): We apply this factor and give it above average weight in consideration of Respondent's dishonest criminal conduct. Moreover, Respondent was motivated primarily by pure selfishness. His conduct was pointless; he credibly acknowledged his ability to pay for the nonscanned items. When we consider the timing of his misconduct—at the height of the COVID pandemic during which so many people experienced great and unusual economic precarity—we find Respondent's self-centered actions to be even more aggravated.

Multiple Offenses – 9.22(d): Respondent committed two distinct types of rule violations. We apply this factor but give it no more than minimal weight.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): Respondent has resisted acknowledging the wrongful nature of his criminal conduct or the injury he has caused. He has failed to appreciate the import of his actions, and he has blamed his circumstances and others while insisting he does not want to "play the blame game." Also worth noting is Respondent's recollection of having represented defendants who were charged with similar crimes, juxtaposed with what seems to us his minimization of his own actions. In all, we choose to apply this aggravator but give it somewhat less than average weight.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted as a Colorado lawyer in 2010, served as a public defender for more than two years, and had

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[15] We also note that the People ask us to suspend Respondent's law license, which further sways us away from beginning at a baseline sanction of disbarment.
[16] ABA *Annotated Standards for Imposing Lawyer Sanctions* at xx.
[17] *See* ABA *Standards* 9.21 and 9.31.

approximately ten years of experience in the practice of law at the time of his misconduct. We apply this factor but, in our discretion, give it less than average weight.

Illegal Conduct – 9.22(k): We find that this factor applies to Respondent's misconduct, as he was charged and convicted of criminal behavior. However, because Respondent's conviction both forms the basis for a violation itself and drives this aggravating factor—a double penalty, so to speak—we decline to give this factor any more than negligible weight.[18]

Mitigating Factors[19]

Absence of Prior Discipline – 9.32(a): Because Respondent has no prior discipline, we apply this factor. We believe it merits little weight, however, as lawyers are expected to fulfill their professional and personal obligations without engaging in sanctionable conduct.

Personal and Emotional Problems – 9.32(c): Respondent testified that he has long struggled with mental health issues, which first surfaced when his father passed away in 2006. He was prescribed a medication for anxiety. Currently, he takes two anti-anxiety medications as well as two different forms of Adderall.

Though the timeline of Respondent's personal and professional journey is not entirely clear to us, we understand that Respondent served as a public defender for two years, then opened a solo practice focusing on criminal defense and family law. At some point, he was twice cited for driving under the influence of alcohol ("DUI"). Because of these DUIs, he had to complete court-ordered conditions, including more than 100 hours of therapy; he also entered into a diversion agreement with the People. He has been sober since. Choosing sobriety, testified Respondent, required significant life changes. He moved out of a high-rise penthouse and into a residential rental home with his fiancée. He also chose to work with a bigger law firm, because that environment would give him more opportunity to socialize, as he was not comfortable working alone. Shortly after his move, however, Respondent lost his romantic relationship; he testified that living alone in the suburbs was not conducive to his mental health or social well-being.

Later, Respondent returned to solo practice, which he was able to open with a robust book of business. When the COVID-19 virus was declared a pandemic, Respondent was working in a downtown office space and winding down his pending cases in anticipation of taking a planned sabbatical, having become disenchanted with criminal justice and the family law system. The pandemic upended his sabbatical plans. Instead, he spent a significant amount of money to

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[18] *See In re Ivy*, 374 P.3d 374, 384 (Alaska 2016) (cautioning against the risk of double counting against a lawyer when an aggravating factor turns on the same facts as the sanction or as other aggravators).

[19] During the hearing, the PDJ specifically asked Respondent about the applicability of each of the mitigating factors listed in ABA *Standard* 9.32. We apply these factors based on the record as a whole.

seek certification as a financial advisor with the goal of transitioning his practice area to estate planning.

The COVID-19 pandemic exacerbated his underlying mental health struggles, he said, particularly because he could not spend time with his mother, whom he describes as his best friend, confidant, and closest remaining family member. He began taking antidepressants. But Respondent's issues worsened and developed into severe sleeping problems. According to Respondent, he has gone four days without sleep at a stretch. He was prescribed trazodone for sleep a couple of months before the Walmart incident, but he hated that it made him feel groggy. He continues to battle this problem.

As discussed above, Respondent's testimony leaves the chronology of these personal and emotional problems somewhat murky. Even so, we are persuaded that at least some of these problems are temporally and causally linked to Respondent's criminal conduct and his unauthorized practice of law. We apply this factor and give it average weight.

Remorse – 9.32(l): Respondent asks us to apply this factor. While we firmly believe that Respondent is sorry that he faces discipline, regrets the harm these incidents have caused him, and rues the potential impact his discipline may have on his reputation and law practice, we see no evidence that he is remorseful for his actions or appreciates their effect on the public. We decline to apply this mitigating factor.

Imposition of Other Penalties or Sanctions – 9.32(k): Respondent's criminal conviction and sentence warrants mitigation under this factor. But we decline to give his criminal penalties any more than minimal weight, given that those penalties were themselves minimal.

Analysis Under ABA Standards and Case Law

The Colorado Supreme Court has directed us to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[20] We do so, mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[21] In determining the appropriate sanction for Respondent's misconduct, we look not only to the specific circumstances of his case but also to prior cases, which can guide us by analogy.[22]

The People request that we suspend Respondent for six months. Respondent asks that we impose private discipline, reasoning that no one was harmed in the Walmart incident and reiterating that his conduct was influenced by chronic sleeplessness. He repeatedly expressed

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

alarm about being publicly disciplined, which he fears will adversely affect his career. As Respondent sees it, his discipline will be the first and most salient result if a potential client searches the internet for his name. He also voiced dismay that he may have thrown away "the biggest accomplishment that anyone on either side of [his] family accomplished."

In our analysis, we begin with a presumptive sanction of suspension. Under ABA *Standard* 2.3, a presumed suspension "should be for a period of time equal to or greater than six months." Here, the aggravating factors outweigh the mitigating factors, which likewise militates in favor of a period of suspension. And the sparse case law, while not a perfect fit factually, points roughly to the same result.[23] These pieces of the analysis lead us to conclude that Respondent should be suspended for some period of time.

We add that this outcome accords with our sense of how best to protect the public, which must be put on notice that our profession does not condone Respondent's behavior. We also believe the legal profession should be sent the message that similar conduct will result in meaningful discipline. Once Respondent serves his suspension and signals his desire to return to the profession, we believe some guardrails around his practice will ensure his smooth reentry, support his efforts to fortify his mental health, and satisfy his clients and the courts that he can practice ethically. These safeguards include ongoing therapy, remedial ethics education, and work with a practice monitor.

Accordingly, with the paramount goal of protecting the public, we conclude that Respondent should be suspended for one year and one day, with six months to be served and the remainder to be stayed pending his successful completion of a two-year probation, with conditions.

V. CONCLUSION

As officers of the court, Colorado lawyers are charged to obey the state's laws as well as the profession's rules. As such, "[a] lawyer cannot ignore or fail to comply with the high ethical and moral standards which are imposed on all members of the legal profession."[24] Here, Respondent neglected his professional obligations and knowingly committed criminal misconduct, contravening his duties to the legal profession and to the public. This misconduct warrants a period of suspension, followed by a period of probation, with conditions.

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[23] *See People v. Barnthouse*, 948 P.2d 534, (Colo. 1997) (suspending a lawyer for one year and one day after the lawyer stole three pairs of eyeglasses frames from a store, and taking into account several aggravating factors); *People v. Buckley*, 848 P.2d 353, 354 (Colo. 1993) (after considering significant mitigation, publicly censuring a deputy district attorney for shoplifting a hair dryer); *see also In re Ellis*, 204 P.3d 1161, 1162 (Kan. 2009) (publicly censuring a lawyer who repeatedly took food from a vendor's café at the lawyer's workplace without paying for that the food).

[24] *People v. Harfmann*, 638 P.2d 745, 746 (Colo. 1981).

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. **PATRICK WESTMAN**, attorney registration number **42606**, is **SUSPENDED** from the practice of law for **ONE YEAR AND ONE DAY,** with **SIX MONTHS SERVED** and the remainder to be stayed pending successful completion of a **TWO-YEAR** period of **PROBATION**, with the conditions identified in paragraph 8 below. The suspension will take effect on issuance of an "Order and Notice of Suspension."[25]

2. Respondent **MUST** timely comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.

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

4. The parties **MUST** file any posthearing motions **no later than Friday, May 3, 2024**. Any response thereto **MUST** be filed within seven days thereafter.

5. The parties **MUST** file any application for stay pending appeal **no later than the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.

6. Respondent **MUST** pay the reasonable costs of this proceeding. The People **MUST** submit a statement of costs **no later than Friday, May 3, 2024**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days after.

7. If Respondent wishes to seek reinstatement to the practice of law after his suspension, he must submit to the PDJ, no earlier than twenty-eight days before the period of his suspension is set to terminate, a motion and affidavit seeking reinstatement under C.R.C.P. 242.38(b)(1).

8. If Respondent is reinstated to the practice of law, he **MUST** serve a **TWO-YEAR** period of **PROBATION** subject to the following conditions:

    a. Respondent must not commit any further violations of the Rules of Professional Conduct;

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[25] 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.

b. Not later than six months after his probation begins, Respondent must attend at his own expense and successfully pass the one-day ethics school sponsored by the People. Respondent must register and pay the costs of ethics school within thirty-five days of his reinstatement. Attendance at ethics school will count as eight general continuing legal education credits, including seven ethics credits. Respondent may obtain the registration form for the ethics school online at www.coloradosupremecourt.com. Respondent may elect to attend ethics school before his probation begins.

c. Respondent must engage a practice monitor for a period of one year and must bear all costs associated with complying with this probationary condition.

   i. The monitor must be an experienced lawyer, licensed to practice law in Colorado, and approved by the People. As a condition of his reinstatement, Respondent and the People must agree on the person who will serve as practice monitor.
   ii. On a monthly basis, the monitoring lawyer must meet with Respondent to review Respondent's workload and calendaring, Respondent's attention to deadlines and obligations in the cases he is handling, and Respondent's efforts to stay organized and diligent in dealing with client and professional matters while also being committed to his self-care and well-being. In addition, the monitor must randomly review Respondent's open files by selecting no fewer than five files and reviewing their contents. Respondent must provide any additional information the monitor requests concerning the files selected randomly. The monitor must discuss with Respondent any concerns the monitor has concerning the file or the legal matters reviewed at the monitor's next monthly meeting with Respondent.
   iii. Within fourteen days after each meeting, Respondent must submit to the People a written report of the meeting. The report must be signed by the monitor.
   iv. The monitor must immediately report to the People any matters that Respondent does not correct or matters that represent significant problems requiring corrective attention. The monitor must also immediately report to the People if Respondent fails to meet or cooperate in any other manner. The monitor's correspondence to the People must also be sent to Respondent.

d. Respondent must engage at his own expense a mental health treatment provider to address the mental health concerns, including depression, that he outlined in his testimony. The People must approve Respondent's selection of a mental health treatment provider. As a condition of his reinstatement, Respondent must have identified and engaged the provider, and must have given the provider a copy of this opinion. Respondent must comply with this condition for the

frequency and duration recommended by the provider. Respondent must provide to the People on a quarterly basis a letter from his provider verifying that Respondent is continuing with treatment and is compliant with the provider's treatment recommendations. Respondent must sign any releases his provider deems necessary to allow the People to verify his treatment.

9. If, while Respondent is on probation, the People receive information that Respondent may have violated a condition of probation, the People may request under C.R.C.P. 242.18(f) that the Court order Respondent to show cause why the stay on his suspension should not be lifted.

DATED THIS 19th DAY OF APRIL, 2024.

BRYON M. LARGE
PRESIDING DISCIPLINARY JUDGE

ROBERT H. DODD JR.
HEARING BOARD MEMBER

DAWN M. WEBER
HEARING BOARD MEMBER