

**People v. David William Beale. 16PDJo66. February 9, 2017.**

After a sanctions hearing, the Presiding Disciplinary Judge disbarred David William Beale (attorney registration number 19097) from the practice of law, effective March 16, 2017.

Beale was convicted of misdemeanor menacing in El Paso County in 2014 after he threatened to shoot police officers. He then failed to report his conviction to disciplinary authorities, as he was required to do. Previously, his license had been suspended for two years based on three other convictions, including a conviction of felony menacing.

Beale's conduct violated Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal) and Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). Because Beale had been suspended before for similar misconduct, yet he again knowingly engaged in further similar acts, disbarment was warranted here.

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	
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO  <b>Respondent:</b> DAVID WILLIAM BEALE	<hr/> Case Number: <b>16PDJo66</b>
<b>OPINION AND DECISION IMPOSING SANCTIONS          UNDER C.R.C.P. 251.19(c)</b>	

David William Beale (“Respondent”) was convicted of menacing in El Paso County in 2014 after he threatened to shoot police officers. He then failed to report his conviction to disciplinary authorities, as he was required to do. Previously, his license was suspended for two years based on three other convictions, including a conviction of felony menacing. That disciplinary sanction also took into his account his failure to report two of his convictions. His misconduct in the present case violated Colo. RPC 3.4(c), 8.4(b), and C.R.C.P. 251.5. Because Respondent had been suspended before for similar misconduct yet he again knowingly engaged in further similar acts, disbarment is warranted here.

### **I. PROCEDURAL HISTORY**

On August 30, 2016, Alan C. Obye of the Office of Attorney Regulation Counsel (“the People”) filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero (“the Court”), and sent copies the same day to Respondent’s registered address.<sup>1</sup> Respondent failed to answer, and the Court granted the People’s motion for default on November 9, 2016. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.<sup>2</sup>

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<sup>1</sup> Respondent’s registered address was 5406 North Nevada Avenue, Number 205, Colorado Springs, Colorado 80918. That remained his registered address as of the disciplinary hearing. See Ex. 2. Also on August 30, 2016, the People mailed the complaint to Respondent’s three additional last-known addresses of: 3950 North Nevada Avenue, Colorado Springs, Colorado 80918; 5416 North Nevada Avenue, Apartment 101, Colorado Springs, Colorado 80918; and El Paso County Sheriff, 2739 East Las Vegas Street, Colorado Springs, Colorado 80906.

<sup>2</sup> See C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

On January 30, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Justin P. Moore represented the People; Respondent did not appear. The People's exhibits 1-3 were admitted into evidence and the Court heard testimony from Karen Bershenyi.

## II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, presented here in condensed form. Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on November 9, 1989, under attorney registration number 19097.<sup>3</sup> He is thus subject to the Court's jurisdiction in this disciplinary proceeding.<sup>4</sup>

On October 25, 2013, two Colorado Springs police officers came to Respondent's residence to assist another person in removing her property from the residence. That day, Respondent called 9-1-1 on more than one occasion and threatened to shoot police officers if they did not leave the area. He also told one of the police officers who came to his home that he was going to get a gun, and that it would not be pleasant for the officer if the officer was still there when Respondent returned.

Based on this conduct, Respondent was charged with one count of menacing, a class-three misdemeanor under C.R.S. section 18-3-206, in El Paso County District Court.<sup>5</sup> On February 13, 2014, Respondent pleaded guilty to the charge.<sup>6</sup> As set forth in his plea agreement, the elements of menacing are: that the defendant, in El Paso County, at or about the date and place charged, by threat or physical action, knowingly placed or attempted to place another person in fear of imminent serious bodily injury.

Respondent's criminal conduct violated 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. His conduct also implicates C.R.C.P. 251.5(b), which states that any criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects is grounds for discipline.

Respondent failed to report this guilty plea to the People as mandated by C.R.C.P. 251.20(b). That rule requires a lawyer to report any criminal conviction to the People within fourteen days after the conviction. By disregarding this rule, Respondent violated Colo. RPC 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

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<sup>3</sup> Compl. ¶ 1.

<sup>4</sup> See C.R.C.P. 251.1(b).

<sup>5</sup> The case was lodged under case number 13CR4259.

<sup>6</sup> See also Ex. 3 (certified copy of Respondent's "Guilty Plea and Waiver of Rights" (Feb. 13, 2014)).

### III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (“ABA Standards”)<sup>7</sup> and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.<sup>8</sup> When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer’s mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

*Duty:* Respondent’s conviction represents a dereliction of his duty to the public to maintain the standards of personal integrity upon which the public relies. He also violated his duty to the legal profession by failing to report his conviction.

*Mental State:* The Court’s order entering default establishes that Respondent knowingly violated Colo. RPC 3.4(c). And the elements of the menacing charge to which Respondent pleaded guilty establish that he also violated Colo. RPC 8.4(b) with a knowing state of mind.

*Injury:* Respondent caused harm or potential harm to the police officers who were the subject of his threats by placing them in fear of imminent serious bodily injury, or at least by attempting to place them in such fear. His conviction also caused injury to the reputation of the legal profession. Last, by failing to report his conviction, Respondent impeded the People’s charge to carry out their regulatory duties.

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

Two ABA Standards are on point here. First, ABA Standard 5.12 calls for suspension when a lawyer knowingly engages in criminal conduct that does not contain the elements listed in ABA Standard 5.11 (including dishonesty) and that seriously adversely reflects on the lawyer’s fitness to practice. Second, as discussed further below, Respondent has previously been sanctioned for felony menacing and for failing to report convictions to the People. The Court thus finds applicable ABA Standard 8.1(b), which states that disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

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<sup>7</sup> Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

<sup>8</sup> See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

## ABA Standard 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.<sup>9</sup> Three aggravating factors are present here. First, Respondent was suspended from the practice of law for two years on June 24, 2013, under case number 13PDJ050.<sup>10</sup> The conditional admission of misconduct in that case provided that Respondent pleaded guilty in 2010 to violating a Maryland protection order; that he pleaded guilty in 2011, also in Maryland, to second-degree assault; that he did not notify the People of either of those convictions; and that he pleaded guilty in 2013 to felony menacing, this time in El Paso County.<sup>11</sup> The other two aggravating factors here are that Respondent has substantial experience in the practice of law and that his underlying conduct was illegal.<sup>12</sup> The Court is aware of but one mitigator: Respondent faced other penalties and sanctions based on his menacing conviction.<sup>13</sup>

### Analysis Under ABA Standards and Colorado Case Law

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

The Colorado Supreme Court has decided in previous cases that lawyers should be disbarred based on application of ABA Standard 8.1(b). In *People v. Bottinelli*, for instance, the Colorado Supreme Court commented that the lawyer’s misconduct might have warranted mere suspension had he not previously engaged in the same type of misconduct.<sup>16</sup> Because his suspension for previous misconduct had failed to deter future misconduct, however, the Colorado Supreme Court determined that disbarment was necessary, citing ABA Standard 8.1(b).<sup>17</sup> Likewise, in *In re van Buskirk*, the Colorado Supreme

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<sup>9</sup> See ABA Standards 9.21 & 9.31.

<sup>10</sup> ABA Standard 9.22(a).

<sup>11</sup> Ex. 1.

<sup>12</sup> ABA Standards 9.22(i)-(k). The Court declines to apply ABA Standard 9.22(d) based on the presence of multiple offenses, since only two types of misconduct were present here.

<sup>13</sup> ABA Standard 9.3 (k); see Ex. 3 (sentencing Respondent to three months of probation).

<sup>14</sup> See *In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *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).

<sup>15</sup> *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

<sup>16</sup> 926 P.2d 553, 558 (Colo. 1996).

<sup>17</sup> *Id.* at 558-59.

Court commented that where lawyers have already been disciplined for the same or similar misconduct, ABA *Standard* 8.1(b) normally should apply.<sup>18</sup>

Considering the presumptive sanction of disbarment, the fact that aggravating factors predominate over mitigators, and the case law discussed above, the Court concludes that disbarment is the appropriate sanction. Respondent has shown that he is unwilling to change his behavior in response to disciplinary sanctions. His refusal to participate in the disciplinary proceeding only underscores the need for a weighty sanction.

#### IV. CONCLUSION

Through his repeated convictions for menacing and his repeated failures to inform the People of those convictions, Respondent has demonstrated that he is unworthy of a license to practice law. His misconduct warrants disbarment.

#### V. ORDER

The Court therefore **ORDERS**:

1. **DAVID WILLIAM BEALE**, attorney registration number **19097**, will be **DISBARRED FROM THE PRACTICE OF LAW**. The **DISBARMENT SHALL** take effect only upon issuance of an “Order and Notice of Disbarment.”<sup>19</sup>
2. To the extent applicable, Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.
3. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the “Order and Notice of Disbarment,” an affidavit complying with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.
4. The parties **MUST** file any posthearing motion or application for stay pending appeal **on or before March 2, 2017**. Any response thereto **MUST** be filed within seven days.
5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before February 23, 2017**. Any response thereto **MUST** be filed within seven days.

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<sup>18</sup> 981 P.2d 607, 608-09 (Colo. 1999). The lawyer in that case escaped application of *Standard* 8.1(b) only because the new misconduct there, unlike here, occurred prior to the imposition of the earlier disciplinary sanction, so the previous misconduct was treated not as prior discipline but rather as a pattern of misconduct. *Id.* at 609. See also *People v. Regan*, 871 P.2d 1184, 1188 (Colo. 1994) (same).

<sup>19</sup> In general, an order and notice of disbarment will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

DATED THIS 9<sup>th</sup> DAY OF FEBRUARY, 2017.

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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

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