***People v. Anselm Andrew Efe.* 19PDJ058. September 17, 2020.**

A hearing board suspended Anselm Andrew Efe (attorney registration number 38357) for one year and one day. The suspension, which runs concurrent to Efe's suspension in case number 18DJ041, took effect on October 28, 2020. To be reinstated, Efe must prove by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

In a child support modification matter, Efe did not competently or diligently represent his client. He ignored disclosure and discovery requirements, and he failed to advise his client about the client's obligations to produce complete and timely financial information. Later, when opposing counsel filed a motion to compel discovery, Efe failed to protect his client's interests, resulting in an award of attorney's fees and costs against the client. Efe also knowingly declined to respond to demands for information during the disciplinary investigation of this case.

Efe's conduct violated Colo. RPC 1.1 (a lawyer shall provide competent representation to a client); Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(2) (a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished); and Colo. RPC 8.1(b) (a lawyer involved in a disciplinary matter 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:** ANSELM ANDREW EFE, #38357	Case Number: **19PDJ058**

OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)

In a child support modification matter, Anselm Andrew Efe ("Respondent") did not competently or diligently represent his client. He ignored disclosure and discovery requirements, and he failed to advise his client about his obligations to produce complete and timely financial information. Later, when opposing counsel filed a motion to compel discovery, Respondent failed to protect his client's interests, resulting in an award of attorney's fees and costs against the client. Respondent also knowingly declined to respond to demands for information during the investigation of this case. Respondent's misconduct, which violated Colo. RPC 1.1, Colo. RPC 1.3, Colo. RPC 1.4(a)(2), and Colo. RPC 8.1(b), warrants a suspension of one year and one day.

I. PROCEDURAL HISTORY

On August 6, 2019, the Office of Attorney Regulation Counsel ("the People") filed with the Office of the Presiding Disciplinary Judge ("the Court") a four-claim complaint in this matter, alleging that Respondent had violated Colo. RPC 1.1, Colo. RPC 1.3, Colo. RPC 1.4(a)(2), and Colo. RPC 8.1(b). Respondent answered on August 27, 2019.

On August 8, 2019, Presiding Disciplinary Judge William R. Lucero ("the PDJ") recused himself from this matter under C.R.C.P. 97 based on his personal relationship with a key fact witness. The Court's administrator solicited volunteers from the lawyer members of the hearing board pool to serve as a presiding officer; on September 5, 2019, Peter B. Goldstein ("Presiding Officer") was selected at random from among the volunteers to preside over this matter. A hearing was then scheduled for March 3-4, 2020.

In October 2019, the Presiding Officer denied the People's motion for a more definite statement, directing the People to construe any noncompliant responses in Respondent's

answer as statements asserting that Respondent was without knowledge or information sufficient to form a belief as to the truth of the averment. Also in October 2019, the Presiding Officer denied certain personal jurisdiction challenges that Respondent lodged in his answer.

In early February 2020, the parties jointly moved to continue the hearing in this matter to await a pending decision in one of Respondent's prior disciplinary cases.[1] The Presiding Officer continued the hearing to June 2020. In late April 2020, the parties sought and were granted a second continuance due to the statewide stay-at-home order then in place in response to the COVID-19 pandemic. The hearing was reset for July 22-23, 2020. On June 9, 2020, the Presiding Officer issued a "Notice of Remote Hearing" and accompanying instructions, alerting the parties that the hearing in this matter would be held remotely via the Zoom videoconferencing platform.

In July 2020, the Presiding Officer rejected Respondent's request to compel certain discovery from the People. The Presiding Officer reasoned that because Respondent had never propounded any discovery requests, no discovery was pending to which Respondent could compel a response.

The evening before the hearing Respondent filed two documents. The first, "Respondent, Anselm Efe's Notice Regarding Prior Discipline," advised that his prior disciplinary case—the recent disciplinary cases sanctioning Respondent—is currently on appeal before the Colorado Supreme Court. The second, "Respondent Anselm Efe's Motion in Limine," moved to preclude the People from introducing any irrelevant testimony, any nonstipulated exhibits bearing highlighting that did not appear on the original document, and all inadmissible hearsay. The Presiding Officer denied the motion as untimely but invited Respondent to make contemporaneous objections during the People's presentation of their case.

A remote hearing via Zoom was held on July 22 and 23, 2020. The Presiding Officer presided over the hearing; he was joined on the Hearing Board by lawyers Diane Brown and Cynthia F. Covell. Erin R. Kristofco and Michele L. Melnick represented the People, and Respondent appeared pro se. The Presiding Officer admitted and the Hearing Board considered stipulated exhibits S1-S21, the People's exhibits 2-10, 14-15, 18, and 20-28,[2] and Respondent's exhibits B, F, I, W, Y, GG, II, DDD, EEE, and FFF. The Hearing Board heard testimony from Scott Hiller, Halleh Omidi, and Respondent.

[1] This is a consolidated case comprising case numbers 18PDJ041 and 19PDJ002.

[2] The Presiding Officer admitted these exhibits with highlighting over Respondent's objections, but he made a record that the highlighting does not constitute evidence. The Presiding Officer characterized the highlighting as argument, not to be considered by the Hearing Board as evidence.

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, a solo practitioner and owner of his law firm, was retained by Scott Hiller in late June 2018 for representation in a post-decree child support modification matter. Hiller, who had worked for more than a decade in television production, had been laid off and hoped to reduce his monthly child support payments for the one child he shares with his ex-wife. Hiller initially filed a pro se motion to modify child support[5] but quickly concluded that he could not handle the matter without the help of a lawyer.

Hiller and Respondent were introduced through a mutual acquaintance. The two met in a coffee shop to discuss Hiller's needs, and Hiller agreed to pay Respondent $3,500.00 in exchange for help modifying his child support payments. Hiller gave Respondent $1,000.00 in cash and a folder containing standard financial documentation, including his 2016 and 2017 tax returns and recent pay stubs. A few days later, Hiller gave Respondent another $2,500.00 via check.[6] Hiller also began forwarding to Respondent various emailed requests from his ex-wife's lawyer, Halleh Omidi, seeking financial disclosures under C.R.C.P. 16.2(e).[7] Hiller expressed willingness to compile the requested documents but solicited Respondent's guidance as to whether he should provide the information to Omidi.[8]

Once Respondent entered his appearance on Hiller's behalf, Omidi corresponded exclusively with Respondent. She began to seek Hiller's complete financial disclosures from Respondent, who in turn instructed Hiller to collect documents Omidi requested and to send them to him for review. Respondent also asked Hiller to revisit his sworn financial statement to ensure its accuracy.[9] Respondent did not give Hiller more specific advice about the types of documentation he should gather, beyond instructing him to download a sworn financial statement form, which requests several types of financial information.

In addition to the folder of documents Hiller had already provided Respondent, Hiller sent Respondent some information responsive to Omidi's requests in late June and early July 2018; he did so with the understanding that Respondent would "take care of" everything.[10] Respondent testified—and Omidi acknowledged—that he forwarded Hiller's

[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).
[5] *See* Ex. W.
[6] Ex. 4; *see also* Ex. 5 (Hiller's bank statement documenting the clearance of his check).
[7] Exs. 2 & 3.
[8] Ex. 3 at 040.
[9] Ex. 6 at 052.
[10] Exs. 7 & 8.

emailed information to Omidi on the evening of July 8, 2018. Respondent contended that his email contained "full and complete disclosures," thereby satisfying all of his future disclosure obligations. Omidi, on the other hand, characterized those initial disclosures as "very much lacking."

The parties attended mediation on July 9, 2018. Though they reached an agreement concerning child support arrearages, they could not resolve the question of ongoing child support amounts.[11] As a result, the parties set an initial status conference for late September 2018.[12] At the status conference, they scheduled a hearing on the modification matter to take place on February 6, 2019. Though Hiller was present at the initial status conference, he emailed Respondent two days later, inquiring whether Respondent could arrange for an earlier court date given his "financial situation."[13] Respondent replied, "I wish it were possible, but when you have a disputed hearing, you will need to have discovery and discovery deadlines. This cannot be squished or rushed."[14] Respondent did not further elaborate on Hiller's disclosure or discovery obligations; according to Hiller, Respondent's explanations were "very general" and "just scratch[ed] the surface" in describing the information he was required to disclose.

Beginning in late autumn 2018, Omidi began emailing Respondent correspondence requesting that he update Hiller's mandatory financial disclosures. On November 9, 2018, Omidi specifically noted that Hiller was "deficient in providing mandatory disclosures as required on Form 35.1, such as any employment benefits he may be receiving, bank statements, and insurance documentation."[15] Omidi proposed exchanging updated disclosures by November 30, 2018. Respondent never responded. Nor did he tell Hiller about Omidi's request.

Because Omidi had not received Hiller's financial disclosures on a voluntary basis, on December 5, 2018, she filed formal discovery requests: pattern and non-pattern requests for production of documents, and pattern and non-pattern interrogatories.[16] The twelve pattern interrogatories contained over seventy separate inquiries; the four non-pattern interrogatories sought answers to a dozen more. The requests for production demanded production of fourteen categories of documents. Under C.R.C.P. 33 and 34, Hiller had thirty-five days, or until January 9, 2019, to submit responses to the discovery requests.[17] These requests were sent to Respondent, as counsel of record, at his Colorado Courts e-filing system account. They were not served on Hiller.

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[11] *See* Exs. B & Y.
[12] Ex. I; Ex. 9.
[13] Ex. 10.
[14] Ex. 10.
[15] Ex. S9. Form 35.1 requires mandatory disclosure of more than a dozen types of financial information.
[16] Ex. S14.
[17] *See also* Ex. S14.

On December 17, 2018, Omidi emailed Respondent a second letter, again requesting that he update Hiller's mandatory financial disclosures within ten days.[18] Omidi specifically sought information about Hiller's current employer, the number of hours Hiller worked, and his rate of pay. Respondent did not respond. Nor did he share Omidi's letter with Hiller.

Respondent did not open or review Omidi's discovery requests in his Colorado Courts e-filing account until December 22, 2018. During the disciplinary hearing, Respondent offered conflicting explanations for his failure to review the requests for more than two weeks. At first, he stated that he was out of town and did not have access to his e-filing account. That narrative then shifted: Respondent said, alternately, "All I know is that I didn't see the motion until December 22," and "I don't recall what happened."

Respondent forwarded the interrogatories to Hiller in the early afternoon of December 22 with the message, "These are pattern interrogatories: could you draft your response to each one of them and we can review them when we meet on December 26, then I can file your response."[19] In that message, Respondent did not provide Hiller with background about the purpose of the interrogatories, guidance as to when they were due, or instructions on how to answer them. Not long thereafter, Respondent sent Hiller the requests for production, asking Hiller to review the requests and to be prepared to discuss them together four days later. Respondent added, "In case you were wondering, I will be requesting discovery from [your ex-wife] as well."[20] Hiller replied,

> I will fill out the information as I can get to it. This is not exactly timely since it is a few days before Christmas and we are preparing for a trip leaving Christmas Day and returning New Years Day. . . . I can certainly fill out as much of the information as I can get to it during this busy time But most likely will not be able to complete it until after the holidays.[21]

At the disciplinary hearing, Hiller explained that Omidi's discovery requests sought an "overwhelming amount of information," and he expressed frustration with Respondent's instructions to gather the information in just four days over the Christmas holiday, which he considered "unreasonable." Respondent did not tell Hiller that they could seek an extension of time to respond to the discovery requests by filing a motion before the expiration of their response deadline.

In response to Hiller's email, Respondent answered,

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[18] Ex. S10.
[19] Ex. S7.
[20] The register of actions shows that Respondent never propounded discovery requests. Ex. S21. Nor, absent leave of the court, could he have sought discovery at that juncture: under C.R.C.P. 16.2(f)(5), all discovery was required to be initiated in time to be completed no later than twenty-eight days before the hearing.
[21] Ex. S15.

> I understand that it may not feel it is timely, but it is what it is – there is a dispute and it has to be resolved. And if they are not done when they ought to be, the court may issue sanctions. I cannot control that. And I certainly do not want to mislead you. It is important that I spell out the repercussions of not doing so.[22]

But Respondent did not specifically advise Hiller what possible repercussions or sanctions he might face if he failed to answer the discovery requests.

Respondent also told Hiller to expedite work on updating his sworn financial statement, directing him to complete that task by December 27. According to Hiller, Respondent never provided any additional verbal instruction about how to respond to the interrogatories.[23]

About a week later—on January 1, 2019—Hiller emailed Respondent an updated sworn financial statement, with the caveat that the statement included only estimates, as he had not yet received any tax information from his 2018 employer.[24] Respondent did not respond. The next day, January 2, Hiller emailed Respondent again; he reminded Respondent that he had sent an updated sworn financial statement the day before, and he again expressed concern that the requests for production called for "an extensive amount of information," some of which he did not have ready access to.[25] Hiller asked when they could meet to discuss how to handle the requests. Again, Respondent did not respond.

Omidi emailed Respondent a third letter on January 8, 2019.[26] Again, she advised Respondent of Hiller's obligation to provide mandatory financial disclosures, and she specifically requested that he disclose information related to Hiller's current employment, including his dates of employment, the number of hours he worked per week, and his rate of pay. Omidi also reminded Respondent that Hiller's formal discovery responses were due the next day, January 9. She concluded, "If we do not have compliance, we will proceed with the filing of a Motion to Compel and will be requesting attorney fees."[27] Respondent neither responded to Omidi nor transmitted her letter to Hiller.

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[22] Ex. S15. At the disciplinary hearing, Hiller related that Respondent never apologized for the delay in forwarding the discovery requests, while Respondent insisted that he said he was sorry and explained that he was at fault. We credit Hiller's account. Respondent's testimony lacked credibility, as it differed substantially from the tone and wording of Respondent's writings, which express no apology or acceptance of any responsibility.

[23] Ex. S15. On December 26, 2018, Hiller telephoned Respondent. *See* Ex. F. They spent about thirteen minutes talking together, though neither person testified about the specifics of that conversation.

[24] Ex. 15.

[25] Ex. 14 at 083.

[26] *See* Ex. S11.

[27] Ex. S11.

On Friday, January 11, ten days after Hiller sent Respondent his updated sworn financial statement, Respondent forwarded that document to Omidi.[28] Omidi replied the same day, noting many deficiencies:

> [N]one of the required disclosures as set forth in Form 35.1 are attached. E.g. it appears your client stopped working less than a month ago, but he should still provide his year-end paystub, recent bank statement etc. . . . As well, his Discovery responses were due two days ago. Please provide those to us by the close of business today. Otherwise, we have no choice but to file a Motion to Compel regarding his insufficient Mandatory Disclosures and Discovery. I really have no choice given the hearing is in less than a month and I have constantly reminded you of your client's continuing duty to disclose pursuant to CRCP 16.2(e). Now I find out that he is unemployed less than a month before the hearing.[29]

Respondent answered just minutes later. He requested that Omidi delay in moving to compel, reasoning that holding off on a motion would minimize costs, "as finances are the issue here."[30] Respondent also said he would be meeting with Hiller over the upcoming weekend and pledged to "endeavor to provide all the required disclosures" no later than Tuesday, January 15.[31] But no documentary evidence or testimony indicates that Respondent and Hiller met over that weekend. Nor did Respondent move the court for an extension of time.

On Monday, January 14, Hiller emailed Respondent his 2016 and 2017 tax returns as well as his social security earning statement, remarking, "I thought I gave the hard copies to you a while ago."[32] Respondent promptly emailed those documents to Omidi, noting that he understood Hiller had earlier disclosed those documents when he filed to modify child support. Omidi acknowledged receipt but asked, "you and your client are filing a formal response to the Interrogatories and Requests for Production of Documents, right? It's not sufficient just to send us piece-meal documents without any reference to a question."[33] Respondent did not respond.

The following morning, on Tuesday, January 15, Hiller sent to Respondent a long list of documents, most notably his answers to the interrogatories.[34] Hiller also attached to the email bank statements, a picture of several paychecks, screen grabs of various efforts Hiller

[28] Ex. S8.
[29] Ex. S8.
[30] Ex. S8.
[31] Ex. S8.
[32] Ex. 18.
[33] Ex. S13.
[34] Ex. S3; *see also* Ex. FFF (Hiller's interrogatory responses).

had made to find paid work, a work hunt log, and a work log.[35] Hiller asked Respondent to confirm receipt of the attachments and to notify him when the documents had been sent to Omidi. Because Respondent did not respond, Hiller texted Respondent the next day, asking, "did you receive the information I emailed yesterday?"[36] Respondent acknowledged that he had and promised to format the answers and send them to Hiller for his signature, though he declined to comment on whether the answers were acceptable, saying, "I wouldn't know yet until I am done. I will ask questions, if anything is not in order."[37] Respondent never questioned Hiller about the draft interrogatory responses or sent him formatted responses to sign.

On the morning of Thursday, January 17, Hiller again emailed Respondent, this time with documentation of an emergency family assistance check he had earlier received. In that email, Hiller questioned Respondent about his case: "Have you sent the information to Omidi? Please keep in communication with me and whether you need more information."[38] Hiller also stated, "I was supposed to have had 35 days to compile the information she requested but I did not receive the information until you emailed on Dec. 22nd even though the papers were served on the 5th of December."[39] Respondent just responded, "Do you have the foreclosure letter for the house?"[40]

That afternoon, at 4:23 p.m., Omidi filed a motion to compel full disclosures and complete discovery responses, to continue the upcoming hearing, and to award Hiller's ex-wife attorney's fees and costs.[41] Respondent reviewed the motion to compel just a few minutes after it was filed, but he did not send the motion to Hiller.

Omidi testified that at the time she filed the motion to compel, she had not received from Respondent any of the documentary information required of Hiller or his interrogatory responses. At the hearing, Respondent explained that he did not give Omidi the financial documents that Hiller had gathered because she had already received some of that documentation earlier. As for the interrogatory responses, Respondent initially claimed that Hiller had not actually provided him any answers to the interrogatories. Later, when questioned by the Hearing Board, Respondent located Hiller's interrogatory answers; he then gave a different explanation, asserting that he did not forward Hiller's responses to Omidi because they were inadequate.

On the evening of Thursday, January 17, Respondent was arrested on a warrant issued by a Jefferson County magistrate on a finding of contempt, which stemmed from his

[35] Ex. S3.
[36] Ex. 20.
[37] Ex. 20.
[38] Ex. 21.
[39] Ex. 21.
[40] Ex. 21.
[41] Ex. S4; Stip. Facts ¶ 4.

representation of a party in an unrelated dissolution of marriage case.[42] The contempt finding was based on Respondent's failure to pay the balance of about $23,000.00 for attorney's fees assessed against him in that case.[43] After Respondent was arrested, he was detained at Boulder County jail for the night and then transported to Jefferson County jail on Friday, January 18.[44]

Monday, January 21, 2019, was Martin Luther King Jr. Day, a public holiday in Colorado.[45] On Tuesday, January 22, the court granted Omidi's motion to compel.[46] The court ordered Hiller to submit discovery responses within three days, continued the hearing, and awarded Hiller's ex-wife the attorney's fees and costs incurred in bringing the motion to compel.[47] Meanwhile, Hiller was unaware that Respondent had been arrested, that Omidi had filed a motion to compel, and that he had been ordered to pay an attorney's fees award.

While Respondent was detained, Hiller repeatedly attempted to contact him. On January 22, 24, and 29, Hiller emailed Respondent, hoping to elicit some assurance that Respondent was still working on the case.[48] Hiller testified that at that point he questioned whether Respondent was a "legitimate" practicing lawyer. He recalled worrying that Respondent "had just disappeared" and that he would be "left to do this on [his] own." On February 1, Hiller again emailed Respondent with the subject line, "Are you still my lawyer?" In that email Hiller wrote,

> Still no communication from you. Not sure what to do, here. Are you working with me or not? If not, can you give me back my $3500 to look elsewhere for help? I have become increasingly concerned after not receiving the interrogatories until 18 days after they were served, three days before Christmas. If you are still representing me, can you get in touch so we can discuss how to proceed.[49]

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[42] Stip. Facts ¶ 1. *See also* Respondent's Hr'g Br. at 4 ("On the 17th day of January on or about 5:00PM, five armed plain clothes police officers knocked on the door of Respondent's residence on a warrant from Jefferson County . . .").

[43] Stip. Facts ¶ 1. Respondent acknowledged on cross-examination that he was aware a *mittimus* had issued in mid-October 2018 in the unrelated dissolution case, ordering him either to purge his contempt or to report to jail in two weeks' time. Respondent also conceded that he was aware that a no-bond warrant for his arrest issued in late October 2018, which remained active until his arrest. Respondent even testified that he had spent a good portion of December 2018 trying to determine how to purge the contempt.

[44] Stip. Facts ¶ 2.

[45] Stip. Facts ¶ 6.

[46] Ex. S5; Stip. Facts ¶ 5. Ordinarily under C.R.C.P. 121 § 1-15 Respondent and his client would have had 21 days within which to file a response, but with the hearing date only days away, that time period was abbreviated, and in fact, the court elected to rule even sooner.

[47] *See* Ex. S5.

[48] Ex. 22.

[49] Ex. 23.

Respondent did not—because he could not—respond to Hiller's emails. But neither did he take any other action to protect Hiller's interests. Respondent explained that he did not have Hiller's contact information or access to his electronic court filing account. However, Respondent was able to telephonically contact a family member for assistance in raising funds to purge his contempt. He did not request that same person contact Hiller about the status of his case or notify Hiller about his detention. Likewise, Respondent was visited by a representative of the Office of Attorney Regulation in Jefferson County jail on January 24, but he did not ask the representative to notify Hiller that he could no longer represent him. Respondent also managed to file a handwritten motion from jail to continue an upcoming hearing in which he himself was a party, yet he did not attempt to file a similar motion on Hiller's behalf.

Respondent was not released from jail until Monday, February 4.[50] That same day, Hiller texted him twice. His first dispatch read, "I've been trying to reach you for several weeks now. We are scheduled to be in court this Wednesday in Broomfield. Please confirm ASAP that you are representing me."[51] His second said, "I just heard from Broomfield courts that the court has been canceled and the [opposing party] has scheduled a private hearing with the judge for an affidavit of attorney fees. I have heard nothing from you regarding this. Please advise ASAP."[52] Respondent waited almost twenty-four hours to reply. When he did, he texted only, "I am still representing you. I had a death in my family. I can meet you today outside Whole Foods. Text me time."[53] Hiller did not respond.

Early on February 6, Respondent texted again: "The Judge has ruled to continue the hearing. The hearing today has been cancelled. I would like to meet with you tomorrow."[54] Respondent did not explain why the hearing had been canceled or why attorney's fees had been awarded. Hiller answered via email, "The hearing was canceled due to your failure to respond, so please withdraw as my attorney. I will be in touch regarding the fees owed to me and damages incurred due to your conduct."[55] Respondent retorted, "It was not for my failure to respond. You had sufficient time to respond, I will be filing my withdrawal. And I will send a copy to you."[56]

The court granted Respondent's withdrawal motion on February 24, 2019,[57] and Hiller retained replacement counsel, ultimately paying upwards of $8,000.00 to complete the

[50] Stip. Facts ¶ 3; *see also* Ex. GG.
[51] Ex. 22.
[52] Ex. 20.
[53] Ex. 20. Respondent testified that there was a death in his family on January 14, 2019. While we do not question the veracity of that testimony, we do find Respondent's representation to Hiller misleading, as it was Respondent's detention—not the death in the family—that prevented him from timely responding.
[54] Ex. 20.
[55] Ex. 24.
[56] Ex. 24.
[57] Ex. II.

representation.[58] A few weeks later, an attorney's fee award of $1,419.75 was entered against Hiller.[59] Respondent neither refunded to Hiller any of the fees that Hiller had paid nor reimbursed Hiller for the amount of the attorney's fee award.

The People first contacted Respondent about this matter on May 9, 2019, when they sent him a letter by certified mail instructing him to "specifically answer" the following questions:

1. Did you inform Mr. Hiller of the Motion to Compel filed on January 17, 2019 . . . ? If yes, when and how? If not, please explain why not.
2. Did you respond to the Motion to Compel filed in the Case? If yes, when and how? If not, please explain why not.
3. Did you review the January 22, 2019 Order Granting [Omidi's] Motion to Compel in the Case? If yes, when and how? If not, please explain why not.
4. Did you inform Mr. Hiller of the January 22, 2019 Order Granting [Omidi's] Motion to Compel in the Case? If yes, when and how? If not, please explain why not.
5. Did you inform Mr. Hiller of any communications Ms. Omidi had made to you to get Mr. Hiller's 16.2 disclosures and discovery responses? If yes, when and how? If not, please explain why not.[60]

On May 28, the People asked Respondent for a phone interview to discuss the matter; Respondent instead requested additional time to file a written response, and the People agreed to an extension to respond until June 15.[61] But Respondent's younger brother passed away unexpectedly, and he did not answer.[62] On June 28, the People sent Respondent a proposed report of investigation recommending formal proceedings and inviting him to submit, no later than July 9, a written response arguing that a formal proceeding was not warranted.[63] Again, Respondent did not timely respond.

Respondent did, however, send a letter to the People on July 19, explaining that he had "not been in the best emotional state to do anything constructive for myself, including responding to your letter."[64] In that communication, Respondent also asserted that "[t]he facts and allegations are untrue," that he had "a defense to all the charges and allegations," and that there was a "grave disparity" between the facts in the People's first and second

[58] By the end of May 2019, four months after he was engaged, replacement counsel had secured an agreement to reduce Hiller's child support payments by more than $250.00 per month.
[59] Ex. S19.
[60] Ex. 25 at 113-14. The People asked six questions in their letter, but the Hearing Board quotes only the five questions relevant to the claims pleaded in the complaint.
[61] Ex. 26; *see also* Ex. EEE.
[62] *See* Ex. DDD.
[63] Ex. 27.
[64] Ex. DDD.

letters.[65] Respondent did not state with particularly why the allegations or charges were untrue, nor did he make clear the defenses he intended to invoke. Instead, he said, "For now, I can fully summarize that Mr. Hiller seeks a scapegoat for his failure to obey my instructions and advi[c]e and his refusal to respond to discovery requests which he could have. I will have a fuller and more complete response to all the allegations."[66] In closing he stated, "The purpose of my letter is to indicate that I have not negligently ignored the allegations made or ignored [the People]. I am in great difficulty emotionally. . . . Furthermore, that I have a detailed defense to all of these spurious allegations made against me."[67]

The People gave Respondent an additional two weeks, until August 5, to provide information, and Respondent vowed that he would respond, but he never did so.[68] On August 6, 2019, the People emailed Respondent a copy of the citation and complaint in this case.[69]

Rule Violations

Colo. RPC 1.1 and Colo. RPC 1.3

Colo. RPC 1.1 mandates that lawyers provide competent representation to their clients by using the requisite legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Comment 5 to the rule states that competent handling of a matter involves the "use of methods and procedures meeting the standards of competent practitioners" as well as "adequate preparation."

Colo. RPC 1.3 imposes on lawyers a correlative duty to act with reasonable diligence and promptness when representing a client. Comment 3 to the rule observes that a lawyer's procrastination can adversely affect a client's interests or "cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." To best protect clients' interests, Comment 5 to the rule counsels sole practitioners to "prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's . . . disability, and determine whether there is a need for immediate protective action."

The People claim that Respondent violated both Colo. RPC 1.1 and 1.3 while representing Hiller. Specifically, they say, Respondent failed to timely provide written discovery requests to Hiller, failed to advise him about how to answer the requests

[65] Ex. DDD.
[66] Ex. DDD.
[67] Ex. DDD.
[68] *See* Ex. EEE.
[69] Ex. EEE. Respondent and the People exchanged additional emails on August 7, 2019, during which Respondent stated that he would likely move in his answer to dismiss the People's charges.

completely and timely, failed to provide Hiller's financial disclosures to Omidi, failed to seek an extension of time to respond on Hiller's behalf, failed to advise Hiller about the motion to compel, and failed to competently respond to the motion to compel.

Respondent argues that he advised Hiller of his disclosure and discovery obligations throughout the representation, and he emphasizes that Hiller never asked questions about how to answer the discovery requests. In closing argument, Respondent acknowledged that it was an error on his part not to forward to Hiller the discovery requests in a timely fashion, but he nevertheless blamed Hiller for neglecting to meet the applicable deadline, even though he did not move for an extension of time that might have protected his client. Respondent also contends that the legal doctrine of impossibility of performance excuses his failure to respond to the motion to compel or to otherwise protect Hiller's interests during his period of detention.

The Hearing Board finds clear and convincing evidence that Respondent failed to timely transmit information between Omidi and Hiller. Respondent never sent to Hiller the three emailed correspondences from Omidi, and he delayed seventeen days in alerting Hiller to Omidi's discovery requests. Further, beginning in late 2018 and continuing into 2019, Respondent delayed sending to Omidi financial information that Hiller supplied him. He waited over ten days—between January 1 and January 11, 2019—to send Hiller's updated sworn financial statement to Omidi. And despite the fact that discovery responses were well overdue when Hiller sent him several documents and the interrogatory responses on the morning of January 15, 2019, Respondent procrastinated in formatting, finalizing, and sending that information to Omidi for almost three additional days. Ultimately, he never delivered those responses, as he was arrested before he did so. Respondent's unexplained failure to obtain the required disclosures from his client and provide them to opposing counsel in the appropriate format, as well as his disregard of his client's discovery obligations, convinces us that Respondent violated Colo. RPC 1.1 and Colo. RPC 1.3 on these bases alone.[70]

We also conclude that Respondent's lack of preparation and thoroughness in counseling Hiller about how to respond to the discovery requests violated both Colo. RPC 1.1 and Colo. RPC 1.3. Hiller testified that Respondent did not provide any direction about how to answer the interrogatories, and no contemporaneous documents show that Respondent gave Hiller the advice he needed to efficiently and effectively respond. Nor did Respondent ever convey to Hiller that Omidi had expressed particular interest in documentation concerning his most recent work arrangements. Had this information been provided, later events—including the filing of the motion to compel and the award of attorney's fees—may well have been averted.

[70] *See Attorney Grievance Com'n of Maryland v. Gray*, 83 A.3d 786, 790 (Md. 2014) (finding that a lawyer violated the Maryland analogs to Colo. RPC 1.1 and Colo. RPC 1.3 when she failed to respond to discovery requests served by opposing counsel in a divorce case).

Finally, we conclude that Respondent's failure to protect Hiller's interests after Omidi filed the motion to compel evidenced a lack of requisite competence and diligence. Respondent knew that he was subject to an outstanding warrant but did not prepare a plan designating another lawyer to handle the matter in the event that he was arrested. Respondent received notice of the motion to compel but did not alert Hiller of the development, either before or after his arrest. And while he was detained Respondent took no action to communicate with Hiller, to withdraw from the representation, or to file a motion with the court.

These findings segue into our rejection of Respondent's impossibility defense. As a threshold matter, we are skeptical that such a defense applies in the lawyer disciplinary context. Impossibility of performance is a contractual doctrine that discharges a party's duty to perform when the party's performance was made impracticable through no fault of the party by the occurrence of an event, the nonoccurrence of which was a basic assumption on which the contract was made.[71]

But we need not decide this legal question, as the black letter definition points us to some useful concepts that underscore how factually inapt this defense is here. First, Respondent was held in contempt, arrested, and detained for more than two weeks because he refused to obey orders of a tribunal. It cannot be said that he was not at fault. Second, Respondent's arrest was neither an unanticipated event nor an unforeseen circumstance.[72] He testified that he was aware an arrest warrant had issued in autumn 2018 and that he spent time in December 2018 trying to determine how to purge his contempt order. Third, Respondent's detention did not render his performance truly impracticable.[73] Without significant expense or injury, Respondent could have asked a family member, colleague, or even a visiting representative of the Office of the Attorney Regulation Counsel to notify Hiller of his inability to continue the representation. Similarly, Respondent could have hand-written a motion on Hiller's behalf, as he did on his own behalf in another matter. Finally, nothing precluded Respondent from filing a motion for extension of time before or after his client's discovery responses were due, but before Omidi filed the motion to compel. For all of these factual reasons, we reject Respondent's impossibility defense.

Colo. 1.4(a)(2)

Colo. RPC 1.4(a)(2) requires lawyers to reasonably consult with the client about the means by which the client's objectives are to be accomplished. The People argue that

[71] *See City of Littleton v. Emp'rs Fire Ins. Co.*, 169 Colo. 104, 108, 453 P.2d 810, 812 (1969).

[72] *See Ruff v. Yuma Cnty. Transp. Co.*, 690 P.2d 1296, 1298 (Colo. App. 1984) (inquiring whether an unanticipated circumstance made performance of the promise substantially different from what should have reasonably been within the contemplation of the parties).

[73] *See City of Littleton*, 169 Colo. at 108, 453 P.2d at 812 (defining impossibility to include "impracticability because of extreme and unreasonable difficulty, expense, injury, or loss involved").

Respondent violated this rule by failing to consult with Hiller about the importance of timely and complete financial disclosures, the motion to compel, and the award of costs and attorney's fees. Respondent maintains that save for the period during which he was jailed, he sufficiently communicated with Hiller throughout the representation.

As explained above, we find that Respondent failed to adequately communicate with Hiller about various matters in his case, thereby violating Colo. RPC 1.4(a)(2). Hiller made Respondent aware in September 2018 that his objectives included a speedy resolution to the modification matter, as he was experiencing financial hardship. We believe that if Respondent had at that time—or at any other—clearly conveyed to Hiller that the matter could not proceed to a hearing without timely disclosure of certain information, Hiller would likely have located and formatted the information in whatever manner Respondent directed, or advised Respondent if he did not have some of the information so they could determine how to proceed. We further find that Respondent never alerted Hiller to the motion to compel or the award of attorney's fees and costs—both developments that impacted Hiller's ultimate objective of a timely modification of his child support payments to alleviate the strain on his finances.

Colo. RPC 8.1(b)

Colo. RPC 8.1(b) prohibits a lawyer involved in a disciplinary matter from "knowingly fail[ing] to respond to a lawful demand for information" from a disciplinary authority.[74] Comment 1 to Colo. RPC 8.1(b) clarifies that a lawyer runs afoul of the rule by knowingly making a "misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct" and by failing to provide "affirmative clarification of any misunderstanding" on the part of a disciplinary authority. The requirements of Colo. RPC 8.1(b) are not absolute, however. The rule's plain language notes that it "does not require disclosure of information otherwise protected by Rule 1.6."[75]

The People urge the Hearing Board to find that Respondent violated this rule by failing to provide specific answers to the questions that they propounded in their letter dated May 9, 2019. Respondent asserts that he did respond to their communications, citing his telephone conversation with them in late May 2019 as well his letter of July 19, 2019.[76]

[74] One source of a lawful demand is C.R.C.P. 251.10(a), which mandates that a lawyer under investigation in a disciplinary matter file with the People a written response to the allegations made against the lawyer within twenty-one days of receiving notice of the investigation.

[75] Colo. RPC 1.6 forbids lawyers from revealing information relating to the representation of a client except in specified circumstances. Of note, comment 2 to Colo. RPC 8.1 also excepts from its sweep good faith challenges to a demand for information, including challenges premised on the Fifth Amendment to the United States Constitution and state equivalents. The comment adds that a person relying on such a provision or challenge "should do so openly and not use the right of nondisclosure as a justification for failure to comply" with the rule. Colo. RPC 8.1 cmt. 2.

[76] Respondent also argues that his motion to dismiss raising a jurisdictional challenge, which he included in his answer to the People's complaint, likewise represents a response to the People's lawful demands for

That the People did not like those responses is immaterial, he says, as the rule requires only that he communicate with them, not that he provide specific answers to their questions.

We begin discussion of this rule with the question the parties' arguments pose: whether the rule requires only that a lawyer communicate with the disciplinary authority, or whether it mandates that the lawyer answer substantively. Colorado case law does not make clear how to construe the requirement to "respond" to a lawful demand for information. The parties have not cited any Colorado cases that provide a definition of "respond," and the Hearing Board knows of none. Other states, however, have held that lawyers' refusals to provide responsive information to disciplinary authorities ran afoul of equivalents to Colo. RPC 8.1(b).[77]

In the absence of Colorado case law, we also consider the language of the rule as a whole as well as possible policy goals behind the rule. Both of those considerations and the extrajurisdictional jurisprudence weigh in favor of the People's position.

We note first that the rule carves out an exception to the duty to respond where information is protected from disclosure by Colo. RPC 1.6. The exception, however, implicitly assumes that responses will otherwise be substantive. If a communication merely acknowledging the People's request without conveying any substantive response were adequate under Colo. RPC 8.1(b), the rule would not explicitly exempt disclosure of confidential client information; indeed, the rule would not contemplate the exchange of *any* meaningful information. Taken in this light, Respondent's interpretation threatens to reduce portions of the rule to superfluity. Likewise, comment 1 to Colo. RPC 8.1(b) explains that a lawyer transgresses the rule if the lawyer knowingly omits information or fails to affirmatively clarify any misapprehension. This guidance is at odds with Respondent's contention that a lawyer is under no obligation other than to merely acknowledge receipt of a demand for information.

Second, we reject Respondent's premise that the purpose of Colo. RPC 8.1(b) is simply to elicit confirmation that the lawyer is aware of the pending investigation; a purpose so cramped in scope needs no rule at all. Rather, we believe that the rule's guiding policy, undergirded by lawyers' duty to maintain the integrity of the profession, is to streamline investigations and to assist authorities in making informed charging decisions. We thus

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investigation. We decline to address this contention in any depth, as his motion to dismiss was filed with the Court *after* the People's investigation had concluded and thus cannot be considered an investigatory response under C.R.C.P. 251.10(a).

[77] *See, e.g.*, *Attorney Grievance Comm'n of Maryland v. Dyer*, 162 A.3d 970, 1020-22 (Md. 2017) (upholding a finding that one lawyer's response to the substance of the complaints, including the lawyer's opinion as to events concerning the underlying litigation and the motivation for filing a grievance, did not violate Rule 8.1(b), whereas another lawyer's response, which merely challenged the legality of the investigation and the authority of the disciplinary authority to conduct such an investigation, violated the rule); *Disciplinary Counsel v. Eichenberger*, 55 N.E. 3d 1100, 1103-05 (Ohio 2016) (concluding that a lawyer violated Rule 8.1(b) for repeatedly refusing to provide copies of his trust account records).

agree with the People and conclude that the rule obliges a lawyer to cooperate with disciplinary authorities by "reveal[ing] information in connection with . . . a disciplinary matter not only when explicitly requested, but also whenever necessary to correct a misapprehension."[78]

Accordingly, we conclude that Respondent violated Colo. RPC 8.1(b) when he declined to answer the People's queries in any substantive fashion. His telephonic request for additional time was of no help in advancing the People's investigation. Nor was his letter of July 19, 2019, in which he claimed without substantive explanation that the People's allegations were untrue and asserted without specificity that he had a detailed defense to all of the charges. The People then offered him additional time to answer, and though he promised he would respond, he did not. We have no choice but to conclude that Respondent knowingly failed to respond to the People's lawful requests for information.

III. SANCTIONS

The ABA *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[79] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[80] 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: Respondent violated his client-centered duties of competence, diligence, and communication. He also failed to honor his duty as a professional to cooperate with investigations conducted by disciplinary authorities.

Mental State: We find that Respondent committed these rule violations knowingly. Although Respondent did not intend to compromise Hiller's interests, we believe he was consciously aware that he was not exhibiting the competence and diligence expected of counsel when managing child support modification disclosure and discovery demands. Likewise, we conclude that Respondent knew his communication with Hiller—both about Omidi's requests for information and about Hiller's obligations to respond to those requests—fell far short of his obligations to discuss with his client the objectives of the representation and the means by which they would be accomplished. Finally, we find that Respondent knowingly declined to respond substantively to the People's requests for information during the investigation of this case.

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[78] ABA *Annotated Model Rules of Professional Conduct* at 642 (8th ed. 2015).
[79] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[80] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003), *as modified on denial of reh'g* (May 12, 2003).

Injury: Respondent harmed Hiller financially. In 2018, Hiller faced what he believed were dire financial circumstances, yet he paid Respondent $3,500.00 for what ultimately proved to be incompetent representation. As a result of that incompetence, Hiller was forced to pay more than $1,400.00 to satisfy the court-ordered attorney's fee award. Also as a result of Respondent's incompetence, Hiller's motion to modify was continued for several months—an outcome that ran directly counter to Hiller's objective of securing a child support modification as quickly as possible. After Hiller terminated Respondent's representation, Hiller had no choice but to hire new counsel, which cost him an additional several thousand dollars in attorney's fees.

Hiller testified at length that he was also emotionally harmed by Respondent's misconduct. He said that he felt as though Respondent had taken advantage of him, because he paid Respondent to take care of him and yet he felt "totally unrepresented." Hiller described the legal process as a "whole other world and another language," so Respondent's failure to communicate left him feeling as though he were "in the dark." Hiller also recalled feeling angry because Respondent blamed him for failing to respond to discovery. Hiller's confidence in Respondent decreased over the course of the representation, leaving him wondering in January 2019 whether Respondent had any experience at all in domestic relations matters. Hiller said that his experience with Respondent was "somewhat traumatic" insofar as it changed his view of the legal profession and the justice system: he is not only "leery" of retaining another lawyer but also of seeking any further recourse through the courts.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction for Respondent's violation of Colo. RPC 1.1 is set by ABA *Standard* 4.52, which calls for suspension when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, thereby causing a client injury or potential injury. Suspension is also the presumptive sanction under ABA *Standard* 4.42, which pertains to Respondent's violation of Colo. RPC 1.3 and Colo. RPC 1.4(a)(2); that *Standard* applies when a lawyer knowingly fails to perform services for client, causing the client injury or potential injury. Finally, ABA *Standard* 7.2 provides that suspension is generally appropriate when, as with Respondent's violation of Colo. RPC 8.1(b), a lawyer knowingly engages in conduct that is a violation of a professional duty and thus causes injury or potential injury to a client, the public, or the legal system. These three ABA *Standards* all counsel us to begin our sanctions 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.[81] As explained below, the Hearing Board applies six factors in aggravation, two of which carry significant weight, and one factor in mitigation. 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.[82] We give average weight to this aggravating factor.

Pattern of Misconduct – 9.22(c): We accord this factor substantial weight in aggravation. Respondent failed repeatedly to meet disclosure deadlines and to provide answers to discovery. He ignored Omidi's three formal attempts to correspond about supplementing Hiller's disclosures, and he delayed—without explanation—in providing Omidi with documents and information that Hiller gave him.

We also consider under this rubric Respondent's discipline in case number 18PDJ041 (consolidated with 19PDJ002).[83] There, Respondent committed misconduct in two separate client matters and was suspended for one year and one day, effective August 3, 2020. In one matter, Respondent 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 his client for six months. In the other matter, Respondent filed frivolous and groundless motions and caused unnecessary delays that slowed the progress of his client's dissolution of marriage matter. 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 the court-ordered award until he was held in contempt, arrested, and jailed.

Multiple Offenses – 9.22(d): The People argue that because Respondent violated four Rules of Professional Conduct, we should apply this aggravator. Though we decline to adopt the People's reasoning that the mere number of rule violations should guide use of this

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

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

[83] *See People v. Honaker*, 863 P.2d 337, 340 (Colo. 1993) (considering misconduct that occurred contemporaneously in another discipline case as a pattern of misconduct rather than prior discipline); *People v. Williams*, 845 P.2d 1150, 1152 n.3 (Colo. 1993) ("Because most of the conduct forming the basis of the present disciplinary proceeding occurred before the imposition of the six-month suspension on the respondent in [the respondent's earlier disciplinary case], we elect to consider that suspension as more appropriately establishing a part of the pattern of misconduct under ABA *Standards* 9.22(c) rather than as a prior disciplinary offense under 9.22(a).").

factor,[84] we do give modest aggravating weight to the fact that Respondent failed to exercise diligence, failed to communicate, and failed to respond to the People's inquiries.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The Hearing Board finds that Respondent has refused to accept responsibility or genuinely acknowledge his role in the award of attorney's fees against Hiller, an aggravating factor that we believe warrants substantial consideration in our analysis. Respondent repeatedly shifted blame to Hiller, both for missing deadlines and for producing inadequate discovery responses, but he never honestly considered how his conduct had an adverse effect on Hiller's case. Conversely, we did not see him contemplate how he could have approached his representation of Hiller differently to yield a more favorable result.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has been licensed to practice law in Colorado since 2006—certainly long enough to know about his client's discovery and disclosure obligations and to appreciate the importance of effective communication and prompt action. We give this factor some weight.

Indifference to Making Restitution – 9.22(j): We are influenced by the fact that Respondent never offered to help Hiller pay the attorney's fees award. We give a moderate amount of weight to this factor.

Mitigating Factors

Personal or Emotional Problems – 9.32(c): Respondent testified that during 2019 he was jailed for more than two weeks and experienced two deaths in his family. We assign average mitigating weight to these personal and emotional problems.

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.[85] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[86] 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.[87]

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[84] *In re Thompson*, 991 P.2d 820, 822 n.1 (Colo. 1999) ("in determining the proper level of discipline, we do not simply add up the number of rules violated, but focus instead on the nature and seriousness of the conduct itself").

[85] *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).

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

[87] *Id.* ¶ 15.

The People ask the Hearing Board to suspend Respondent for one year and one day. Respondent contends that he has committed no misconduct. But in the event the Hearing Board finds a rule violation, he says, his actions warrant a private admonition only.

Here, analogous cases from within and outside Colorado point toward a period of suspension. In *People v. Rishel*, the Colorado Supreme Court suspended a lawyer for one year and one day for his neglect in two client matters.[88] In one matter, the lawyer did not notify his client about a hearing on motions to modify child support and visitation and to hold the client in contempt.[89] When the client learned of the hearing by chance two days before it was scheduled to take place, the client hired replacement counsel on an emergency basis.[90] The lawyer then refused to refund unearned fees, to provide a requested accounting, and to withdraw from the representation.[91] In the other client matter, the lawyer did not respond to a client's requests for the return of his file, for an accounting, and for a refund of fees.[92]

Cases from sister jurisdictions also provide a benchmark for the appropriate length of a suspension in this matter. For example, a Maryland lawyer was suspended indefinitely, with the right to seek reinstatement after six months.[93] There, the lawyer failed to exercise diligence when she took no action to file a divorce proceeding on her client's behalf, to propound discovery, or to engage in settlement discussions.[94] The lawyer also failed to respond meaningfully to many client communications, declined to provide the client's file to successor counsel for many months, and neglected to respond to three letters in connection with the disciplinary investigation.[95] Similarly, in a case arising out of Oklahoma, a lawyer was suspended for one year for misconduct in five client matters, including failing to communicate, to expedite litigation, to exercise competence and diligence, and to respond substantively to disciplinary inquiries until she was served with a subpoena.[96]

In contrast, a Kansas lawyer was suspended for six months for similar misconduct, where two mitigators and four aggravators applied; the lawyer was sanctioned because he had not exhibited the requisite skill level when representing his client in a jury trial for aggravated kidnapping, and because in another client representation the lawyer failed to timely file and prosecute a motion to modify child support and failed to return the client's many telephone calls.[97] Likewise, the Supreme Court of Alaska suspended a lawyer for six months, taking into account two aggravating factors and four mitigating factors.[98] There,

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[88] 956 P.2d 542, 542 (Colo. 1998).
[89] *Id.* at 543.
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Attorney Grievance Com'n of Maryland v. Kreamer*, 876 A.2d 79, 97 (Md. 2005).
[94] *Id.* at 100.
[95] *Id.*
[96] *State ex rel. Oklahoma Bar Ass'n v. Hummel*, 89 P.3d 1105, 1112 (Okla. 2004)
[97] *In re Matson*, 56 P.3d 160, 163-64 (Kan. 2002).
[98] *In re Brady*, 387 P.3d 1, 5-6 (Alaska 2016).

the lawyer failed to act with reasonable diligence and failed to make reasonable efforts to expedite litigation, as he did not provide pretrial discovery, meet established deadlines in trial and appellate proceedings, file timely responsive pleadings, answer show cause orders, or timely pay sanctions and attorney's fees.[99]

These guiding authorities trend toward imposition of a suspension lasting between six months and one year in cases involving incompetence, lack of diligence, and lack of communication. The cases do not, however, take into account the imbalance in this matter between the six applicable aggravating factors—two of which we accord substantial weight—and the lone mitigating factor. Nor do all of these cases involve the lawyer's failure to appreciate the wrongfulness of the misconduct, as is the case here.[100]

When we consider the presumptive sanction and the preponderance of aggravating factors, including Respondent's prior discipline, we determine that Respondent should be suspended for one year and one day, which carries with it the requirement of reinstatement.[101] We also conclude that the suspension we impose should run concurrent with the one-year-and-one-day suspension imposed in case number 18PDJ041.[102] As part of any petition for reinstatement, whether filed in conjunction with or separate from a petition for reinstatement in case number 18PDJ041, Respondent must also demonstrate eligibility for reinstatement from the discipline imposed here.[103] Specifically, Respondent must show rehabilitation from his violations of Colo. RPC 1.1, 1.3, 1.4(a)(2), and 8.1(b), which will require him to demonstrate by clear and convincing evidence that he has achieved the requisite competence to again represent clients and that he can practice law with adequate diligence,

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[99] *Id.*; *see also* In *re Whitehead*, 816 So.2d 284, 288 (La. 2002) (suspending a lawyer for one year, with six months stayed, because the lawyer failed to pursue three client matters, failed to communicate with clients, failed to refund unearned fees, and failed to cooperate in two disciplinary investigations, where five aggravating and three mitigating factors applied); *Attorney Grievance Com'n of Maryland v. Harris*, 784 A.2d 516, 533 (Md. 2001) (suspending for six months a lawyer who had thrice been previously disciplined, when the lawyer failed to exercise competence and diligence, failed to communicate, failed to withdraw based on the lawyer's inability to continue the representation, failed to expedite litigation, and engaged in conduct that prejudiced the administration of justice).

[100] *See, e.g.*, *Brady*, 387 at 6 (applying mitigation for absence of a selfish motive, cooperative attitude toward the disciplinary proceeding, and remorse); *Matson*, 56 P.3d at 164 (describing the lawyer's expressions of remorse as "genuine"); *Whitehead*, 816 So.2d at 286 (noting the lawyer expressed remorse for his communication failures, admitted he could have handled the matter more professionally, and volunteered that he had rectified his inadequate staffing and calendaring system).

[101] *See* C.R.C.P. 251.29(c).

[102] As a result, the two periods of suspension will substantially overlap but will not be coterminous, as Respondent's suspension in case number 18PDJ041 took effect on August 3, 2020.

[103] Case number 18PDJ041 is currently on appeal with the Colorado Supreme Court. If the sanction in that case is vacated, reversed, or remanded, we intend the sanction in this case to stand independently. Thus, regardless of the ultimate outcome in case number 18PDJ041, Respondent is required to serve the full one-year-and-one-day suspension in this case; if, after he serves the period of suspension imposed in this case, he wishes to resume the practice of law, he will have to petition for reinstatement under C.R.C.P. 251.29(c) and will be required to prove by clear and convincing evidence that he has been rehabilitated, is fit to practice law, and has complied with all disciplinary orders and rules.

communication, and attention to his obligations as a professional. Further, although we do not impose such a requirement, we urge any future hearing board that reinstates Respondent also to order that he submit to a period of practice monitoring to ensure the continued protection of the public.

IV. CONCLUSION

Lawyers serve many roles: guides for their clients when navigating the legal system; client representatives when communicating with opposing parties; and intermediaries between courts and their clients to ensure the clients' compliance with court rules. In Hiller's matter, Respondent was derelict in all three roles. He did not explain to his client the obligation to provide accurate and updated information to the opposing party, he disregarded standing disclosure rules designed to facilitate the efficient exchange of information, and he incompetently managed his client's discovery responses. The appropriate sanction here is a served suspension of one year and one day, to run concurrent with the suspension imposed in Respondent's recent disciplinary case.

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."[104]

2. As part of any petition for reinstatement from the suspension imposed in this case, whether filed in conjunction with or separate from a petition that addresses the misconduct underlying case number 18PDJ041, Respondent **MUST** demonstrate eligibility for reinstatement from the misconduct addressed in this case, as set forth above.

3. 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. 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.

[104] 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 posthearing motion **on or before October 1, 2020**. Any response thereto **MUST** be filed within seven days.

6. The parties **MUST** file any application for stay pending appeal **on or before October 8, 2020**. Any response thereto **MUST** be filed within seven days.

7. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before October 1, 2020**. Any response thereto **MUST** be filed within seven days.

DATED THIS 17th DAY OF SEPTEMBER, 2020.

PETER B. GOLDSTEIN
PRESIDING OFFICER

/s/ Diane Brown

DIANE BROWN
HEARING BOARD MEMBER

/s/ Cynthia F. Covell

CYNTHIA F. COVELL
HEARING BOARD MEMBER

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