SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202 **Complainant:** THE PEOPLE OF THE STATE OF COLORADO, **Respondent:** LYNN DAITZMAN.	Case Number: **00PDJ052**

REPORT, DECISION AND IMPOSITION OF SANCTION

Opinion by Presiding Disciplinary Judge Roger L. Keithley and Hearing Board members, Dante J. James and Kathleen Killian, both members of the bar.

SANCTION IMPOSED: ATTORNEY SUSPENDED FOR THREE YEARS

A sanctions hearing pursuant to C.R.C.P. 251.15 was held on January 12, 2001, before the Presiding Disciplinary Judge ("PDJ") and two hearing board members, Dante J. James and Kathleen Killian, both members of the bar. Terry Bernuth, Assistant Attorney Regulation Counsel represented the People of the State of Colorado (the "People"). Lynn Daitzman ("Daitzman"), the respondent, did not appear either in person or by counsel.

The Complaint in this action was filed June 19, 2000. Daitzman did not file an Answer to the Complaint. On August 21, 2000 the People filed a Motion for Default. Daitzman did not respond. On October 27, 2000 the PDJ issued an Order granting default, stating that all factual allegations set forth in the Complaint were deemed admitted pursuant to C.R.C.P. 251.15(b). The default Order also established that all violations of The Rules of Professional Conduct ("Colo. RPC") alleged in the Complaint were also deemed admitted, *e.g.*, *People v. Richards*, 748 P.2d 341 (Colo. 1987), with the exception of the alleged violation of Colo. RPC 1.16(d) arising from the factual allegations set forth in the Complaint at paragraph 69, claim II.

At the sanctions hearing, the People presented evidence from Judge Thomas Curry, Steven Calder, Brian Hardy, Natwadee Techotthipakorn, Antonio Rivera and Patricia Gerspach. Exhibits 1 through 8 were offered by the People and admitted into evidence.

The PDJ and Hearing Board considered the People's argument, the facts established by the entry of default, the exhibits admitted, assessed the testimony and credibility of the witnesses and made the following findings of fact which were established by clear and convincing evidence:

I. FINDINGS OF FACT

Daitzman has taken and subscribed to the oath of admission, was admitted to the bar of the Supreme Court on April 30, 1992 and is registered upon the official records of this court, registration number 21331. Daitzman is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b).

All factual allegations set forth in the Complaint were deemed admitted by the entry of default. The facts set forth therein are therefore established by clear and convincing evidence. *See* Complaint attached hereto as exhibit 1. The Order entering default also granted default as to all alleged violations of The Rules of Professional Conduct set forth in the individual claims except the alleged violation of Colo. RPC 1.16(d) in claim II. The Order of default denied default as to that alleged violation. The People elected to introduce additional factual support for that alleged violation at the sanction hearing.[1]

The facts set forth in claim II of the Complaint reveal that Daitzman was retained by Patricia Gerspach ("Gerspach") to handle a legal separation on May 25, 1999. A fee agreement was reached and Gerspach paid Daitzman a total of $599 to perform the necessary legal services. Daitzman told Gerspach that the matter would be concluded by the end of July 1999. Over the next several months, Gerspach made several attempts to contact Daitzman, both by phone and by fax, to determine the status of her case. Daitzman either dodged the contact efforts or made excuses regarding her failure to complete the necessary legal tasks. Indeed, Daitzman did not file the proper pleadings to initiate the legal separation proceeding until November 10, 1999, some five months after the attorney/client relationship was commenced. Gerspach made repeated attempts to contact Daitzman throughout November and December without success. On January 20, 2000, Gerspach again attempted to contact Daitzman by phone and was informed that Daitzman's phone number was

[1] The evidence introduced also established that Daitzman's misconduct in claim IV, the Hardy matter, caused Mr. Hardy to expend an additional $2,500 in duplicate attorney fees to correct the difficulties caused by respondent's misconduct.

disconnected. Daitzman took no further action on Gerspach's file beyond preparing the necessary initial pleading to commence the action. Eventually, the action commenced by Daitzman was dismissed for failure to prosecute.

In addition to the facts set forth in the Complaint and deemed admitted by the entry of default on claim II, additional evidence introduced at the sanctions hearing in support of the alleged violation of Colo. RPC 1.16(d) established the following facts. From the time Ms. Gerspach retained Daitzman to represent her interests, Daitzman engaged in a continuing pattern of neglect and repeatedly failed to communicate with Gerspach. Gerspach repeatedly attempted to contact Daitzman directly and through others. On one occasion, Daitzman had met with Gerspach at a local restaurant where the staff seemed to know Daitzman. After several attempts to contact Daitzman by phone, Gerspach returned to the restaurant on more than one occasion in the hope of locating Daitzman so that she could obtain information about her case. Gerspach also returned to the office where Daitzman had maintained her law practice in an effort to communicate with her. All such efforts were without success. Notwithstanding Gerspach's extraordinary efforts to locate and communicate with Daitzman, she was unable either to locate Daitzman or to obtain information about the status of her legal matter. Eventually, Gerspach sent an additional fax to Daitzman requesting a return of the fees paid to her so that Gerspach could retain alternate counsel.

II. CONCLUSIONS OF LAW

The entry of default established the following violations of The Colorado Rules of Professional Conduct: in claim I, the Techotthipakorn matter, Colo. RPC 1.3 (neglect of a legal matter), Colo. RPC 1.4(a)(failure to communicate), and Colo. RPC 1.15(a); in claim II, the Gerspach matter, Colo. RPC. 1.3 (neglect) and Colo. RPC 1.4(a)(failure to communicate); in claim III, the Calder matter, Colo. RPC 3.4(c)(knowing disobedience to an obligation under the rules of a tribunal); in claim IV, the Hardy matter, Colo. RPC 3.4(c)(knowing disobedience to an obligation under the rules of a tribunal) and Colo. RPC 8.4(d)(conduct prejudicial to the administration of justice); in claim V, the bank account matter, Colo. RPC 8.4(h)(other conduct reflecting adversely upon fitness to practice law), and claim VI, Colo. RPC 8.1(b)(failure to respond without good cause to the requests of the Office of Attorney Regulation Counsel).

The testimony presented at the sanctions hearing provided additional evidence of the degree of Daitzman's neglect in the Gerspach matter. Prior decisions have held that when sufficiently great, neglect may rise to the level of abandonment. *People v. Hotle*, no. 99PDJ038, slip op. at 4 (Colo. PDJ October 16, 1999), 29 COLO. LAW. 107, 108, (January 2000); *People v. Elliott*, no. 99PDJ059, slip op. at 5 (Colo. PDJ March 1, 2000), 29 COLO. LAW. 112, 113 (May 2000); *People v. Carvell*, no. 99PDJ096, slip op. at 11 (Colo. PDJ

September 11, 2000), 29 Colo. Law. 137, 138 (November 2000). Abandonment may be found when the proof objectively indicates that the attorney has deserted, rejected and/or relinquished the professional responsibilities owed to the client. *Carvell*, 99PDJ096, slip op. at 11, 29 COLO. LAW. at 138. Daitzman's continuing neglect of Gerspach's matter and the disconnection of Daitzman's phone, when combined with the extraordinary efforts made to Gerspach to simply locate Daitzman, provides the necessary objective proof to establish that Daitzman had deserted her client and the client's cause. The degree of such neglect justifies a finding that Daitzman abandoned her client.

Abandonment of a client terminates the attorney/client relationship and requires the attorney to comply with the mandatory provisions of Colo. RPC 1.16(d)(upon termination, a lawyer shall take steps to protect a client's interests). Daitzman failed to do so and therefore violated Colo. RPC 1.16(d) in connection with the Gerspach matter.

III. SANCTION/IMPOSITION OF DISCIPLINE

The most serious misconduct engaged in by Daitzman is the clear pattern of serious neglect and lack of communication with her clients, including the abandonment of at least one client, Gerspach. Even the violations of Colo. RPC 3.4(c)(knowing disobedience to an obligation under the rules of a tribunal) arise from Daitzman's failure to properly attend to her client's matters to such a degree that she failed to comply with court orders designed to force attention to procedural obligations imposed upon the attorney and her clients.

The ABA *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") is the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct.

ABA *Standard* 4.41(b) and (c) provide that disbarment is generally appropriate when:

> (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
> (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to the client.

ABA *Standard* 4.42(a) and (b) provide that suspension is generally appropriate when:

> (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

The presumptive sanction recommended by ABA *Standards* 4.41 and 4.42 are distinguished by the degree of injury or potential injury occasioned by the lawyer's misconduct. Serious injury as opposed to simple injury suggests disbarment rather than suspension. The PDJ and Hearing Board consider the injury or potential injury to which the clients were exposed in the Techotthipakorn, Gerspach, Calder and Hardy matters to constitute serious injury warranting disbarment under the ABA *Standards*.

Colorado law, however, suggests that a lengthy period of suspension rather than disbarment is the required sanction. In both *In Re Demaray*, 8 P.3d 427, 429 (Colo. 1999) and *In Re Righter,* 992 P.2d 1147, 1149 (Colo. 1999), the Supreme Court imposed a three-year period of suspension in similar circumstances. In *Demaray*, notwithstanding the fact that the lawyer had abandoned one client causing him at least potentially serious harm, the Supreme Court imposed a three-year suspension. Both *Righter* and *Demaray* -- like this case -- were default proceedings in which the record lacked detail regarding the circumstances leading to the misconduct.

No Colorado authority has been presented in which a lawyer has been disbarred for a single instance of client abandonment.[2] Although the opinions in *Righter* and *Demaray*, as well as other Colorado decisions, suggest that under particularly aggravated circumstances disbarment would be appropriate, the law of this state dictates that the presumed sanction under the facts in this case is a lengthy period of suspension. *See People v. Shock*, 970 P.2d 966, 967 (Colo. 1999)(suspending the attorney for six months in default matter for effectively abandoning two clients); *People v. Rishel*, 956 P.2d 542, 544 (Colo. 1998)(suspending attorney for one year and one day with payment of restitution for neglecting one legal matter, and in two cases, failing to keep the client reasonably informed, failing to promptly refund client funds upon request, and failing to take reasonable steps to protect client's interest upon termination of representation), *People v. Odom*, 914 P.2d 342, 345 (Colo. 1996)(suspending rather than disbarring the attorney based on the abbreviated record in the default proceedings and the facts and circumstances of the particular case).

Determination of the appropriate sanction requires the PDJ and Hearing Board to consider aggravating and mitigating factors. Since Daitzman did not participate in these proceedings, no mitigating factors were established. The facts deemed admitted in the Complaint establish several aggravating factors pursuant to ABA *Standard* 9.22. Daitzman engaged in a pattern of

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[2] The Complaint neither charged abandonment in the Techotthipakorn, Calder or Hardy matters nor did Attorney Regulation Counsel argue that the conduct in those cases rose to the level of abandonment.

misconduct, *id*. at 9.22(c); she engaged in multiple offenses, *id*, at 9.22(d); at least one client – Techotthipakorn – was vulnerable, *id*. at 9.22(h); she demonstrated indifference to making restitution, *id*. at 9.22(j), and she engaged in bad faith obstruction of the disciplinary proceeding, *id*. at 9.22(e). Moreover, Daitzman has one prior instance of professional discipline, *id*. at 9.22(a). In 1995, Daitzman received a Letter of Admonition for neglect and lack of competence in dealing with a Uniform Parentage Act matter.

The nature and degree of the aggravating factors are similar to those found in *Righter*, *Demoray* and *Rishel, supra*. Consequently, the PDJ and Hearing Board conclude that a three-year period of suspension is the appropriate discipline in this case.

IV. ORDER

It is therefore ORDERED:

1. LYNN DAITZMAN, attorney registration number 21331 is suspended from the practice of law effective thirty-one days from the date of this Order for a period of three years.

2. As a condition of reinstatement, Daitzman must establish that she has, within twelve (12) months from the issuance of this decision, refunded and paid restitution as follows:

    a. Pay to Natwadee Techotthipakorn the sum of $500 plus interest at the statutory rate from the date of this decision;

    b. Pay to Patricia Gersbach the sum of $599 plus interest at the statutory rate from the date of this decision;

    c. Pay to Gary Gray the sum of $1,000 plus interest at the statutory rate from the date of this decision;

    d. Pay to Brian Hardy the sum of $2,500 plus interest at the statutory rate from the date of this decision.

3. Daitzman is Ordered to pay the costs of these proceedings; the People shall submit a Statement of Costs within ten (10) days of the date of this Order. Respondent shall have five (5) days thereafter to submit a response thereto.

DATED THIS 24th DAY OF JANUARY, 2001.

(SIGNED)

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

(SIGNED)

DANTE JAMES
HEARING BOARD MEMBER

(SIGNED)

KATHLEEN KILLIAN
HEARING BOARD MEMBER

EXHIBIT 1

SUPREME COURT, STATE OF COLORADO

Case No. 00PDJ052 **FILED 6/19/00**

ORIGINAL PROCEEDING IN DISCIPLINE
BEFORE THE PRESIDING DISCIPLINARY JUDGE

COMPLAINT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

LYNN DAITZMAN,

Respondent.

THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on April 30, 1992, and is registered upon the official records of this court, registration no. 21331. She is subject to the jurisdiction of this court. The respondent's registered business address is 2801 East Colfax Avenue, Suite 201, Denver, Colorado 80216 and her registered home address is 800 Ogden, #205, Denver, Colorado 80218. The respondent's last known addresses are 600 17th Street, Suite 950-S, Denver, Colorado 80202, and 8155 Fairmount Drive, Apt. 233, Denver, Colorado 80220.

CLAIM I - TECHOTTHIPAKORN MATTER
[Colo. RPC 1.3, Colo. RPC 1.4(a), Colo. RPC 1.15(a)]

2. Natwadee Techotthipakorn, a resident of Thailand, married Michael Sielicki on February 8, 1999 in Colorado.

3. Less than a month later on March 4, 1999, Ms. Techotthipakorn was served with a petition for declaration of invalidity of the marriage.

4. The petition alleged that Ms. Techotthipakorn entered into the

marriage for a fraudulent purpose to allow her to immigrate to this country and that the parties separated the same day they were married.

5. The filing of the action put Ms. Techotthipakorn's immigration status at risk.

6. On March 11, 1999 Ms. Techotthipakorn retained the respondent to represent her in the action for declaration of invalidity of marriage and to protect her interests. Ms. Techotthipakorn executed a fee agreement with the respondent and paid a retainer of $500 to her.

7. The fee agreement stated that the retainer paid by the client would be deposited into the respondent's trust account and that the respondent would draw against the deposit as fees or costs were incurred.

8. On March 15, 1999, the respondent deposited the funds in her personal account at Norwest Bank, account #1015306435, where the client's funds were not segregated from the respondent's funds.

9. At their meeting on March 11, 1999, Ms. Techotthipakorn introduced her son and a friend to the respondent and directed her to contact them in her absence. Ms. Techotthipakorn speaks little or no English.

10. On March 23, 1999, Ms. Techotthipakorn returned to Thailand because her visa was about to expire. She remained in Thailand because she could not get a new visa to return to the United States for three months.

11. Ms. Techotthipakorn's response to the petition for declaration of invalidity of marriage was due on March 24, 1999. Ms. Techotthipakorn retained and paid the respondent to file the response on her behalf.

12. The respondent failed to file a timely response to the petition for declaration of invalidity.

13. On April 2, 1999, the respondent faxed a response to the petition for declaration of invalidity to Ms. Techotthipakorn for her signature.

14. On April 9, 1999, the respondent filed a late response to the petition for declaration of invalidity with the Denver District Court.

15. The respondent executed a certificate of mailing to opposing counsel Lawrence Leff, who never received the response.

16. The check that the respondent tendered to the court for the response filing fee was returned by the bank due to insufficient funds. The check was drawn on her personal account at Norwest, Account #1015306435.

17. On April 28, 1999, the check the respondent tendered to the court for the response filing fee cleared her bank upon a second presentment.

18. On June 2, 1999, the opposing counsel moved the court for entry of decree of invalidity of the marriage by default alleging that no response had been filed.

19. Lawrence Leff, the opposing attorney, stated that because he did not receive a responsive pleading, he requested entry of the decree by default.

20. On June 28, 1999, the court entered a decree of invalidity of marriage and found that more than twenty days had elapsed and no responsive pleading contesting the matter had been filed.

21. At the end of June 1999, Ms. Techotthipakorn returned to the United States and received a copy of the decree of invalidity through sources other than the respondent.

22. On or about June 30, 1999, she personally confronted the respondent about the entry of the decree by default. The respondent promised Ms. Techotthipakorn she would look into the matter.

23. On July 12, 1999, the respondent faxed a note to Ms. Techotthipakorn's friend which stated she would go to the courthouse that afternoon to research the case and that she would call him that same day.

24. The respondent did not make that telephone call as promised. The respondent failed to return numerous phone calls and faxes from Ms. Techotthipakorn, her friend, and her son thereafter.

25. The respondent never explained to the client why the decree of invalidity was entered by default or had any contact with her after July 12, 1999.

26. Ms. Techotthipakorn filed a request for investigation on September 20, 1999 with the Office of Attorney Regulation Counsel.

27. The respondent responded to the request for investigation on November 22, 1999, and stated that she did not know why the court entered the decree by default when she had filed a response to the petition and was attorney of record according to the register of action.

28. On November 22, 1999, the respondent stated to the Office of Attorney Regulation Counsel that she would file a motion to modify the order to conform to the facts of the case.

29. In her response to the request for investigation, the respondent also stated that she responded to telephone calls from Ms. Techotthipakorn's friend but did not recall receiving calls from Ms. Techotthipakorn's son.

30. The respondent stated her return calls to Ms. Techotthipakorn and her friend were not timely since she was taking over another attorney's caseload while he was ill.

31. On December 8, 1999, the respondent faxed a motion to the Office of Attorney Regulation Counsel stating that she would file that motion in the district court case.

32. On January 23, 2000, seven months after entry of the decree the respondent filed her motion to modify the decree to conform with the facts of the case.

33. Though the respondent executed a certificate of mailing on the document, opposing counsel never received the motion to modify the decree that the respondent certified she sent to him.

34. On March 10, 2000, the district court denied the respondent's motion to modify the decree to conform with the facts of the case stating that the moving party did not seek appropriate relief under the Colorado Rules of Civil Procedure nor was she entitled to it.

35. The respondent was retained by Ms. Techottipakorn to represent her. Ms. Techottipakorn entrusted her legal matter to the respondent and the respondent agreed to represent her.

36. The respondent did not act with reasonable diligence and promptness.

37. The respondent did not file a timely response to the petition for declaration of invalidity though she had been retained to do so nor did she file an appropriate or timely motion after entry of the default against Ms. Techottipakorn.

38. The respondent's neglect through her failure to file a timely response in Ms. Techotthipakorn's legal matter, and a timely motion after the entry of default, caused the decree to be entered by default.

39. The respondent's neglect of Ms. Techotthipakorn's legal matter and failure to act with diligence and promptness is a violation of Colo. RPC 1.3.

40. The respondent's failure to communicate with Ms. Techotthipakorn, her son or her friend after July 12, 1999, as she had stated she would, is a failure to keep the client reasonably informed about the status of her matter.

41. The respondent's failure to communicate with Ms. Techotthipakorn, her son, or her friend after July 12, 1999, as she stated she would, is a failure to promptly comply with the client's reasonable requests for information.

42. The respondent's failure to communicate and promptly comply with Ms. Techotthipakorn's reasonable requests for information is a violation of Colo. RPC 1.4(a).

43. The respondent failed to hold the property of Ms. Techotthipakorn separate from the respondent's own property.

44. The respondent's failure to deposit Ms. Techotthipakorn's retainer in her trust account, as required in the fee agreement that Ms. Techotthipakorn and the respondent executed, resulted in a violation of Colo. RPC 1.15(a).

WHEREFORE, complainant prays at the conclusion hereto.

CLAIM II - GERSPACH MATTER
[Colo. RPC 1.3, Colo. RPC 1.4(a), and Colo. RPC 1.16(d)]

45. Patricia Gerspach retained the respondent to represent her in a legal separation action.

46. On May 25, 1999, Ms. Gerspach and the respondent personally met and executed a fee agreement. Ms. Gerspach paid the respondent $399 that day. On June 2, 1999, she paid an additional $200 and signed the petition for legal separation.

47. The respondent told Ms. Gerspach that she would do the work necessary to get a decree entered by the court and that Ms. Gerspach would be legally separated from her husband by the end of July 1999.

48. Ms. Gerspach did not hear from the respondent after the June 2, 1999 meeting. Ms. Gerspach attempted to reach the respondent by telephone in July 1999 regarding the status of her legal separation. The respondent told her she was too busy to talk with her but that she would get back to her. The respondent did not return the phone call to Ms. Gerspach as promised.

49. Ms. Gerspach telephoned the respondent in August 1999 several times and left messages requesting a return call. Ms. Gerspach did not receive any return calls from the respondent in August.

50. Ms. Gerspach did talk to the respondent in early September 1999. The respondent promised to contact Ms. Gerspach regarding the status of her petition for legal separation in mid-September but did not.

51. In October 1999, Ms. Gerspach faxed two letters regarding the status of her petition for legal separation to the respondent asking for a response. She did not receive a response.

52. In November 1999, Ms. Gerspach asked Robert Carr, the attorney who had referred her to the respondent, to intercede, which he did.

53. On November 10, 1999 more than five months after she was retained to file the petition for legal separation, the respondent filed the petition in Denver District Court.

54. The respondent sent a fax to Robert Carr on November 11, 1999, to advise him that the petition had been filed.

55. Ms. Gerspach did not hear from the respondent. Despite Ms. Gerspach's repeated attempts to contact the respondent in November and December 1999 regarding the status of her legal matter, the respondent did not contact her.

56. On January 20, 2000, Ms. Gerspach again telephoned the respondent and was informed by a voice recording that the number was disconnected. No forwarding number was provided.

57. Ms. Gerspach borrowed the money for the retainer and has not been able to hire other counsel to complete her legal separation.

58. The respondent has taken no action on the case except to file the petition.

59. On February 10, 2000, the district court clerk sent a dismissal notice to the respondent who failed to respond to the notice or notify Ms. Gerspach of the notice.

60. On March 15, 2000, Ms. Gerspach's case was dismissed by the court for lack of prosecution.

61. Ms. Gerspach entrusted her legal matter to the respondent and the respondent agreed to represent her in the legal separation.

62. The respondent's failure to act with reasonable diligence and promptness and her neglect of the legal matter caused unnecessary delay and ultimately caused Ms. Gerspach's case to be dismissed.

63. The respondent's delay in filing the petition for legal separation and taking no action on the matter after the filing is failure to act with reasonable diligence and promptness and neglect of a legal matter entrusted to the respondent in violation of Colo. RPC 1.3.

64. The respondent's failure to act with reasonable diligence and promptness and her neglect in Ms. Gerspach's legal matter is a violation of Colo. RPC 1.3.

65. The respondent's last communication with Ms. Gerspach was in September 1999. The respondent failed to keep Ms. Gerspach reasonably informed about the status of her legal matter from October 1, 1999 until she abandoned her as a client on January 20, 2000 by disconnecting her telephone.

66. Ms. Gerspach made many requests for information about her legal matter to the respondent from October 1, 1999 to January 20, 2000. The respondent did not promptly comply with Ms. Gerspach's reasonable requests for information.

67. The respondent's failure to keep Ms. Gerspach reasonably informed of the status of her legal matter and her failure to promptly comply with requests for information are a violation of Colo. RPC 1.4(a).

68. The respondent's failure to act with reasonable diligence and promptness in Ms. Gerspach's legal matter and her neglect of that legal matter coupled with the respondent's failure to keep Ms. Gerspach reasonably informed about the status of her matter and promptly comply with reasonable requests for information resulted in abandonment of Ms. Gerspach as a client.

69. Upon her abandonment of Ms. Gerspach as a client on January 20, 2000, the respondent did not take any of the steps required by Colo. RPC 1.16(d) upon termination. The respondent's failure to take any of the steps to protect the client's interests resulted in dismissal of her legal action and other harm in violation of Colo. RPC 1.16(d).

WHEREFORE, complainant prays at the conclusion herein.

CLAIM III - CALDER MATTER
[Colo. RPC 3.4(c)]

70. On December 8, 1999, Stephen Calder, an attorney, and his client appeared in Arapahoe County District Court for the scheduled permanent orders hearing in *In Re The Marriage of Gray*, Case No. 99DR1336. Mr. Calder represents Gary Gray, the respondent, in the divorce action.

71. The respondent, who represents the petitioner, Cindy Gray, in the divorce action, did not appear nor did her client.

72. Mr. Calder learned from the division clerk that day that the case had been dismissed by the court on November 19, 1999, for failure to comply with the court's earlier status order.

73. The respondent, as attorney for petitioner in the divorce case, was sent the status order and the order for dismissal from the court and was instructed to copy Mr. Calder on each of the orders within a few days of her receipt of each order.

74. The respondent did not mail the copy of the status order which warned of dismissal to Mr. Calder as she was ordered to do by the court. Had Mr. Calder received the status order, he would have had the opportunity to cure the deficiencies and to prevent dismissal of the case.

75. Also, the respondent did not mail a copy of the dismissal order to Mr. Calder as she was ordered to do by the court. Receipt of the dismissal order would have alerted Mr. Calder and his client so that unnecessary attorney's fees and substantial inconvenience to both of them were not incurred.

76. The respondent failed to mail a copy of the status order to Mr. Calder, and also failed to respond to the status order as directed by the court.

77. From November 18, 1999, until the hearing date of December 8, 1999, Mr. Calder, believing that the case was on track for hearing, faxed correspondence and a proposed joint trial management certificate to the respondent. He also faxed proposed exhibits and left numerous voicemails.

78. Mr. Calder made many attempts to reach the respondent. Mr. Calder's voicemail messages for the respondent asked her to call him back.

79. Only once did the respondent call back and leave a message and that was at 6:30 p.m. the night before trial. The respondent left a message but the message did not alert Mr. Calder that the case had been dismissed. The message said he needed to call her right away.

80. Mr. Calder received that message when he was on his way to the courthouse the next morning.

81. On the morning of December 8, 1999, after many hours of preparation, Mr. Calder and his client appeared for the permanent orders hearing and discovered the case had been dismissed nearly a month earlier.

82. Neither the respondent nor her client appeared for the permanent orders hearing that day. The respondent knew the hearing had been vacated and had advised her client of that.

83. On December 10, 1999, Mr. Calder filed a motion with the district court requesting that the divorce case be reinstated.

84. On December 10, 1999, Mr. Calder filed a motion for sanctions and attorney's fees against the respondent. The motion asked the court to order the respondent to pay substantial attorney's fees which were incurred by Mr. Calder's client unnecessarily due to the respondent's failure to comply with the court's orders.

85. On January 11, 2000, the court having received no response to the motion, ordered the respondent to pay Mr. Calder $1,000 within 30 days. A copy of the court's order was sent to the respondent.

86. Mr. Calder telephoned the respondent numerous times regarding the entry of the attorney fee order but he never reached her personally.

87. The respondent has not complied with the court's order that she pay Mr. Calder $1,000 within 30 days of January 11, 2000. The respondent has made no effort to make payments or negotiate a payment plan.

88. The respondent's failure to send a copy of the court's status order as ordered to do to Mr. Calder is knowing disobedience of an obligation under the rules of a tribunal or, if it is not knowing due to the respondent's failure to handle her mail appropriately, it is so careless or reckless it must be deemed knowing.

89. The respondent's failure to comply with the court's status order is knowing disobedience of an obligation under the rules of a tribunal or, if it is not knowing due to the respondent's failure to handle her mail appropriately, it is so careless or reckless it must be deemed knowing.

90. The respondent's failure to send a copy of the court's dismissal order as ordered to do to Mr. Calder is knowing disobedience of an obligation under the rules of a tribunal or, if it is not knowing due to the respondent's failure to handle her mail appropriately, it is so careless or reckless it must be deemed knowing.

91. The respondent's failure to pay Mr. Calder the $1,000 she was ordered to pay him is knowing disobedience of an obligation under the rules of a tribunal or, if it is not knowing due to the respondent's failure to handle her mail appropriately, it is so careless or reckless it must be deemed knowing.

92. The respondent's conduct referenced above are separate violations of Colo. RPC 3.4(c).

WHEREFORE, the complainant prays at the conclusion herein.

CLAIM IV - HARDY MATTER
[Colo. RPC 3.4(c), Colo. RPC 8.4(d)]

93. Brian Hardy is the opposing party in the divorce case in which the respondent represented his wife in *In Re the Marriage of Hardy*, Douglas County District Court, Case No. 98DR185.

94. The respondent's conduct in the divorce case caused Mr. Hardy additional attorney's fees since he was required to have his attorney file motions to compel discovery.

95. On March 18, 1999, the divorce court entered an attorney fee award against Mary Beth Hardy, the respondent's client, and in favor of Brian Hardy in the amount of $448 and costs in the amount of $104.

96. The respondent did not comply with C.R.C.P. 16.2 in the Hardy divorce case. The respondent failed, as petitioner's counsel, to schedule a pre-trial meeting and to prepare the joint trial management certificate required by the rule.

97. The court entered an order for sanctions against the respondent's client, Mary Beth Hardy, in the amount of $105 for failure to conduct the pre-trial meeting and prepare the joint trial management certificate.

98. The parties to the divorce case and their respective attorneys appeared for permanent orders on June 4, 1999, and read an agreement on the record that day.

99. The respondent, since she represented the petitioner in the divorce case, was ordered to reduce the permanent orders to writing and to file the document by June 15, 1999.

100. No written permanent orders was circulated or filed by the respondent.

101. Counsel for Brian Hardy filed a motion to compel compliance with the court's order on or about October 13, 1999.

102. No response to the motion to compel compliance with the court's order was filed by the respondent.

103. On November 4, 1999, Judge Thomas J. Curry of the Douglas County District Court, entered an order to show cause to the respondent why she has not complied with the court's order of June 5, 1999, or to file the written permanent orders on or before November 22, 1999.

104. On November 4, 1999, the court also ordered that the respondent pay attorney's fees to Brian Hardy's attorney in the amount of $224, fees incurred by him in bringing the motion to compel compliance. The trial court's orders of November 4, 1999, were sent to the respondent at her appropriate address.

105. On December 20, 1999, Judge Curry, having received no response to his order of November 4, 1999 from the respondent, entered an order and contempt citation against the respondent.

106. That order and contempt citation were served on the respondent by certified mail and by regular mail to the respondent's office address. The certified mail was not claimed but the regular mail did not get returned.

107. That order and contempt citation required the respondent to appear before Judge Curry on February 11, 2000. The respondent failed to appear before Judge Curry on February 11, 2000 at the required time.

108. The judge's clerk made telephone calls to the respondent's office and left messages requesting return calls. The respondent did not return these calls.

109. All efforts made by the court to arrange a status conference with the respondent to determine what reason existed for her failure to comply with the court's orders were not responded to by the respondent.

110. As of June 1, 2000, the respondent has not filed the written permanent orders in *In Re The Marriage of Hardy* as she was ordered to do on June 4, 1999.

111. Upon information and belief, the respondent has not complied with the court's order to pay attorney's fees which was entered on November 4, 1999.

112. The respondent's failure to prepare and file the permanent orders by June 15, 1999 in the Hardy divorce case is knowing disobedience of an obligation under the rules of a tribunal.

113. The respondent's failure to show cause or file the written permanent orders by November 22, 1999 is knowing disobedience of an obligation under the rules of a tribunal or, if it is not knowing due to the respondent's failure to handle her mail appropriately, it is so careless or reckless it must be deemed knowing.

114. The respondent's failure to appear in court on February 11, 2000 as required by the judge's order and contempt citation is knowing disobedience of an obligation under the rules of a tribunal or, if it is not knowing due to the respondent's failure to handle her mail appropriately, it is so careless or reckless it must be deemed knowing.

115. The respondent's failure to pay the $224 in attorney's fees to Brian Hardy's attorney as required by the judge's November 4, 1999 order is knowing disobedience of an obligation under the rules of a tribunal or, if it is not knowing due to the respondent's failure to handle her mail appropriately, it is so careless or reckless it must be deemed knowing.

116. The respondent's above referenced conduct are separate violations of Colo. RPC 3.4(c).

117. The respondent's failure to obey four separate court orders is conduct that is prejudicial to the administration of justice in violation of Colo. RPC 8.4(d).

WHEREFORE, the complainant prays at the conclusion herein.

CLAIM V - BANK ACCOUNT VIOLATIONS AND OTHER CONDUCT
[Colo. RPC 8.4(h)]

118. Paragraphs 1 through 69 are incorporated herein.

119. The respondent deposited the retainers she received from Ms. Techotthipakorn and Ms. Gerspach into a personal account at Norwest Bank, account number 1015306435.

120. During the period from February 12, 1999 until that account was closed by the bank on January 7, 2000, the respondent had a negative balance in her account on forty-eight days.

121. In addition, the bank did not initially honor forty-five checks that the respondent wrote on that account during that same time period, due to insufficient funds in the account.

122. The respondent still owes the bank $457.88, the negative balance when the account was closed.

123. The respondent was sued by the University of Denver in September, 1999 in county court where a judgment was entered against her in the amount of $1,556.42 plus costs. She entered into a stipulation to pay the money she owed and then breached that agreement. The University of Denver had to garnish her bank account to get paid.

124. The respondent's extremely poor management of her personal bank account from February 12, 1999, to January 7, 2000, which resulted in 48 days of a negative balance and 45 checks written on the account with insufficient funds is conduct that adversely reflects on the respondent's fitness to practice law.

125. The respondent's failure to pay the bank the money she owes is conduct that adversely reflects on the respondent's fitness to practice law.

126. The respondent's failure to pay the University of Denver money she owed it and further failure to comply with a stipulation to pay the University what she owed is conduct that adversely reflects on the respondent's fitness to practice law.

127. The respondent's conduct referenced above that adversely reflects on her fitness to practice law are separate violations of Colo. RPC 8.4(h).

WHEREFORE, the complainant prays at the conclusion herein.

CLAIM VI - FAILURE TO RESPOND OR COOPERATE
[C.R.C.P. 251.5(d) and Colo. RPC 8.1(b)]

128. Paragraphs 1 through 127 are incorporated herein.

129. On various dates, the respondent was sent copies of the requests for investigation from the Office of Attorney Regulation Counsel and asked to respond to each of the requests for investigation in Claims I through IV herein. The respondent responded to the request for investigation in Claim I.

130. Each of the requests was sent to the respondent properly pursuant to C.R.C.P. 251.32 to her registered business address.

131. On March 30, 2000, the respondent claimed that she did not receive any of the requests for investigation contained in Claims II, III, or IV, the Gerspach, Calder, and Hardy matters.

132. The respondent provided the Office of Attorney Regulation Counsel with a new business address and a new residence address. The respondent requested that the response times be staggered to allow her time to address each one and that mail be sent to her home address.

133. On March 30, 2000, the requests for investigation contained in Claim II, III, and IV were resent to the respondent at her new home address with staggered response times. The respondent failed to respond to those requests for investigation contained in Claim II, III, and IV, the Gerspach, Calder, or Hardy matters.

134. On May 8, 2000, the respondent claimed she did not know which requests for investigation she had received and which she had not.

135. On May 8, 2000, a package containing the requests for investigation in the Gerspach, Calder and Hardy matters was hand-delivered to the respondent's new office address. The respondent failed to respond to the requests for investigation again.

136. On May 19, 2000, the Office of Attorney Regulation issued a subpoena *duces tecum* to the respondent and noticed her for a deposition, due to her lack of response.

137. On May 19, 2000, the respondent stated to the Office of Attorney Regulation that she would accept service of a subpoena for the deposition, but she never did so.

138. The respondent's failure to respond without good cause to the Attorney Regulation Counsel's requests on the Gerspach, Calder, and Hardy matters are violations of Colo. RPC 8.1(b).

139. The respondent's repeated failure to respond are knowing failures to respond reasonably to a lawful demand for information from a disciplinary authority.

Paragraphs 1 through 139 are incorporated herein.

Conclusion

The foregoing conduct of the respondent establishes grounds for discipline as provided in C.R.C.P. 251.5; and violates Colo. RPC 1.3, Colo. RPC 1.4(a), Colo. RPC 1.15(a), Colo. RPC 1.16(d), Colo. RPC 3.4(c), Colo. RPC 8.4(d), Colo. RPC 8.4(h), and Colo. RPC 8.1(b).

WHEREFORE, it is prayed that the respondent be found guilty of violations of various rules of conduct which establish grounds for discipline as provided in C.R.C.P. 251.5, and the Colorado Rules of Professional Conduct and that she be appropriately disciplined and assessed the costs of these proceedings.

(SIGNED)

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