Summary of Opinion. People v. Elinoff, No. GC98C109, 9/17/99. Attorney Regulation. The Presiding Disciplinary Judge and Hearing Board initially disbarred the Respondent, Kallman S. Elinoff, for attempting to bribe two Denver, police officers, in violation of Colo. RPC 8.4(h) and prior C.R.C.P. 241.6(5). Subsequently, by Amended Order dated *1/5/2000* the Presiding Disciplinary Judge and Hearing Board amended their prior Opinion and Order dated September 17, 1999 pursuant to respondent's C.R.C.P. 59(a)(4) motion only as to the sanction imposed. The Presiding Disciplinary Judge and Hearing Board reaffirmed their finding that the Respondent's misconduct constituted bribery of a public official. The PDJ and Hearing Board considered the previously determined mitigating circumstances together with respondent's additional character testimony introduced at the post-trial hearing, and Respondent's demonstration of remorse and comprehension of the gravity of his conduct, and found that a reduction in sanction was warranted, and amended the sanction from disbarment to a three year suspension, with one year of the suspension period stayed during a one year period of probation subject to conditions.

SUPREME COURT, STATE OF COLORADO
CASE NO.: **GC98C109**
ORIGINAL PROCEEDING IN DISCIPLINE BEFORE
THE PRESIDING DISCIPLINARY JUDGE

OPINION AND ORDER IMPOSING SANCTIONS

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

v.

KALLMAN S. ELINOFF,

Respondent.

Opinion by Presiding Disciplinary Judge Roger L. Keithley, Hearing Board members John E. Mosby, a lawyer, and Michael B. Lupton, a public representative.

SANCTION IMPOSED: ATTORNEY DISBARRED

Trial of this disciplinary matter was held on June 16 and 17, 1999 before the Presiding Disciplinary Judge ("PDJ") and two hearing board members, John E. Mosby and Michael B. Lupton. Assistant Regulation Counsel Debora D.

Jones represented the People of the State of Colorado ("the People") and Harvey A. Steinberg represented Kallman S. Elinoff ("Elinoff"), respondent, who was also present. The People's Exhibit 1 was admitted into evidence. The PDJ and Hearing Board members heard testimony from the People's witness David Ollila. The PDJ and Hearing Board also heard testimony from Elinoff's witnesses Kallman S. Elinoff, Douglas Rathbun, Frank Martinez and Kathleen Bowers.

I. FINDINGS OF FACT

The PDJ and Hearing Board considered the testimony and exhibits admitted, assessed the credibility of the witnesses, and made the following findings of fact, which were established by clear and convincing evidence:

Kallman S. Elinoff is an attorney licensed to practice law in the state of Colorado and is currently registered under attorney registration number 18677. He is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b). Elinoff was admitted to the bar on October 23, 1989 and has developed a high volume criminal defense practice.

On or about March 17, 1998 Elinoff appeared before Judge Kathleen Bowers in Denver County Court with his client, Douglas Rathbun in connection with a domestic violence charge. The day before the appearance, Elinoff had injured his arm in a snowboarding incident and was taking medication. Judge Bowers was made aware of the incident, the medication usage and inquired into Elinoff's ability to proceed with the scheduled hearing. Based upon her observations and Elinoff's assurances, Judge Bowers found there was no need to continue the hearing and that Elinoff was able to properly represent his client's interests. Notwithstanding his medication usage, Elinoff was in full control of his mental faculties on the day of the Rathbun hearing.[1]

At the conclusion of the county court hearing, Detective David Ollila and Detective Michael Mullen of the Denver Police Department placed Rathbun under arrest on a separate domestic violence warrant. Rathbun was placed in handcuffs. Rathbun became emotional and pleaded with the detectives to release him so he could visit with his girlfriend that afternoon before she began serving a sentence of incarceration in Jefferson County. The detectives refused to release Rathbun but did agree to allow Rathbun to smoke a cigarette before they transported him to jail.

Rathbun, Elinoff and the two detectives left the courthouse to allow Rathbun to smoke a cigarette. Rathbun continued to plead with the detectives to release him as they walked down the courthouse corridors. Once outside

[1] Elinoff did not contend in this disciplinary proceeding that his prescription drug use impaired his mental abilities on the day in question.

the courthouse, as Rathbun smoked a cigarette, Elinoff struck up a conversation with the detectives. Although Elinoff had no prior contact with either Ollila or Mullen, he disclosed to them that his father had been a police officer and he had once applied to join the force. During their conversation, Rathbun continued to plead to be released. Elinoff told the detectives that they needed to talk about his client on a level they all could understand. Elinoff then reached into his shirt pocket and removed several bills of U. S. currency. The visible bill was a $100 bill. Elinoff extended the bills toward Detective Mullen and stated that if the detectives would forget the matter for that day, Rathbun would turn himself in the next day. Elinoff intended by this conduct to influence the decision made by Ollila and Mullen to jail Rathbun.

Detective Mullen informed Elinoff that his conduct was unacceptable and both he and Detective Ollila promptly took Rathbun to jail. Elinoff was neither arrested by the police nor charged by the district attorney as a result of his conduct. The following day Elinoff went to Denver Police Headquarters and asked to see Ollila and Mullen to apologize for his conduct. Mullen was unavailable but Elinoff did apologize to Ollila.

Elinoff, in testimony before the PDJ and Hearing Board, characterized his conduct as a joking effort to show his client that he was going to jail and that nothing would prevent the detectives from transporting him immediately. Elinoff also admitted, however, that if one of the detectives had accepted the funds offered, he would have reported the "bribe" to the police department with the anticipation that the detective would have been arrested.

II. CONCLUSIONS OF LAW

The People contend that Elinoff's actions constituted an act which violated the criminal laws of this state, namely bribery, pursuant to §18-8-302(1)(a), 6 C.R.S. (1998), and therefore violated C.R.C.P. 241.6(5). They further contend that his conduct violated The Colorado Rules of Professional Conduct ("Colo. RPC") 8.4(h)(engaging in any other conduct that adversely reflects on the lawyer's fitness to practice law).

Elinoff was not charged by the district attorney with the violation of any criminal law. Indeed, he was not arrested by the police for his conduct. Neither of those events, however, are determinative of the outcome of these disciplinary proceedings. C.R.C.P. 241.6(5) provides grounds for discipline for an attorney's conduct regardless of whether the authorities charged with the responsibility for prosecuting the crime have elected to pursue criminal charges. C.R.C.P. 241.6(5) specifically provides:

> [C]onviction [of a crime] in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and . . .

acquittal in a criminal proceeding shall not necessarily bar disciplinary action;

Disciplinary proceedings are *sui generis* in nature, and conviction of a criminal offense is not a prerequisite either to the institution of disciplinary proceedings or the imposition of discipline premised upon the uncharged conduct. *People v. Morley*, 725 P.2d 510, 514 (Colo. 1986); *People v. Harfmann*, 638 P.2d 745, 747 (Colo. 1981). It is the attorney's misconduct itself which forms the basis of the disciplinary charges and justifies the imposition of sanctions, not the exercise of prosecutorial discretion by law enforcement authorities.

§18-8-302(1)(a), 6 C.R.S. (1998) provides:

> Bribery[2] (1) A person commits the crime of bribery, if:
>
> (a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity;

The facts established by clear and convincing evidence at trial reflect that Elinoff offered money to Detective Mullen, a Denver police officer, in an effort to convince Detective Mullen and Detective Ollila to release Elinoff's client from custody. Detective Mullen and Detective Ollila are public servants pursuant to §18-1-901(3)(o), 6 C.R.S. (1998), §18-1-901(3)(i), 6 C.R.S. (1998) and §18-1-901(3)(j), 6 C.R.S. (1998). Although Elinoff characterized the offer as a joke, the evidence established that it was his intent to influence the detectives to exercise their discretion and release Elinoff's client.

Elinoff's testimony given on direct examination in the disciplinary trial demonstrates his intent:

> Q. Did you ever pull out money?
>
> A. Yes.
>
> Q. Tell the panel about that.
>
> A. Well, I was outside in the back of the courthouse, and he was insisting on not going to jail, and he was kind of doing his own thing. And I was relating to the officers about things, like, I was in the military, and, you know, I could have been a cop myself. I applied many, many years ago to be a cop.
>
> And just as a joke I said -- because I thought my client was watching, you know, because he was insisting on not going to jail -- I said, you know, let's -- why don't we go ahead and forget this, like an insider joke, like, I was one of the cops. It was just one of those goofy -- you know, because I felt like the boundaries had kind of melted between myself and the officers. I liked them. I was having a good time. I was feeling pretty good. I thought the officers liked me. We were getting along.

[2] Bribery is a class 3 felony. §18-8-302(3), 6 C.R.S. (1998).

And I thought it was, like, an inside joke. I was kind of, like, goofing on my client to kind of lighten up the situation. I wasn't trying to goof on the officers. I was really goofing on my client.

Q. Tell us about that. What do you mean by goofing on your client?

A. Well, I thought if, you know -- it's hard to relate exactly what was going through my mind. It just seemed like it was a funny thing to do, just to show him, you know, look, you know, the officers are not going to take –- you're going to jail whether I tell you -- whether I offer the officer money, you're going to go to jail. I mean, look how stupid this is that I'm offering this officer money and you're going to go to jail. That was kind of the gist of it, I guess. It's hard to recollect exactly what was going through my mind.

Q. What was the officer's reaction?

A. Officer Mullen was the one closest to me, and he said, you have been here long enough to know that's inappropriate. And I assumed that he meant that it was an inappropriate joke. That's the way I intended it, and that's what he said. I apologized to the officers. I put the money away, obviously. My client had nothing to do that. I wasn't prompted to do that by my client. I apologized to the officers.

Q. What would you have done if they had taken the money?

A. You know, I would have been in shock. To be honest, I can't imagine what I would have done. It's kind of like joking with somebody and saying, here's $50, why don't you go jump off a bridge. And all of a sudden they jump off of a bridge. And you're saying, oh my God, I didn't mean for you to jump off a bridge. It was a joke.

And I guess if the officers would have taken it, I would have tried to get my money back, because it was my money, and I don't give away money. I would have assumed that he would have been joking, if he had taken the money. I would have assumed he would have said something like, look, I'll need $10,000 more than this to get your client out of this. And I would probably have laughed and said, I don't have the $10,000 on me, maybe I'll bring it tomorrow.

And if he had actually taken it and walked away and uncuffed my client, I probably would have called the police and

had him arrested for taking a bribe. That's how ludicrous it kind of became in my mind.

Bribery is a specific intent offense. It requires a factual finding that the accused acted with the conscious objective to cause the specific result proscribed by the statute defining the offense. It is immaterial to the issue of intent whether or not the result actually occurred. §18-1-501(5), 6, C.R.S. (1998). [T]he uniform rule is, that the mind of an alleged offender may be read from his acts, his conduct, and the reasonable inferences which may be drawn from the circumstances of the case. *Maraggos v. People*, 486 P.2d 1, 3 (Colo. 1971).

Elinoff testified on direct examination that he offered money to the police officers and asked them to release his client. He admitted that his purpose, or motive, in doing so was to prove to his client that the detectives would not release his client. Elinoff's testimony leaves no doubt that his intent in offering the money to the officers was an attempt to convince them to release his client from custody. His belief that they would not do so does not alter his intent, it merely bears upon the potential of success. Although Elinoff's motive may have been to prove to his client that nothing he could do would prevent the officers from transporting the client to jail, Elinoff's offer of money was unmistakably an effort to influence the detectives' decision to jail the client. It establishes the requisite intent required under §18-8-302(1)(a), 6 C.R.S. (1998). Whether his motive is characterized as joking or serious, Elinoff's offer of money to the officers to release his client was bribery.

Elinoff's attempt to bribe the detectives violated C.R.C.P. 241.6(5). Under the totality of the circumstances surrounding his conduct, Elinoff also violated Colo. RPC 8.4(h)(engaging in other conduct that adversely reflects on the lawyer's fitness to practice law). *See People v. Egbune*, No. GC98A13 (Colo. P.D.J. 1999), 29 COLO. LAW. 132 (Sept. 1999)

III. SANCTION/IMPOSITION OF DISCIPLINE

The PDJ and Hearing Board find that Elinoff's conduct constitutes a violation of duties owed both to the profession and to the public. The ABA *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") are the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct.

ABA *Standard* 5.11 provides:

> Disbarment is generally appropriate when:
>
> (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, [or] misappropriation . . .;
>
> (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

The Commentary to ABA *Standard* 5.11 provides further:

> A lawyer who engages in any of the illegal acts listed above has violated one of the most basic professional obligations to the public, the pledge to maintain personal honesty and integrity.

ABA *Standard* 7.1 provides:

> Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Elinoff's conduct meets the tests set forth in both ABA *Standard* 5.11(a) and (b), and ABA *Standard* 7.1. The presumptive sanction in this case is disbarment. *See People v. Bullock*, 882 P.2d 1390, 1391 (Colo. 1994)(disbarring attorney pursuant to a conditional admission based on an indictment of a class 3 felony for aiding his client in his escape by arranging to supply the client with money); *People v. Viar* 848 P.2d 934, 935-936 (Colo. 1993)(disbarring attorney pursuant to conditional admission based on a class 3 felony of bribery for attorney's facilitating for a fee the destruction of the client's records contained within the Arapahoe County court system and the Office of the Arapahoe County District Attorney); *People v. Young* 732 P.2d 1208, 1209-1210 (Colo. 1987)(disbarring attorney for felony offense of use of a communication facility to distribute cocaine). *See also People v. Sheffer*, No. GC98A112 (Colo. P.D.J. 1999) 29 COLO. LAW. 145 (Sept, 1999) (holding that disbarment was presumptive sanction for violation of forgery statute, a class 5 felony, but factors in mitigation resulted in suspension for two years). In

People v. Abelman, 804 P.2d 859, 863 (Colo. 1991), the Colorado Supreme Court stated:

> We are mindful that the primary purpose of attorney discipline is the protection of the public, *People v. Grenemyer*, 745 P.2d 1027, 1029 (Colo. 1987), not to mete out punishment to the offending lawyer. As officers of the court, however, lawyers are charged with obedience to the law, and intentional violation of those laws subjects an attorney to the severest discipline.

A lawyer's failure to uphold the law -- an obligation he has sworn to satisfy -- and choice to engage in serious criminal activity, particularly within the exercise of his professional undertakings, is the most grievous of misconduct and necessitates a similarly serious response by this court, the bar and the profession.

The relationship between law enforcement officers and defenders of those accused of crime can be intensely adversarial, often lacking in trust, and the source of acrimony within the criminal justice system. Elinoff's misconduct fostered even greater lack of respect, engendered greater lack of trust and did substantial damage to an already tenuous relationship between those charged with conflicting responsibilities and duties within the criminal justice system.

The PDJ and Hearing Board considered factors in mitigation pursuant to ABA *Standards* 9.32. Judge Frank Martinez of the Denver District Court and Judge Kathleen Bowers of the Denver County Court were subpoenaed to testify in this matter. Both testified to Elinoff's professional competence in their respective courtrooms, his jocular demeanor and his efforts to ease tense situations. Their testimony was considered as character or reputation evidence by the PDJ and Hearing Board, establishing the mitigating factor of good character or reputation under ABA *Standard* 9.32(g). As additional mitigating factors, the evidence presented established that Elinoff had no prior disciplinary record, *id.* at 9.32(a) and had a cooperative attitude toward these disciplinary proceedings, *id.* at 9.32(e). No aggravating circumstances were presented.

The severity of Elinoff's misconduct is not sufficiently attenuated by the mitigating factors to justify a reduction in the presumed level of discipline. The central and controlling fact remains that Elinoff attempted to bribe a police officer. Such misconduct requires the forfeiture of the right to practice law.

Hearing Board Member John E. Mosby Concurs in Part and Dissents in Part:

I concur in the findings of fact of the PDJ and Hearing Board, however, I dissent in the sanction imposed. While I recognize that in certain situations disbarment may be appropriate to the offense, this is not one of those situations.

I concur with the PDJ and Hearing Board's findings that the facts established by clear and convincing evidence that Elinoff's act constituted bribery. Indeed, it was Elinoff's own testimony which provided the conclusive proof of the crime. It is precisely the honesty and forthrightness of Elinoff's candor in front of the tribunal which leads me to conclude that disbarment from the practice of law is too draconian in this case.

Under the circumstances of this case and pursuant to ABA *Standard* 9.32, the following factors in mitigation would reduce the presumptive discipline of disbarment to a two-year suspension, with subsequent probation. Elinoff had no prior disciplinary record, *see id.* at 9.32(a). Elinoff did not demonstrate a dishonest or selfish motive, i.e., he did not personally profit from his foolish act, *see id.* at 9.32(b). Elinoff demonstrated a timely good faith effort to rectify the consequences of his act the following day by apologizing to one officer and attempting to apologize to the second officer, *see id.* at 9.32(d). Elinoff made full and free disclosure to the disciplinary board and demonstrated a cooperative attitude toward the proceedings, *see id.* at 9.32(e); indeed, he freely admitted that his conduct was inappropriate. Two judges testified as to Elinoff's good character and reputation in the community, *see id.* at 9.32(g). Elinoff stated that he had a "euphoric feeling" on the day he committed the act as a result of the medications he was taking. I believe it can be considered a mitigating factor that Elinoff did *not* argue as a defense that his act was the result of the medications. I was impressed that rather than using this as a defense, he told the truth, *see id.* at 9.32(h). Elinoff demonstrated remorse for his act, *see id.* at 9.32(l).

In the recent decision of *People v. Sheffer*, No. GC98A112, (Colo. P.D.J. 1999), 29 COLO. LAW. 143, 144 (Sept. 1999) the PDJ and Hearing Board imposed the sanction of a two year suspension for the attorney's improper use of a notary seal. Recognizing –- as in the present case -- that such conduct constituted a serious offense, the PDJ and Hearing Board found that disbarment was the presumptive discipline, and reduced the sanction to a two-year suspension based on substantial mitigating factors. The mitigating factors in that case are identical to those present here, with the exception of

the two facts that Sheffer self-reported her misconduct, *see id.* at 9.32(e), and she received severe penalties in the criminal action for the same misconduct, *see id.* at 9.32(k). In the present case, Elinoff arguably did not have the opportunity to self-report, because the officers reported his conduct to the Office of Attorney Regulation Counsel immediately. Even considering these added mitigating factors, the conduct in *Sheffer* is more egregious because it demonstrates an ongoing course of conduct. Here, Elinoff made one mistake, and based on his remorseful conduct at trial, the mistake will not be repeated. There was no evidence of any aggravating factors to support the serious sanction of disbarment.

The attorney regulation system was changed to achieve consistency in the law in order to provide guidance to the bar, and to renew the trust of the public in the bar's supervision of its members. Here, at the conclusion of trial, the People of the State of Colorado sought a sanction significantly less than disbarment. It is critical that attorneys be made aware that if they engage in certain types of conduct, they risk losing their livelihood. However, disbarment in the context of the legal profession is akin to the death penalty; it irrevocably changes that individual's life, and the lives of his family and friends. In this case, the attorney should be sanctioned for a mistake he made and for which he is remorseful. As a criminal defense attorney, he has, prior to this error, been an upstanding member of the bar, frequently representing the underdog. He should not be given less justice than the clients he represents.

On the grounds of mitigating circumstances set forth above, I would find that a two-year suspension with probation is warranted

IV. ORDER

It is therefore ORDERED:

1. Kallman S. Elinoff is DISBARRED from the practice of law in the State of Colorado and his name shall be stricken from the role of attorneys effective October 19, 1999;
2. Kallman S. Elinoff shall pay the costs of these proceedings within sixty (60) days of the date of this Order;
3. 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 17th DAY OF SEPTMBER, EFFECTIVE THE 19th DAY OF OCTOBER, 1999.

_____(SIGNED)_____
ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

_____(SIGNED)_____
JOHN E. MOSBY
HEARING BOARD OFFICER

_____(SIGNED)_____
MICHAEL B. LUPTON
HEARING BOARD OFFICER

SUPREME COURT, STATE OF COLORADO
CASE NO.: **GC98C109**
ORIGINAL PROCEEDING IN DISCIPLINE BEFORE
THE PRESIDING DISCIPLINARY JUDGE

ORDER RE: RESPONDENT'S MOTION TO AMEND FINDINGS OF FACT AND MOTION TO AMEND JUDGMENT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

v.

KALLMAN S. ELINOFF,

Respondent.

On September 17, 1999 an Opinion and Order was issued in this case imposing the sanction of disbarment upon Kallman S. Elinoff ("Elinoff"). On October 4, 1999, Elinoff filed a motion pursuant to C.R.C.P. 251.26(g) requesting that the imposition of discipline be stayed pending post trial proceedings pursuant to C.R.C.P. 251.19. On October 17, 1999, the Presiding Disciplinary Judge ("PDJ") entered an order staying imposition of discipline until such time as all post trial proceedings and/or appeals were concluded. That order is still in place.

On December 1, 1999, following two extensions of time, Elinoff filed a Motion to Amend Findings and Order ("Motion to Amend") pursuant to C.R.C.P. 251.19, C.R.C.P. 59(a)(3) and C.R.C.P. 59(a)(4). The People filed a timely response. On December 22, 1999, Elinoff filed a Motion to Supplement Motion to Amend Findings and Order ("Motion to Supplement") and the People responded. The Motion to Supplement is, in fact, a motion pursuant to C.R.C.P. 59(f) to reopen the record to receive additional evidence. The People did not object to the reopening of the record but did interpose objections to portions of the evidence offered.

On January 4, 2000, the PDJ held a hearing and heard argument on the Motion to Supplement. Harvey A. Steinberg appeared on behalf of Elinoff, who was also present, and Debora D. Jones appeared on behalf of the People. The PDJ treated the Motion to Supplement as a motion under C.R.C.P. 59(f). Pursuant to C.R.C.P. 251.19(b), the PDJ consulted with the members of the

Hearing Board prior to ruling upon the Motion to Supplement. Although reopening of a trial record should only occur in the rarest of circumstances, fairness requires it be done in this case. Both counsel for the People and counsel for Elinoff openly acknowledged they had misperceived the gravity of the charges, the proceeding and the potential sanction. The PDJ granted the Motion to Supplement and accepted the testimony of four additional witnesses reflected in deposition transcripts attached to the motion. The PDJ sustained the People's objection and excluded any testimony set forth therein relating to pharmacological effects of medication and sustained the People's objection and excluded any testimony set forth therein opining upon the findings of fact, conclusions of law or sanction imposed by the September 17, 1999 Opinion and Order. The PDJ granted the People's request to limit consideration of the remaining testimony set forth therein to character evidence under C.R.E. 404(a)(1).

Immediately thereafter, the members of the Hearing Board and the PDJ heard argument on the Motion to Amend. Following argument, the PDJ consulted with the members of the Hearing Board and enters the following Order:

1. The Motion to Amend Findings and Order filed pursuant to C.R.C.P. 59(a)(3) requesting that the findings of fact be amended is DENIED. Taking into account the demeanor of the witnesses in this case as exhibited at trial, assessing the credibility of those witnesses and considering the additional character testimony submitted in the deposition transcripts, the PDJ and Hearing Board reaffirm their factual finding that Elinoff had the requisite specific intent required under §18-8-302(1)(a), 6 C.R.S. (1998). His offering money to the police officers and asking them to release his §client from custody under the factual circumstances presented at trial was intended to be an effort to influence the decision of the police officers. Elinoff admitted as much when he acknowledged in his testimony that he engaged in the offer to prove to his client that nothing he could do would prevent the client's incarceration.

2. The Motion to Amend Findings and Order filed pursuant to C.R.C.P. 59(a)(4) requesting that the sanction of disbarment be amended is GRANTED.

The PDJ and Hearing Board reaffirm their conclusion in the Opinion and Order dated September 17, 1999 that misconduct constituting a violation of §18-8-302(1)(a), bribery of a public official, requires a presumptive discipline of disbarment both under the case law in this state and under the ABA *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*"). The additional character testimony introduced on behalf of Elinoff and Elinoff's dramatically different attitude apparent during the January 4, 2000 hearing, however, established by

clear and convincing evidence that Elinoff is genuinely remorseful for this single episode of misconduct[3], and any recurrence of similar misconduct is very unlikely. *See* ABA *Standards* 9.32(l). It is evident that Elinoff now comprehends the gravity of his misconduct. This recognition is a significant mitigating factor which was not proven by the requisite standard of proof during the trial of this matter.

Although the PDJ and one member of the Hearing Board are reluctant to acknowledge that misconduct which has been found to constitute bribery of a public official can result in any discipline other than disbarment, they recognize that the function of the attorney regulation system is first and foremost to protect the public and not to punish the offending attorney. *See People v. Ableman,* 804 P.2d 859, 863 (Colo. 1991). Elinoff's recognition of his misconduct and the remoteness of any likely similar recurrence, combined with the other factors in mitigation previously found, convince the PDJ and Hearing Board that the public is adequately protected in this case with a disciplinary sanction reduced one level from that previously imposed.

It is therefore ORDERED:

1. The Opinion and Order entered September 17, 1999 is amended only as to the sanction imposed.

2. Kallman S. Elinoff, attorney registration number 18677, is hereby SUSPENDED from the practice of law in the State of Colorado for a period of THREE YEARS, with one year of the suspension period stayed while Elinoff is placed on probation pursuant to C.R.C.P 251.7 for a period of one year on the condition that he not engage in any conduct during the period of suspension or probation which results in the commencement of proceedings under C.R.C.P. 251.12(e).

3. The effective date of the suspension is the date the stay presently pending in this case is lifted.

3. All remaining provisions of the September 17, 1999 Opinion and Order are unchanged and the stay of execution previously entered in this case will continue until either the period of time within which to appeal pursuant to C.R.C.P. 251.26(f) has expired or appellate proceedings have concluded.

DATED THIS 5th DAY OF JANUARY, 2000.

[3] One member of the hearing board wrote in a dissenting opinion to the September 17, 1999 ruling that Elinoff was remorseful for his misconduct, a conclusion not shared at that time by the other hearing board member or the PDJ.