***People v. Anselm Andrew Efe*. 18PDJ041 (consolidated with 19PDJ002). April 4, 2020.**

A hearing board suspended Anselm Andrew Efe (attorney registration number 38357) from the practice of law for one year and one day, effective August 3, 2020. To be reinstated, Efe will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

Efe committed misconduct in two separate client matters. In one matter, he placed a client's retainer directly into his operating account without earning the funds, neglected to notify the client of the basis of his fee in writing, and knowingly failed to return unearned funds to the client for six months. Through this conduct, Efe violated Colo. RPC 1.5(b) (a lawyer who has not regularly represented a client must communicate to the client in writing the basis or rate of the lawyer's fees within a reasonable time after beginning the representation); Colo. RPC 1.15A(a) (a lawyer must hold the property of a client separate from the lawyer's own property); and Colo. RPC 1.16(d) (on termination of the representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, including refunding any advance payment of fees that have not been earned).

In the second matter, Efe filed frivolous and groundless motions and caused unnecessary delays that slowed the progress of the case. As a result, Efe personally was sanctioned $33,000.00 to cover the opposing party's attorney's fees. Efe failed to satisfy that award for seventeen months, refusing to pay until he was held in contempt, arrested, and jailed. Through this conduct, Efe violated Colo. RPC 3.1 (a lawyer is prohibited from bringing or defending a proceeding, or asserting or controverting an issue in that proceeding, unless there is a basis in law and fact for doing so that is not frivolous); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); and Colo. RPC 8.4(d) (it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice).

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:** ANSELM ANDREW EFE, #38357	Case Number: **18PDJ041 (consolidated with 19PDJ002)**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

Anselm Andrew Efe ("Respondent") committed misconduct in two separate client matters. In one matter, he placed a client's retainer directly into his operating account without earning the funds, neglected to notify the client of the basis of his fee in writing, and knowingly failed to return unearned funds to the client for six months. In the other matter, Respondent filed frivolous and groundless motions and caused unnecessary delays that slowed the progress of the case. As a result, Respondent personally was sanctioned $33,000.00 to cover the opposing party's attorney's fees. Respondent failed to satisfy that award for seventeen months, refusing to pay until he was held in contempt, arrested, and jailed. Respondent's misconduct warrants a suspension of one year and one day.

I. PROCEDURAL HISTORY

On July 3, 2018, the Office of Attorney Regulation Counsel ("the People") filed with Presiding Disciplinary Judge William R. Lucero ("the PDJ") a four-claim complaint in case number 18PDJ041, alleging that Respondent had violated Colo. RPC 1.5(b), Colo. RPC 1.8(f)(1), Colo. RPC 1.15(A)(a), and Colo. RPC 1.16(d). Respondent did not timely submit an answer, and the People moved for default on August 7, 2018. Two weeks later, before the PDJ entered default, Respondent sought permission to file an answer; the PDJ allowed him to answer and denied the People's default motion. The matter was then set for a two-day hearing in early March 2019. In early February 2019, at Respondent's unopposed request, the PDJ continued the hearing. The hearing was rescheduled for late July 2019.

The People filed a three-claim complaint in case number 19PDJ002 on January 8, 2019, alleging that Respondent had violated Colo. RPC 3.1, Colo. RPC 3.4(c), and Colo. RPC 8.4(d). The PDJ granted Respondent an extension of time to file an answer, which Respondent submitted on February 22, 2019. A hearing in the case was set for September 2019.

The People moved in May 2019 to consolidate case numbers 18PDJ041 and 19PDJ002, to vacate the July 2019 hearing, and to hold a hearing in the consolidated cases during the September 2019 hearing setting. That hearing was in turn continued to January 2020, after Respondent sought a continuance to mourn the sudden death of his younger brother.

In September 2019, on the People's unopposed motion, the PDJ struck paragraphs 10 and 12 of the complaint in case number 18PDJ041 and dismissed the associated claim premised on Colo. RPC 1.8(f)(1).[1] Shortly before the hearing the PDJ granted the People's motion *in limine* to preclude certain witnesses' testimony; the PDJ reasoned that those witnesses, whom Respondent had failed to timely disclose, could not offer any testimony relevant to the issues in the case. The PDJ denied the People's motion *in limine* to preclude Respondent from introducing late-disclosed non-stipulated exhibits. But the PDJ ordered Respondent to promptly organize and clearly identify the previously disclosed documents that he planned to use as exhibits.

A hearing on the consolidated cases was held on January 27 through 29, 2020. The PDJ presided over the hearing; he was joined on the Hearing Board by citizen member Kerry M. Gabrielson and lawyer Terry Rogers. Erin R. Kristofco and Michele L. Melnick represented the People, and Respondent appeared *pro se*. The PDJ admitted and the Hearing Board considered stipulated exhibits S1-S71, the People's exhibits 1-3, and Respondent's exhibits A, C, H, R, CC, LL, TT, UU, and VV. The Hearing Board heard testimony from Janet Layne, Patricia Schapiro,[2] Judge Lael Montgomery, Jeffrey M. Villanueva, Magistrate Judith Goeke, and Respondent. On the morning of the final day of the hearing Respondent requested a sequestration order, which the PDJ entered.

II. FACTUAL FINDINGS AND ANALYSIS[3]

Respondent was admitted to practice law in Colorado on December 11, 2006, under attorney registration number 38357. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[4]

Respondent grew up and attended law school in Nigeria. He was admitted to the bar and practiced law there for many years. He then moved to the United States to attend the University of Iowa, eventually earning an LL.M. in international law. Thereafter, he taught international law for five years while carrying on a limited law practice. After relocating to Colorado, he passed the Colorado bar examination in 2006 and has since maintained a varied solo law practice in criminal, personal injury, appellate, and domestic relations law.

[1] Claim II in case number 18PDJ041.
[2] The People briefly recalled Patricia Schapiro to testify as an impeachment and rebuttal witness.
[3] The findings of fact, which have been established by clear and convincing evidence, are drawn from testimony at the disciplinary hearing where not otherwise indicated.
[4] *See* C.R.C.P. 251.1(b).

The Udo Matter

In April 2016, Pastor Aniefiok Udo, an Oklahoma resident, retained Respondent to investigate the whereabouts of Udo's son, who was being held in a Colorado jail. Udo asked Respondent to investigate where his son was being detained and which Colorado jurisdictions had pending criminal charges against his son. Respondent did not provide Udo, a new client, with a written statement containing the basis or rate of his fee.[5]

On April 29, 2016, Respondent accepted a $2,000.00 retainer via wire transfer from Udo.[6] The wire transfer was deposited directly into Respondent's operating account.[7] Respondent concedes that he never transferred any of this money into his trust account.[8] Respondent's bank statements show that by May 2, 2016, he had spent all but $460.52 of Udo's funds.[9] On May 20, 2016, Respondent texted Udo, "I sent you the new charges and the 'letter of representation.'"[10] Udo did not respond.

Instead, on June 1, 2016, Udo terminated his attorney-client relationship with Respondent by text, requesting a full refund.[11] Respondent replied the next day, promising to calculate which portion of the retainer had been earned and to refund the remainder.[12] Udo repeatedly requested a refund during summer 2016,[13] but Respondent never issued an accounting or a refund.

Udo eventually filed a request for investigation with the People. On December 5, 2016, the People sent Respondent a letter requesting information about Udo's representation of Udo.[14] Two days later, on December 7, 2016, Respondent sent Udo an invoice, which showed that he had earned $980.00 and thus owed Udo $1,020.00 in unearned funds.[15] Respondent issued the refund the same day, more than six months after Udo terminated the representation, requested an accounting, and asked for the return of his retainer. At the disciplinary hearing Respondent did not explain why he delayed for so long in returning Udo's money. But he did concede that "it took too long" for him to make the refund, acknowledging, "that was wrong of me."

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[5] At the disciplinary hearing, Respondent introduced a separate unsigned, undated fee agreement that contained his hourly rate; this agreement purports to set forth the terms of Respondent's representation of Udo's son, not Udo. *See* Ex. TT.
[6] Ex. S46.
[7] Ex. S47 at 275.
[8] *See also* Exs. S47 & S48.
[9] Ex. S48 at 279. Respondent had consumed all but $11.69 of Udo's funds by July 5, 2016. *See* Ex. S49 at 289.
[10] Ex. S54 at 048.
[11] Ex. S54 at 048.
[12] Ex. S54 at 049.
[13] Ex. S54 at 050-56.
[14] Ex. S53.
[15] *See* Ex. S52, which Respondent provided to the People in response to their inquiries.

Rule Violations

The People allege that Respondent violated three rules while representing Udo: Colo. RPC 1.5(b), which provides that when a lawyer has not regularly represented a client, the lawyer must communicate to the client in writing the basis or rate of the lawyer's fees within a reasonable time after beginning the representation; Colo. RPC 1.15A(a), which requires a lawyer to hold the property of a represented client separate from the lawyer's own property; and Colo. RPC 1.16(d), which provides that on termination of the representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, including refunding any advance payment of fees that have not been earned.

Because Respondent admitted at the disciplinary hearing that he violated Colo. RPC 1.15A(a) and Colo. RPC 1.16(d)—and we find that the evidence adduced bears out those violations—we address in substance only the remaining contested claim, alleging a violation of Colo. RPC 1.5(b). The People maintain that Respondent contravened Colo. RPC 1.5(b) because even though he had not before represented Udo, he failed to provide Udo any writing memorializing the basis or rate of his fee. Respondent counters that he sent a fee agreement to Udo, citing his text on May 20, 2016,[16] as proof that he forwarded to Udo a writing setting forth the rate of his fee.

We find that the People have proved this claim by clear and convincing evidence. We have no confidence that Respondent ever sent any writing to Udo; as his other text exchanges with Udo illustrate, Respondent's promises often went unfulfilled. But even if Respondent had sent to Udo his fee agreement with Udo's son,[17] we cannot find that the writing satisfies his obligations under Colo. RPC 1.5(b). That agreement is undated, unsigned, addressed to Udo's son, and purports to establish terms governing Respondent's representation of Udo's son in three criminal cases—tasks that Udo did not retain him to complete. We cannot agree that providing to a new client a fee agreement with the client's family member (which itself governs an engagement quite unlike the client's requested task) adequately notifies the client of the fees the lawyer will charge. We conclude that Respondent violated Colo. RPC 1.5(b).

The Schapiro Matter

Patricia ("Wife") and Marc ("Husband") Schapiro were married in September 1980 and had two sons, both now adults. On January 5, 2016, Wife petitioned in Jefferson County court for legal separation from Husband through her counsel Lily Appelman and William Hunnicutt.[18] Through his then-counsel William King, Husband responded, seeking a dissolution of marriage decree.[19] Because the couple had no minor children, the dissolution

[16] *See* Ex. S54 at 048.
[17] *See* Ex. TT.
[18] Ex. S55.
[19] Ex. S56.

proceeding centered entirely on allocation of the marital assets, including four Colorado properties, retirement assets, and Husband's ownership share in entities related to a business that he co-owned.[20]

Early in the divorce proceeding, the parties agreed to the appointment of retired Judge Lael Montgomery of the Judicial Arbiter Group to serve as an appointed judge.[21] The Colorado Supreme Court approved the appointment in February 2016.[22] Soon after she was appointed, Judge Montgomery entered an order directing Wife to collect and pay all bills from the martial estate, including all attorney's fees for both parties. The judge took this action in part because in spring 2016, Husband, unbeknownst to Wife, took out a sizeable line of credit on the couple's marital home in contravention of the judge's express orders.[23] Judge Montgomery ultimately sentenced Husband to three days in jail for this contemptuous conduct.[24]

On April 29, 2016, King withdrew as Husband's counsel of record.[25] Respondent entered his appearance for Husband on May 12, 2016.[26] By all accounts, Respondent stepped into an already contentious dissolution proceeding on behalf of what Judge Montgomery called a "difficult client."[27] According to the judge, Husband was "erratic," refused to follow through on court orders, and exhibited "impaired thinking." Throughout spring and summer 2016, Wife's counsel pressed for disclosure of business documents related to the valuation of Husband's business entities,[28] later alleging that Husband had independently taken action to destroy his business records.[29]

Meanwhile, Husband grew concerned that Wife had "endeavored to create confrontations with [him] on several occasions, the intent being to provoke [him] to act out in a hostile way which would afford [Wife] the opportunity to call the police on [him]."[30] On August 9, 2016, Respondent filed on Husband's behalf a complaint for a civil protection order against Wife.[31] The form complaint requested that the movant check applicable boxes identifying reasons for seeking a civil protection order; Respondent checked the box for stalking (per C.R.S. section 13-14-101(2)) and the box for physical assault, threat, or another situation.[32] The form also asked for a description of the most recent and most serious

[20] *See* Ex. S27 at 1623-24.
[21] Ex. S64.
[22] Ex. S62.
[23] *See* Ex. S27 at 1629-30.
[24] *See* Ex. S1 at 1935.
[25] *See* Ex. S1 at 1937.
[26] *See* Ex. S1 at 1936.
[27] Ex. S23 at 1597.
[28] *See, e.g.,* Ex. S4.
[29] Ex. S70 at 1899.
[30] Ex. 2 at 1445.
[31] Ex. 2.
[32] Ex. 2 at 1444.

incidents prompting the request for a civil protection order. Respondent enumerated several bases for the request, including:

- "Left a package and note for '[Husband] only' . . . The package included a cryptic note about forgiving me and a book titled 'An unquiet Mind.' She is suggesting that I may be incompetent and that I might be in need of psychiatric help, despite evidence to the contrary. The intent of these incidents of unnecessary and inappropriate contact are to cause me to suffer anxiety and emotional distress . . ."

- "Shortly after she filed for divorce, [Wife's] attorney sent me an email telling me that [Wife] was putting my clothes, medications and belongings (including photography equipment and computers) [] 'in the driveway' for pickup shortly before an impending snowstorm."

- "[Wife] parked her car in my spot at a property which we own which was designated for my use. She does not live at this property and her clear intent is to provoke me."

- "[Wife] arranged for my father, whom I had not seen in many months, to meet me 'as a surprise' at Denver International Airport with clear intent to upset and provoke me. She also urged my sons to call the police when I become upset."[33]

According to Respondent, he sought a protection order on the basis of stalking and imminent physical harm because "that's what my client said." "It wasn't up to me," he asserted, contending that he could simply write down whatever his client believed: "if he says it, that's enough." Respondent also reasoned that protection orders are regularly sought to keep the peace and that the legal "threshold is so low almost anyone can jump over it."

Magistrate Loewer held an *ex parte* temporary protection order hearing on August 9, 2016, the same day that Respondent filed the request. Respondent questioned Husband and introduced several exhibits.[34] At the hearing, the magistrate concluded that Wife had neither stalked nor harassed Husband, and that a temporary injunction order was already in place prohibiting either party from molesting or disturbing the peace of the other party.[35] The magistrate thus denied the civil protection order request, finding no "imminent danger existing to [the] life or health" of Husband.[36]

[33] Ex. 2 at 1445.
[34] *See* Ex. 3.
[35] Ex. 3 at 1806-08.
[36] Ex. S3.

On August 19, 2016, Respondent filed a motion to recuse Judge Montgomery.[37] He did so, he said, because he believed that the judge was biased against Husband and because he was concerned about the judge's "hostility." When Judge Montgomery denied the motion, Respondent filed a petition for a rule to show cause under C.A.R. 21.[38]

During autumn 2016, Wife's counsel regularly complained of delays occasioned by Husband's refusal to provide discovery. In late October 2016, Wife sought and was granted an extension of time to file her expert's report valuing the businesses at issue, given the difficulties Wife had experienced in obtaining Husband's business records.[39] Around that time, Respondent testified at the disciplinary hearing, he began to experience debilitating headaches brought on by stress, which necessitated his hospitalization on several occasions. Still, he testified, he "soldiered through and didn't cause any delays."

Wife moved to expedite progress of the case in mid-November 2016. She asserted that her efforts to conduct discovery had been stymied by Husband's noncompliance and Respondent's health issues, resulting in the cancellation of several critical events: a scheduled mediation was canceled the evening before it was to take place; the deposition of Husband's business partner was canceled less than twenty-four hours before it was to occur; and an in-person status conference with the judge was canceled on short notice.[40] Judge Montgomery granted the motion, reset the deposition[41] and status conference, and ordered Respondent to associate with co-counsel knowledgeable in domestic law who could step in as substitute counsel if necessary.[42] Respondent never associated with co-counsel.

In mid-December 2016, Judge Montgomery continued the permanent orders hearing several months into the future. She did so because she wanted to hold a hearing first to determine whether Husband was competent, and also because the delays and cancellations had slowed the case to a halt. Judge Montgomery further noted that Wife would have to begin liquidating martial assets to pay Respondent's fees. The judge ruled, "Liquidating assets takes time and Wife is ordered to pay [Respondent's] fees on behalf of Husband each

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[37] *See* Ex. UU.

[38] *See* Ex. A. The Colorado Supreme Court denied the petition.

[39] *See* Exs. S70 & S71.

[40] Ex. S6. Respondent disputed that these events were called off due to his health issues or his client's behavior. We give these denials no credence; he offered no alternative explanation for the cancellations, and Wife credibly testified on rebuttal that it was Respondent who canceled the events. On November 18, 2016, Wife filed another motion to compel and for sanctions, citing a litany of delays and failures to provide discovery, including Respondent's failure to submit witness disclosures, to file expert reports, and to provide disclosures about Husband's retirement and bank and investment accounts. Ex. S7. *See also* Ex. S8 (Husband's response) and Ex. S10 (Wife's reply). Judge Montgomery held off ruling on Wife's contempt motion pending a hearing to determine whether Husband was competent.

[41] The deposition was rescheduled to December 5, 2016. *See* Ex. C (deposition transcript).

[42] Ex. S5.

month when she receives [Respondent's] bill, but the court refuses to set a date each month by which [Respondent] must be paid."[43]

In late January 2017, Respondent filed a motion for a contempt citation against Wife. Respondent cited three grounds: (1) that Wife had failed to make a monthly discretionary spending disbursement by the third of every month; (2) that in contravention of a court order mandating that she hold Husband's property in good condition until he could retrieve it, Wife had destroyed packets belonging to Husband containing a substance that she believed to be cocaine; and (3) that Wife had failed to provide an adequate monthly accounting of the joint marital fund.[44] As to the second basis, Respondent explained at the disciplinary hearing that he moved for contempt against Wife because "whatever it was, she shouldn't have destroyed it," adding, "just because [Wife] said it was cocaine doesn't mean it was." The motion alleged both punitive and remedial contempt, and it sought both fines and imprisonment.

Wife responded. She acknowledged that she had not made a monthly disbursement on January 3, 2017, but explained that she had difficulty liquidating assets, noting that Husband had placed unreasonable impediments to withdrawing funds from his retirement accounts.[45] She denied the allegations that she failed to produce requisite monthly accounting to Respondent.[46] As to Husband's property destruction claim, she answered that she was "dumbfounded" by his contempt motion.[47] She attached to her response what she characterized as "a series of apoplectic emails [from Respondent] posing various conspiracy theories and veiled threats related to the cocaine matter, including threats against [Wife]."[48] Wife acknowledged that she destroyed the packets; she said that she had done so because she felt she needed to protect herself and the marital estate, as she did not want the issue of drugs to further complicate the divorce proceeding.[49]

Judge Montgomery denied Respondent's contempt motion.[50] She confuted Respondent's assertion that Wife was under any obligation to make monthly discretionary disbursements by the third of every month. She repeated a finding she had made the month

[43] Ex. S9 at 1486.
[44] Ex. S11.
[45] Ex. S12 at 1505.
[46] Ex. S12 at 1506.
[47] Ex. S12 at 1507.
[48] Ex. S12 at 1507; *see also* Ex. S12 at 1540 (email correspondence from Respondent warning that the marital home could be subject to forfeiture under state and federal law, and suggesting that certain individuals might be subject to "immense legal liability," including the court's chosen medical expert and Husband and Wife's son); Ex. S12 at 1545-46 (Wife's counsel explaining in an email that Wife found "numerous plastic packets of a white substance which [Wife] believed was cocaine," some of which "were labelled [sic] 'mild,' 'strong,' 'weak,' 'blend cut strong,'" and Respondent retorting that "[Wife] had no right to destroy anything that belongs to [Husband], neither does she have the right to destroy evidentiary material. . . . In addition, destroying any material belonging to [Husband] is contrary to existing court order. Why would she do that?").
[49] Ex. S12 at 1507-08.
[50] Ex. S13.

prior that Wife's monthly accounting was sufficient. And she observed that, "Believing the packets were a controlled substance, Wife destroyed them rather than distribute them to Husband. *See* C.R.S. 18-18-405."[51] Judge Montgomery concluded that Respondent's motion was frivolous and groundless, and she ordered Husband to pay the attorney's fees that Wife incurred in responding to the motion.

In late February 2017, Judge Montgomery held a *Sorensen*[52] hearing to determine whether Husband was competent to represent his own interests in the case.[53] At the disciplinary hearing, Judge Montgomery testified that she convened the *Sorensen* hearing because she had harbored concerns about Husband's mental health for some time. The case had been "interminably slow," she related, and she thought that Husband might need a *guardian ad litem* ("GAL") to get the case through the system. At the end of the *Sorensen* hearing Judge Montgomery appointed Gina Weitzenkorn to serve as Husband's GAL.

On March 14, 2017, Respondent presented Wife's counsel with invoices for work he performed during the prior four months—November 2016 through February 2017. The invoices, which were the first and only requests for payment that Respondent had sent during that four-month period, totaled approximately $110,000.00. Respondent threatened to withdraw as Husband's counsel unless the invoices were paid in full by noon on March 17.[54] At the disciplinary hearing, Respondent acknowledged that he had not sent out monthly bills. He said he pressed for immediate payment anyway because he knew there was money in the joint marital account. But he offered no explanation for why he held this belief and no evidence to support it.

Wife responded to this demand for immediate payment. She told Respondent that she did not at that time have the cash on hand to pay the full amount, but she made a partial payment of $17,095.00 on March 17.[55] She then began to liquidate her retirement fund, freeing up funds to pay Respondent another $10,000.00 on March 23, 2017.[56]

Even so, Respondent moved to withdraw as Husband's counsel of record on March 24, 2017, citing Wife's failure to pay for his legal services.[57] Wife objected. In her response, she noted that she "made two attorney['s] fees payments [of over $27,000.00] to [Respondent] within 9 days of his seeking payment of approximately $110,000 in fees."[58]

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[51] Ex. S13 at 1557.

[52] *See In re Sorensen*, 166 P.3d 254, 258 (Colo. App. 2007) (concluding that "the preferred procedure when a substantial question exists regarding the mental competence of a spouse in a domestic relations proceeding is for the trial court to conduct a hearing to determine whether or not the spouse is competent, so that a guardian ad litem may be appointed if needed").

[53] *See* Ex. R (transcript).

[54] *See* Ex. S14 at 1562.

[55] Ex. 1 at 1717.

[56] Ex. 1 at 1718.

[57] Ex. S15.

[58] Ex. S16. Wife also made another $10,000.00 payment on March 30, 2017. *See* Ex. 1 at 1719.

Because Respondent waited four months before he submitted his payment request, she contended, he "manufactured a conundrum of his own doing."[59] In reply, Respondent merely argued that he should not be forced to provide legal services in the face of Wife's refusal to make court-ordered payments.[60] He cited the Thirteenth Amendment to the United States Constitution and the Colorado Constitution's Bill of Rights.[61]

Judge Montgomery rejected Respondent's motion to withdraw on April 4, 2017, noting that the permanent orders hearing was just five weeks away.[62] She also stated that Respondent's "bills will be paid when Husband proceeds with withdrawing money from his 401(k) [account]."[63]

Respondent renewed his motion to withdraw on April 25, 2017, again based on Wife's failure to pay his fees.[64] Respondent also moved to continue the permanent orders hearing based on his request to withdraw.[65] At the disciplinary hearing, Respondent conceded that, save for receiving another $10,000.00 payment from Wife on April 17, 2017,[66] nothing had changed between the denial of his first motion to withdraw and the filing of his renewed motion to withdraw.

Judge Montgomery denied Respondent's requests on April 27, 2017. She disallowed the withdrawal, which she said would be "extremely and unfairly prejudicial" to Husband and to Wife, as the permanent orders hearing was to take place in about a week and a half.[67] Judge Montgomery also noted other issues for the record, including that Husband had not complied with her earlier directive to withdraw funds from his retirement accounts to pay Respondent's bills; that the parties' joint accounting expert would not release her report until Husband signed her engagement letter; that counsel should exchange trial management certificates by May 5, 2017; and that Husband's proposed expert witness could not testify, as "[n]o expert report has even been written, much less provided to the other side."[68]

On May 4, 2017, Respondent again moved to withdraw, this time on the grounds that Husband had terminated the representation.[69] Four days later, on May 8, 2017, he again filed a motion to continue the hearing.[70] Judge Montgomery held a pretrial status conference the same day and denied both motions. In an ensuing order, the judge acknowledged that

[59] Ex. S16 at 1670.
[60] Ex. S18.
[61] Ex. S18 at 1574.
[62] Ex. S17.
[63] Ex. S17 at 1569.
[64] Ex. S19.
[65] Ex. S21.
[66] *See also* Ex. 1 at 1720.
[67] Ex. S20 at 1589.
[68] Ex. S20 at 1590.
[69] Ex. S22.
[70] Ex. S24.

Respondent had a "difficult client;" she also explained, however, that she denied the motions because Respondent had represented Husband for a year and thus was very familiar with the issues, Respondent had billed over $240,000.00 in legal fees through February 2017, the litigation had thus far depleted the marital estate by nearly one million dollars, and Husband's thinking was "impaired."[71] Judge Montgomery's order also contained findings that Respondent had not filed a trial management certificate as ordered, so Wife was uncertain which witnesses to prepare for; that Respondent had not subpoenaed witnesses for the hearing; and that Respondent declined to say which potential witnesses he may have arranged to appear at the hearing.

On the morning of May 10, 2017—the first day of the permanent orders hearing—Respondent filed yet another motion to continue. The motion was premised on Respondent's late receipt and consequent inability to digest the information contained in the joint financial expert witness's report, which was delivered on May 5, 2017, at a time when Respondent's motion to withdraw was pending.[72] Judge Montgomery denied the motion, and the permanent orders hearing began as planned that day. The hearing ended on May 12, 2017. Respondent filed a trial management certificate three days later, on May 15, 2017.[73]

Judge Montgomery entered corrected permanent orders on May 24, 2017.[74] In those orders, she addressed attorney's fees and costs. She found that through the end of February 2017, Respondent and Husband's former counsel had charged in aggregate $324,312.00. She also found that Wife's attorneys had charged a total of $307,289.00 through the end of April 2017. "[T]he exorbitant costs in this case," the judge stated, "were driven by Husband and at times, his lawyer, [Respondent]."[75] In particular, she pointed to several of Respondent's decisions in the course of the litigation that swelled costs: seeking a protective order on legally baseless grounds; moving to hold Wife in contempt for disposing of packets containing what she feared was cocaine; threatening to hold Wife in contempt if she failed to pay $100,000.00 in attorney's fees within seventy-two hours; and filing repeated motions to withdraw shortly before trial and after billing $240,000.00 in attorney's fees.[76] Judge Montgomery also took note of Respondent's failure to timely file a trial management certificate, his failure to subpoena witnesses for the hearing, and his refusal to say who would appear on Husband's behalf.[77]

Husband's GAL urged the court to assess fees against Respondent personally for some of the expenses Wife incurred. "The problem the court has," Judge Montgomery wrote, "is that by all appearances Husband and his lawyer worked in concert (including on

[71] Ex. S23 at 1596-97.
[72] *See* Ex. S25.
[73] Ex. S26.
[74] *See* Ex. S27.
[75] Ex. S27 at 1635.
[76] Ex. S27 at 1635-36.
[77] Ex. S27 at 1636.

the many crises and unnecessary and frivolous logjams that slowed the progress of this case.)"[78] She concluded that about $100,000.00 of Wife's attorney's fees were attributable to Husband's and Respondent's "failure to respond to requests for information, threats to file, or actual filing of, substantially frivolous, substantially groundless or substantially vexatious pleadings."[79] In the end, Judge Montgomery ordered Respondent to pay $33,000.00 toward Wife's attorney's fees.[80] Respondent was told to pay the award in full by August 24, 2017—three months from the entry of the permanent corrected orders.[81]

Respondent did not comply with Judge Montgomery's order. Instead, Respondent and Husband both appealed. Wife hired Jeffrey Villanueva as her appellate counsel. On August 29, 2017, Wife filed a motion in Jefferson County District Court seeking a remedial contempt citation against Respondent for failing to pay her the $33,000.00 as ordered.[82] According to Villanueva, before he filed the contempt motion he sent Respondent at least three emails to remind him of his obligation, but Respondent largely ignored those communications.

Magistrate Shelley Brown Rodriguez declined in October 2017 to take action on Wife's contempt request, finding that she lacked jurisdiction due to Respondent's pending appeal.[83] Wife sought review of that order, which Judge Diego Hunt reversed and remanded on April 3, 2018. Judge Hunt concluded that the magistrate had jurisdiction to enforce the permanent corrected orders, as Respondent had not sought a stay of the judgment's execution.[84] A little more than a month later, on May 10, 2018, Respondent made a partial payment of $10,000.00—a little less than a third of what Judge Montgomery had ordered him to pay.[85]

On May 16, 2018, Respondent appeared before Magistrate Rodriguez for an advisement on Wife's pending contempt motion. Respondent pleaded not guilty, and the matter was set for a contempt hearing in three months' time.[86] On August 10, 2018, immediately before Magistrate Rodriguez convened the contempt hearing, the parties reached a stipulation in the matter whereby Respondent would pay the remainder of what he owed, plus 8 percent interest running from August 25, 2017, within forty-five days.[87] If

[78] Ex. S27 at 1636.
[79] Ex. S27 at 1636-37.
[80] Ex. S27 at 1637.
[81] Ex. S29.
[82] Ex. S30.
[83] *See* Ex. S32.
[84] Ex. S32.
[85] Ex. S38 at 025.
[86] Ex. S33.
[87] Ex. S36.

Respondent made the full payment the contempt would be dismissed; if he did not, a contempt hearing would be held on October 12, 2018.[88]

But during autumn 2018 Respondent paid Wife nothing. So, after reviewing the full record of the underlying dissolution proceeding, Magistrate Judith Goeke held a contempt hearing on October 12, 2018.[89] Villanueva appeared on Wife's behalf, and Respondent appeared *pro se*. Villanueva argued that Respondent had known about the award for seventeen months yet had paid only $10,000.00 during that time, despite the fact that he had earned $240,000.00 in ten months of representing Husband.[90] Respondent testified, without evidentiary support, that he lacked the means to pay.

Magistrate Goeke found Respondent in remedial contempt of Judge Montgomery's orders.[91] At the conclusion of the hearing Magistrate Goeke remarked, "I find that the bulk of [Respondent's] testimony was devoted to basically blaming others for how he got in this situation. . . . I find that what he was trying to do is really obscure the issue here, which is that the only issue is his ability to pay."[92] She concluded, "And when it comes right down to his ability to pay, he offered very little other than just his statements."[93] The magistrate held that Respondent had the ability to comply and instead simply did not wish to pay.[94] She noted that Respondent declined to answer questions about his 2017 income and failed to support his assertions with any evidence, such as bank statements, tax returns, profit and loss statements, or balance sheets.[95] She issued and hand-delivered to Respondent a *mittimus*, which ordered him to report to jail in two weeks' time—no later than noon on October 26, 2018—to serve an indefinite sentence.[96] The *mittimus* made clear that Respondent could purge the contempt at any time by paying $23,000.00 plus interest.[97]

Respondent neither paid the amount owed nor turned himself in to Jefferson County jail on the appointed date. Instead, he petitioned for review of the order, though he did not seek a stay of execution.[98] At the disciplinary hearing, he testified that he disobeyed the order because he was worried that Husband's legal interests would be harmed if he reported to jail. If he had turned himself in, Respondent elaborated, Husband's appeal would have lapsed, and he would have missed a significant deadline. Respondent claimed that he placed Husband's interests above his own and thus made this "sacrifice" for Husband.

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[88] Ex. S36.
[89] *See* Ex. S38.
[90] Ex. S38 at 024.
[91] Ex. S39.
[92] Ex. S38 at 117.
[93] Ex. S38 at 117.
[94] Ex. S38 at 119.
[95] Ex. S38 at 118.
[96] Ex. S37.
[97] Ex. S37.
[98] On January 24, 2019, Judge Hunt affirmed Magistrate Goeke's contempt order. *See* Ex. S42.

On October 30, 2018, Magistrate Goeke issued a no-bond warrant for Respondent's arrest.[99] Still, Respondent neither paid nor reported to jail. On January 10, 2019, the magistrate issued a minute order confirming that Respondent had not purged the contempt and that his warrant was to remain active.[100] Respondent was arrested on January 17, 2019. He arranged to make the full payment and thus purged the contempt on February 1, 2019. Villanueva promptly sent notice to the court. Magistrate Goeke testified that she first received notice that Respondent had purged the contempt on February 4, 2019, and that she issued an order releasing him from jail within an hour.[101]

Rule Violations

At the outset, we turn to a defense Respondent advanced to defeat all three claims pleaded in the Schapiro matter: that he was the victim of bias on the basis of race and national origin. Judge Montgomery and Magistrate Goeke, he said, both issued orders against him which he deemed irregular and which he thus concluded were motivated by racism. "We don't see racism," he said, "we see the effect of it," pointing as support for his claim to these judicial officers' rulings, which he characterized as departures from substantive law and procedure.

We find no evidence that Respondent was the victim of bias on the basis of race or national origin. When Respondent was called on to cite the bases for this allegation, he repeatedly pointed to instances in which Judge Montgomery issued rulings against his *client*, not against him. Judge Montgomery denied harboring bias against Respondent, though she did admit to frustration with his lawyering, including his apparent willingness to do whatever Husband requested of him. And while Judge Montgomery did issue adverse rulings in the proceeding, none of those rulings were felled on appellate review, undercutting Respondent's claim that the rulings significantly deviated from normal procedures or lacked legal support. We reject this defense, and we turn to each alleged rule violation.

Colo. RPC 3.1

Colo. RPC 3.1 prohibits a lawyer from bringing or defending a proceeding, or asserting or controverting an issue in that proceeding, unless there is a basis in law and fact for doing so that is not frivolous. We use an objective standard to assess whether motions are frivolous.[102]

The People claim that Respondent violated this rule in two ways. First, the People contend that Respondent violated Colo. RPC 3.1 by filing a frivolous motion for a protection

[99] Ex. S40.
[100] Ex. S41.
[101] Exs. S43 & S44. No evidence or testimony was presented to explain the lag in notice provided to Magistrate Goeke.
[102] *See In re Olsen*, 2014 CO 42, ¶ 20.

order against Wife, premised on allegations that Wife, without regard for the weather, left a box of Husband's property outside, and that she arranged for Husband's father to pick him up at the airport when she knew that Husband was angry with his father. Second, the People allege that Respondent violated the rule by filing a frivolous motion to hold Wife in contempt for wrongfully disposing of Husband's property after she threw away packets of what she feared contained cocaine.

Respondent contests this claim, arguing that he zealously represented his client within the bounds of the law. Protection orders are routinely requested, he argues, and are appropriately sought in any situation in which a person has a good-faith argument that the person is being stalked or feels endangered. Further, he notes, the magistrate who ruled on the temporary protection order did not deem it frivolous. Respondent further claims that he was fully justified in seeking to hold Wife in contempt for disposing of personal property, as "constant violation of court orders by [Wife] was a repetitive feature of this case."[103]

The Hearing Board concludes that Respondent violated Colo. RPC 3.1 by lodging frivolous and groundless motions. His request for a temporary restraining order was groundless, as the facts he recited—that more than eight months prior Wife had placed a box of Husband's property outside before an impending snowstorm and that she invited Husband's father to pick him up the airport—failed to satisfy the legal bases for filing the request. None of those facts objectively supported his contention that Wife had stalked or physically threatened Husband. The contempt motion that Respondent filed against Wife for disposing of Husband's property was likewise frivolous, as Respondent had no good faith legal basis to use the legal system to recover possibly illegal goods or to punish Wife for disposing of such goods.

Colo. RPC 3.4(c)

Colo. RPC 3.4(c) proscribes lawyers from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. This rule has been read to require a respondent to prove that she or he refused to comply with the order in good faith and based on open noncompliance in order to test the order's validity.[104]

The People allege that Respondent contravened this rule when he failed for seventeen months, from roughly August 2017 through January 2019, to pay Wife $33,000.00

[103] Respondent's Hr'g Br. at 12.

[104] *See In re Ford*, 128 P.3d 178, 181 (Alaska 2006) (finding that the proper course of action for an attorney who believed a court's order was invalid was to openly inform the court that he could not comply with the order, challenge the order, and take steps to preserve the status quo during that challenge); *Gilbert v. Utah State Bar*, 379 P.3d 1247, 1256 (Utah 2016) (remarking that the rule stands, "at a minimum, for the proposition that an attorney must either obey a court order or alert the court that he or she intends to not comply with the order").

in attorney's fees as ordered by Judge Montgomery. The People also claim that Respondent violated Magistrate Goeke's order by refusing to pay the attorney's fee award or to report to jail by October 26, 2018. Respondent states that he did not knowingly disobey either obligation—he simply had no ability or means to fulfill the obligation. He also contends that he "had a good faith belief that he had no obligation to turn himself over to Jefferson County Jail, while he attempted to borrow the money he needed to pay the attorneys' [sic] fees."[105]

We find that Respondent violated Colo. RPC 3.4(c), both by refusing to obey Judge Montgomery's order to pay Wife $33,000.00 in attorney's fees and by refusing to comply with Magistrate Goeke's order to either purge his contempt or turn himself in to the Jefferson County jail.

Respondent received notice on May 24, 2017, that he was legally obligated to pay the award. He ignored the award for almost twelve months, and then presented only one-third of what was owed. But he did not pay anything thereafter, not even small installments. He paid nothing between the May 2018 contempt advisement and the August 2018 contempt hearing. He was then given an additional forty-five days to pay, but he did not. When, in October 2018, Magistrate Goeke found him in contempt, she granted him an additional two weeks to comply. He did not. Throughout November and December 2018, while a warrant was outstanding, he did not comply. Even after the People filed a complaint in this case, alleging that "[t]o date, Respondent has not paid the monies owed nor turned himself in to the Jefferson County Sheriff, as ordered by the court," Respondent refused to comply with the order.[106]

Respondent contends that he had a good faith belief that he was not required to pay, in part because he says he did not have the means to do so. He offered no evidence to support this assertion. Though Respondent appealed—but did not seek to stay—the order, he never once raised before either tribunal a purported inability to comply until October 2018. After he was found in contempt, he did not openly refuse through proper legal channels to comply with Magistrate Goeke's *mittimus*; he simply ignored it. And in the disciplinary hearing, as in the contempt hearing before Magistrate Goeke, Respondent presented no evidence to support his claim that he was financially unable to fulfill his legal obligations.[107]

[105] Respondent's Hr'g. Br. at 13.
[106] Compl. ¶ 23 (case number 19PDJ002).
[107] Respondent's claim of inability to pay strains credulity; we note, as did Magistrate Goeke, that Respondent was paid $240,000.00 for representing Husband during the ten-month period between mid-May 2016 and February 2017, and that he continued to represent and charge Husband thereafter. Because he was on notice of the obligation to pay $33,000.00 in late May 2017, we have no reason to believe that he was unable to financially plan for the payment, either in a lump sum or in increments.

Colo. RPC 8.4(d)

Colo. RPC 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice. The People maintain that Respondent violated this rule by filing frivolous motions in the dissolution proceeding, by repeatedly moving to withdraw and to continue the permanent orders hearing, and by refusing to pay court-ordered attorney's fees. Respondent counters that he represented his client fearlessly and zealously, that most delays or added costs were attributable to Wife's dilatory tactics and Judge Montgomery's decision to convene a *Sorensen* hearing, and that he should not be held vicariously liable for his client's actions, if any, that may have complicated the case.

The People have proved this claim by clear and convincing evidence. Judge Montgomery credibly testified that she did not "conflate Respondent with his client," acknowledging that the case largely "ground to a halt" due to Husband's actions. But, she said, rather than advising his client about his responsibilities and helping him fulfill those obligations, Respondent neglected to do what he could to resolve the case. For example, he often simply failed to respond to opposing counsel's communications. As Judge Montgomery said, "there was just a sort of thundering silence, and the case was moribund." According to Judge Montgomery, Respondent also failed to handle tasks for which lawyers are responsible, including responding to discovery, subpoenaing witnesses, submitting expert reports, and filing a trial management certificate. These lapses, we find, prejudiced the progress of the case, caused significant delay, and added expense.[108]

At the disciplinary hearing, Respondent assailed Judge Montgomery's *sua sponte* decision to hold the *Sorensen* hearing, attributing the delays and the mounting costs in the case in large part to that decision. We reject this line of defense. That Judge Montgomery continued the permanent orders hearing because she had legitimate concerns about Husband's competence is beside the point, as it has no bearing on whether Respondent's conduct prejudiced the administration of justice.

We also find that some of Respondent's affirmative actions prejudiced the administration of justice. Respondent's two frivolous motions, as discussed above, wasted the time of judicial officers.[109] And Respondent's temporary protection order request was a drain on judicial resources, which were required to process and convene an *ex parte* hearing on the request. We also deem prejudicial Respondent's second motions to withdraw and to continue the permanent orders hearing, as he identified no new grounds on which to bring these motions. He thereby wasted judicial resources.

[108] *See People v. Murray*, 887 P.2d 1016, 1020 (Colo. 1994) (finding that a lawyer violated Colo. RPC 8.4(d) by causing a court to delay resolution of a matter).

[109] *See In re Olsen*, ¶ 23 (upholding a finding that a lawyer violated Colo. RPC 8.4(d) by bringing frivolous motions and thus wasting judicial resources).

Finally, Respondent's ongoing refusal to comply with Judge Montgomery's attorney's fees award squandered judicial resources.[110] Magistrate Rodriguez held a contempt advisement and convened a contempt hearing. Magistrate Goeke held a full contempt hearing, after reviewing the entire file of the underlying dissolution proceeding. She then spent time issuing three orders related to the contempt matter. Magistrate Goeke testified at the disciplinary hearing that she spent many hours in total dealing with Respondent's contempt matter. She also opined that because no real dispute existed concerning Respondent's failure to pay, and because he declined to present any evidence that he was unable to pay, save for his own unsubstantiated testimony, the contempt matter was a misuse of her time, which could have been spent on cases that presented actual controversies.

III. SANCTIONS

The ABA *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[111] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[112] When imposing a sanction after a finding of lawyer misconduct, a hearing board 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: In the Udo matter, Respondent violated client-centered duties to safeguard his client's money and to provide accurate and complete information about his fees. In the Schapiro matter, Respondent violated his duty as an officer of the court to abide by court orders. He also violated duties he owed to the public and to the legal system, as his conduct prejudiced the administration of justice and engendered mistrust of lawyers and the legal system.

Mental State: Respondent knowingly placed unearned funds in his operating account and knowingly ignored Udo's pleas to return his money for six months. He negligently failed to provide Udo a fee agreement. In the Schapiro matter Respondent knowingly filed frivolous motions. He knowingly refused to pay court-ordered attorney's fees and knowingly refused to turn himself in to Jefferson County jail. We also find that he knowingly prejudiced the administration of justice.

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[110] *See People v. Johnson*, 944 P.2d 524, 527 (Colo. 1997) (finding that a lawyer's failure to pay an award of attorney's fees until two years after the judgment entered was prejudicial to the administration of justice); *In re Stover*, 104 P.3d 394, 399 (Kan. 2005) (finding that a lawyer violated Kan. RPC 8.4(d) by failing to comply with court orders).

[111] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).

[112] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003), *as modified on denial of reh'g* (May 12, 2003).

Injury: In the Udo matter, Respondent retained $1,020.00 of Udo's funds for six months after his representation terminated, causing Udo financial injury and emotional distress.

In the Shapiro matter Respondent financially harmed both Husband and Wife by taking and failing to take actions that drove up attorney's fees on both sides. Villanueva testified that a case like this would normally cost each party about $130,000.00 in fees, including expert fees. Husband's combined fees of over $340,000.00 through February 2017 and Wife's combined fees of over $300,000.00 through April 2017, Villanueva said, was a "ridiculous," "staggering amount." These fees sizably diminished the marital estate, he testified. Judge Montgomery echoed his opinion, noting that the case was "a money drain" and an "unnecessary hemorrhage of the family's resources."

Respondent's refusal for seventeen months to pay the $33,000.00 awarded to Wife in attorney's fees—surrendering the full amount only when he was held in contempt of court, arrested, and jailed—significantly prejudiced the administration of justice and wasted judicial resources.

Finally, Respondent's misconduct undermined the standing of the legal profession in the community and brought lawyers into disrepute. Villanueva testified that Wife's experience with Respondent has raised "serious questions" for her about the fairness of the legal system. Villanueva also remarked that Respondent's misconduct has, in his opinion, damaged the reputation of all lawyers, especially those who practice family law. Magistrate Goeke testified that she was struck by how many times different judges had awarded or affirmed Judge Montgomery's attorney's fees award. She found it "disturbing," she said, that the contempt proceeding before her involved a lawyer, as she believes that lawyers should hold themselves to a higher standard.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction for Respondent's violations of Colo. RPC 1.15A(a) and Colo. RPC 1.16(d) in the Udo matter is set by ABA *Standard* 4.12, which calls for suspension when a lawyer knows or should know that the lawyer is dealing improperly with client property and thereby causes injury or potential injury. Public censure is the presumptive sanction under ABA *Standard* 4.63 when, as in the Udo matter, a lawyer negligently fails to provide a client with accurate or complete information. Finally, ABA *Standard* 6.22, which sets a presumptive sanction for Respondent's violations in the Schapiro matter, provides that suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party, or causes interference with the legal proceedings. Considering these standards together, we proceed in our analysis with the presumptive sanction of suspension.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the sanction.[113] As explained below, the Hearing Board applies eight factors in aggravation, three of which are given significant weight, and two factors in mitigation, one of which carries substantial weight. We evaluate the following factors.

Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): Respondent was disciplined in 2014 for representing clients before the Denver Immigration Court without the proper work authorization required for his immigration status. He stipulated to violations of Colo. RPC 1.4(a)(5), Colo. RPC 8.4(c), and Colo. RPC 8.4(d), and was suspended for one year and one day, all but six months stayed on the successful completion of a three-year period of probation.[114] We weigh this aggravating factor very heavily, as Respondent was still on probation when he committed much of the misconduct in the Udo and Schapiro cases.

Dishonest or Selfish Motive – 9.22(b): Respondent acted selfishly by failing to issue a refund to Udo for more than six months after Udo terminated the representation. In the Schapiro matter, Respondent acted selfishly by refusing to timely pay the $33,000.00 in attorney's fees as ordered. We give this aggravator average weight.

Pattern of Misconduct – 9.22(c): The People contend that Respondent engaged in a pattern of behavior that delayed and obstructed the Schapiro dissolution proceeding. We agree. Respondent repeatedly failed to follow court orders and filed frivolous motions. Respondent also exhibited a pattern of disregarding his financial obligations; he delayed in returning Udo's money for six months, and he waited seventeen months to satisfy the attorney's fees award against him. We award this factor significant weight in aggravation.

Multiple Offenses – 9.22(d): Because Respondent violated six separate rules of professional conduct in two different client matters, we apply this aggravating factor and accord it average weight.

Bad Faith Obstruction of the Disciplinary Proceedings – 9.22(e): The People urge us to apply this aggravator, but we decline to do so. Although Respondent failed to timely provide to the People his prehearing materials, we do not have sufficient evidence to find that he acted in bad faith to obstruct this disciplinary proceeding.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): Throughout the hearing Respondent maintained that he acted in accordance with the law and his duties in the

[113] *See* ABA *Standards* 9.21 and 9.31.

[114] The PDJ terminated Respondent's probation effective May 7, 2018, after Respondent attested to his successful completion of the terms of his probation.

Schapiro matter. When we prompted him to reflect on his behavior in that case, he retorted that his introspection was that he has been shocked by "ridiculous" rulings and the unfairness of the judiciary. Respondent's refusal to consider how his actions contributed to the delay, difficulty, and waste of resources in the Shapiro case is troubling; because he accepts responsibility for nothing, we have grave concerns that he may engage in similar behavior in the future. We give this aggravating factor great weight.

Vulnerability of Victim – 9.22(h): We agree with the People that Udo was vulnerable because he lived out of state and therefore faced additional challenges in seeking a refund of unearned fees. This dynamic was exacerbated because Respondent never provided Udo with his fee schedule, making it particularly difficult for Udo to dispute the fees. We also find that both parties in the Schapiro matter were vulnerable. Husband's thinking was impaired; as a result, both he and Wife were subject to Respondent's tactics and thus were saddled with enormous attorney's fees driven by Respondent's delays and obstructions. We give this factor modest aggravating weight.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has been licensed to practice law in Colorado since 2006. Before that, he practiced law in Nigeria for many years. We give this factor average weight.

Indifference to Making Restitution – 9.22(j): Respondent did not return Udo's money for more than six months after Udo began imploring him to send a refund. This aggravating factor warrants average weight.

Mitigating Factors

Absence of Dishonest or Selfish Motive – 9.32(b): Respondent argues that this mitigating factor should apply because he refunded unearned fees to Udo. But we are not swayed that returning unearned fees six months late demonstrates an absence of a dishonest or selfish motive. We decline to apply this factor.

Personal or Emotional Problems – 9.32(c): Respondent testified that he was hospitalized for headaches caused by stress stemming from the Shapiro matter. He also stated that his marriage ended shortly after he was jailed for contempt. Because we received scant corroborating evidence or additional details about these claims, we choose to give him only very limited mitigating credit for his factor.

Full and Free Disclosure, Cooperative Attitude – 9.32(e): Respondent contends that this factor should apply in mitigation. The People disagree. Because we have seen no evidence of such an attitude, we will not apply this factor.

Character and Reputation – 9.32(g): Respondent testified that he is of good character, averring that he is both a trained pastor and a Christian lawyer. Because his testimony was conclusory and unsupported, we will not accord this factor mitigating credit.

Imposition of Other Penalties or Sanctions – 9.32(k): Respondent testified that he spent a total of seventeen days in jail before he purged his contempt. He also paid Wife $33,000.00 in attorney's fees, plus interest. We give this mitigating factor significant weight.

Remorse – 9.32(l): Respondent says that he should have rendered a more timely refund in the Udo matter but insists he fulfilled his duty of zealous representation in the Schapiro matter. The People counter that Respondent is quick to blame everyone but himself and refuses to acknowledge the wrongfulness of his actions, including his refusal to obey court orders. Respondent's few expressions of remorse about his handling of Udo's funds ring hallow, as they stand in stark contrast to his very lengthy delay in returning his client's money. We will not apply this mitigator.

Analysis Under ABA *Standards* and Case Law

The Colorado Supreme Court has directed the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[115] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[116] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[117]

The People advocate for imposition of a served suspension lasting at least one year and one day. Respondent asserts that he should receive nothing more than a private admonition. Our starting point is the presumptive sanction of suspension. Case law steers us toward the same result.

In the Udo matter, Respondent improperly retained unearned fees in his operating account and failed to promptly return those fees to his client. Under case law, failure to keep unearned fees in trust amounts to a negligent or technical conversion of client funds, which typically results in suspension.[118] Suspension has also been imposed when a lawyer,

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[115] *See In re Attorney F.*, 2012 CO 57, ¶ 19; *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

[116] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

[117] *Id.* ¶ 15.

[118] *See People v. McGrath*, 780 P.2d 492, 493-94 (Colo. 1998) (finding a suspension of one year and one day warranted where a lawyer commingled and technically converted client funds and where his conduct was aggravated by his deceit and misrepresentation, as well as by his prolonged neglect of a legal matter entrusted to him); *People v. Schaefer*, 938 P.2d 147, 150 (Colo. 1997) (suspending a lawyer for two years for negligently mishandling client funds where, in aggravation, the lawyer had an arrogant attitude regarding his ethical responsibilities and believed that he was above complying with lawyers' fiduciary responsibilities); *People v. Zimmermann*, 922 P.2d 325, 329-30 (Colo. 1996) (suspending a lawyer for one year and one day with conditions of reinstatement for reckless conversion of client funds in over ten matters); *People v. Galindo*, 884 P.2d 1109, 1112 (Colo. 1994) (suspending a lawyer for one year and one day for negligent conversion of funds where several mitigating factors were present and the lawyer voluntarily closed his law practice).

among other things, failed to take adequate steps to protect a client's interests after the representation terminated.[119]

We next turn to case law addressing conduct analogous to Respondent's in the Schapiro matter. The Colorado Supreme Court has suspended several lawyers for one year and one day for similar violations. In one case, a lawyer was suspended for one year and one day after the lawyer filed a false financial affidavit, willfully disobeyed court orders, and launched attacks on opposing counsel and an appointed GAL during a dissolution proceeding.[120] Another lawyer was likewise suspended for one year and one day for disobeying court orders, ultimately leading to a finding of criminal contempt.[121] A third lawyer was suspended for one year and one day because she disobeyed a trial court's order to remain in the courtroom during trial and then knowingly submitted false information on appeal.[122] Finally, another lawyer was suspended for one year and one day for violating a court order requiring disputed attorney's fees to be placed in trust and for failing to disclose a personal conflict of interest.[123]

Under ABA *Standard* 2.3, a baseline suspension is six months, fully served, to be adjusted in line with applicable aggravators and mitigators and guiding case law.[124] In cases involving multiple types of lawyer misconduct, however, the ultimate sanction should be at least consistent with, and generally greater than, the sanction for the most serious disciplinary violation.[125] The eight aggravating factors here, three of which carry significant weight, vastly overshadow the two factors in mitigation, even with the significant mitigation we give to the other serious penalties Respondent faced because of his misconduct. The guiding case law similarly points to a meaningful period of suspension.

As for the proper length of that suspension, we consider a few factors. First and most salient, we take into account that Respondent was previously disciplined and was on disciplinary probation when he engaged in much of the misconduct here. Second, we bear in mind that Respondent committed distinct acts of misconduct while representing two separate clients. And third, we consider that Respondent's methods of practice, as evidenced in both the Schapiro matter and his own disciplinary case before this tribunal, fall below basic professional standards. He disregards court-ordered deadlines, treats

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[119] *See People v. Davis*, 950 P.2d 596, 598 (Colo. 1998); *accord In re McPherson*, 196 P.3d 921, 930 (Kan. 2008) (suspending a lawyer for six months for, in part, delaying a refund of an unearned portion of a client's retainer for ten months). Failure to set forth the basis for a fee in writing has been met with public censure. *See, e.g., In re Wimmershoff*, 3 P.3d 417, 421 (Colo. 2000) (publicly censuring lawyer for charging an unreasonable fee, failing to explain the basis of the fee, and violating contingent fee arrangement rules).

[120] *See People v. Barnthouse*, 775 P.2d 545, 549-50 (Colo. 1998).

[121] *See People v. Blunt*, 952 P.2d 356, 358-59 (Colo. 1998).

[122] *See In re Roose*, 69 P.3d at 49-50.

[123] *See People v. Harding*, 967 P.2d 153, 154 (Colo. 1998).

[124] ABA *Standards* 2.3 ("Generally, suspension should be for a period of time equal to or greater than six months.").

[125] ABA *Standards* Preface at xx.

disclosures as optional, lacks recognition of the need to offer corroborative evidence and testimony, attempts to obscure and fails to focus on essential issues, and misrepresents or embellishes facts in the record. For these reasons, our sanctions order is progressive, with an eye toward protecting the public and deterring future such misconduct.[126]

Taken as a whole, the presumptive sanction, the imbalance of aggravating and mitigating factors, and the guiding case law all militate toward imposing a suspension of one year and one day, all served.

IV. CONCLUSION

Lawyers are essential cogs in the machine of justice. When lawyers refuse to obey court orders, file frivolous motions, and mishandle client funds, they fail to perform their function and thereby jeopardize the fair and efficient administration of justice. In two client matters, Respondent abandoned his duties as a lawyer, causing the legal process to grind to a halt, injuring his clients, and undermining the judiciary and the profession.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **ANSELM ANDREW EFE**, attorney registration number **38357**, will be **SUSPENDED** from the practice of law for **ONE YEAR AND ONE DAY.** The suspension will take effect upon issuance of an "Order and Notice of Suspension."[127]

2. Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.

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

4. The parties **MUST** file any posthearing motion **on or before Wednesday, April 15, 2020**. Any response thereto **MUST** be filed within seven days.

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[126] *Accord In re Igbanugo*, 863 N.W.2d 751, 764 (Minn. 2015) (citations and quotations omitted) (noting the purpose of lawyer discipline is not to punish but rather to protect the public, protect the judicial system, and deter future misconduct by the disciplined lawyer and other lawyers).

[127] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

5. The parties **MUST** file any application for stay pending appeal **on or before Wednesday, April 22, 2020**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Wednesday, April 15, 2020**. Any response thereto **MUST** be filed within seven days.

7. If Respondent wishes to resume practicing law in Colorado, he will be required to petition for reinstatement under 251.29(c).

DATED THIS 1st DAY OF APRIL, 2020.

[original signature on file]

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[original signature on file]

_____

KERRY M. GABRIELSON
HEARING BOARD MEMBER

[original signature on file]

_____

TERRY ROGERS
HEARING BOARD MEMBER

Copies to:

Erin R. Kristofco Michele L. Melnick Office of Attorney Regulation Counsel	Via Email e.kristofco@csc.state.co.us m.melnick@csc.state.co.us
Anselm A. Efe Respondent	Via Email efelaw@icloud.com
Kerry M. Gabrielson Terry Rogers Hearing Board Members	Via Email Via Email
Cheryl Stevens Colorado Supreme Court	Via Hand Delivery & Email cheryl.stevens@judicial.state.co.us