***People v. James C. Wollrab Jr.* 18PDJ068. June 26, 2019.**

A hearing board suspended James C. Wollrab Jr. (attorney registration number 01906) for seven months, effective July 31, 2019. Under the terms of a previous disciplinary opinion, Wollrab is required to formally petition for reinstatement and to prove by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law. As part of that petition, Wollrab also must demonstrate eligibility for reinstatement from the discipline imposed in this matter.

Wollrab was hired in 2017 to represent a client in a personal injury action. At the time, Wollrab knew there was a risk that the stay might be lifted on his suspension in the previous disciplinary matter, which was under appeal. He thus found another lawyer who was willing to assist him with the personal injury case. While his law license was still active, Wollrab filed a complaint in the personal injury action using his own electronic filing account but under the other lawyer's electronic signature alone. By doing so, Wollrab falsely represented that the other lawyer had satisfied his duties under C.R.C.P. 11.

Through that conduct, Wollrab violated Colo. RPC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal). The case file is public per C.R.C.P. 251.31. Please see the full opinion below.

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| SUPREME COURT, STATE OF COLORADO<br>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE<br>THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE<br>1300 BROADWAY, SUITE 250<br>DENVER, CO 80203 | |
| **Complainant:**<br>THE PEOPLE OF THE STATE OF COLORADO<br><br>**Respondent:**<br>JAMES C. WOLLRAB JR., #01906 | Case Number:<br>**18PDJ068** |
| **OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)** | |

James C. Wollrab Jr. ("Respondent") was hired in 2017 to represent a client in a personal injury action. At the time, Respondent knew there was a risk that the stay might be lifted on his suspension in a separate disciplinary matter under appeal. He thus found another lawyer, Richard Banta, who was willing to assist him with the personal injury case. While his law license was still active, Respondent filed a complaint in the personal injury action using his own electronic filing account but under Banta's electronic signature alone. Clear and convincing evidence does not support the charge that Respondent violated Colo. RPC 8.4(c) by misrepresenting to the court that Banta had authorized him to file the complaint with Banta's signature. But clear and convincing evidence does establish that Respondent violated Colo. RPC 3.3(a)(1) by attaching Banta's signature to the complaint even though Banta had never seen the complaint, thereby falsely representing that Banta had satisfied his duties under C.R.C.P. 11. Respondent's misconduct warrants a suspension of seven months.

## I. PROCEDURAL HISTORY

On October 29, 2018, Jacob M. Vos, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ"), alleging that Respondent violated Colo. RPC 3.3(a)(1) and 8.4(c). Respondent filed an answer through his counsel, Troy R. Rackham, on November 27, 2018.

On May 9, 2019, a Hearing Board comprising the PDJ and lawyers David J. Driscoll and William H. Levis held a hearing under C.R.C.P. 251.18. Vos represented the People, and Respondent appeared with his counsel. The Hearing Board considered the stipulated facts,

stipulated exhibits S1-S23 and S25-S26,[1] the People's exhibits A, B, J, N, and O, Respondent's exhibits 4 and 11,[2] and the testimony of Respondent, Richard Banta, Katie Marsden-Hannah, and Christopher John Roney. The Hearing Board also considered a written trial stipulation and written closing arguments filed by the parties a week after the hearing.

## II. FACTUAL FINDINGS AND LEGAL CLAIMS

Respondent was admitted to practice law in Colorado on April 26, 1972, under attorney registration number 01906. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[3]

### Findings of Fact

The Hearing Board finds the following facts have been established by clear and convincing evidence.[4]

#### Respondent's Hiring

Christopher John Roney, a marriage counselor in the Boulder area, was injured when his head struck a bicycle repair stand on Boulder County property in November 2015.[5] The first law firm he contacted about the accident adjudged the case not worth its time. In 2017 Roney met Respondent, a Boulder attorney, who expressed interest in taking the case. Roney and Respondent entered into a contingent fee agreement for representation in a personal injury action on September 28, 2017.[6] Respondent spent time investigating the facts of the case and relevant law.

In May 2017, a hearing board had ordered Respondent's license to be suspended as a sanction for disciplinary violations, but the suspension was stayed pending his appeal to the Colorado Supreme Court.[7] By August 2017, Respondent knew that the People had concerns about his compliance with the practice monitoring requirements of the stay. As such, Respondent believed he should plan for the possibility that the stay on his suspension could be lifted.

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[1] The parties agreed at the outset of the hearing to withdraw exhibit S24, which remains in the case file but was not considered by the Hearing Board. Exhibits S25-S26 remained suppressed from the Hearing Board's view until the Hearing Board determined that Respondent had committed a rule violation.

[2] Exhibit 11 was admitted for the limited purpose of showing the filing date of the motion.

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

[4] These findings are drawn from testimony at the disciplinary hearing where not otherwise indicated.

[5] *See* Stip. Facts ¶¶ 2, 5; *see also* Ex. S2 at 00003.

[6] Ex. S1. Respondent also assisted Roney with an employment case around the same period. That representation is not at issue here.

[7] *See* Stip. Facts ¶ 3.

Respondent had been socially acquainted for decades with Richard Banta, a Denver litigator. In June 2016, the two men had jointly filed a complaint in Boulder County District Court.[8] In summer or fall 2017, Respondent and Banta discussed working together on additional cases, including the Roney case, in part because of the possibility that the stay on Respondent's suspension could be lifted.[9]

Roney was aware at the time he hired Respondent that there was a chance his license would be suspended. Roney engaged Respondent nevertheless, on the understanding that Banta would take over the case if Respondent's suspension was activated.

Filing of Complaint

Respondent wanted to file the complaint in Roney's case no later than November 26, 2017, to avoid expiry of the statute of limitations.[10] That afternoon, Respondent, Roney, and Respondent's assistant, Katie Marsden-Hannah, gathered in Respondent's office to finish drafting the complaint, which named as defendants Boulder County and the manufacturer of the bike repair stand. At 10:11 p.m., Respondent filed the complaint using his own electronic filing account.[11] The caption lists Banta as the sole attorney, and Banta's purported electronic signature is the sole signature on the complaint.[12] Banta, however, was not present during the preparation of the complaint on November 26 and did not personally affix his signature to the complaint.[13] Witness testimony leaves no doubt that Banta did not read the complaint before Respondent filed it.[14] Nor was there any evidence that Banta agreed to be listed as the sole attorney on the complaint. Respondent testified that he elected to file the complaint in Banta's name alone to protect Roney's rights,[15] and to avoid the need for a substitution of counsel if his suspension was later activated.

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[8] Ex. S21. Both Respondent and Banta were listed in the caption, and both their electronic signatures appear on the complaint. Ex. S21.

[9] Banta testified that he never in fact represented any of those clients, other than Roney, as explained below.

[10] *See* Stip. Facts ¶ 6.

[11] Ex. S2 at 00001; *see* Stip. Facts ¶ 7. The case is captioned *Christopher Roney v. Boulder County, State of Colorado; Jointly and Severly [sic] with Madrax a Division of Graber Manufacturing, Inc. a Wisconsin Corperation [sic], Doing Business in Colorado*, Boulder County District Court case no. 2017CV31167. Ex. S2.

[12] Ex. S2 at 00001, 00006. The register of actions in the case shows that Respondent was the "authorizer" of the complaint, Ex. A at 000199, meaning that his role in filing the complaint was not hidden from the court.

[13] *See* Stip. Facts ¶ 8. On November 27, Respondent electronically filed a case cover sheet, which lists Banta in the caption and contains Banta's purported signature. Ex. S4. Respondent also prepared a civil summons naming Banta in the caption. Ex. S3. The signature page of the summons contains a hard-to-decipher signature that appears to be Respondent's, along with the notation, "OK Dick Banta." Ex. S3.

[14] None of the witnesses testified that Banta read the complaint before its filing save for Respondent, who alternately testified that Banta did and that he did not read the complaint.

[15] Although Respondent did not explain what he meant by protecting Roney's rights, we assume he meant that he wanted to file the complaint within the statute of limitations.

Whether Respondent communicated with Banta on November 26 about the filing of the Roney complaint and the contents of any such communication are at the heart of the People's claim that Respondent misrepresented that he had obtained authorization to file the complaint in Banta's name. The witnesses provided conflicting testimony about whether Banta authorized the use of his name and signature on the complaint. We consider in turn each witness's testimony on this critical point.

Respondent remembers talking to Banta about the complaint on November 26 via speakerphone while he, Roney, and Marsden-Hannah prepared the complaint together. Respondent said Banta was "on board" with the filing and that Banta authorized him to file it under Banta's signature. This testimony is arguably in conflict with a May 2018 response to the People's request for investigation, in which Respondent's counsel concedes that Respondent lacked express consent to list Banta in the complaint's caption.[16] We are hesitant to rely on this document, which was written before Respondent's counsel had fully investigated the facts of the case. But nor do we rely on Respondent's own testimony, as we do not deem him a credible witness. In general, he demonstrated significant forgetfulness and confusion on the witness stand. Further, he repeatedly contradicted his own testimony.[17] Thus, we give very little weight to Respondent's testimony.

Marsden-Hannah also testified that Respondent and Banta discussed the complaint in detail on November 26. She remembers that Banta called Respondent to confirm that the complaint would be filed on time. She said the men specifically talked about Banta's name appearing on the complaint. In fact, she averred, Banta sent over his signature to Respondent's office by email or by fax. The parties' trial stipulations, however, provide that the People requested all correspondence between Banta and Respondent during the relevant time period, but Respondent never produced any correspondence matching Marsden-Hannah's description or, indeed, any correspondence between the two men on that day.

The Hearing Board cannot credit much of Marsden-Hannah's testimony. She said she has known Respondent since she was a small child and she considers him a "good friend." Marsden-Hannah's manner and demeanor on the witness stand and in the courtroom strongly suggested that she is deeply loyal to Respondent and that she felt motivated to portray him favorably. Further, her assertion that Banta faxed or emailed his electronic signature to Respondent's office is unsupported by evidence and appeared to us to be an outright fabrication.

[16] Ex. S20 at 00049-50. At the hearing, Respondent construed the phrase "express consent" in his counsel's letter to mean written consent.

[17] As just two examples, Respondent testified that his secretary suggested he place Banta's signature on the complaint but he later said that this was his own idea. He also made contradictory statements about whether he had given Banta a list of pending cases that Banta might assist with.

For his part, Roney recalls listening to a speakerphone discussion between Respondent and Banta on November 26. According to Roney, Respondent explained that they planned to electronically file the complaint, Respondent asked Banta if he had "any input," and Banta agreed to serve as lead counsel on the case. Roney's testimony did not indicate that Respondent and Banta's conversation involved a highly detailed review of all aspects of the complaint. When Roney was asked at the disciplinary hearing whether Banta gave permission to file the complaint in his name, Roney responded in the affirmative. It is unclear whether Roney meant to refer to Banta's name appearing in the caption or Banta's electronic signature appearing on the complaint.

The Hearing Board deems Roney a credible witness. Although Roney may have some loyalty to Respondent because he accepted a case that another law firm had turned away, we find that Roney's testimony reflected a motivation to speak truthfully. He also demonstrated a sound memory and good recollection of relevant facts. Further, Roney testified that he had professional experience navigating legal proceedings, and he appeared to be savvy enough to understand the general nature of the conversations he participated in and heard.

Banta, in contrast to the other three witnesses, testified that he did not speak to Respondent on November 26 about the Roney complaint. When asked whether he and Respondent might have discussed any subject that day, Banta said he could not recall one way or the other. Banta testified that he neither saw the complaint before it was filed nor authorized Respondent to file it under his name. We have misgivings about the credibility of Banta's testimony. In response to a striking number of questions, Banta said that he could not remember relevant facts. Further, as explained in greater detail below, Banta never raised the issue of authorization to file the complaint until February 2018, after he had learned that he was at significant risk of having to pay attorney's fees unless he could extricate himself from the case. At that point, Banta told the court in his motion to withdraw that Respondent had filed the complaint in his name without authorization.[18] Banta thus had a plausible motive for misrepresenting facts surrounding the filing of Roney's complaint.[19]

Based on the witnesses' testimony and our credibility determinations, we find by clear and convincing evidence that Banta and Respondent spoke by telephone about the Roney complaint on November 26 and that Banta granted permission to attach his name at least to the caption of the complaint. The evidence, however, does not resolve whether Banta gave Respondent permission to attach his electronic signature to the complaint. We do find clear and convincing evidence that Banta never agreed to be the sole attorney of record on the case. And last, although Banta may have understood some aspects of the

[18] As addressed below, Banta consulted with four or five other attorneys before ultimately moving to withdraw from the Roney case, suggesting that Banta was highly concerned about his exposure to attorney's fees.

[19] We note the possibility that Banta was motivated to testify at the disciplinary hearing in a manner consistent with his statements to the Boulder court in order to avoid disciplinary charges premised on making false statements to a tribunal.

complaint, we find clear and convincing evidence that he did not have full and detailed knowledge of the factual allegations and legal assertions in the complaint.

Events After Complaint's Filing

Respondent did not send the complaint or the case cover sheet to Banta after filing these documents.[20]

Banta and Roney spoke by phone for nine minutes on December 13, 2017.[21] Roney testified that he called Banta because he had questions about serving the defendants in the case.[22] Roney recalls Banta reassuring him that they had plenty of time to accomplish service. According to Roney, Banta immediately recognized Roney's name when he answered the call and did not express any lack of familiarity with the case; to the contrary, Roney said, they discussed the recent filing of the lawsuit. Banta, meanwhile, does not remember details about the call, except that he told Roney he would get back to him after speaking with Respondent.

On January 8, 2018, a lawyer for Boulder County emailed Banta to notify him that she had received a copy of the complaint in the Roney matter but no summons; she inquired whether Banta planned to serve a summons.[23] Banta immediately forwarded the email to Respondent, saying simply, "Skip, call me. We need to figure out how to add [me] to ICCES."[24] At the time, Banta testified, he was not particularly concerned about his role in the Roney litigation because Respondent's license was still active, Banta viewed himself as playing the role of "second chair," and he thought they could make the situation "work." On January 12, Banta entered his appearance in the case.[25]

The stay on Respondent's suspension was lifted and his suspension—which remained in force as of the date of the disciplinary hearing in the present case—took effect February 5, 2018.[26]

Banta met in person with Roney on February 14.[27] In the meeting, Banta expressed concerns about expert costs and Boulder County's pending motion to dismiss on

[20] Respondent testified that he believed the filing system would automatically send the documents to Banta. That assumption was incorrect.
[21] Roney testified that he reviewed his phone records to confirm the length of the call.
[22] This testimony is consistent with Roney's recollection that Banta agreed to serve as lead counsel.
[23] Ex. S5.
[24] Ex. S5. "Skip" is Respondent's nickname. Banta's email in fact reads, "add *fee* to ICCES," but Banta testified that he meant to write "add me." Ex. S5 (emphasis added). ICCES was then the name for the Colorado courts' electronic filing system. Banta said he wanted to be added to the system so he could be sure to receive filings in the Roney case.
[25] Stip. Facts ¶ 9; Ex. S6.
[26] *See* Stip. Facts ¶ 11. The People had moved to revoke the stay pending appeal on January 3, 2018. Ex. 11.

governmental immunity grounds—a motion Banta deemed strong. By that time, Banta had come to recognize that if Boulder County prevailed on its motion to dismiss, both he and Roney probably would be assessed attorney's fees. Banta also told Roney at the meeting that he had not authorized the filing of the complaint in his name. By this time, Banta testified, he had become more concerned about his role as counsel in Roney's case. He felt like he was between a "rock and a hard place" because Roney's case appeared to be weak yet Roney's rights still needed to be protected.[28]

Roney testified that he was surprised by Banta's comment on February 14 that Respondent lacked authorization to file the complaint in his name. This seemed strange, Roney thought, because all along it had seemed as though Respondent did have authorization. Roney did not challenge Banta on this point, he said, because it was clear that this was the "stance" Banta wanted to take and that Banta appeared "adamant" about "pushing that idea." Roney consented to Banta's withdrawal from the case.

The next day, February 15, Banta emailed Respondent that a response to Boulder County's motion to dismiss needed to be prepared and that returns of service were due on March 5.[29] A week later, Banta followed up with a five-paragraph email that stated in part:

> I met with Chris Roney on February 14th. I have to say initially I am not happy having a law suit filed under my name without consulting with me first. The suit was filed on November 26, 2017. I did not find out about it until I got an email on January 8th, 2018 from the Boulder County Attorney's office . . . . I had to file an entry of appearance so I could get access to a case I ostensibly filed . . . . There are I think big problems with the case. My initial sense is the County's Motion to Dismiss is good . . . . Last thing I want is to be left holding the bag for a questionable law suit . . . . I do not think this is a good trial case . . . . I told Chris I thought he was looking at $8K to 10k in expert medical and engineering fees . . . . My bandwidth is getting stretched. I have contemplated filing a motion to withdraw . . . . I called you back this morning but your voice box is full. I could get together down here next week.[30]

Respondent replied by email the next day, February 22.[31] He did not mention the issue of authorization to file the complaint.[32] He did say he had hired another lawyer to

[27] A week earlier, Banta had forwarded to Respondent as an "FYI" an email that Banta's paralegal had prepared about Roney's case. Ex. S8.

[28] According to Banta, he consulted about the situation with four or five other attorneys, all of whom advised him to move to withdraw from the case.

[29] Ex. S9.

[30] Ex. S10. At the hearing, Banta admitted he could have accessed the case filings electronically without entering his appearance, but he said he did not realize this at the time.

[31] Ex. S11.

[32] Ex. S11.

respond to the motion to dismiss, and he mentioned various legal questions about the case.[33] The following morning, February 23, Banta emailed Respondent and Roney.[34] He raised the possibility of moving to withdraw.[35] Respondent replied, asking Banta to wait until the following week before doing so.[36]

Nevertheless, Banta filed an unopposed motion to withdraw that same afternoon.[37] The motion states that Respondent filed the Roney complaint in Banta's name "without [his] knowledge, approval or consent."[38] The motion further represents that Banta did not find out about the case until January 8, 2018, when he received an email from Boulder County's counsel.[39] The latter representation conflicts with the persuasive evidence that Banta and Roney spoke about the case for nine minutes in December 2017, and we do not deem this representation credible. Further, Banta's statement to the court that Respondent filed the complaint without his knowledge is inconsistent with our findings about the November 26 phone call.

On February 26, the court granted the motion to withdraw, indicating that it appeared Respondent had attempted to "commit a fraud on the court" and directing Banta to verify whether he had authorized Respondent to file a complaint and to use Banta's electronic signature.[40] Banta filed the requested response, repeating that he did not learn of the lawsuit until January 8, 2018, and that he did not authorize Respondent to list him as the filing attorney or to place his electronic signature on the complaint.[41]

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[33] Ex. S11.

[34] Ex. S11.

[35] Ex. S11.

[36] Ex. S13.

[37] Stip. Facts ¶ 10; Ex. S12. Banta also moved for an extension of time within which to respond to the motion to dismiss and to file returns of service so that Roney could proceed with the case if he found new counsel, which he ultimately did. Ex. S17. Respondent testified that he was surprised by Banta's decision to file the motion "before we made a final decision on whether to drop the case." The Hearing Board notes our concern about Respondent's apparent view, reflected in this and other comments, that he was entitled to play a decision-making role in the Roney litigation while his license was suspended.

[38] Ex. S12 at 00007.

[39] Ex. S12 at 00008. In the motion for extension, Banta states that "Roney was unaware when counsel and he met on February 14th that the complaint had been filed without counsel's knowledge, approval or consent." Ex. S17 at 00041.

[40] Ex. S18. The court also granted the motion for extension. Ex. S17. The judge who presided over the Roney case appeared to partly misunderstand the relevant circumstances. He believed that Respondent used Banta's e-filing account to submit the Roney complaint without Banta's permission and that Respondent was unable to use his own e-filing account. *See* Ex. S26. This misunderstanding is irrelevant, however, to the Hearing Board's task of determining whether the facts proved at the hearing amount to a violation of the Rules of Professional Conduct.

[41] Ex. S19. Respondent did not file any papers with the court to contest Banta's narrative. Respondent testified that he chose not to do so because he had lost access to the e-filing system, Banta was a longtime friend with whom he had a "decent working relationship," and Respondent did not want to get into a "nit-picky contest" about a motion Banta had filed simply to protect himself from the risk of having to pay attorney's fees.

## Legal Analysis

Colo. RPC 3.3(a)(1)

Colo. RPC 3.3(a)(1) provides that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct such a statement previously made by the lawyer. According to the People, by attaching Banta's electronic signature to the complaint, Respondent represented to the court that Banta was responsible for the complaint's contents and certified that they complied with C.R.C.P. 11. In turn, C.R.C.P. 11 provides that a lawyer's signature on a pleading certifies that the lawyer has read the pleading; that the lawyer understands the pleading to be well grounded in fact and legally appropriate; and that the pleading is not filed for an improper purpose. But in fact, the People allege, Respondent knew Banta had never seen the complaint nor fulfilled his duties under C.R.C.P. 11. The People also claim that Respondent filed the complaint under Banta's signature despite knowing he lacked Banta's express or implied consent to do so.

The Hearing Board finds clear and convincing evidence that Respondent, with actual knowledge, made a false statement of material fact to the court by representing that Banta had read the complaint and was responsible for its contents in accordance with C.R.C.P. 11 when Banta had not seen the complaint. The evidence persuasively shows that Banta had not read the complaint—and that Respondent had full knowledge of this fact—when Respondent affixed Banta's signature to the complaint and filed it. Nor did Banta otherwise have detailed knowledge of the contents of the complaint.[42] Banta had no opportunity to fulfill his duty under C.R.C.P. 11 to determine whether the pleading was well grounded in fact and legally appropriate. We deem this to be a material fact because the legal system relies on lawyers' representations under C.R.C.P. 11 as a means of deterring abusive litigation.[43]

Although Respondent points out that courts have authority independent from the disciplinary process to enforce C.R.C.P. 11 through sanctions, the Hearing Board finds that a violation of C.R.C.P. 11 of this nature—involving a misrepresentation as to whether *another* lawyer fulfilled his or her duties under the rule—is an entirely appropriate matter for discipline.[44] The C.R.C.P. 11 cases cited by Respondent do not indicate otherwise.[45]

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[42] Arguably, a lawyer could constructively comply with C.R.C.P. 11 if the lawyer does not fully read a complaint yet has extensive and comprehensive knowledge of its contents. Here, however, we find that Banta lacked detailed knowledge about the complaint, so we need not address that possible argument.

[43] *See People v. Trupp*, 51 P.3d 985, 992 (Colo. 2002) (noting that the rule is meant "to deter the filing of frivolous actions and pleadings"); *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (explaining that the purpose of F.R.C.P. 11 is to "deter baseless filings" and thereby streamline administration and procedure in the courts).

[44] While trial courts may be particularly well positioned to determine whether a lawyer has complied with his or her own duties under Rule 11, *see Corley v. Rosewood Care Ctr., Inc. of Peoria*, 388 F.3d 990, 1013 (7th Cir. 2004), it does not follow that only a trial court may sanction a lawyer for falsely representing that a *second* lawyer has read a pleading as required by Rule 11.

Respondent's efforts to emphasize that he himself conducted a reasonable investigation before filing the complaint are misplaced, since it was not his own signature he placed on the complaint and he did not take responsibility for the complaint. A primary reason C.R.C.P. 11 has deterrent force is that it emphasizes to the signing lawyer that lawyer's "personal, nondelegable responsibility."[46] In addition, we find unpersuasive Respondent's contention that the Boulder County judge did not rely on the C.R.C.P. 11 certification. Indeed, the evidence shows that the judge did find the certification troubling; he devoted judicial resources to investigating that issue.

As part of their Colo. RPC 3.3(a)(1) claim, the People also allege that Respondent lacked express or implied consent to file the complaint under Banta's signature. Although filing a complaint under another lawyer's signature without that lawyer's consent is certainly more egregious than doing so with consent, resolution of this claim does not turn on the issue of consent. A lawyer does not have the power to authorize another lawyer to misrepresent facts to a court. Even if Banta consented either expressly or impliedly to use of his name on the complaint, Respondent still made a false statement to the court by signing Banta's name to the complaint because Respondent knew that Banta had not read it.

Colo. RPC 8.4(c)

Colo. RPC 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The People assert that when Respondent filed the complaint under Banta's name he knowingly misrepresented that Banta had "authorized" the filing when Banta had not. Notably, the People do not premise their Colo. RPC 8.4(c) claim on an allegation that Respondent misrepresented to the court that Banta had read the complaint.

We thus consider whether the People have proved that Banta did not authorize the filing of the complaint in his name. We recognize that Respondent's counsel conceded in a May 2018 letter that Respondent lacked express consent to list Banta in the caption of the complaint.[47] As noted above, however, we do not rely heavily on this document because Respondent's counsel penned it before fully investigating the case. On reviewing the testimony and evidence before us, we find that the evidence is unresolved as to whether Banta authorized Respondent to file the complaint under his signature. As explained above, Roney provided persuasive testimony that Banta did authorize the use of his name on the complaint during the November 26 phone call. This was consistent with Respondent's and Marsden-Hannah's testimony, although we give those witnesses' testimony little weight. And we cannot find Banta's disavowal of this phone call to be persuasive given his very poor

[45] *See In re Trupp*, 92 P.3d 923, 932 (Colo. 2004); *People v. Trupp*, 51 P.3d at 990-92; *Stepanek v. Delta Cty.*, 940 P.2d 364, 370-71 (Colo. 1997); *SRS, Inc. v. Southward*, 2012 COA 19, ¶¶ 9-18.

[46] *Pavelic & LeFlore v. Marvel Entm't Grp.*, 493 U.S. 120, 126 (1989) (construing F.R.C.P. 11).

[47] Ex. S20 at 00049-50. We assume Respondent's counsel also meant to concede that Respondent lacked Banta's express consent to attach his actual signature to the complaint.

recollection of numerous events relevant to this case. As such, we cannot find by clear and convincing evidence that Respondent lacked Banta's express authorization to file the complaint in Banta's name.

Because the People have failed to prove an absence of express authorization, a rule violation cannot be established through a showing of a lack of implied authorization.[48] For the sake of completeness, however, we note that we also cannot find an absence of implied authorization by clear and convincing evidence. Although Respondent and Banta's brief history of working together does not establish a significant enough pattern and practice to give rise to implied authorization, we find that Respondent and Banta discussed the Roney complaint on November 26, and even if that conversation was not specific enough to give rise to explicit authorization, the conversation may have given rise to implied authorization.

Thus, we do not find clear and convincing evidence that Banta never authorized the use of his name on the complaint. As such, the People have not carried their burden of proof to establish a violation of Colo. RPC 8.4(c).

## III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[49] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[50] A hearing board must consider the duty 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 may be adjusted based on aggravating and mitigating factors.

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

*Duty*: Respondent disregarded his duty to the legal system by misrepresenting that Banta had complied with C.R.C.P. 11.

*Mental State*: As discussed above, we conclude that Respondent knowingly committed misconduct in this case.

*Injury*: Because we decline to conclude that Respondent affixed Banta's name to the complaint without permission, we do not find that Respondent's conduct caused cognizable harm or potential harm to Banta himself. Nor does it appear that the misconduct meaningfully affected Roney, since there is evidence that at least one lawyer (Respondent) did read the complaint to determine that it had a proper basis in law and fact. Rather, the

[48] To prove their Colo. RPC 8.4(c) claim, the People would need to establish a lack of both express authorization *and* implied authorization.
[49] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[50] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

harm we see here derives from C.R.C.P. 11's role in ensuring that lawyers file pleadings with a proper basis in law and fact.[51] Respondent misled the court by representing that Banta had complied with his duties under C.R.C.P. 11 when Banta actually had not. Such actions undermine reliance on C.R.C.P. 11. Further, a lawyer's misrepresentation to a court causes some intangible injury to all courts and the legal profession by undercutting courts' ability to trust lawyers' representations.

The Hearing Board roundly rejects Respondent's contention that his actions in fact had the salutary effect of preventing the statute of limitations from expiring on Roney's case. Had Respondent not left the preparation of the complaint to the last minute, he easily could have sent the complaint to Banta for his review before filing it and avoided making any misrepresentation under C.R.C.P. 11.

**ABA *Standards* 4.0-7.0 – Presumptive Sanction**

ABA *Standard* 6.12 provides that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld yet takes no remedial action, thus causing a party injury or potential injury or causing an adverse or potentially adverse effect on a legal proceeding.

**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.[52] As explained below, the Hearing Board considers three factors in aggravation. We apply one mitigating factor, which carries scant weight. We evaluate the following factors proposed by the parties.

Aggravating Factors

*Prior Disciplinary Offenses – 9.22(a)*: Respondent has been sanctioned on four prior occasions. In 1979, he received a letter of admonition for intentionally misleading a law enforcement officer about whether a certain person was present at a residence. Respondent was admonished again in 1983 for representing a client in a lawsuit in which Respondent was a defendant and a necessary witness. The letter noted serious concerns about his "procrastination" and "lack of cooperation" in the disciplinary process.[53]

In 1996, Respondent was publicly censured for separately asking two police officers not to attend his client's driver's license revocation hearing. Respondent also told one of the

[51] *See Trupp*, 51 P.3d at 992.
[52] *See* ABA *Standards* 9.21 & 9.31.
[53] Ex. S25 at 00112.

officers that in exchange for his nonappearance, the client would plead guilty to a lesser charged offense.

Most recently, in 2018, a hearing board suspended Respondent for nine months, with the requirement of petitioning for reinstatement under C.R.C.P. 251.29(c).[54] In the underlying matter, Respondent violated Colo. RPC 1.8(a) in two business transactions with clients. Specifically, he drafted and entered into with his clients a lifetime lease for office space at far-below market rates, stripping out all provisions that would have protected the landlord, his clients. He did not advise his clients to seek independent legal advice as to the transaction, nor did he secure the clients' written informed consent to his role in the transaction. Separately, Respondent entered into an option agreement to purchase a stake in property owned by those same clients without securing their written informed consent to his role in the deal.

The Hearing Board is troubled both by the number of Respondent's prior disciplinary violations and the pattern of conduct that the past cases reveal. Respondent's disciplinary history reflects a lack of trustworthiness—an issue also present in the case before us.

*Dishonest or Selfish Motive – 9.22(b)*: The People ask us to apply this factor in aggravation, arguing that Respondent's actions were inherently dishonest. We do not find strong enough evidence to warrant application of this factor. Although Respondent did knowingly make a false statement to the court, we do not find clear evidence that he acted out of a conscious motivation to meaningfully benefit himself or to deceive the court. Rather, it appears that he acted out of haste and an ill-considered desire for expediency.

*Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g)*: The People maintain that Respondent has refused to acknowledge his wrongdoing, and Respondent concedes that this factor applies.

*Substantial Experience in the Practice of Law – 9.22(i)*: Respondent has been licensed to practice law in Colorado since 1972. His inattention to his ethical duties ill befits such an experienced practitioner.

Mitigating Factors

*Absence of Dishonest or Selfish Motive – 9.32(b)*: Respondent insists he lacked a dishonest or selfish motive, saying he was merely trying to protect his client. While we did not find evidence persuasive enough to merit applying the aggravating factor of dishonest

[54] The hearing board imposed this sanction after the Colorado Supreme Court remanded the matter for a redetermination of the appropriate sanction in an opinion affirming in part and reversing in part the hearing board's earlier decision issued in 2017.

or selfish motive, nor do we find evidence clearly demonstrating that Respondent acted with genuinely pure intentions.

*Personal and Emotional Problems – 9.32(c)*: We heard brief testimony that Respondent was concerned about being able to pay for his son's college education and that he felt "a little depressed" about the disciplinary case pending in 2017. Respondent has stipulated that emotional problems did not have a causal connection to his misconduct. He nevertheless asks us to apply this factor in mitigation. Because of the lack of a causal relationship, we decline to do so.[55]

*Cooperative Attitude Toward Proceedings – 9.32(e)*: The People argue that Respondent's narrative and theory of defense have shifted significantly over the course of this case and that he made untenable contentions during his testimony. We agree and elect not to apply this factor in mitigation.

*Physical Disability – 9.32(h)*: Respondent testified that he suffered diverticulitis in November 2017 and that he was in car accident in December 2017, which caused temporary bleeding in his brain. In his May 2018 letter to the People, Respondent's counsel refers to several accidents Respondent has suffered in recent years and suggests that he be permitted to retire, noting that Respondent "appreciates his limitations given his head injuries and age."[56] But Respondent has stipulated that no mental or physical issues were causally connected to his misconduct here, so we do not apply this factor in mitigation.[57]

*Imposition of Other Penalties or Sanctions – 9.32(k)*: Respondent asks us to apply this factor, noting that his license is currently suspended. That sanction was imposed for conduct separate from the conduct at issue in this case, however, and it thus has no relevance here.

*Remorse – 9.32(l)*: Respondent requests application of this mitigating factor. He testified that he feels like an "idiot." Though he was just trying to save time, he said, he should not have "cut the corner" but rather should have filed the complaint in his own name and followed up later with a motion to withdraw. Although Respondent's statements reflect some level of regret, he did not fully own up to his misconduct. The Hearing Board does not

[55] *See In re Cimino*, 3 P.3d 398, 402 (Colo. 2000) (refusing to award credit in mitigation to personal or emotional problems where there was no evidence that the problems caused or affected the onset of the misconduct); *In re Hicks*, 214 P.3d 897, 904 (Wash. 2009) (stating that personal or emotional problems are considered in mitigation only where there is a "connection between the asserted problem and the misconduct").

[56] Ex. S20 at 00052.

[57] *See ABA Annotated Standards for Imposing Lawyer Sanctions* 474 ("Courts often point out that health conditions generally are not mitigating factors in reducing a sanction for misconduct, particularly when no causal connection exists between a disorder and the misconduct or when no evidence of rehabilitation is present."); *In re Peasley*, 90 P.3d 764, 777 (Ariz. 2004) (declining to consider physical disabilities in mitigation where there was no evidence that the disabilities caused the misconduct).

find that Respondent's lukewarm expressions amount to true remorse that should justify a reduction in the sanction to be imposed.

*Remoteness of Prior Offenses – 9.32(m)*: Although Respondent's two letters of admonition are mitigated by the passage of time, his 2018 discipline is far from remote. We therefore apply slight weight to this factor.

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

The Colorado Supreme Court has directed the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[58] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[59] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[60]

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.[61]

Respondent denies committing misconduct but suggests that if the Hearing Board were to find a violation, the appropriate sanction would be public censure. The People, in contrast, request a suspension of at least six months. The People note that Respondent is currently subject to a requirement to formally petition for reinstatement from the suspension that took effect in 2018. The People ask that as part of the discipline imposed in this case, the Hearing Board require that any petition for reinstatement encompass the misconduct found here.

The most factually analogous Colorado case we are aware of is *People v. Reed*.[62] There, a lawyer signed another lawyer's name to multiple filings, purposely signing in a style different from his own signature, thus misrepresenting to the court the other lawyer's involvement in the case.[63] Separately, the lawyer committed misconduct by disregarding a tribunal's ruling, engaging in a representation involving a conflict of interest, and holding

[58] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d at 822 (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[59] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[60] The Colorado Supreme Court has suggested that cases predating the 1999 revision to this state's disciplinary system often carry less precedential weight than more recent cases. *Id*.
[61] *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).
[62] 955 P.2d 65 (Colo. 1998).
[63] *Id*. at 67.

himself out as the partner of another attorney when there was no such partnership.[64] Voicing concern about the lawyer's duty of candor, the Colorado Supreme Court imposed a six-month suspension, while noting that some members of the court would have imposed more serious discipline.[65]

In an Ohio case, a lawyer was sanctioned, in part, for filing documents under the name of another lawyer with whom she associated after her electronic-filing privileges had been revoked.[66] The respondent continued to use the other lawyer's password and signature after he terminated his association with her, thus misrepresenting the identity of the attorney responsible for the filings.[67] Also taking into account the lawyer's failure to comply with multiple orders to disgorge attorney's fees, the court imposed a one-year suspension with six months conditionally stayed.[68]

We recognize that the two decisions discussed above have somewhat limited value because the sanctions imposed also took into account several other types of misconduct.[69] With the benefit of this review, we return to the guiding framework set forth above, beginning with the baseline of a six-month served suspension and adjusting that baseline sanction in consideration of aggravating and mitigating factors. We have found three factors in aggravation and one mitigating factor, which carries slight weight. Given these circumstances, we determine that the appropriate sanction is a suspension of seven months. As part of any petition for reinstatement from his past misconduct, Respondent must demonstrate eligibility for reinstatement from the discipline imposed here. Specifically, Respondent must show rehabilitation from his violation of Colo. RPC 3.3(a)(1), which reflects an inattention to rules and to his duty of candor. He must also demonstrate his compliance with our orders herein and with rules implicated by this opinion.[70]

## IV. CONCLUSION

By signing another lawyer's name to a complaint when that lawyer had not seen the complaint and had not agreed to be listed as the sole attorney on the complaint, Respondent knowingly made a false statement of material fact to the court. Respondent's inattention to his ethical duties warrants a seven-month suspension.

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[64] *Id*.
[65] *Id*. at 68.
[66] *Cleveland Metro. Bar Ass'n v. Brown-Daniels*, 985 N.E.2d 1289, 1291 (Ohio 2013).
[67] *Id*. at 1291-92.
[68] *Id*. at 1291-93. It appears that Ohio does not follow the ABA *Standards* in assigning disciplinary sanctions. *See id*. at 1292.
[69] In addition, we note that *Reed* is a pre-1999 case.
[70] Respondent at times exhibited disorientation and confusion on the witness stand. We recommend that a future hearing board entertaining a petition for reinstatement give consideration to Respondent's fitness to practice law before reinstating his license.

## V. ORDER

The Hearing Board therefore **ORDERS**:

1. **JAMES C. WOLLRAB JR.,** attorney registration number **01906,** will be **SUSPENDED** from the practice of law for a period of **SEVEN MONTHS**. The suspension will take effect upon issuance of an "Order and Notice of Suspension."[71]

2. As part of any petition for reinstatement from the suspension imposed in case number 16PDJ062, Respondent **MUST** demonstrate eligibility for reinstatement from the misconduct addressed in this case, as set forth above.

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

4. The parties **MUST** file any posthearing motion **on or before Wednesday, July 10, 2019**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Wednesday, July 17, 2019**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Wednesday, July 10, 2019**. Any response thereto **MUST** be filed within seven days.

[71] 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). 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.

DATED THIS 26th DAY OF JUNE, 2019.

*[original signature on file]*

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

*[original signature on file]*

_____

DAVID J. DRISCOLL
HEARING BOARD MEMBER

*[original signature on file]*

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WILLIAM H. LEVIS
HEARING BOARD MEMBER

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