***People v. Marie Bernal*. 19PDJ009. July 3, 2019.**

Following a sanctions hearing, the Presiding Disciplinary Judge suspended Marie Bernal (attorney registration number 45617) for three months, effective August 7, 2019. Bernal is required to formally petition for reinstatement and prove by clear and convincing evidence that she has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

After she was suspended from the practice of law for administrative reasons, Bernal failed to wind down her law practice, including by neglecting to withdraw from matters pending before the Denver immigration court. She also refused to cooperate with disciplinary authorities investigating her case. Through this misconduct, Bernal violated Colo. RPC 1.16(d) (upon termination a lawyer must take steps to protect a client's interests, including by giving reasonable notice to the client); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); and Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority).

The case file is public per C.R.C.P. 251.31. Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** MARIE BERNAL, #45617	Case Number: **19PDJ009**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

After she was suspended from the practice of law for administrative reasons, Marie Bernal ("Respondent") failed to wind down her law practice, including by failing to withdraw from matters pending before the Denver immigration court. She also refused to cooperate with disciplinary authorities investigating this case. Respondent will thus be suspended for a period of three months, with the requirement that she seek reinstatement, if at all, by petitioning to regain her license.

I. PROCEDURAL HISTORY

On January 30, 2019, Bryon M. Large, Office of Attorney Regulation Counsel ("the People"), filed a complaint with the Presiding Disciplinary Judge ("the Court"). The same day, the People sent copies of the complaint to Respondent via certified mail to her registered business address.[1] When the due date for Respondent's answer had passed, the People sent her a letter on February 25, 2019, reminding her to answer.

On March 12, 2019, the People moved for entry of default. The Court granted the People's default motion on April 8, 2019. 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.[2]

At the sanctions hearing held under C.R.C.P. 251.15(b) on June 26, 2019, Large represented the People. Respondent did not appear. During the hearing, the People's exhibits 1-6 were admitted into evidence. No testimony was offered.

[1] *See* Ex. 2.
[2] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

II. ESTABLISHED FACTS AND RULE VIOLATIONS

Respondent was admitted to practice law in Colorado on February 19, 2013, under attorney registration number 45617. She is thus subject to the Court's jurisdiction in this disciplinary proceeding.[3]

In June 2017, Respondent was administratively suspended for failing to comply with continuing legal education requirements. On May 1, 2018, she was administratively suspended for failing to comply with lawyer registration requirements for the 2018 calendar year.

As of May 25, 2018, Respondent was listed as the attorney of record in at least six cases pending before the Denver immigration court. She was listed as the nonprimary attorney of record—co-counseling with lawyer Miguel Velasco—in the immigration matters of Carmen Figueroa-Lopez, Alfredo Toloza-Diaz, and Omar Tellez-Hernandez. She was the primary attorney of record in the immigration matters of Sergio Antonio Venegas-Guzman, Raul May-Dzib, and Erick Castrejon-Sanchez.

Per 8 C.F.R. § 1292.1(a)(1), a licensed "attorney" may practice law before immigration tribunals. "Attorney," in turn, is defined in 8 C.F.R. § 1001.1(f), which requires an attorney to be eligible to practice law in, and be a member in good standing of, the bar of any state. Further, the attorney cannot be subject any order suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law.[4] But Respondent is administratively suspended in Colorado, so under these provisions she is not in good standing or eligible to practice law in Denver immigration court.

C.R.C.P. 251.28 requires an attorney to complete certain steps when an order is issued suspending the attorney. Those steps include winding up affairs, providing notice to clients of the suspension, surrendering client property, and notifying opposing counsel by certified mail of the suspension and the attorney's consequent inability to represent clients after the order's effective date. The rule also requires an attorney to notify every other jurisdiction in which the attorney is admitted to practice law of the order entered against the attorney, and to file an affidavit certifying compliance with the rule. C.R.C.P. 251.28(c) expressly extends these requirements to administratively suspended attorneys who are not reinstated within fourteen days of the suspension order.

Respondent failed to notify the Executive Office for Immigration Review ("EOIR") of her suspension and ineligibility to practice law.[5] She failed to notify by certified mail the Chief Counsel for Immigration and Customs Enforcement—opposing counsel in the May-Dzib and Castrejon-Sanchez matters—of her suspension. Nor did she withdraw from either

[3] *See* C.R.C.P. 251.1(b).
[4] *See* Ex. 4.
[5] The EOIR is a federal agency housing immigration courts and the Board of Immigration Appeals.

matter.[6] And she did not file an affidavit with disciplinary authorities certifying her compliance with C.R.C.P. 251.28.

On June 18, 2018, the People sent a letter to Respondent's registered business address, advising her of the request for investigation in this matter and requesting a response.[7] She failed to respond to this inquiry. On July 6, 2018, the People sent a letter to Respondent's registered address, notifying her of their investigation under C.R.C.P. 251.10.[8] She did not respond to this letter, either. On July 30, 2018, the People sent her another such letter,[9] but she did not reply. The People have also emailed Respondent, using her registered business email address, but she has not responded. In fact, she failed to respond to any of the People's inquiries during their investigation.

Through this misconduct, Respondent violated Colo. RPC 1.16(d), which provides that a lawyer must take steps upon termination to protect a client's interests, including by giving reasonable notice to the client; Colo. RPC 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal; and Colo. RPC 8.1(b), which provides that a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[10] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[11] 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 breached some of her most basic obligations to the legal system and to the legal profession: she violated orders prohibiting her from practicing law during her administrative suspension, and she failed to respond to the People's lawful demands for information during their disciplinary investigation.

Mental State: The order of default establishes that Respondent knowingly practiced law while her law license was suspended and knowingly failed to cooperate with the People's investigation. Because the Court can point to no evidence suggesting that Respondent knowingly violated the remaining rule at issue, it concludes that Respondent

[6] *See* Ex. 5.
[7] *See* Ex. 2.
[8] *See* Ex. 2.
[9] *See* Ex. 3.
[10] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[11] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

acted only negligently when she failed to notify opposing counsel and to withdraw from representation in the May-Dzib and Castrejon-Sanchez matters.

Injury: Respondent caused actual harm by undermining lawyers' system of self-regulation when she practiced law while her license was administratively suspended. She also disrespected the legal system and the profession by failing to respond to the People's requests for information during their investigation.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Suspension is the presumptive sanction under ABA *Standard* 6.22 when a lawyer knowingly violates a court order or rule, thereby causing a client or party injury or potential injury, or interfering or potentially interfering with a legal proceeding. Likewise, ABA *Standard* 7.2 calls for suspension when a lawyer knowingly engages in conduct that violates a duty owed as a professional, resulting in injury or potential injury to a client, the public, or the legal system.

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.[12] The People ask the Court to apply the aggravating factor of bad faith obstruction of the disciplinary proceeding by failing to comply with orders of the disciplinary authority.[13] But the Court declines to do so, as this aggravator is based on the same conduct underlying the claim premised on Colo. RPC 8.1(b). Because Respondent did not appear at the hearing, the Court is aware of just one applicable mitigating factor: her lack of prior discipline.[14]

Analysis Under ABA *Standards* and Colorado Case Law

The Court recognizes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[15] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[16] Though prior cases may be instructive 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 ABA *Standards* peg suspension as the presumptive sanction in this case, and the lone mitigator does not militate in favor of a different outcome. Colorado disciplinary jurisprudence also counsels for suspension of a lawyer who practices law during an

[12] *See* ABA *Standards* 9.21 & 9.31.
[13] ABA *Standards* 9.22(e).
[14] ABA *Standard* 9.32(a).
[15] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012).
[16] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

administrative suspension, regardless of whether the lawyer's conduct results in actual harm.[17]

Accordingly, the Court must decide the appropriate length of that suspension. The Colorado Supreme Court typically imposes less stringent discipline for violations of administrative suspension orders than for violations of disciplinary suspension orders,[18] but the ultimate sanction often hinges on a mix of factors, including whether the lawyer committed other misconduct, whether the misconduct resulted in actual harm, and whether other circumstances suggest that a lesser penalty may be condign.[19]

Here, Respondent failed to adhere to the dictates of her administrative suspension, which caused the lawyer regulation system and the profession itself some reputational and systemic injury. But the Court has seen no evidence to suggest that her misconduct caused clients actual harm.[20] Further, Respondent has not been charged with or found in violation of any other ethical infractions, in this or in other matters. The Court therefore adopts the People's recommendation and imposes a short suspension of three months in this matter. Respondent appears to have turned her back on the profession and her law license, however, which justifies requiring her to petition for reinstatement under C.R.C.P. 251.29(c) following her suspension.[21]

IV. CONCLUSION

After she was administratively suspended, Respondent failed to withdraw from client matters, failed to notify opposing counsel, and failed to wind down her practice, as she was obligated to do. She thereby violated her duties to the legal system and the duties she owes as a professional. Further, she never responded to demands for information from disciplinary authorities. The Court concludes that Respondent should be suspended for a period of three months, with the requirement that she petition for reinstatement.

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[17] *See People v. Johnson*, 946 P.2d 469, 471 (Colo. 1997) (suspending a lawyer for eighteen months after he violated an administrative suspension order and engaged in additional misconduct); *People v. Rivers*, 933 P.2d 6, 8 (Colo. 1993) (suspending a lawyer for one year and one day for disregarding an administrative suspension order and for violating other ethical rules).

[18] *Compare Rivers*, 933 P.2d at 8 (suspending a lawyer for violating an administrative suspension order), *with People v. Zimmermann*, 960 P.2d 85, 88 (Colo. 1998) (disbarring a lawyer who violated a disciplinary suspension order and engaged in other misconduct, causing actual harm to clients).

[19] *See People v. Dover*, 944 P.2d 80, 82 (Colo. 1997) (finding public censure appropriate in light of mitigating factors where an attorney violated an administrative suspension order yet informed the court of his suspension at an early stage in court proceedings); *People v. Kargol*, 854 P.2d 1267, 1269 (Colo. 1993) (suspending for one year and one day a lawyer who had been administratively suspended yet appeared as counsel of record for multiple clients even after he was put on notice of the charge of practicing law while suspended).

[20] Respondent has not appeared before the EOIR since her suspension began on June 9, 2017. *See* Ex. 6.

[21] *See In re Bauder*, 980 P.2d 507, 508-09 (Colo. 1999) (requiring a lawyer to establish his fitness to practice law in reinstatement proceedings before recommencing his practice, as the lawyer had completely refused to participate in disciplinary proceedings).

V. ORDER

The Court therefore **ORDERS**:

1. **MARIE BERNAL**, attorney registration number **45617**, will be **SUSPENDED** from the practice of law for **THREE MONTHS**. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[22]

2. If Respondent wishes to resume the practice of law, she **MUST** petition for reinstatement under C.R.C.P. 251.29(c).

3. 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.

4. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Suspension," 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.

5. The parties **MUST** file any posthearing motions **on or before Wednesday, July 17, 2019**. Any response thereto **MUST** be filed within seven days.

6. The parties **MUST** file any application for stay pending appeal **on or before Wednesday, July 24, 2019**. Any response thereto **MUST** be filed within seven days.

7. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Wednesday, July 17, 2019**. Any response thereto **MUST** be filed within seven days.

DATED THIS 3rd DAY OF JULY, 2019.

Original Signature on File

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[22] 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) 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.

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