***People v. John Elliott Reardon.* 15PDJ100. June 1, 2016**.

Following a reciprocal discipline hearing, a hearing board ordered imposition of concurrent reciprocal discipline and suspended John Elliott Reardon (attorney registration number 07801) for two years, effective *nunc pro tunc* to June 12, 2015. To be reinstated, Reardon 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.

In June 2015, the United States Court of Appeals for the Tenth Circuit suspended Reardon from practicing in that court for two years. The two-year suspension was imposed because Reardon provided his immigration client with incompetent representation when he failed to follow the rules of appellate procedure, resulting in the dismissal of his client's appeal. In imposing its sanction, the Tenth Circuit reviewed Reardon's past filings and found that for at least a decade, his appellate filings had been adjudged incoherent. Because Reardon was suspended by the Tenth Circuit while he was serving a period of probation in Colorado courts for other misconduct, the hearing board concluded that reciprocal discipline in Colorado was appropriate under C.R.C.P. 251.21(e) and that substantially different discipline was not warranted in Colorado. 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:** JOHN ELLIOTT REARDON	Case Number: **15PDJ100**

OPINION AND DECISION IMPOSING RECIPROCAL SANCTIONS UNDER C.R.C.P. 251.21(d)

In June 2015, the United States Court of Appeals for the Tenth Circuit suspended John Elliott Reardon ("Respondent") from practicing in that court for two years. The two-year suspension was imposed because Respondent provided his client with incompetent representation when he failed to follow the rules of appellate procedure, resulting in the dismissal of his client's appeal. Given Respondent's pattern of similar misconduct in the Tenth Circuit, as well as his prior disciplinary history in Colorado, concurrent reciprocal discipline of a two-year suspension of his Colorado law license is warranted.

I. PROCEDURAL HISTORY

Alan C. Obye, of the Office of Attorney Regulation Counsel ("the People"), lodged a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ") on November 10, 2015, stating that Respondent had been suspended for two years by the United States Court of Appeals for the Tenth Circuit and requesting imposition of the same sanction in Colorado under C.R.C.P. 251.21. Respondent answered the complaint in a "Response" on December 1, 2015, asserting only that the proceeding in the Tenth Circuit violated his right to due process.

On December 8, 2015, the People filed a "Motion for More Definite Statement," arguing that Respondent had not specifically admitted or denied each allegation in the complaint. Having failed to receive any response from Respondent, the PDJ granted the People's motion on December 30, 2015, and ordered Respondent to file an amended answer that addressed each allegation in the complaint. Meanwhile, on December 15, 2015, the PDJ set a hearing for April 8, 2016.

Respondent filed a second answer, which he also captioned "Response," on January 7, 2016. That second pleading, likewise, did not address each allegation in the complaint, as the PDJ had ordered. The People then filed a motion for summary judgment on February 5, 2016. Respondent responded to the summary judgment motion on February 22, 2016, in a pleading that substantively resembled his two prior answers to the People's complaint and in which he failed to follow the PDJ's directives: he did not admit or deny material facts in paragraphs corresponding to those in the motion, nor did he separately set forth numbered additional material disputed facts.[1] The People filed a reply four days later.

In their motion for summary judgment, the People argued that judgment as a matter of law is appropriate in this case because there was a final adjudication of misconduct by the Tenth Circuit and there are no disputed issues of material fact. Respondent disagreed, contending that summary judgment should not be entered because he was not accorded due process in the Tenth Circuit proceeding and because his misconduct does not warrant a two-year suspension in Colorado.[2]

The PDJ liberally construed Respondent's arguments as defenses to imposition of reciprocal discipline under C.R.C.P. 251.21(d)(1) and (4).[3] The PDJ concluded that Respondent's arguments as to due process wholly lacked merit, that no material issue of fact existed regarding his due process defense, and that the People were entitled to judgment as a matter of law on that score. As to Respondent's contention that a lesser sanction should be imposed by the State of Colorado, however, the PDJ determined that disputed issues of material fact remained "as to elements of the analysis guiding imposition of a sanction in Colorado."[4] The PDJ thus declined to grant the People's motion as to Respondent's C.R.C.P. 251.21(d)(4) defense and instead referred the matter to a hearing board to decide whether substantially different discipline in Colorado is clearly and convincingly warranted.

The PDJ made clear in his order, however, that Respondent would not be permitted to raise due process defenses or to challenge the Tenth Circuit's findings of fact or its conclusion that he engaged in misconduct. The PDJ limited the hearing to introduction of evidence and argument about Respondent's mental state in committing the misconduct, the injury or potential injury he caused, and aggravating or mitigating factors, relying on relevant case law and applicable considerations under the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*").[5]

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[1] These directives were set forth in the PDJ's scheduling order in section V8.

[2] Respondent first raised the defense that a different level of discipline is warranted in Colorado in his second answer.

[3] C.R.C.P. 251.21 governs reciprocal discipline, and C.R.C.P. 251.21(d)(1) and (4) set forth defenses to imposition of reciprocal discipline. A respondent invoking such defenses bears the burden to demonstrate by clear and convincing evidence that those defenses pertain.

[4] Order Granting in Part and Denying in Part Complainant's Mot. for Summ. J. at 7 (Mar. 17, 2016).

[5] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

On April 8, 2016, a Hearing Board comprising Stacey A. Campbell and Ralph G. Torres, members of the bar, and the PDJ held a reciprocal discipline hearing under C.R.C.P. 251.21(d). Obye represented the People, while Respondent appeared pro se. The Hearing Board considered Respondent's testimony, stipulated exhibits S1-S2, and the People's exhibits 1-2.[6]

II. FINDINGS OF FACT AND RULE VIOLATIONS

Respondent took the oath of admission and was admitted to the bar of the State of Colorado on October 26, 1976, under attorney registration number 07801. He is thus subject to the jurisdiction of the PDJ and the Hearing Board in this disciplinary proceeding. The findings of fact below are drawn from the PDJ's summary judgment order, as well as the parties' stipulated exhibits.

Underlying Disciplinary Case

On June 12, 2015, the Tenth Circuit suspended Respondent from practicing before that court for two years.[7] The suspension order was precipitated by Respondent's representation of Santiago Alejandre-Gallegos in *Alejandre-Gallegos v. Holder*, case number 14-9567.[8] In that case, Alejandre-Gallegos sought to cancel his deportation, otherwise termed a removal, on the grounds that it would result in "unusual hardship" to his U.S.-citizen family members.[9] An immigration judge denied his request, as did the Board of Immigration Appeals ("BIA"), which remarked that an applicant cannot win cancellation of removal if he or she is convicted of a crime involving moral turpitude, regardless of the nature or extent of the hardship to the applicant's family.[10] Alejandre-Gallegos had pleaded guilty to at least one such offense.[11]

Respondent appealed Alejandre-Gallegos's case to the Tenth Circuit, which dismissed the appeal with these findings:

> Now before us, Mr. Alejandre-Gallegos seeks to undo this decision but his attorney fails to give us any grounds on which we might. Counsel suggests the BIA relied on improper evidence but doesn't apply any citations to the record where it went wrong on the facts (despite Fed. R. App. P. 28(a)(8)(A)). He suggests that the BIA applied the wrong legal standards but doesn't cite any legal authority that might remotely support his claim. He even spends pages discussing *another* criminal charge against his client irrelevant to the one on which the BIA relied. Neither are counsel's shortcomings confined to such

[6] Respondent failed to submit a hearing brief or an exhibit list in advance of the hearing, as he was directed to do in the PDJ's scheduling order. Before the hearing he did attempt to submit several documents—possibly stipulated exhibits—in a noncompliant manner; the PDJ instructed him to resubmit those documents in accordance with the PDJ's scheduling order, but he never did so.
[7] Ex. S1 at 00033.
[8] Ex. S1 at 00017.
[9] Ex. S1 at 00005.
[10] Ex. S1 at 00005-06.
[11] Ex. S1 at 00006.

> important things. His statement of related cases actually includes argument (in defiance of 10th Cir. R. 28.2(C)(1)) and his statement of the case includes no record citations at all (as required by Fed. R. App. P. 28(a)(6)). His brief contains no "summary of the argument." Fed. R. App. P. 28(a)(7). He hasn't even bothered to "alphabetically arrange[]" his table of authorities. Fed. R. App. P. 28(a)(3)). We could go on.
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> Essentially, counsel pronounces that the BIA mistook the facts and acted in defiance of law and leaves it to the court to go fish for facts and law that might possibly support his claim. This, of course, the court has no obligation and is poorly positioned to do.[12]

In the same order, the Tenth Circuit reviewed Respondent's past filings and found that for at least a decade, those filings had "consistently suffered from the sort of shortcomings present in this one."[13] The court cited a number of past cases in which Respondent had been admonished or in which his arguments had been adjudged incoherent.[14] The Tenth Circuit thus stated that "sanctions—including suspension from this court's bar and restitution—may be appropriate" and directed the clerk to initiate a disciplinary proceeding.[15]

On May 12, 2015, the clerk for the Tenth Circuit ordered Respondent to show cause within twenty-one days "why he should not be disciplined and/or sanctioned for his failure to zealously represent his clients, and for his continued failure in his filings here to follow [applicable rules]."[16] The order noted that sanctions might include suspension or disbarment, among other possibilities.[17] The order directed Respondent to "address with specificity why he should not be disciplined for the failures identified in the *Alejandre-Gallegos* matter, as well as for his failure to respond to the admonishments contained in prior decisions of the court."[18] Included as an attachment to the order were the Tenth Circuit's procedures for imposing attorney discipline.[19]

Respondent filed his response to the Tenth Circuit's show cause order on June 2, 2015.[20] In that pleading, he addressed fundamental due process issues that immigrants are today facing, his vision and headache-related ailments that he believed contributed to "problems" in his brief for Alejandre-Gallegos, and the advice he had given Alejandre-

[12] Ex. S1 at 00006-07.
[13] Ex. S1 at 00008.
[14] Ex. S1 at 00008.
[15] Ex. S1 at 00008-09.
[16] Ex. S1 at 00017.
[17] Ex. S1 at 00017.
[18] Ex. S1 at 00017-18.
[19] Ex. S1 at 00019-25.
[20] Ex. S1 at 00026.

Gallegos about the chances for obtaining relief.[21] He did not request a hearing on the disciplinary charges.

By order of June 12, 2015, the Tenth Circuit suspended Respondent for two years, effective June 15, 2015, based on his response, the court's prior decisions and admonishments, and his "past representations," finding that he had failed to provide competent representation, failed to identify cogent arguments, and failed to follow appellate rules.[22]

Respondent's Testimony

Though Respondent was admitted to the bar in 1976, he worked in investment banking for twenty years before opening a general solo practice in Glenwood Springs. He developed an interest in immigration law after observing how his immigrant clients who were facing criminal charges were affected by immigration policies.

Because he quickly formed the opinion that there are inherent conflicts in representing immigration clients who might also be criminal defendants, Respondent switched his practice almost exclusively to immigration law, with more than one-quarter of that work in appellate courts. For more than ten years, he explained, he was the only practicing attorney on the Western Slope who was willing to try immigration and detention cases. Respondent estimated that he is currently juggling 300-400 cases, with perhaps five percent of those matters performed pro bono. Four support staff members assist him, but he is the only lawyer in the office and thus the only person who writes briefs for clients.

At the time of the Alejandre-Gallegos matter, Respondent recounted, he was grappling with two issues. The first issue was of a medical nature: one eye "turned brown," he recalled; it was as if he were looking through a "thin sheath of brown."[23] Meanwhile, the vision in his other eye was completely obfuscated except for its peripheral vision, he said. He was "struggling" with headaches resulting from his loss of vision and with the emotional strain of those medical problems. He was frightened, he said. The second issue was of a professional nature: he was launching a "big push" to finish a brief to the United States Supreme Court in a pro bono immigration matter—a brief, he said, that required a "huge amount of polishing"—while concurrently managing a "huge caseload."[24]

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[21] Ex. S1 at 00029-30.

[22] Ex. S1 at 00033.

[23] *See also* Ex. S2 at 00029 ("Two years before a Doctor at St. Mary's Hospital replaced my lens in my right eye but by late 2014 the capsule into which the lens was placed had died and turned brown. At the same time the cataract had blinded all but the periphery [sic] vision of the left eye. I was extremely anxious that my deterioration was irreparable . . . .").

[24] Respondent identified this pro bono matter as *Herrera-Castillo v. Holder*, denominated in the Tenth Circuit as case number 08-9538. *See* Ex. 2 (*Herrera-Castillo v. Holder*, 573 F.3d 1004 (10th Cir. 2009)). In that opinion, the Tenth Circuit complains that Respondent's brief "lacks an argument setting forth his contentions and the appropriate supporting authorities." *Id.* at 1010. It also criticizes his opening brief as failing to "articulate his specific contentions, the action he is challenging, or how the government specifically violated" his client's rights, instead citing cases "only tangentially relevant to the one before this court, review[ing] irrelevant

Respondent acknowledged that he made mistakes in the Alejandre-Gallegos appeal, including failing to alphabetize his table of authorities, but he insisted that he had read and largely followed the appellate rules of procedure. He disagreed that his arguments were not cogent; to the contrary, he maintained, his "fundamental" arguments were very important. Further, he felt he had "an obligation to repeat certain unhappy arguments before the Tenth Circuit, arguments that they did not want to hear, such as that it was a cruel and unusual punishment to have a person violate a civil law and get twenty years barred from reentering the country to see their U.S.-citizen wife and U.S.-citizen children." Nevertheless, he also remarked, "Did I also distribute other signs of violations of due process in the briefs that maybe I should not have and that did not add to my fundamental argument? I did. I realize my weakness."

Throughout his testimony, Respondent reiterated how unjust he perceives U.S. immigration law to be. "It is a horrendous thing not to be a citizen," he testified. He opined that judges should be apprised about the effects of immigration policies, including damage to the domestic economy and an increase in the number of children sent to foster care. He described being "incensed" by recent procedural changes in immigration law and "aggravated" by the real-life implications of immigration law for his clients. Over the course of his career, he said, he has always had the best of intentions for his clients, our society, and the country. He expressed pride in having worked to change immigration law and to alter processes along the border, but, he said, "I'm singularly not proud of what I've gotten from my attempts with the Tenth Circuit. It has always pained me."

The Tenth Circuit's two-year suspension bars Respondent from practicing in that court, but he is still permitted to appear before U.S. district courts, immigration courts, and Colorado state courts.

III. SANCTIONS

C.R.C.P. 251.21(a) provides that a final adjudication of misconduct in another jurisdiction shall conclusively establish such misconduct in Colorado. As relevant here, the same discipline shall be imposed as was imposed in the foreign jurisdiction unless "[t]he misconduct proved warrants that a substantially different form of discipline be imposed by the Hearing Board."[25]

Construing Respondent's second answer as raising this defense, the PDJ declined to grant the People's summary judgment motion. Instead, he reserved the decision as to sanctions for the Hearing Board's independent judgment, to be guided by the ABA *Standards* and Colorado Supreme Court case law.[26] Using this framework, the Hearing Board must consider the duty violated, the lawyer's mental state, and the actual or potential injury

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allegations of immigration abuses by the government, and mak[ing] policy arguments beyond the court's purview." *Id.*

[25] C.R.C.P. 251.21(d)(4).

[26] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted in consideration of aggravating and mitigating factors.

ABA *Standard* 3.0 – Duty, Mental State, and Injury

Duty: As Alejandre-Gallegos's legal representative, Respondent violated a duty to his client to provide competent representation. As an officer of the court, Respondent violated his duty to the legal system to comply with the Tenth Circuit's rules of appellate procedure.

Mental State: We find that Respondent acted knowingly when he submitted his noncompliant brief in the Alejandre-Gallegos appeal. For about a decade, the Tenth Circuit had noted similar problems in other of his briefs, reminded him of his professional obligations, and admonished him.[27] He was on notice of his failure to comply, yet his brief for Alejandre-Gallegos suffered from the same defects. We deem this clear and convincing evidence of his knowing mental state.

Injury: Respondent's "failure to set forth a coherent argument" resulted in actual harm to Alejandre-Gallegos, whose appeal was dismissed.[28] His repeated failure to comply with federal rules of appellate procedure wasted the time and resources of Tenth Circuit judges and led them to request that the clerk initiate a disciplinary proceeding.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Suspension is the presumptive sanction for Respondent's misconduct under ABA *Standards* 4.43 and 6.22. The former standard provides that suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, resulting in injury or potential injury to a client.[29] The latter standard provides that suspension is generally appropriate when a lawyer knows that he or she is violating a court rule, thereby causing a client injury or potential injury, or interfering or potentially interfering with a legal proceeding.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating factors are considerations that may justify an increase in the presumptive discipline to be imposed, while mitigating factors may justify a reduction in the severity of the sanction.[30] The Hearing Board considered the parties' arguments as to the following aggravating and mitigating circumstances. As explained below, we apply four serious aggravators and three mitigators, two of which are not entitled to much weight.

Prior Disciplinary Offenses – 9.22(a): We view this aggravating factor as very serious. Respondent has been disciplined three other times in this court, with the most recent and

[27] *See* Ex. S1 at 00008.
[28] Ex. S1 at 00008 n.1.
[29] Though Respondent is a longstanding immigration practitioner, the Tenth Circuit's prior orders establish that Respondent was not carrying out immigration representations competently.
[30] *See* ABA *Standards* 9.21 & 9.31.

most severe sanction imposed in 2014 in case number 13PDJ091. Disconcertingly, the misconduct at issue here occurred while Respondent was serving his term of probation for this 2014 discipline.

In that case, by stipulation, Respondent was suspended from the practice of law for one year and one day, all stayed upon the successful completion of a two-year period of probation, effective June 9, 2014. That case involved Respondent's representation of an immigration client for a flat fee of $3,800.00. The fee agreement stated that Respondent would earn the fee upon receipt, and the client paid Respondent $2,000.00 in cash, which he deposited directly into his operating account. Very little work was done on the client's matter from February through July 2011. The client sent Respondent a letter terminating the representation in August 2011, requesting a copy of his file, and asking for a refund of his money. Respondent initially refused but agreed in March 2012 to refund half of the fees paid. He then sent the client a check for just $500.00, noting that he could not provide the other half until he received written authorization from the client's ex-wife. Respondent eventually refunded another $500.00 to the client. In November 2012, the client again requested a copy of his file, along with an accounting and a refund of the remaining $1,000.00. Respondent never provided a written accounting to the client. He later submitted an accounting to the People; the accounting showed that Respondent earned $944.00 before the representation was terminated and an additional $1,009.00 afterwards. The accounting also contained unreasonable time entries. For example, the accounting indicated that on several occasions a staff member spent twenty minutes leaving a voicemail message; this task was billed at the attorney rate of $195.00 per hour. Respondent eventually refunded the remaining $1,000.00 in early 2014. He thereafter amended his fee agreements to include benchmarks in flat fee cases and to clarify the points at which he earns amounts paid to him. Through this conduct, Respondent violated Colo. RPC 1.5(a) (charging a reasonable fee); Colo. RPC 1.15(a) and (c) (holding attorney and client property separate); Colo. RPC 1.5(f) (depositing advances of unearned fees in an attorney's trust account until earned); Colo. RPC 1.16(d) (protecting a client's interests upon termination of the representation); and Colo. RPC 8.4(c) (proscribing conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent also received two private admonitions: one in 2003 and one in 2004. He received the first admonition for improperly placing earned fees in his trust account, failing to list specific client purposes for disbursements, failing to maintain required trust accounting records, and presenting a financial instrument against insufficient funds in his trust account. He received his second admonition for filing a court pleading in which he stated as fact his mistaken recollections, for failing to appear for a trial, and for entering his appearance as defense counsel in a case in which he was a material witness.

Pattern of Misconduct – 9.22(c): The Tenth Circuit took into account eight prior matters in which Respondent had been chastised for failing to follow appellate procedural rules or failing to set forth cogent arguments. A review of the opinions in those cases indicate that he did not confine his rhetoric to the nuts and bolts of legal argument, relying on citations to record evidence and legal authorities as the mainstay for his analysis. Instead, under the guise of constitutional challenges, he meandered into the realm of policy to make

"sweeping and argumentative generalizations."[31] This extensive pattern, which the Tenth Circuit labeled "disquieting," formed the basis for that court's decision to initiate disciplinary proceedings against Respondent, and it warrants great aggravating weight here.[32]

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People ask for application of this factor because Respondent has continued to insist his briefing was trenchant and to deny that he engaged in any misconduct. We are, frankly, nonplussed as to why Respondent did not improve his written advocacy in response to the Tenth Circuit's criticism: we wonder whether he truly believes that he advanced his client's cause in the most persuasive manner possible, whether he was unable to apprehend what was required of him, or whether he made a calculated decision to cut certain corners. Whatever the cause, we conclude that we must consider his refusal to acknowledge his briefing deficiencies as an acute aggravator in this matter. Without an understanding that his submissions suffered from significant shortcomings, he certainly cannot fix future filings.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has been licensed in the State of Colorado since 1976 and has maintained an active law practice for twenty years. No experience is needed to appreciate that the Tenth Circuit's warnings should have been heeded. Thus, that Respondent had substantial experience is indeed a substantial aggravating factor here.

Absence of a Dishonest or Selfish Motive – 9.32(b): We adjudge Respondent to be genuinely passionate about rectifying the injustice that he believes pervades the immigration system. It is this passion that perhaps blinded him to the fact that the federal appellate bench views his arguments as ineffectual. But his depth of feeling is patent, and we deem it a mitigating factor worth considering.

Personal or Emotional Problems – 9.32(c): Respondent's vision problems and stress therefrom merit some—but not much—mitigating weight in our analysis. We have no difficulty imaging that Respondent was distracted from his work by his loss of vision and concomitant fear for his future. But as the Tenth Circuit observed, this medical problem does not explain "why [Respondent] failed to heed this court's prior admonishments regarding his failure to follow court rules."[33]

Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings – 9.32(e): In their hearing brief the People acknowledge that Respondent cooperated in this disciplinary proceeding. We accept the People's representation but give this factor minimal weight, as Respondent neglected to comply with several of the PDJ's directives: he did not properly answer the People's complaint after being ordered to do so,

[31] Ex. 2 (*Gonzales v. Holder*, 567 F. Appx. 612, 614 n.3 (10th Cir. 2014)). We, too, observed the same tendency at the reciprocal discipline hearing: though Respondent appears to be well-versed in the complexities of immigration law, he repeatedly strayed into unfocused digressions about the injustice of the system as it now stands.

[32] Ex. S1 at 00008.

[33] Ex. S1 at 00032.

he did not comply with the standards for summary judgment set forth in the PDJ's scheduling order, and he did not submit a hearing brief in contravention of that same scheduling order.

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.[34] We recognize that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[35] Though prior cases are helpful by way of analogy, we must determine the appropriate sanction based on the particular facts before us.

The People ask the Hearing Board to impose the same sanction as that levied by the Tenth Circuit: a two-year suspension, to run concurrent to that discipline. Here, the presumptive sanction is a suspension, and the four factors in aggravation overshadow the three mitigators, both in number and in import. In particular, we focus on Respondent's prior disciplinary history and his pattern of misconduct, which together suggest that he either cannot or will not conform his behavior to the rules and standards of the courts before which he practices. We are troubled that, having received on eight prior occasions the message that his briefs were not up to par, he submitted the "garbled" Alejandre-Gallegos brief while he was serving a period of probation in Colorado, a mandatory condition of which was that he was not to commit any further violation of the Colorado Rules of Professional Conduct.[36] That inability or unwillingness to heed court orders was also manifest in Respondent's conduct before this tribunal, where Respondent failed altogether to comply with some orders and failed to comply in a satisfactory manner with others. This history militates in favor of a meaningful period of a served suspension. Further, although the cases that the People cite, *People v. Smith*[37] *and People v. Hartman*,[38] are not particularly supportive of such a lengthy period of suspension, their request for reciprocal discipline is neither manifestly excessive nor outside the bounds of sanctions imposed in comparable situations.[39]

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[34] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *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).

[35] *In re Attorney F.*, 285 P.3d at 327 (quoting *People v. Rosen,* 198 P.3d 116, 121 (Colo. 2008)).

[36] Ex. 1 (stipulation); *see also* C.R.C.P. 251.7(b) ("The conditions [of probation] . . . shall include no further violations of the Colorado Rules of Professional Conduct.").

[37] 937 P.2d 724, 725-26 (Colo. 1997) (suspending an attorney for nine months for filing frivolous appeals in two cases).

[38] 744 P.2d 482, 483 (Colo. 1987) (suspending an attorney for six months for making frivolous arguments in three tax cases).

[39] *See, e.g., In re Hull*, 767 A.2d 197, 201-02 (Del. 2001) (suspending an attorney for two years for her repeated acts of misconduct, including failing to file documents and neglect, resulting in real client injury); *In re Albrecht*, 779 N.W.2d 530, 532-33, 537 (Minn. 2010) (suspending an attorney for two years, where the attorney had shown a pattern of incompetence and lack of diligence and had issued an insufficient funds check, and noting that "the fact that misconduct occurs while an attorney is already on probation suggests that a more serious sanction may be needed to prevent such misconduct from recurring").

If we grant the People's request, Respondent would be eligible to petition for reinstatement in both jurisdictions on June 15, 2017, with his reinstatement to the Tenth Circuit conditioned on his good standing in Colorado. In effect, Respondent would face a suspension in Colorado that lasts about one year. We recognize, however, that granting the People's request would gut Respondent's practice. The Tenth Circuit's discipline precludes him from prosecuting immigration appeals but does not bar him from practicing in immigration court, state courts, and federal district courts; a concurrent two-year suspension in this forum would prohibit him from practicing in any court, state or federal.[40] But we also observe that the People could have chosen to address the misconduct at issue here by bringing an action to revoke the stay on Respondent's suspension in case number 13PDJ091 on the grounds that he violated ethical rules—by failing to competently represent Alejandre-Gallegos and failing to comply with federal appellate rules—and thereby violated the terms of his probation.[41] If the People proved such claims by a preponderance of the evidence, the stay on Respondent's suspension of one year and one day would be lifted. Taking these factors into account, imposition of an approximately year-long served suspension here does not strike us as unfair.

Next, we again look to the standard that must govern our decision. Respondent bears the burden in this proceeding to prove that his misconduct warrants a substantially different form of discipline than that imposed by the Tenth Circuit.[42] He did not do so. In fact, he did not suggest an alternative sanction, point to case law that would support a different outcome, or even advocate for application of additional mitigating factors at the hearing.[43] This failure to harness the facts and circumstances of his case to the established legal framework worries us, as it bears some resemblance to the Tenth Circuit's complaints about his advocacy. All told, Respondent did not meet his burden of showing that reciprocal discipline is not warranted, and our independent assessment indicates that reciprocal discipline is within the realm of reasonable. Therefore, we impose the same discipline as that imposed by the Tenth Circuit.

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[40] *See, e.g., People v. Cohan*, 913 P.2d 523, 524-25 (Colo. 1996) (approving a stipulation to a public censure of an attorney who was suspended for three years by a federal court, and considering the relative impact of a federal and of a state suspension on the lawyer's ability to practice law) (citing *In re Robertson*, 608 A.2d 756, 757 (D.C. 1992) ("[T]he federal appeals court was limited to suspending respondent from the practice of law before that court only. This differs from an action by a state supreme court, which would ordinarily impose suspension from the practice of law throughout the state, not just before a particular court")). Here, the People reason that the net effect of their recommended sanction—a suspension of about a year—is a "reasonable solution to the problem of the minor incompatibility between federal and state disciplinary procedures." *Smith*, 937 P.2d at 731.

[41] Ex. 1 (stipulation); *see also* C.R.C.P. 251.7(b) ("The conditions [of probation] . . . shall include no further violations of the Colorado Rules of Professional Conduct.").

[42] *See People v. Calder*, 897 P.2d 831, 832 (Colo. 1995) (noting that a hearing board in a reciprocal disciplinary proceeding properly placed the burden on the respondent to demonstrate by clear and convincing evidence that less severe discipline, or no discipline, should be imposed in Colorado).

[43] At the hearing Respondent did draw attention to his vision problems, which he had already mentioned in his briefing before the Tenth Circuit. *See* Ex. S1 at 00029.

Finally, we note that given Respondent's failures to properly observe court orders and rules, we are concerned that he may not properly wind up his affairs and close his practice in a manner compliant with C.R.C.P. 251.28. Though we are not empowered to appoint inventory counsel under C.R.C.P. 251.32(h), we urge the People to closely monitor Respondent's compliance and, if necessary, request appointment of inventory counsel without delay.

IV. CONCLUSION

In eight cases, the Tenth Circuit described Respondent's appellate briefing in withering terms, among them, incoherent, undeveloped, unclear, disorganized, prolix, vague, and unfocused. Respondent was eventually suspended in that court for two years for lack of competent representation—at a time when he was serving a period of probation in Colorado courts for other misconduct. With these facts in mind, we conclude that substantially different discipline is not warranted in Colorado, and we order imposition of concurrent reciprocal discipline.

V. ORDER

The Hearing Board therefore **ORDERS:**

1. **JOHN ELLIOTT REARDON**, attorney registration number 07801, is **SUSPENDED** for **TWO YEARS**. The **SUSPENSION SHALL** run concurrent to the period of Respondent's suspension in the Tenth Circuit, *nunc pro tunc* to the date the Tenth Circuit's suspension was imposed. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[44]

2. Should Respondent wish to resume the practice of law, he **MUST** petition for reinstatement under C.R.C.P. 251.29(c).

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. Respondent **SHALL** file with the PDJ, within fourteen days of issuance of the "Order and Notice of Suspension," an affidavit complying with C.R.C.P. 251.28(d).

5. The parties **MUST** file any posthearing motion or application for stay pending appeal with the Hearing Board **on or before Wednesday, June 22, 2016**. Any response thereto **MUST** be filed within seven days.

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

6. Respondent **SHALL** pay the reasonable and necessary costs of this proceeding. The People **SHALL** file a statement of costs **on or before Wednesday, June 15, 2016**. Any objection thereto **MUST** be filed within seven days.

DATED THIS 1st DAY OF JUNE, 2016.

Original signature on file
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original signature on file
STACEY A. CAMPBELL
HEARING BOARD MEMBER

Original signature on file
RALPH G. TORRES
HEARING BOARD MEMBER

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