

People v. Romo-Vejar, 05PDJ057. March 31, 2006. Attorney Regulation. Following a sanctions hearing, a Hearing Board publicly censured Respondent Jesus Roberto Romo-Vejar (Attorney Registration No. 17350) in this reciprocal discipline case. C.R.C.P. 251.21(d)(4) requires that a Hearing Board impose the same discipline imposed by a foreign jurisdiction unless the misconduct warrants a substantially different form of discipline. The Supreme Court of Arizona issued Respondent a public censure and placed him on probation for a period of one year. Respondent acknowledged in the Arizona proceedings that he negligently dealt with client funds when he failed to maintain client funds in his trust account. Respondent also failed to notify the State of Colorado of the discipline imposed by the Supreme Court of Arizona due to his mistaken belief that a past administrative suspension meant he no longer held a law license in the State of Colorado. The Hearing Board concluded that the People did not meet their burden of showing the misconduct warranted a substantially different form of discipline in the State of Colorado.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO,	Case Number: 05PDJ057
Respondent: JESUS ROBERTO ROMO-VEJAR.	
REPORT, DECISION, AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.21(d)	

On January 30, 2006, a Hearing Board comprised of J.D. Snodgrass, Boston H. Stanton, Jr., both members of the Bar, and William R. Lucero, the Presiding Disciplinary Judge (“PDJ”), held a hearing on the issue of sanctions in this reciprocal discipline matter pursuant to C.R.C.P. 251.21(d). April M. Seekamp and Nancy L. Cohen appeared on behalf of the Office of Attorney Regulation Counsel (“the People”) and Jesus Roberto Romo-Vejar (“Respondent”) appeared *pro se*. The Hearing Board issues this Report, Decision, and Order Imposing Sanctions Pursuant to C.R.C.P. 251.21(d) based on the pleadings, evidence, and arguments presented by the parties.

SANCTION IMPOSED: PUBLIC CENSURE¹

I. ISSUE

C.R.C.P. 251.21(d)(4) provides that a Hearing Board shall impose the same discipline imposed by a foreign jurisdiction unless the misconduct warrants a substantially different form of discipline. The Supreme Court of Arizona publicly censured Respondent and imposed a one-year period of probation after he admitted to negligently dealing with client funds. Should this Hearing Board impose a six-month suspension, stayed upon the

¹ The Supreme Court of Arizona publicly censured Respondent and imposed a one-year period of probation. C.R.C.P. 251.7(a)(3) requires the imposition of a stayed sentence in conjunction with probation. Respondent’s Exhibit A shows he successfully completed his one-year period of probation in the State of Arizona. The Hearing Board therefore forgoes the requirement of a one-year period of probation in this reciprocal discipline case.

successful completion of a one-year period of probation, as requested by the People?

II. PROCEDURAL HISTORY AND BACKGROUND

On July 20, 2005, the People filed a complaint pursuant to C.R.C.P. 251.21(d) in this reciprocal discipline matter. The People filed an amended complaint on August 3, 2005. The amended complaint notified Respondent that the People intended to seek a greater sanction than the discipline imposed by the Supreme Court of Arizona. Respondent filed his answer on September 26, 2005.²

On December 1, 2005, the People filed a motion for judgment on the pleadings and Respondent filed a response on January 4, 2006. On January 19, 2006, the PDJ found no dispute as to the material facts in this case and granted the People's motion. The entry of judgment on the pleadings established Respondent's violation of Colo. RPC 1.15(a) and C.R.C.P. 251.21(b) for purposes of reciprocal discipline in Colorado. The PDJ set the case for a hearing on the issue of sanctions pursuant to C.R.C.P. 251.21(d) to be held January 30, 2006.

The issue before the Hearing Board is whether Respondent's misconduct warrants a substantially different form of discipline in the State of Colorado than the discipline imposed by the Supreme Court of Arizona. The People seek a six-month suspension, stayed upon the successful completion of one year of probation. Respondent seeks the imposition of reciprocal discipline. A brief summary of the established facts is set forth below.

III. FACTS AND RULE VIOLATIONS

C.R.C.P. 251.21(a) provides that a final adjudication imposed in another jurisdiction conclusively establishes misconduct for purposes of reciprocal discipline in the State of Colorado. The Hearing Board incorporates into this Report the following rule violations and facts established by the PDJ's entry of judgment on the pleadings to determine whether Respondent's misconduct warrants a substantially different form of discipline.

Respondent, Attorney Registration Number 17350, took and subscribed the oath of admission in Colorado and gained admission to the Bar of the Colorado Supreme Court on April 8, 1988. He is therefore subject to the jurisdiction of this court in these disciplinary proceedings. C.R.C.P. 251.1(b). The Colorado Supreme Court previously administratively suspended Respondent in 1992 for failing to fulfill mandatory continuing legal education

² The People's Amended Complaint and Exhibits and Respondent's Answer and Exhibits are attached to this Report as Exhibits A and B respectively.

requirements. In this case, Respondent admitted he failed to notify the People of the discipline imposed by the Supreme Court of Arizona due to his mistaken belief that the administrative suspension meant he no longer held a law license in the State of Colorado. The People highlighted Respondent's admission as a part of their argument for greater discipline in this matter. The remainder of Respondent's misconduct occurred in the State of Arizona.

Respondent deposited a \$50,000.00 settlement check into his trust account in November 2001 as an attorney in the State of Arizona. Respondent deducted his fee, held \$15,000.00 to satisfy a worker's compensation lien, and issued a check to his client for \$18,350.00. Respondent initially attempted to negotiate the lien for his client, but subsequently failed to pursue payment of the lien. In the meantime, Respondent transferred portions of the lien funds to his operating account, used portions of the funds to repay another client, and failed to maintain the \$15,000.00 in his trust account. The insurance company attempted to contact Respondent without success. Respondent's client suffered the potential harm of having to pay the outstanding lien during this period of time. However, Respondent immediately sent funds to the insurance company for full payment of the lien after the State Bar of Arizona contacted him in April 2003.

Respondent's misconduct has been established in proceedings before the Supreme Court of Arizona and the PDJ. The only remaining issue in this case is whether the People met their burden to show that Respondent's misconduct in the State of Arizona warrants a substantially different form of discipline in the State of Colorado.

IV. SANCTIONS

The ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992) ("*ABA Standards*"), the Colorado Rules of Civil Procedure, and Colorado Supreme Court case law are the guiding authorities for imposing reciprocal discipline in the State of Colorado. "Reciprocal discipline is the imposition of a disciplinary sanction for conduct for which a lawyer has been disciplined in another jurisdiction." *ABA Standard 2.9*.

The Supreme Court of Arizona publicly censured Respondent and imposed a one-year period of probation after he admitted to negligently dealing with client funds. The People seek a six-month suspension, stayed upon the successful completion of one year of probation and Respondent seeks the imposition of reciprocal discipline. C.R.C.P. 251.21(d) provides that the Hearing Board shall issue a decision imposing the same discipline imposed by the foreign jurisdiction unless the Hearing Board determines that *the misconduct proved warrants that a substantially different form of discipline be imposed by the Hearing Board*. C.R.C.P. 251.21(d)(4)(emphasis added).

The People notified Respondent that they intended to seek a sanction “greater” than the sanction imposed by the Supreme Court of Arizona. The Hearing Board recognizes the People seek a *greater* sanction, but questions in the first instance whether it is in fact a *substantially different* form of discipline than the discipline imposed by the Supreme Court of Arizona as required by C.R.C.P. 251.21(d). Nevertheless, the Hearing Board must decide whether Respondent’s misconduct warrants a substantially different form of discipline pursuant to C.R.C.P. 251.21(d)(4).

The Hearing Board gives great deference to the proceedings in the Supreme Court of Arizona. These extensive proceedings revealed that Respondent failed to adequately safeguard client funds in his trust account and failed to maintain his trust account in accordance with the Rules of Professional Conduct. The proceedings also found no evidence that indicated Respondent intended to misappropriate his client’s funds, and instead the parties agreed that he negligently handled these funds. Finally, the Hearing Officer considered each of the factors outlined in ABA *Standard* 3.0 including the duties breached by Respondent, his mental state, the injury or potential injury he caused, and the aggravating and mitigating factors.

ABA *Standard* 4.1 clearly is the most applicable standard to Respondent’s misconduct regarding his failure to preserve a client’s property. Specifically, in the absence of aggravating or mitigating factors:

- Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA *Standard* 4.12.
- Reprimand (public censure) is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. ABA *Standard* 4.13.

The Supreme Court of Arizona listed a series of mitigating factors that led it to the conclusion that the presumptive sanction for Respondent’s misconduct is public censure. The factors included: (1) the lack of any prior discipline (ABA *Standard* 9.32(a)); (2) an absence of dishonest or selfish motive (ABA *Standard* 9.32(b)); (3) a good faith effort to make restitution/rectify the consequences of his misconduct (ABA *Standard* 9.32(d)); and (4) cooperation throughout the disciplinary proceedings in the State of Arizona (ABA *Standard* 9.32(e)). The Hearing Board also considered Respondent’s substantial experience in the practice of law (over 17 years) as an aggravating factor and found Respondent remorseful for his misconduct (ABA *Standard* 9.32(l)) as an additional mitigating factor.

The People argue that Colorado Supreme Court case law requires a sanction greater than public censure under these circumstances. A review of the cases cited by the People reveals distinguishable fact scenarios that in some instances involved multiple disciplinary violations with little or no mitigation and/or respondents who failed to participate in the proceedings. Further, none of these cases considered the appropriate sanction for negligent handling of client funds in the context of a reciprocal discipline case where the respondent already has been publicly censured in another jurisdiction.

Negligent handling of client funds warrants a public censure, at the least. *People v. Shidler*, 901 P.2d 477, 479 (Colo. 1995); *See People v. Cantrell*, 900 P.2d 126, 128 (Colo. 1995) (in the absence of aggravating or mitigating factors, public censure is appropriate when a lawyer is negligent in dealing with client funds and causes injury or potential injury to a client, citing ABA *Standard* 4.13). The Hearing Board acknowledges that a suspension *could be* considered given the established facts, absent the significant mitigating factors and the reciprocal discipline standard the Hearing Board must apply in this case.

The Hearing Board considered the findings of the Supreme Court of Arizona, the Colorado Supreme Court case law cited by the People, Respondent's failure to report his Arizona discipline in the State of Colorado, and the significant factors in mitigation and finds that the People did not meet their burden to show that Respondent's misconduct warrants a substantially different form of discipline as set forth in C.R.C.P. 251.24(d)(4). Under these circumstances, the Hearing Board finds no reason to deviate from the presumptive reciprocal discipline and is therefore required to issue an order imposing the same discipline as imposed by the Supreme Court of Arizona. C.R.C.P. 251.21(d).

V. CONCLUSION

One of the primary goals of our disciplinary system is to protect the public from lawyers who pose a danger to them. The People did not meet their burden of showing Respondent's misconduct warrants a substantially different form of discipline in the State of Colorado. The established facts reveal Respondent's conduct involved negligence, involved only one client, and caused only potential harm to that client. The Hearing Board also considered the fact that Respondent has not practiced in the State of Colorado since before 1992, has no intention of practicing here, and remains administratively suspended at this time. The Hearing Board therefore concludes that the discipline ordered by the Supreme Court of Arizona is reciprocally appropriate under these circumstances. Accordingly, the Hearing Board finds that the imposition of a public censure is the appropriate sanction in this case.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. Jesus Roberto Romo-Vejar, Attorney Registration Number 17350, is **PUBLICLY CENSURED**.
2. Jesus Roberto Romo-Vejar **SHALL** pay the costs of these proceedings. The People shall submit a Statement of Costs within fifteen (15) days of the date of this Order. Respondent shall have ten (10) days in which to file a response.

DATED THIS 31ST DAY OF MARCH, 2006

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

(Original Signature on File)

J.D. SNODGRASS
HEARING BOARD MEMBER

(Original Signature on File)

BOSTON H. STANTON, JR.
HEARING BOARD MEMBER

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