**BEFORE THE BOARD OF DISCIPLINARY APPEALS**
**APPOINTED BY**
**THE SUPREME COURT OF TEXAS**

| | | |
|---|---|---|
| **IN THE MATTER OF** | § | |
| **DERRICK DUANE CORNEJO** | § | **CAUSE NO. 60491** |
| **STATE BAR CARD NO. 24048049** | § | |

## SECOND AMENDED PETITION FOR RECIPROCAL DISCIPLINE

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Derrick Duane Cornejo, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Second Amended Petition for Reciprocal Discipline at Derrick Duane Cornejo, 9978 Deer Creek Ln., Highlands Ranch, Colorado 80129.

3. On or about August 28, 2013, a Complaint was filed in the Supreme Court of Colorado, Before the Presiding Disciplinary Judge in a matter styled, *Complainant: The People of the State of Colorado, Respondent: Derrick Duane Cornejo, #29438*, 13 PDJ 066. (Exhibit 1).

4. On or about July 30, 2014, an Opinion and Decision Imposing Sanctions was filed in the Supreme Court of Colorado, Before the Office of the Presiding Disciplinary Judge in a matter styled, *Complainant: The People of the State of Colorado, Respondent: Derrick Duane*

*Cornejo, #29438*, Case Number 13PDJ066. (Exhibit 2).

5. On or about June 26, 2015, an Amended Order and Notice of Suspension was entered in the Supreme Court of Colorado, Before the Office of the Presiding Disciplinary Judge in a matter styled, *Complainant: The People of the State of Colorado, Respondent: Derrick Duane Cornejo, #29438*, Case Number 13PDJ066, that states in pertinent part as follows:

> ... From June 2 through 4, 2014, the Hearing Board held a hearing pursuant to C.R.C.P. 251.18. On July 20, 2014, the Hearing Board issued an "Opinion and Decision Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)," suspending Derrick Duane Cornejo ("Respondent") from the practice of law for a period of eighteen months. The Colorado Supreme Court affirmed the Hearing Board's decision on June 8, 2015.
>
> Pursuant to C.R.C.P. 251.28(a), the Presiding Disciplinary Judge ("the Court") ORDERS that DERRICK DUANE CORNEJO, ATTORNEY REGISTRATION NUMBER 294381 IS SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF EIGHTEEN MONTHS, EFFECTIVE JULY 23, 2015, and his name shall be stricken from the list of attorneys authorized to practice in the State of Colorado.

(Exhibit 3).

6. In the Opinion and Decision Imposing Sanctions, the Hearing Board found that Respondent knowingly violated his disciplinary order of suspension during a two-month period by negotiating a fee agreement, offering legal advice to clients, and holding himself out as authorized to practice law in Colorado in violation of the following Colorado Rules of Professional Conduct:

| | |
|---|---|
| 3.4(c) | A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; |
| 5.5(a)(1) | A lawyer shall not practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by C.R.C.P. 204 or C.R.C.P. 205 or federal or tribal law; and |

8.4(c) It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

7. Copies of the Complaint, Opinion and Decision Imposing Sanctions, and Amended Order and Notice of Suspension are attached hereto as Petitioner's Exhibits 1 through 3, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

8. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Second Amended Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Colorado and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

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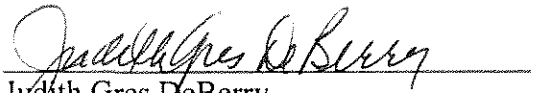

Judith Gres DeBerry
Bar Card No. 24040780

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Second Amended Petition for Reciprocal Discipline and the Order to Show Cause on Derrick Duane Cornejo by personal service.

Derrick Duane Cornejo
9978 Deer Creek Ln., Highlands Ranch
Colorado 80129

Judith Gres DeBerry

# INTERNAL PROCEDURAL RULES

## BOARD OF DISCIPLINARY APPEALS

*Current through June 21, 2018*

## Contents

# INTERNAL PROCEDURAL RULES

## Board of Disciplinary Appeals

*Current through June 21, 2018*

### I. GENERAL PROVISIONS

**Rule 1.01. Definitions**

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

**Rule 1.02. General Powers**

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

**Rule 1.03. Additional Rules in Disciplinary Matters**

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

**Rule 1.04. Appointment of Panels**

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

**Rule 1.05. Filing of Pleadings, Motions, and Other Papers**

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) Exceptions.

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) Format. An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

**Rule 1.06. Service of Petition**

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

**Rule 1.07. Hearing Setting and Notice**

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

**Rule 1.08. Time to Answer**

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

**Rule 1.09. Pretrial Procedure**

(a) **Motions.**

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

**Rule 1.10. Decisions**

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

**Rule 1.11. Board of Disciplinary Appeals Opinions**

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

**Rule 1.12. BODA Work Product and Drafts**

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

**Rule 1.13. Record Retention**

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

**Rule 1.14. Costs of Reproduction of Records**

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

**Rule 1.15. Publication of These Rules**

These rules will be published as part of the TDRPC and TRDP.

## II. ETHICAL CONSIDERATIONS

**Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases**

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

**Rule 2.02. Confidentiality**

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

**Rule 2.03. Disqualification and Recusal of BODA Members**

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse himor herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

## III. CLASSIFICATION APPEALS

**Rule 3.01. Notice of Right to Appeal**

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

**Rule 3.02. Record on Appeal**

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

## IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

**Rule 4.01. Perfecting Appeal**

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

**Rule 4.02. Record on Appeal**

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) **Preparation of Clerk's Record.**

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) **Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6[1]) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

[1] So in original.

**Rule 4.03. Time to File Record**

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

**Rule 4.04. Copies of the Record**

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

**Rule 4.05. Requisites of Briefs**

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

**Rule 4.06. Oral Argument**

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

**Rule 4.07. Decision and Judgment**

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

**(b) Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

**Rule 4.08. Appointment of Statewide Grievance Committee**

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

**Rule 4.09. Involuntary Dismissal**

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

## V. PETITIONS TO REVOKE PROBATION

**Rule 5.01. Initiation and Service**

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

**Rule 5.02. Hearing**

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

## VI. COMPULSORY DISCIPLINE

**Rule 6.01. Initiation of Proceeding**

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

**Rule 6.02. Interlocutory Suspension**

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

## VII. RECIPROCAL DISCIPLINE

**Rule 7.01. Initiation of Proceeding**

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

**Rule 7.02. Order to Show Cause**

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

**Rule 7.03. Attorney's Response**

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

## VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

**Rule 8.01. Appointment of District Disability Committee**

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

**Rule 8.02. Petition and Answer**

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

**Rule 8.03. Discovery**

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) Motion. The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) Report. The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

**Rule 8.04. Ability to Compel Attendance**

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

**Rule 8.05. Respondent's Right to Counsel**

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

**Rule 8.06. Hearing**

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

**Rule 8.07. Notice of Decision**

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

**Rule 8.08. Confidentiality**

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

## IX. DISABILITY REINSTATEMENTS

**Rule 9.01. Petition for Reinstatement**

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

**Rule 9.02. Discovery**

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

**Rule 9.03. Physical or Mental Examinations**

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

**Rule 9.04. Judgment**

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

## X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

**Rule 10.01. Appeals to the Supreme Court**

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

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| SUPREME COURT, STATE OF COLORADO<br><br>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE<br>1300 Broadway, Suite 250<br>Denver, Colorado 80203 | **FILED**<br>AUG 2 8 2013<br>PRESIDING DISCIPLINARY JUDGE<br>SUPREME COURT OF COLORADO |
| Complainant:<br>THE PEOPLE OF THE STATE OF COLORADO<br><br>Respondent:<br>DERRICK DUANE CORNEJO, #29438 | ▲COURT USE ONLY▲<br><br>Case Number:<br><br>13 PDJ 066 |
| Adam J. Espinosa, #33937<br>Assistant Regulation Counsel<br>James C. Coyle, #14970<br>Regulation Counsel<br>Attorneys for Complainant<br>1300 Broadway, Suite 500<br>Denver, Colorado 80203<br>Telephone: (303) 457-5800x7813<br>Fax No.: (303) 501-1141<br>Email: a.espinosa@csc.state.co.us | **Supreme Court**<br>State of Colorado<br>Certified to be a full, true and correct copy<br><br>MAY 16 2018<br><br>Office of the<br>Presiding Disciplinary Judge<br>By |
| **COMPLAINT** | |

THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

## Jurisdiction

1. Respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on May 18, 1998, and is registered upon the official records of this Court, registration no. 29438. He is subject to the jurisdiction of this Court in these disciplinary proceedings. Respondent's registered business address is 3033 Blake St. #105, Denver, CO 80205.

## General Allegations

2. On February 24, 2012, Respondent's license to practice law was suspended by the Presiding Disciplinary Judge for nine months in 11PDJ037, *People v. Derrick Duane Cornejo.*



Exhibit 1

3. In August 2012, while his law license was suspended, Respondent met with Leyla N. Eraybar, Esq. and discussed assisting Ms. Eraybar in her transition to private practice as a solo practitioner.

4. At that time, Ms. Eraybar was an attorney employed by Caroline C. Cooley as a salaried associate.

5. Ms. Eraybar worked for Ms. Cooley from April 18, 2011 to October 25, 2012. The firm handled mostly family law.

6. Ms. Eraybar wanted to start her own law firm and wanted to practice criminal law.

7. In August 2012, Ms. Eraybar and Respondent discussed practicing together when Respondent was reinstated to the practice of law in November of 2012.

8. In late August 2012, Ms. Eraybar formed an LLC named "Law Firm of Leyla Eraybar, LLC."

9. Ms. Eraybar opened a COLTAF account at Colorado Business Bank and obtained a Lexis-Nexis account for e-filing.

10. Ms. Eraybar knew Respondent would not be eligible for reinstatement to the practice of law until November 2012.

11. Ms. Eraybar hoped Respondent could help her learn more about criminal law, be a source of referrals, and work as a paralegal.

12. On September 19, 2012, Respondent and Ms. Eraybar entered into a written "Consulting Agreement."

13. The consulting agreement provided that Respondent's services would be retained to market Ms. Eraybar's law firm and recruit clients. Respondent would be compensated hourly for work performed, but not to exceed 50% of the revenues earned by the marketing. Ms. Eraybar paid Respondent $1,000 as an initial payment for services.

14. Respondent and Ms. Eraybar agreed that the marketing documents would use Respondent's address and phone number as the contact information, primarily because Ms. Eraybar did not have her own office and because she was still employed with Ms. Cooley's law firm.

15. Respondent and Ms. Eraybar agreed that Respondent would meet with and sign up prospective clients and do preliminary drafting of the necessary legal documents.

16. Respondent was supposed to keep Ms. Eraybar informed of the status of the cases, and Ms. Eraybar would sign any pleadings and attend all court proceedings.

17. In September and October 2012, Respondent mailed out several advertising flyers.

18. The envelopes that contained the advertising flyers had the following return address: Law Office of Leyla Eraybar, 3033 Blake St., Unit 105, Denver, CO 80205.

19. In fact, 3033 Blake St., Unit 105, Denver, CO 80205 is Respondent's address.

20. The advertising flyers that Respondent mailed out advertised the "Law Office of Derrick D. Cornejo, LLC, Attorneys and Counselors at Law."

21. The advertising flyer provided general legal advice and specifically advised, "If you are being charged with DUI, DWAI, or any other crime, DON'T PLEAD GUILTY!! DON'T TAKE A DEAL!!"

22. The advertising flyers were signed by Respondent and the signature line read "Derrick D. Cornejo, Esq."

23. The advertising flyers did not mention Ms. Eraybar.

24. At the time Respondent mailed out the advertising flyers, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo*.

25. In mid-October Ms. Eraybar became suspicious that Respondent was marketing and meeting with clients and representing he was an attorney. She became suspicious because multiple clients seemed confused about her role in their case.

26. By the end of October 2012, courts and attorneys in Colorado notified the Colorado Supreme Court Office of Attorney Regulation Counsel that Respondent may be holding himself out as an attorney or may be practicing law.

27. On October 22, 2012, Ms. Eraybar sent Respondent a letter terminating the Consulting Agreement.

28. In her termination letter, Ms. Eraybar told Respondent that she was no longer working with him and that Respondent was to cease all marketing in her name, cease any communications with her clients under her name, and cease representing that there was any affiliation between them. Ms. Eraybar directed Respondent to turn over all files, documents, fee agreements, and any money Respondent had collected.

29. On or about October 22, 2012, Respondent and Ms. Eraybar sent each other a series of text messages.

30. Respondent made the following statements in the text messages:

a. "U got six clients in a month. You owe me 1250 per client"

b. "Don't be stupid about self reporting just represented clients that's all you have to do"

c. "U put a little seed money out to earn a little. Your earning something in return. As I saw last Friday I am decent at what I do. We are doing business together. When you don't trust me even though I have brought u business, gives me pause. . . I have been loyal to u and u have made some money. My question is are you loyal to me at least, for the next 45?"

d. "Don't talk to me about arc because u can easily find your ass in a twist..."

e. "You know what I am talking about.....i have been loyal too just u and you made some coin...."

f. "As u can see I can catch some trout, we can actually live on some trout but I need to trust u. I will set u up to land the whale on your own. Bottom line let's catch some more trout...."

31. Respondent held himself out as an attorney and engaged in the unauthorized practice of law in six client matters. Those client matters are described as follows:

*Sanchez-Morales, 12M08864*

32. Jose Javier Sanchez-Morales contacted Respondent to defend him in a DUI case in Denver County.

33. Respondent had previously represented Mr. Sanchez-Morales' wife in a different criminal matter.

34. Respondent agreed to represent Mr. Sanchez-Morales and told him that someone would be assisting him on the case.

35. At the time Respondent agreed to represent Mr. Sanchez-Morales, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo*.

36. Respondent did not tell Mr. Sanchez-Morales that his license to practice law was suspended.

37. Nevertheless, on August 26, 2012, Respondent met with Mr. Sanchez-Morales about his DUI case.

38. Respondent provided Mr. Sanchez-Morales legal advice about his DUI case.

39. Also on August 26, 2012, Respondent presented Mr. Sanchez-Morales with a written fee agreement titled "Legal Representation Engagement and Fee Agreement" for the Law Office of Derrick Cornejo, Attorneys and Counselors at Law.

40. The "Legal Representation Engagement and Fee Agreement" presented by Respondent to Mr. Sanchez-Morales stated "This letter, when signed by, constitutes a contract whereby this law firm will provide legal services to you in connection with a Denver DUI matter." The fee agreement provided for a flat fee of $2200.00 plus costs. The fee agreement also provided that a $500.00 retainer would be paid on September 1, 2012 with the balance to be paid in monthly installments of $300.00.

41. The "Legal Representation Engagement and Fee Agreement" was signed by Respondent and Mr. Sanchez-Morales.

42. At the time Respondent presented the written fee agreement to Mr. Sanchez-Morales, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo*.

43. Respondent told investigators that the "Legal Representation Engagement and Fee Agreement" that he and Mr. Sanchez-Morales executed was supposed to be destroyed.

44. Ms. Eraybar provided investigators a copy of her invoice for legal services in Mr. Sanchez-Morales' case.

45. According to the invoice Ms. Eraybar met with Mr. Sanchez-Morales on September 2, 2012 and collected $500.00. The invoice shows that Mr. Sanchez-Morales was charged $200.00 in costs for "paralegal fees" which were paid to Respondent.

46. The invoice reflects that between September 6 and October 15, Mr. Sanchez-Morales was invoiced for $1,092.50 for various legal services.

47. Both Respondent and Ms. Eraybar attended Mr. Sanchez-Morales' court hearing on October 15, 2012.

48. After becoming suspicious that Respondent was engaged in the unauthorized practice of law, on October 22, 2012, Ms. Eraybar contacted Mr. Sanchez-Morales and informed him that Respondent was not a licensed attorney.

49. Ms. Eraybar refunded $785.00 to Mr. Sanchez-Morales, which represented the amount he had paid minus the costs.

50. Up until the time Ms. Eraybar contacted him, Mr. Sanchez-Morales believed Respondent was his attorney in his DUI case in Denver County.

*Arteage Matter*

51. Respondent had previously represented Juan Arteage in a separate legal matter.

52. In September 2012, Mr. Arteage contacted Respondent to assist him with a domestic relations matter and a business matter.

53. On September 24, 2012, Respondent and Ms. Eraybar met with Mr. Arteage regarding the domestic relations matter and the business matter.

54. Mr. Arteage paid Ms. Eraybar $500.00 at this meeting.

55. On September 27, 2012, Respondent and Ms. Eraybar met with Mr. Arteage again to advise him regarding "a course of action" for his domestic relations matter and his business matter.

56. Ms. Eraybar did not enter her appearance for either of Mr. Arteage's legal matters.

57. After becoming suspicious that Respondent was engaged in the unauthorized practice of law, on October 23, 2012, Ms. Eraybar contacted Mr. Arteage and informed him that Respondent was not a licensed attorney.

58. Ms. Eraybar also refunded $350.00 to Mr. Arteage.

59. At all relevant times in the Arteage matter, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo*.

*Roberts, 12M09777*

60. On September 28, 2012, Mark Roberts received a flyer in the mail advertising Respondent's legal services.

61. The envelope that contained the advertising flyer had the following return address: Law Office of Leyla Eraybar, 3033 Blake St., Unit 105, Denver, CO 80205.

62. In fact, 3033 Blake St., Unit 105, Denver, CO 80205 is Respondent's address.

63. The advertising flyer that Mr. Roberts received in the mail advertised the "Law Office of Derrick D. Cornejo, LLC, Attorneys and Counselors at Law." The advertising flyer provided general legal advice and specifically advised, "If you are being charged with DUI, DWAI, or any other crime, DON'T PLEAD GUILTY!! DON'T TAKE A DEAL!!" The advertising flyer was signed by Respondent and the signature line read "Derrick D. Cornejo, Esq."

64. At the time Mr. Roberts received the advertising flyer, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo.*

65. Mr. Roberts contacted Respondent in response to the advertising flyer to represent him in a DUI in Denver County.

66. Shortly after, Mr. Roberts met with Respondent about his case.

67. At the meeting, Respondent told Mr. Roberts that he worked for Ms. Eraybar.

68. Mr. Roberts believed Respondent was an attorney working under the supervision of Ms. Eraybar.

69. After this first meeting, Mr. Roberts met with Respondent and Ms. Eraybar and paid them $2,500.00 to represent him in his DUI case.

70. After becoming suspicious that Respondent was engaged in the unauthorized practice of law, on or about October 22, 2012, Ms. Eraybar contacted Mr. Roberts and informed him that Respondent was not a licensed attorney.

71. Ms. Eraybar refunded $2,300.00 to Mr. Roberts.

72. Prior to being contacted by Ms. Eraybar, Mr. Roberts believed Respondent was an attorney because of the flyer and because Respondent had given him legal advice about his case.

73. At all relevant times in the Roberts matter, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo.*

*Leyvas, 12M09687*

74. On September 15, 2012, Jose Leyvas was arrested for DUI and other related traffic violations.

75. Mr. Leyvas received a flyer in the mail advertising Respondent's legal services.

76. The envelope that contained the advertising flyer had the following return address: Law Office of Leyla Eraybar, 3033 Blake St., Unit 105, Denver, CO 80205.

77. In fact, 3033 Blake St., Unit 105, Denver, CO 80205 is Respondent's address.

78. The advertising flyer that Mr. Roberts received in the mail advertised the "Law Office of Derrick D. Cornejo, LLC, Attorneys and Counselors at Law." The advertising flyer provided general legal advice and specifically advised, "If you are being charged with DUI, DWAI, or any other crime, DON'T PLEAD GUILTY!! DON'T TAKE A DEAL!!" The advertising flyer was signed by Respondent and the signature line read "Derrick D. Cornejo, Esq."

79. At the time Mr. Leyvas received the advertising flyer, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo*.

80. Mr. Leyvas contacted Respondent in response to the advertising flyer to represent him in a DUI in Denver County.

81. Shortly after, Mr. Leyvas met with Respondent.

82. Mr. Leyvas hired Respondent and agreed to a fee of $2500.

83. No money was ever paid to Respondent or to Ms. Eraybar.

84. Mr. Leyvas met with Respondent and spoke to him on the phone several times over the next few weeks.

85. Mr. Leyvas' plea and setting hearing was set for November 26, 2012.

86. On or about October 26, 2012, Respondent told Mr. Leyvas that Ms. Eraybar was going to withdraw from the criminal DUI case but that she would handle his upcoming DMV hearing.

87. Respondent promised to represent Mr. Leyvas at the November 26, 2012 hearing.

88. Mr. Leyvas then contacted Ms. Eraybar who told him that Respondent was not licensed to practice law and that she would not be able to represent him. She withdrew from the case and found Mr. Leyvas another attorney who could represent him.

89. At all relevant times in the Leyvas matter, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo*.

*Resto, 12M09717*

90. On September 22, 2012, Joseph Resto was arrested for DUI and other related charges.

91. Mr. Resto contacted Respondent and hired him after receiving a flyer in the mail advertising Respondent's legal services.

92. The envelope that contained the advertising flyer had the following return address: Law Office of Leyla Eraybar, 3033 Blake St., Unit 105, Denver, CO 80205.

93. In fact, 3033 Blake St., Unit 105, Denver, CO 80205 is Respondent's address.

94. The advertising flyer that Mr. Roberts received in the mail advertised the "Law Office of Derrick D. Cornejo, LLC, Attorneys and Counselors at Law." The advertising flyer

provided general legal advice and specifically advised, "If you are being charged with DUI, DWAI, or any other crime, DON'T PLEAD GUILTY!! DON'T TAKE A DEAL!!" The advertising flyer was signed by Respondent and the signature line read "Derrick D. Cornejo, Esq."

95. At the time Mr. Leyvas received the advertising flyer, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo.*

96. On October 16, 2012, Respondent and Ms. Eraybar attended Mr. Resto's court hearing.

97. When Ms. Eraybar arrived at court on October 16, 2012, Mr. Resto did not know who she was.

98. Ms. Eraybar was shocked to find that Mr. Resto did not know who she was, which caused her to become suspicious of Respondent.

99. Ms. Eraybar began to believe that Respondent was engaging in the unauthorized practice of law.

100. On October 22, 2012, the court clerk in Mr. Resto's case contacted Mr. Resto about his case.

101. The clerk told Mr. Resto she was having trouble reaching his attorney.

102. Mr. Resto told the clerk that Respondent represented him and gave the clerk Respondent's phone number.

103. When contacted by the clerk, Respondent provided Ms. Eraybar's number.

104. Mr. Resto contacted the clerk the next day, distressed because he had believed that Respondent was his attorney.

105. After becoming suspicious that Respondent was engaged in the unauthorized practice of law, on or about October 26, 2012, Ms. Eraybar contacted Mr. Resto and informed him that Respondent was not a licensed attorney.

106. Ms. Eraybar met with Mr. Resto at the courthouse and refunded his money.

107. At all relevant times in the Resto matter, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo.*

*Smith, 12M10426*

108. On October 11, 2012 James Smith was arrested for DUI and other traffic related offenses.

109. Respondent and Ms. Eraybar met with Mr. Smith about his DUI case.

110. Mr. Smith retained Ms. Eraybar to represent him in his DUI case.

111. Ms. Eraybar signed an entry of appearance and request for discovery on behalf of Mr. Smith on about October 20, 2012. The Certificate of Service was signed by Respondent but was never filed with the court.

112. After becoming suspicious that Respondent was engaged in the unauthorized practice of law, Ms. Eraybar contacted Mr. Smith and informed him that Respondent was not a licensed attorney.

113. On November 1, 2012, Ms. Eraybar filed Notice of Intent to Withdraw as attorney of record.

114. At all relevant times in the Smith matter, Respondent's license to practice law was under suspension in case number 11PDJ037, *People v. Derrick Cornejo*.

## CLAIM I
**[A Lawyer Shall Not Knowingly Disobey an Obligation Under the Rules of a Tribunal - Colo. RPC 3.4(c)]**

115. Paragraphs 1 through 114 are incorporated herein as if fully set forth.

116. Colo. RPC Rule 3.4(c) states that a "lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

117. Respondent violated Colo. RPC 3.4(c) by knowingly disobeying the Presiding Disciplinary Judge's order of suspension in 11PDJ037 by engaging in the practice of law in the Sanchez-Morales matter, the Arteage matter, the Roberts matter, the Leyvas matter, the Resto matter, and the Smith matter.

118. Each of these knowing failures to obey the Presiding Disciplinary Judge's order of suspension in 11PDJ037 constitutes a separate violation of Colo. RPC 3.4(c) as do all of them together.

WHEREFORE, the complainant prays at the conclusion hereof.

## CLAIM II
**[A Lawyer Shall Not Threaten Disciplinary Charges to Obtain an Advantage in a Civil Matter - Colo. RPC 4.5(a)]**

119. Paragraphs 1 through 114 are incorporated herein as if fully set forth.

120. Colo. RPC Rule 4.5(a) states, "A lawyer shall not threaten criminal,

administrative or disciplinary charges to obtain an advantage in a civil matter nor shall a lawyer participate in presenting criminal, administrative or disciplinary charges solely to gain an advantage in a civil matter."

121. Respondent violated Colo. RPC 4.5(a) by threatening disciplinary charges against Ms. Eraybar to obtain an advantage in their civil dispute.

WHEREFORE, Complainant prays at the conclusion hereof.

## CLAIM III
**[A Lawyer Shall Not Practice Law in a Jurisdiction Where Doing So Violates the Regulations of the Legal Profession in that Jurisdiction – Colo. RPC 5.5]**

122. Paragraphs 1 through 114 are incorporated herein as if fully set forth.

123. Colo. R.P.C. Rule 5.5 states "a lawyer shall not practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court..."

124. Respondent violated Rule 5.5 in the Sanchez-Morales matter, the Arteage matter, the Roberts matter, the Leyvas matter, the Resto matter, and the Smith matter by either holding himself out as an attorney, or by providing legal advice, or by accepting legal fees after his license to practice law was suspended.

125. Each instance Respondent held himself out as an attorney, or provided legal advice, or accepted legal fees after his license to practice law was suspended, in each separate client matter, constitutes a separate violation of Colo. RPC 5.5 as do all of them together.

WHEREFORE, Complainant prays at the conclusion hereof.

## CLAIM IV
**[A Lawyer Shall Not Engage In Conduct Involving Dishonesty, Fraud, Deceit Or Misrepresentation (Knowing Conversion)- Colo. RPC 8.4(c)]**

126. Paragraphs 1 through 114 are incorporated herein.

127. Colo. RPC 8.4(c) states, "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

128. Respondent violated Colo. RPC 8.4(c) by misrepresenting his status as a licensed attorney and by engaging in deceitful and dishonest conduct by holding himself out as a licensed attorney in the Sanchez-Morales matter, the Arteage matter, the Roberts matter, the Leyvas matter, the Resto matter, and the Smith matter.

129. Each instance Respondent misrepresented his status as an attorney in each legal matter establishes a violation of Colo. RPC 8.4(c).

## CLAIM V
**[A Lawyer Shall Not Engage In Conduct That Is Prejudicial to the Administration of Justice -- Colo. RPC 8.4(d)]**

130. Paragraphs 1 through 114 are incorporated herein.

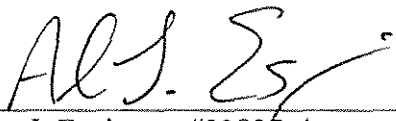
131. Colo. RPC 8.4(d) states, "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."

132. Respondent violated Colo. RPC 8.4(d) by coercing and threatening Ms. Eraybar in an effort to prevent Ms. Eraybar from making a complaint with the Office of Attorney Regulation Counsel concerning Respondent's misconduct.

WHEREFORE, the People pray that the respondent be found to have engaged in misconduct under C.R.C.P. 251.5 and the Colorado Rules of Professional Conduct as specified above; Respondent be appropriately disciplined for such misconduct; Respondent be required to take any other remedial action appropriate under the circumstances; and Respondent be assessed the costs of this proceeding.

DATED this 28th day of August, 2013.

Respectfully submitted,



Adam J. Espinosa, #33936
Assistant Regulation Counsel
James C. Coyle, #14970
Regulation Counsel
Attorneys for Complainant

SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE BEFORE
THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1300 BROADWAY, SUITE 250
DENVER, CO 80202

**Complainant:**
THE PEOPLE OF THE STATE OF COLORADO

**Respondent:**
DERRICK DUANE CORNEJO

Case Number:
**13PDJ066**

**OPINION AND DECISION IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(b)**

On June 2 through 4, 2014, a Hearing Board comprised of Linda S. Kato and Paul J. Willumstad, members of the bar, and William R. Lucero, the Presiding Disciplinary Judge ("the PDJ"), held a hearing pursuant to C.R.C.P. 251.18. Adam J. Espinosa appeared on behalf of the Office of Attorney Regulation Counsel ("the People"), and Derrick Duane Cornejo ("Respondent") appeared with his counsel, Timothy Kelly. The Hearing Board now issues the following "Opinion and Decision Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)."

## I. SUMMARY

The Hearing Board finds that Respondent knowingly violated his disciplinary order of suspension during a two-month period by negotiating a fee agreement, offering legal advice to clients, and holding himself out as authorized to practice law in Colorado in violation of Colo. RPC 3.4(c), 5.5(a)(1), and 8.4(c). The Hearing Board concludes, however, the People were unable to prove by clear and convincing evidence that Respondent threatened disciplinary charges against another attorney in order to obtain an advantage in a civil matter, thereby prejudicing the administration of justice. Respondent's proven misconduct, together with the circumstances of this case, warrants an eighteen-month suspension from the practice of law.

## II. PROCEDURAL HISTORY

The People filed a complaint in this case on August 28, 2013, bringing claims premised on violations of Colo. RPC 3.4(c) (a lawyer shall not disobey an obligation under the rules of a tribunal), Colo. RPC 4.5(a) (a lawyer shall not threaten criminal, administrative, or disciplinary charges to obtain an advantage in a civil matter), Colo. RPC 5.5(a)(1) (a lawyer shall not practice law in this jurisdiction without a valid license to practice law), Colo.

Exhibit
2

RPC 8.4(c) (a lawyer shall not engage in dishonesty, fraud, deceit, or misrepresentation), and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice). Respondent filed his answer on November 20, 2013.

The PDJ held an at-issue conference on December 6, 2013, setting the following deadlines for prehearing motions and materials: dispositive motions due by April 7, 2014; prehearing motions due by May 12, 2014; and prehearing materials due by 12:00 p.m. on May 19, 2014. The parties filed a flurry of prehearing motions the week prior to trial, however, in contravention of the deadlines set forth in the PDJ's at-issue conference order. The PDJ entered orders: (1) granting the People's motion to limit the number of Respondent's character witnesses to three; (2) granting the People's motion for sanctions for Respondent's non-compliance with C.R.C.P. 251.28 and the PDJ's at-issue conference order; (3) granting in part Respondent's motion to use Leyla Eraybar's conditional admission of misconduct for impeachment; (4) granting in part Respondent's motion to reconsider the imposition of sanctions; (5) denying Respondent's request for an offer of proof concerning Cris Franco's testimony and to exclude her testimony; (6) denying Respondent's motion to compel disclosure of Caroline Cooley's prior disciplinary history; (7) denying Respondent's motion to compel production of Eraybar's bank records; (8) denying the People's motion to quash subpoenas directed to Amy DeVan and Brooke Meyer; and (9) denying third-party motions to quash the subpoenas directed to Lamar Sims and Bernice Ginn.

The morning of the disciplinary hearing, the PDJ orally **GRANTED** Respondent's objection to the People's use of newly discovered or previously undisclosed evidence and precluded the People from presenting at the hearing the back side of Exhibit 4. During the hearing, the Hearing Board heard testimony from Respondent, Leyla Eraybar, Jose Leyvas, Mark Roberts, Corinne Billingsley, James Smith, Amy DeVan, Brooke Meyer, Meghan Lemire, Mary Lynne Elliott, Lamar Sims, Bernice Ginn, Andrea Waterhouse, Leann Trujillo, and Dan Peterson. The Hearing Board considered the People's exhibits 1-6, 9-11, and 15-19 and Respondent's exhibits A-C, E, G-I, K-O, R-T, V-X, Z, and FF.[1] After the close of the People's evidence, Respondent orally moved for partial summary judgment on all allegations regarding the matters involving Jose Javier Sanchez-Morales, Joseph Resto, and Juan Arteage; upon reviewing the evidence in the light most favorable to the People, the PDJ **DENIED** Respondent's motion.[2]

## III. FINDINGS OF FACT AND RULE VIOLATIONS

The Hearing Board considered the testimony of each witness and all admitted exhibits and finds the following facts were established by clear and convincing evidence.

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[1] Exhibit FF was admitted for the limited purpose of demonstrating admissions Eraybar made under oath. Exhibit G and Exhibit 15 contain text messages from Eraybar's and Respondent's telephones during the relevant time period. Both exhibits were admitted over objection. Even though these two exhibits are not identical, the Hearing Board finds them credible when viewed as a whole.

[2] *See Vikman v. Int'l Bhd. of Elec. Workers, Local Union No. 1269*, 889 P.2d 646, 654 (Colo. 1995).

## Background

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on May 18, 1998, under attorney registration number 29438.[3] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in these disciplinary proceedings.[4]

On August 29, 2011, Respondent was suspended for a period of nine months, all stayed upon the successful completion of an eighteen-month period of probation, for failing to communicate with clients and for failing to diligently pursue matters. On February 24, 2012, the PDJ lifted the stay on Respondent's nine-month suspension and revoked his probation; the PDJ determined that Respondent had violated his monitored sobriety probation provision and had failed to abstain from alcohol consumption on multiple occasions in violation of his probation agreement. Respondent was reinstated to the practice of law on November 29, 2012.

Respondent acknowledges that at all relevant times described herein, he was suspended from the practice of law. Prior to his suspension, Respondent practiced criminal defense, including driving under the influence ("DUI"), assault, and other related cases.

## The Consulting Arrangement

In 2007, Respondent met attorney Leyla Eraybar when the two served as opposing counsel on a case. They remained colleagues and friends thereafter. In August 2012—three months prior to Respondent's reinstatement—Respondent spoke with Eraybar about her desire to open a solo practice.[5] At that time, Eraybar worked for attorney Caroline Cooley's family law firm in Castle Rock, but she was unhappy with her professional situation and wanted to start her own criminal law practice.[6] Unlike Respondent, Eraybar had no criminal law experience other than a dog bite case and various restraining order issues related to cases that Cooley's firm had handled. According to Eraybar, she and Respondent discussed how Respondent could assist her during his suspension in forming a firm, recruiting clients, and acting as her paralegal.[7] Eraybar knew that Respondent would not be reinstated until November 2012.[8] Soon after these discussions, Eraybar incorporated the Law Firm of Leyla Eraybar.

Respondent testified at the hearing that following these initial discussions, he and Eraybar entered into a verbal consulting agreement in August 2012, with the intent of retaining Respondent to market the Law Firm of Leyla Eraybar and to recruit clients on her behalf. To prove they entered into this verbal agreement, Respondent points to the

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[3] Respondent's registered business address is 3033 Blake Street #105, Denver, Colorado 80205.
[4] *See* C.R.C.P. 251.1(b).
[5] Compl. ¶ 3; Answer ¶ 3.
[6] Compl. ¶ 6; Answer ¶ 6.
[7] Compl. ¶ 11; Answer ¶ 11.
[8] Compl. ¶ 10; Answer ¶ 10.

following evidence: (1) an email that Eraybar sent him on August 31, attaching a copy of her fee agreement;[9] (2) a series of text messages between Respondent and Eraybar on August 26 in which they discuss a possible client Respondent recruited for her;[10] (3) copies of Eraybar's business cards that Respondent asserts he received in early September for marketing purposes;[11] and (4) the fact that on September 8 Eraybar gave Respondent access to her Google calendar so that he could schedule meetings with clients.[12] Eraybar, however, steadfastly denied entering into a verbal agreement in August, maintaining that any conversations she had with Respondent were discussions concerning a future arrangement. The Hearing Board finds Respondent's testimony on this issue to be more credible than that of Eraybar's in light of the corroborating text messages and emails between them at the end of August and the beginning of September discussing clients, cases, and business cards. We also find it significant that Eraybar sent Respondent her fee agreement and granted him access to her Google calendar during the same timeframe.

On September 19, 2012, Respondent and Eraybar memorialized their verbal discussions by signing a written consulting agreement, which was drafted by Eraybar.[13] Per their arrangement, Respondent would assist Eraybar with marketing and obtaining clients.[14] Respondent's compensation was to be hourly, but was not to exceed fifty percent of the revenues earned by the marketing.[15] Eraybar made an initial payment of $1,000.00 for Respondent's expenses[16] because, according to Eraybar, Respondent was low on funds. Since Eraybar was still employed by Cooley, she and Respondent conspired to use Respondent's address and telephone number as her firm's contact information.[17] They also agreed to meet potential clients in the mailroom at Respondent's apartment building because Eraybar did not want Cooley to know of her plans, nor did she want potential clients to know where she lived. Respondent agreed to keep Eraybar informed of the status of her cases, and Eraybar agreed to sign all pleadings and make all court appearances.[18] Eraybar's knowledge of criminal law was limited, so Respondent also pledged to advise her about how to proceed with these cases and to perform paralegal duties, including drafting pleadings under Eraybar's supervision.

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[9] *See* Ex. B. The email references an attached fee agreement, but no attachment was proffered with this exhibit.

[10] Ex. G at 1 (text messages from Respondent to Eraybar dated August 26, 2012, stating: "Call me. I got u a client.").

[11] Ex. G at 1 (text messages from Eraybar to Respondent dated September 3-4, 2012, stating: "Got cards for u" and "dude I'm trying to call you so I can drop off cards wake up."); *see also* Ex. Z (copies of Eraybar's business cards, which do not reflect the date of delivery).

[12] Ex. E.

[13] *See* Ex. 2.

[14] Ex. 2 at 0138.

[15] Ex. 2 at 0138.

[16] Compl. ¶ 13; Answer ¶ 13.

[17] Compl. ¶ 14; Answer ¶ 14.

[18] Compl. ¶ 16; Answer ¶ 16.

From August to October 2012, Respondent recruited the following six clients for Eraybar: Jose Javier Sanchez-Morales, Juan Arteage, Mark Roberts, Jose Leyvas, Joseph Resto, and James Smith. The details of their respective matters are set forth below.

**The Advertising Flyers**

Eraybar testified that she understood Respondent's marketing efforts under their agreement to include placing her business cards in various bars, liquor stores, and other locations where individuals might be seeking legal representation, as well as sending out advertising flyers to potential clients. Respondent told her that he had used marketing flyers in the past to generate business for his firm. He also mentioned that he had hired a graphic designer to create a flyer for his firm and that the designer could generate a similar flyer for her. Respondent could then post the flyers on Craig's List and mail them to potential clients using a system he had developed.

Respondent testified that in 2009, he hired Meghan Lemire, the sister of his then-girlfriend, to fill envelopes with adverting flyers three to four times per month. He instructed Lemire to browse Colorado court websites, looking for individuals charged with DUIs, assaults, or similar offenses. Lemire would then use LexisNexis to find the defendants' recent addresses and mail them a flyer and a business card advertising Respondent's services. On average, Lemire sent out between twenty and one-hundred flyers each month. Respondent testified that because printing costs were high, he told Lemire to reuse any returned flyers. According to Lemire, stacks of returned envelopes were often piled on Respondent's desk, as it was very common for "a lot" of flyers to be returned. Lemire said that when she ran out of new flyers, she would open an envelope that had been returned, remove the flyer, and place it in a new envelope without looking at it, since it had already been folded.

According to Respondent, he had flyers created for Eraybar's firm in September 2012. During September and October 2012, he instructed Lemire to mail out approximately one-hundred of Eraybar's flyers, using the Colorado court websites and LexisNexis to obtain addresses, with the goal of recruiting clients for Eraybar's firm. Lemire stated that she remembered sending out flyers marketing Eraybar's firm during this time period and seeing a version of Eraybar's flyer on Respondent's computer. However, Lemire could not produce a copy of Eraybar's flyer, nor could she state whether any of those flyers had been returned to Respondent's address.

Eraybar, on the other hand, testified that Respondent never gave her a copy of a flyer advertising her firm. She also stated that not one potential client called her after receiving a flyer for the Law Firm of Leyla Eraybar. She did, however, eventually receive a copy of a flyer advertising Respondent's firm from Roberts.[19] Two of Eraybar's clients—Roberts and Leyvas—received advertisements containing the following information: "Law Office of Derrick D. Cornejo, LLC, Attorneys and Counselors at Law," along with Respondent's

[19] *See* Ex. 18.

address and cell phone number.[20] The flyers advised: "If you are being charged with a DUI, DWAI, or any other crime, DON'T PLEAD GUILTY!! DON'T TAKE A DEAL!!"[21] These flyers were signed by Respondent as "Derrick D. Cornejo, Esq." and made no mention of Eraybar or her law firm.[22] Eraybar was resolute that she never gave Respondent authorization to send out his marketing flyer, and we accept this assertion as credible.

Respondent testified that Lemire likely sent out his flyers to Eraybar's potential clients by mistake. Lemire theorized that when she ran out of Eraybar's flyers, she must have taken Respondent's flyers that had been returned prior to his suspension—those marketing the Law Office of Derrick D. Cornejo, LLC—and stuffed them into the envelopes with Eraybar's firm's name.

Throughout these proceedings, Respondent was unable to produce a copy of Eraybar's flyer. He maintained at the hearing that an electronic copy of her flyer was probably deleted when his computer recently crashed. We find it unlikely that if a flyer had indeed been created for Eraybar, not even one out of the one-hundred mailed would have been returned to Respondent's address; equally unlikely is that the graphic designer could not have produced a copy. Based upon the testimony and the evidence, the Hearing Board concludes that Respondent never created or sent out a flyer for Eraybar; rather, we find that he directed Lemire to send out his flyer—perhaps to save money— but with the intent to solicit clients for Eraybar.

**The Dissolution of the Consulting Arrangement**

In mid-October 2012, about a month after Respondent and Eraybar signed the consulting agreement, Eraybar began to suspect that Respondent was engaging in the unauthorized practice of law by providing legal advice to her clients and by holding himself out as a licensed attorney. She stated that many of her clients were confused about who she was and the role she played in their cases. When she informed her clients that Respondent was suspended, she discovered they were "shocked and upset" to learn this information. A review of the text messages sent between Respondent and Eraybar from October 16 to 18, however, reveals that she was also getting cold feet about the consulting agreement, because she continued to have scheduling conflicts between her obligations at Cooley's firm and her clients' court appearances.[23]

On October 22, 2012, Eraybar sent Respondent a letter formally terminating the consulting agreement.[24] In the letter, she advised Respondent that he was to cease

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[20] Exs. 3 & 4. These flyers were placed in envelopes with the following return address: Leyla Eraybar, 3033 Blake Street, Unit 105, Denver, Colorado 80205. Compl. ¶ 18; Answer ¶ 18; This is Respondent's business address. The People asserted in their complaint that Resto also received an identical flyer, but they produced no evidence to support this allegation at the hearing.

[21] Exs. 3 & 4.

[22] Exs. 3 & 4.

[23] Ex. G at 23-25.

[24] Compl. ¶ 27; Answer ¶ 27; Ex. 16.

marketing her firm, cease all communications with the clients, and cease representing to the clients that he was affiliated with her.[25] She requested the return of all client files, documents, fee agreements, and any money he may have collected from clients.[26]

That same day, Respondent and Eraybar exchanged a series of inflammatory text messages. The following highlights just a portion of Respondent's text messages to Eraybar:

> U got six clients in a month. You owe me 1250 per client
>
> Don't be stupid about self reporting just represent the clients that's all you have to do . . . .
>
> U put a little seed money out to earn a little. Your earning something in return. As I saw last Friday I am decent at what I do. We are doing business together. When you don't trust me even though I have brought u business, gives me pause . . . . I have been loyal to u and u have made some money. My question is are you loyal to me at least, for the next 45?
>
> Don't talk to me about arc because u can easily find your ass in a twist . . . .
>
> You know what I am talking about . . . . i have been loyal too just u and you made some coin . . . .
>
> As u can see I can catch some trout, we can actually live on some trout but I need to trust u. I will set u up to land the whale on your own. Bottom line let's catch some more trout . . . .[27]

Respondent did not dispute sending these messages to Eraybar. He explained that his references to "trout" are to smaller DUI clients, and he said that he sent Eraybar the text message referring to "arc" (the People), not as a threat, but because he believed she was not following through on her obligations to the clients.

Respondent proceeded to contact Cooley and notify her that Eraybar was "moonlighting" while working at Cooley's firm. He testified that he was "compelled" to call Cooley because he felt threatened by Eraybar and believed she was stealing some of Cooley's clients and firm property. He said he did not want to be implicated in aiding Eraybar in any criminal activity.

On October 23, Eraybar sent Respondent a second letter, again requesting the return of all client files, including fee agreements and communications.[28] Respondent refused to

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[25] Ex. 16.
[26] Ex. 16.
[27] Ex. G at 26-30; Ex. 15 at 575, 577, 579, 570, 116 & 388.
[28] Ex. 17.

turn over any client files in his possession until Eraybar paid him the money he believed he was owed for the six clients he recruited under the consulting agreement.[29] Shortly thereafter, Eraybar was fired by Cooley. Eraybar then self-reported her conduct to the People and received a sanction.[30] Eraybar also promptly withdrew from all six cases and refunded all of the clients' fees.

**The Sanchez-Morales Matter**

According to Respondent, around August 26, 2012, either Jose Javier Sanchez-Morales or his wife called Respondent to represent Sanchez-Morales in a DUI matter. Sanchez-Morales's wife had previously retained Respondent in different criminal matter.[31] Respondent testified that during this telephone call he did not disclose that his law license was suspended, nor did he mention his affiliation with Eraybar. Respondent stated that this call was brief, meant simply to set up a meeting with Sanchez-Morales and his wife for later that day.

Respondent met with the couple at a McDonald's for approximately thirty minutes. Eraybar was not present. Although this meeting was held three weeks prior to the written consulting agreement, Respondent averred that Eraybar knew he was meeting with Sanchez-Morales and that she had verbally agreed to take on the representation. He contended that had she not agreed to this beforehand, he would never have met with Sanchez-Morales and instead would have referred him to another attorney. Eraybar insisted, however, that she did not give Respondent authorization to meet with Sanchez-Morales or to negotiate a fee on her behalf. Given that we have found that a verbal agreement between Respondent and Eraybar existed in mid-August, we credit Respondent's account that Eraybar gave him permission to recruit clients for her firm at that time.

During the meeting, Respondent did not tell his former clients that he was not able to represent them or that his license was suspended. Respondent indicated that he discussed with Sanchez-Morales his DUI charge and told him to obtain the discovery in his case, including any blood alcohol content reports. Respondent remembered telling Sanchez-Morales that he had a "good case." Respondent then executed a fee agreement with Sanchez-Morales. This agreement bore the letterhead of the "Law Office of Derrick Cornejo," and it was signed by both Respondent and Sanchez-Morales.[32] Absent from this document is any mention of Eraybar or her law firm. The fee agreement states that Respondent will provide legal services in "connection with a Denver DUI matter" for a flat rate of $2,200.00.[33] Although the agreement notes that Respondent received a $500.00

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[29] Ex. 15 at 572, 570, 569, 568, 116 & 388; Ex. G at 27-29.
[30] Ex. FF (admitted for a limited purpose).
[31] Compl. ¶ 35; Answer ¶ 35.
[32] Ex. 5 at 0325.
[33] Ex. 5 at 0325. Respondent verified that his handwriting appears on the document, as reflected in handwritten changes to the amount of the flat fee, edits to the due date for the retainer, and addenda to the payment arrangements. Ex. 5.

retainer, he insisted that he received no money from Sanchez-Morales at this meeting.[34] Respondent maintained that he executed the agreement on behalf of Eraybar, under her direction,[35] declaring that the agreement was merely a "placeholder" for Eraybar's fee agreement, which was to be signed at a later date. No evidence, however, was presented of a second agreement, and Eraybar was categoric that she never signed one.

After the meeting, Respondent sent Eraybar a text message, which stated: "Call me. I got u a client."[36] Respondent explained that this text message was a reference to Sanchez-Morales.

Respondent also testified that as part of his paralegal duties he was instructed by Eraybar to prepare the file in Sanchez-Morales's case, including drafting an entry of appearance for Eraybar's signature.[37] Eraybar acknowledged this, stating that she wanted him to earn his paralegal fees and that she paid him $100.00 for preparing the pleadings.

Another meeting was held on September 2, 2012, between Sanchez-Morales, his wife, Respondent, and Eraybar. Respondent recalled speaking with Sanchez-Morales about an issue with the DUI checkpoint signage, and remembered Sanchez-Morales giving Eraybar a $500.00 retainer at this meeting. Eraybar signed the entry of appearance.[38] Respondent testified that he believed it was clear to Sanchez-Morales at this meeting that Respondent's law license had been suspended and that Eraybar would be representing him. Sanchez-Morales did not testify at the hearing, however.

On September 7, 2012—twelve days prior to entering their written consulting agreement—Eraybar signed a letter authorizing Respondent to pick up discovery for her in Sanchez-Morales's case.[39] On September 22, Respondent, Eraybar, and Sanchez-Morales met again to discuss the discovery in the case;[40] Respondent testified that Eraybar took charge of the discussions, but Eraybar remembered Respondent controlling the communication during the meeting, instructing Sanchez-Morales to get the police report and his timecards from work, and explaining to him the concept of reasonable doubt. Indeed, Eraybar testified that based upon her limited knowledge of criminal law, she had no understanding of the possible defenses in his case. The Hearing Board finds Respondent's testimony incredible in light of Eraybar's lack of experience with DUI cases, and we conclude she likely relied upon Respondent's expertise. Thus, we believe Eraybar's account.

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[34] Ex. 5 at 0327.
[35] Ex. 5.
[36] Ex. G
[37] *See* Ex. D.
[38] *See* Ex. A (cash receipt); Ex. C (entries of appearance).
[39] Ex. H; *see also* Ex. G at 2 (text messages between Eraybar and Respondent dated September 6, 2012, regarding picking up discovery).
[40] *See* Ex. G at 10, 17 (discussing meeting with Sanchez-Morales).

Both Respondent and Eraybar attended Sanchez-Morales's court appearance on October 15, 2012.[41] Respondent stated that he remained in the hallway during this appearance and that Eraybar appeared with Sanchez-Morales in the courtroom. After the hearing, Respondent did not perform any additional work on the case. Eraybar stated that she eventually terminated her representation of Sanchez-Morales because she did not feel comfortable representing clients that Respondent had recruited. She also maintained that it was she who told Sanchez-Morales that Respondent's license was suspended.

### The Arteage Matter

In September 2012, Juan Arteage contacted Respondent seeking representation for a domestic relations matter.[42] Respondent believed that Arteage was referred to him by a neighbor who knew Respondent was an attorney. Respondent admitted he did not inform Arteage during their initial telephone call that he was suspended; rather, he told him only that he did not practice family law but could schedule a meeting with Eraybar.

On September 24, both Respondent and Eraybar met with Arteage.[43] During this meeting, Respondent again failed to inform Arteage that he was suspended from the practice of law. Arteage paid Eraybar $500.00 at this meeting.[44] On September 27, 2012, Respondent and Eraybar again met with Arteage,[45] and Arteage and Eraybar signed a fee agreement.[46] This agreement bore the name "Law Office of Leyla Eraybar, LLC DBA Leyla Legal."[47]

### The Roberts Matter

Around September 28, 2012, Mark Roberts received one of Respondent's advertising flyers.[48] The return address on the envelope read: "Law Office of Leyla Eraybar" but it listed Respondent's home address.[49] The flyer bore the letterhead from Respondent's firm and advised: "If you are being charged with a DUI, DWAI, or any other crime, DON'T PLEAD GUILTY!! DON'T TAKE A DEAL!!"[50] The flyer was signed "Derrick D. Cornejo, Esq.," and it indicated that he was a member of the Colorado Bar Association.[51] Respondent testified that, at the time, he had no reason to believe Roberts had received this flyer.

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[41] Compl. ¶ 47; Answer ¶ 47.
[42] Compl. ¶ 52; Answer ¶ 52. Arteage did not testify at the hearing.
[43] Compl. ¶ 53; Answer ¶ 53; *see* Ex. E at 2.
[44] Compl. ¶ 54; Answer ¶ 54.
[45] Compl. ¶ 55; Answer ¶ 55.
[46] Exs. 9 & I.
[47] Ex. 9.
[48] Ex. 4.
[49] Compl. ¶¶ 61-62; Answer ¶¶ 61-62; Ex. 4 at 0270.
[50] Ex. 4 at 0269.
[51] Ex. 4 at 0269.

Roberts had been charged with a DUI,[52] so he called the number on the flyer, and Respondent answered the telephone. Roberts testified that he believed Respondent was an attorney because of the representations on the flyer.[53] During this conversation, Respondent did not tell Roberts that he was suspended, nor did he mention Eraybar. Respondent did not recall discussing the facts of Roberts's case over the telephone, but he scheduled a meeting with him at a local Perkins for the next day.

The following day, Respondent and Roberts met without Eraybar. Roberts recounted the facts of his case, including that he had not undergone a breathalyzer. Although Respondent maintained that he did not give Roberts legal advice at this meeting, Roberts said that Respondent told him he had ten years of DUI experience and explained that the fee for the representation would be $2,500.00. Roberts then signed a fee agreement, which appears on Eraybar's letterhead.[54] Respondent again failed to disclose the status of his law license.

Roberts, Eraybar, and Respondent met at the courthouse on October 2 before Roberts's court appearance.[55] Eraybar signed the fee agreement and entered her appearance on Roberts's case.[56] Respondent testified that he told Roberts at this meeting about his suspended license, and Roberts corroborated this fact. Despite this, Eraybar swore that Respondent gave Roberts legal advice because she was unfamiliar with DUI law. She heard Respondent advise Roberts about how to proceed with his case, how to retrieve his employee timecard, and how to order new blood tests. She also listened to Respondent explain to Roberts the concept of a "metabolized defense." Given Eraybar's lack of DUI experience, we find it likely that Respondent, not Eraybar, gave Roberts the legal advice.

On October 17, Eraybar authorized Respondent to pick up discovery in Roberts's case.[57] A few days prior to the termination of the consulting agreement, on October 19, Respondent and Eraybar met with Roberts at the courthouse. Roberts testified that at this meeting, Respondent and Eraybar discussed with Roberts a plea agreement and advised him about sobriety court,[58] but he did not think Respondent gave him any legal advice at this time. Eraybar later withdrew from her representation in this case. She recalled Roberts being surprised when she told him that Respondent was not a licensed attorney. Roberts later retained Respondent when his license to practice law was reinstated.

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[52] *See* Ex. M.
[53] Ex. 4.
[54] Ex. 10.
[55] *See* Ex. E at 3; Ex. M at 0276.
[56] Ex. K; Ex. M at 0276; Ex. 10.
[57] Exs. K-L.
[58] *See* Ex. M.

## The Leyvas Matter

On September 15, 2012, Jose Leyvas was arrested for a DUI and other traffic violations.[59] Around September 28, he received the same advertising flyer in the mail that Roberts had been sent. Like the flyer Roberts received, the "Law Office of Leyla Eraybar"[60] was named in the returned address, but the flyer itself contained Respondent's information, along with representations about legal services he offered. Leyvas testified that he also received Respondent's business card in the mail, as well as from Respondent in person on more than one occasion.[61] Respondent's business card identified him as an attorney.[62]

After receiving the flyer, Leyvas contacted Respondent about his DUI case. Respondent testified that he did not tell Leyvas of his suspension, but recalled discussing the terms of his representation and setting up a meeting. Leyvas testified that he next met with Respondent alone, when they spoke about Leyvas's case, the cost of the representation ($2,500.00), and payment arrangements. Leyvas said he believed that Respondent was a licensed attorney because he had distributed his flyer and business card, and Respondent sounded professional. Leyvas recalled signing the fee agreement but did not recall seeing Eraybar's letterhead. At the end of the meeting, he gave Respondent a $500.00 check, which was never cashed.[63]

According to Leyvas, he did not meet Eraybar until a third meeting, when Respondent briefly introduced her but gave no indication as to who she was. At that time, Leyvas still believed Respondent was representing him. Respondent insisted, however, that he informed Leyvas at this meeting that he was suspended and that Eraybar was his attorney. The Hearing Board finds Leyvas's testimony credible, given Respondent's similar pattern of failing to inform potential clients of his suspension. Respondent then prepared an entry of appearance for Eraybar's signature.[64] Respondent had no further contact with Leyvas after this meeting.

Eraybar later withdrew from Leyvas's case, assisted him in retaining another attorney, and refunded all of his fees. Leyvas stated that it was Eraybar who told him Respondent was suspended from the practice of law.

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[59] Compl. ¶ 74; Answer ¶ 74.
[60] Compl. ¶ 77; Answer ¶ 77; Ex. 3. Leyvas also received a Spanish-language version of the flyer. Ex. 3 at 0321.
[61] Ex. 3 at 0322.
[62] Ex. 3 at 0322.
[63] Ex. O.
[64] Ex. P. The entry of appearance contained Respondent's telephone number in the caption. Eraybar testified that this was likely a typographical error, as it was a mistake to include Respondent's telephone number on pleadings.

### The Resto Matter

Respondent testified that Joseph Resto called him about a DUI case after receiving an advertising flyer in the mail.[65] As with the other clients, Respondent did not inform Resto that his license was suspended or that he could not represent him, nor did he mention Eraybar during the initial call. Respondent stated that he alone met Resto on October 12, 2012, when Resto executed a fee agreement appearing on Eraybar's letterhead.[66] Respondent recalled Eraybar signing the agreement three days later. On October 15, Eraybar entered her appearance and requested discovery.[67] Per Eraybar's instruction, Respondent drafted a motion to quash Resto's arrest warrant.[68] Eraybar revised the motion before filing it the next day.[69]

On October 16, Respondent and Eraybar attended a hearing in Resto's DUI matter. It was here, according to Respondent, that Resto met Eraybar for the first time. Eraybar stated that when she met Resto, he was surprised to see her and asked her who she was, and she replied that she was his attorney. According to Respondent, he then informed Resto that his license was suspended. Six days after the hearing, the court clerk called Respondent to set another court date because his telephone number appeared on the pleadings. Respondent provided Eraybar's telephone number to the clerk.[70] After this communication with the clerk, Respondent did no further work on Resto's case.

### The Smith Matter

Respondent and Eraybar met James Smith for the first time at the Denver County courthouse on October 19, 2012. Respondent testified that he overheard Smith speaking with his mother, Corinne Billingsley, and the district attorney about his DUI case. Respondent stated that he instructed Eraybar to approach Smith to discuss representing him. Respondent and Eraybar spoke with Smith and Billingsley in the hallway of the courthouse.

Billingsley testified that she believed that both Respondent and Eraybar were attorneys. Although Respondent did not expressly state he was an attorney, Billingsley felt that he implied this through their conversation. She thought Respondent was the main attorney and that Eraybar worked with him. Likewise, Smith testified that he thought Respondent was an attorney because he told Smith that he handled DUI cases and because he suggested that Smith had a good case. Smith was interested in retaining an attorney, and a meeting was scheduled for the next day. At that time, Respondent did not tell them he was suspended.

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[65] Resto did not testify at the hearing.

[66] Ex. R.

[67] Ex. S. As in the Leyvas case, the entry of appearance caption contained Respondent's telephone number, rather than Eraybar's.

[68] Ex. T. This pleading also contained Respondent's telephone number in the caption.

[69] Ex. E at 7-9.

[70] Compl. ¶ 103; Answer ¶ 103.

On October 20, Respondent and Eraybar met with Smith at Respondent's apartment building. During the meeting, Respondent testified that he asked Smith about the facts of his case and discussed a "no-drive" defense. Smith did not remember this specific terminology but indicated Respondent opined that the case was winnable. Both Eraybar and Smith testified that Respondent did all the talking. Smith said Eraybar "was just sitting there" and was not involved in the conversation. At the meeting, Respondent did not tell Smith that he was suspended, so Smith continued to believe that Respondent and Eraybar were "a team of" attorneys. Before the meeting concluded, Eraybar and Smith signed Eraybar's fee agreement.[71] When Smith asked Respondent why he did not sign the agreement, Respondent told him only that "he had something going on." Smith was surprised by this answer because he did not know what this meant, but he paid them a $1,000.00 retainer, anyway. Eraybar signed an entry of appearance and a request for discovery on Smith's behalf.[72]

Once the consulting agreement was dissolved, Eraybar ceased representation of Smith and refunded his money. Smith retained Respondent when his license to practice law was reinstated.

**Unauthorized Practice of Law**
**Colo. RPC 3.4(c), 5.5(a)(1), and 8.4(c)**

The People contend in Claims I (Colo. RPC 3.4(c)), III (Colo. RPC 5.5(a)(1)), and IV (Colo. RPC 8.4(c)) that Respondent knowingly practiced law during his suspension. The People aver that Respondent engaged in the unauthorized practice of law in the Sanchez-Morales, Arteage, Roberts, Leyvas, Resto, and Smith matters by offering these clients legal advice, by accepting legal fees and negotiating fee agreements with them, and by misrepresenting his status as a licensed attorney. Respondent defends his behavior as acceptable under the Rules of Professional Conduct and avers that he did not engage in the unauthorized practice of law or misrepresent his unlicensed status.

To succeed on their Colo. RPC 3.4(c) claim, the People must demonstrate that Respondent knowingly disobeyed "an obligation under the rules of the tribunal except for an open refusal based on an assertion that no valid obligation exists." Colo. RPC 5.5(a)(1) provides: "[a] lawyer shall not practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court" unless otherwise specifically authorized to do so.[73] The "practice of law" has been defined by the Colorado Supreme Court to include acting "in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising, and assisting him in connection with

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[71] Ex. 11.

[72] Compl. ¶ 111; Answer ¶ 111; Ex. 11; Exs. V-X. The caption to the entry of appearance contains Respondent's telephone number rather than Eraybar's.

[73] *See People ex rel. Atty. Gen. v. Hanna*, 127 Colo. 481, 482, 258 P.2d 492, 492 (1953) (holding that a person can engage in the unauthorized practice of law even if he or she has no intent to violate restrictions on the practice of law).

these rights and duties."[74] The practice of law consists of, among other things, advising clients regarding legal matters, preparing court pleadings, and appearing in court.[75] Finally, Colo. RPC 8.4(c) proscribes conduct involving dishonesty, fraud, deceit, or misrepresentation. To establish a violation of Colo. RPC 8.4(c), the People must prove that Respondent acted knowingly or with a reckless state of mind.[76]

It is undisputed that Respondent was subject to an order of suspension in case number 11PDJ037, effective as of February 24, 2012. Respondent admitted at the disciplinary hearing that he was aware of the PDJ's order and was subject to the order at all times relevant to the matters discussed above. Although Respondent knew about his order of suspension, the Hearing Board finds that he nevertheless practiced law in violation of that order between August and October 2012.[77] By practicing law, as described below, Respondent flouted the PDJ's order of suspension, thereby knowingly disobeying an obligation under the rules of a tribunal in contravention of Colo. RPC 3.4(c).

We conclude that Respondent engaged in the practice of law in violation of Colo. RPC 5.5(a)(1) in the Sanchez-Morales matter in several ways. First, he practiced law when he fixed fees for Sanchez-Morales's representation and promised to represent him in his DUI case.[78] Respondent did this when he met with Sanchez-Morales and negotiated a fee agreement outside of Eraybar's presence and with no mention of her firm. Additionally, this agreement, which Respondent signed, appeared on the letterhead of the "Law Office of Derrick Cornejo"—without any mention of Eraybar's firm. The agreement also expressly promised that Respondent, through his firm, would be providing Sanchez-Morales with legal services for a flat rate. Further, Respondent made handwritten modifications to the fee agreement, including changing the flat fee from $2,000.00 to $2,200.00 and setting up a

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[74] *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999); *see also* C.R.C.P. 201.3(2)(a)-(f) (defining the practice of law to include "[f]urnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law . . . .").

[75] *People v. Adams*, 243 P.3d 256, 266 (Colo. 2010).

[76] *In re Fisher*, 202 P.3d 1186, 1203 (Colo. 2009).

[77] The Hearing Board concludes that the People were unable to present clearly and convincingly that Respondent practiced law in contravention of his suspension in the Arteage or Resto matters. Without the testimony of these individuals or any other documentary evidence, the Hearing Board cannot find that the People met their burden in proving violations premised on Colo. RPC 3.4(c), 5.5(a)(1), or 8.4(c) with respect to these matters.

[78] *See State v. Schumacher*, 519 P.2d 1116, 1121-25, 1127 (1974) (stating that a suspended attorney engaged in the unauthorized practice of law when he maintained an office where he held himself out to be a lawyer, used a letterhead describing himself as a lawyer, counseled clients in legal matters, negotiated with opposing counsel, and fixed and collected fees for services rendered by an associate).

payment schedule.[79] By taking these actions, Respondent held himself out as Sanchez-Morales's attorney in his DUI case.[80]

Next, Respondent violated Colo. RPC 5.5(a)(1) by failing to inform Sanchez-Morales during their initial meeting that his law license had been suspended, even though he knew that Sanchez-Morales was seeking legal representation.[81] This is particularly troubling in light of the fact that Sanchez-Morales's wife had retained Respondent prior to his suspension in an unrelated legal matter, so the couple had only known Respondent in his capacity as a licensed attorney. Last, Respondent practiced law by giving Sanchez-Morales legal advice in his case, including directing him to obtain discovery and blood alcohol content reports, ordering him to get his timecard from work, opining about the strength of his case, and discussing with Sanchez-Morales the concept of reasonable doubt.[82]

We also find that Respondent violated Colo. RPC 5.5(a)(1) in the Roberts matter when he held himself out as authorized to practice law.[83] He did this by directing Lemire to send a flyer to Roberts advertising his legal services and by identifying himself as a licensed attorney. Respondent further violated this rule when he failed to promptly inform Roberts of his suspension,[84] and when he discussed the fee for the representation without mentioning Eraybar.[85] Respondent also disregarded this rule by offering Roberts legal advice

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[79] The mere act of accepting payment in exchange for the promise to represent another constitutes the unauthorized practice of law. *See People v. Zimmermann*, 960 P.2d 85, 87 (Colo. 1998) (concluding that a lawyer violated Colo. RPC 5.5(a) by accepting a fee after the lawyer had been suspended).

[80] *See People v. Shell*, 148 P.3d 162, 171 (Colo. 2006) (defining the unauthorized practice of law to include offering legal advice, drafting or selecting legal pleadings, and holding oneself out as the representative of another in a legal action); *Unauthorized Practice of Law Committee v. Prog.*, 761 P.2d 1111, 1111-17 (Colo. 1998) (finding a layperson engaged in the unauthorized practice of law on behalf of homeowners in Rule 120 proceedings by obtaining a fee agreement, drafting pleadings, conducting research, and offering legal advice).

[81] *See Attorney Grievance Com'n of Md. v. Maignan*, 31 A.3d 467, 474 (Md. 2011) (finding an attorney violated Rule 5.5(a) by failing to inform his client of his suspension from the practice of law); *In re Giese*, 709 N.W.2d 717, 720-21 (N.D. 2006) (suspending a lawyer who engaged in the unauthorized practice of law by holding himself out as being authorized to practice).

[82] *See Shell*, 148 P.3d at 174 (stating that the unauthorized practice of law encompasses "offering advice or judgment about legal matters to another person for use in a specific legal setting").

[83] *See* C.R.S. § 12-5-112 (2014) ("Any person who, without having a license from the supreme court of this state so to do, advertises, represents, or holds himself out in any manner as an attorney, attorney-at-law, or counselor-at-law . . . is guilty of contempt of the supreme court of this state . . . ."); *Binkley v. People*, 716 P.2d 1111, 1114 (Colo. 1986) ("Anyone advertising as a lawyer holds himself or herself out as an attorney, attorney-at-law, or counsel-at-law and, if not properly licensed, may be held in contempt of court for practicing law without a license."); *see also Statewide Grievance Committee v. Zadora*, 772 A.2d 681, 684 (Conn. App. 2001) ("Advertising alone is sufficient to constitute the unauthorized practice of law if the advertisement is for activity that amounts to legal services."); *In re Baldwin*, 890 So.2d 56, 61 (Miss. 2003) (finding that a disbarred attorney who created an appearance of practicing law by listing his name and telephone number in a directory under "Attorneys," receiving mail at his office, and answering the telephone for the law office contravened his order of disbarment).

[84] *See Attorney Grievance Com'n of Md.*, 31 A.3d at 474.

[85] *See Zimmermann*, 960 P.2d at 87; *Schumacher*, 519 P.2d at 1121-25, 1127.

about a "metabolized defense."[86] Through Respondent's own statements, Roberts was led to believe that Respondent was a validly licensed attorney with ten years of DUI experience. Roberts believed Respondent could represent him until Respondent informed him of his suspension during a subsequent meeting with Eraybar.

Likewise, we conclude that Respondent contravened Colo. RPC 5.5(a)(1) in the Leyvas matter when he sent out his advertising flyer, which described himself as a lawyer specializing in criminal defense. Respondent gave Leyvas his business card on several occasions, also identifying himself as an attorney.[87] Respondent negotiated the fee agreement with Leyvas without mentioning Eraybar, and he accepted a $500.00 check from Leyvas. Through these actions, Respondent held himself out as a licensed attorney, even though he was not. Further, Respondent failed to tell Leyvas that he was suspended; Leyvas therefore believed Respondent was a licensed attorney who could assist him with his DUI case.

The Hearing Board also finds that Respondent continued to engage in the practice of law in violation of Colo. RPC 5.5(a)(1) by providing Smith with legal advice in his DUI case, including instructing him to pick up discovery, offering him advice about the "no-drive" defense, and opining on the strength of his case. Both Smith and his mother believed Respondent was a licensed attorney based upon his implied assurances that he could assist Smith with his DUI case. Respondent took no action to correct their mistaken beliefs.

Finally, the Hearing Board finds that Respondent violated Colo. RPC 8.4(c) by misrepresenting to Sanchez-Morales, Roberts, Leyvas, and Smith, through omission, that he was a validly licensed attorney after he had been suspended, since concealment of his suspension constituted a misrepresentation by omission in violation of this rule.[88] Respondent knew his license had been suspended yet he failed to inform these clients of that fact. Accordingly, we conclude that the People proved Respondent violated Colo. RPC 8.4(c) by knowingly misrepresenting his status as a validly licensed attorney.

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[86] *See also Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 823 (Colo. 1982) (offering case-specific legal advice and selecting case-specific legal documents constitutes the practice of law); *Prog*, 761 P.2d at 1115 (same).

[87] *See People v. Gregory*, 135 Colo. 438, 439, 312 P.2d 512, 512 (1957) (finding that two laypersons had engaged in the unauthorized practice of law by holding themselves out in advertisements and in person as qualified to prepare legal documents and render legal services); *People v. Castleman*, 88 Colo. 207, 207, 294 P. 535, 535 (1930) (finding that a layperson engaged in the unauthorized practice of law by appearing in court for a client and by advertising himself as an attorney on his business card); *People v. Humbert*, 86 Colo. 426, 427, 282 P. 263, 263 (1929) (holding a disbarred attorney in contempt for listing his name and office address in three directories under the heading "Lawyers" and designating himself as a lawyer).

[88] *See* C.R.C.P. 251.5(a) (providing that any omission in violation of the Colorado Rules of Professional Conduct is grounds for discipline); *see also In re Roose*, 69 P.3d 43, 46 (Colo. 2003) (finding that an attorney's omissions to the court of appeals violated Colo. RPC 8.4(c)); *People v. Redman*, 819 P.2d 495, 496 (Colo. 1991) (ruling that a suspended lawyer had an affirmative duty to inform his client of his suspension, and that the lawyer's failure to do so constituted conduct involving dishonesty, fraud, deceit, or misrepresentation).

The People argue that Respondent committed six violations each of Colo. RPC 3.4(c), 5.5(a)(1), and 8.4(c). We determine, however, that Respondent's violation of these rules is more appropriately characterized as a single violation of each rule arising from a pattern of unauthorized practice of law resulting from the consulting arrangement with Eraybar, rather than six distinct violations of each rule.[89]

**Threatening Disciplinary Charges Against Eraybar**
**Colo. RPC 4.5(a) and 8.4(d)**

In Claim II and V, the People allege that Respondent violated Colo. RPC 4.5(a) and 8.4(d), respectively, by threatening disciplinary charges against Eraybar in order to obtain an advantage in a possible future civil contract dispute between them or in a disciplinary matter.[90] In support of their claims, the People rely upon a text message that Respondent sent to Eraybar on October 22, 2012, which read, "Don't talk to me about arc because u can easily find your ass in a twist . . . ."[91]

We cannot find that Respondent acted in contravention of Colo. RPC 4.5(a), which states that a lawyer shall not threaten disciplinary charges to obtain an advantage in a civil matter. Although poorly articulated, Respondent did not affirmatively threaten a disciplinary grievance against Eraybar in this text message.[92] Moreover, when read in context with the other text messages Respondent sent during the same timeframe, there appears to be no clear indication in the relevant text of an actual threat.[93] The Hearing Board interprets Respondent's statement more as an observation that Eraybar's hands were not entirely clean and that her conduct was not beyond reproach. Without a more concrete statement linking cause and effect, Respondent's statement alone falls short of clear and convincing evidence of a threat to present disciplinary charges against Eraybar.

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[89] *See In re Olsen*, 326 P.3d 1004, 1012 (Colo. 2014) (characterizing a Colo. RPC 3.1 violation as a single violation rather than three distinct violations when the violation arose from an ongoing pattern of untruths of the attorney's client).

[90] The People alleged at the hearing that Eraybar could have filed a civil breach of contract claim against Respondent for breach of the consulting agreement. *See* Colo. RPC 4.5 cmt. 1 ("[A] civil matter is a controversy or potential controversy over rights and duties of two or more persons under the law whether or not an action has been commenced.").

[91] Ex. 15 at 576; Ex. G at 26.

[92] *See People v. Sigley*, 951 P.2d 481, 482 (Colo. 1998) (finding a violation of Colo. RPC 4.5 where an attorney wrote a letter to the district attorney expressly asking that criminal charges against his former associate be filed solely to gain an advantage in a civil matter); *People v. Gonzales*, 922 P.2d 933, 934 (Colo. 1996) (finding a violation of Colo. RPC 4.5 when an attorney, in response to a malpractice action filed against him, specifically threatened in writing to file a grievance against the attorney filing the complaint if the complaint was not dismissed); *People v. Farrant*, 852 P.2d 452, 454 (Colo. 1993) (finding a violation of Colo. RPC 4.5 when an attorney expressly threatened criminal charges against a client in a letter to obtain his attorney's fees upon his withdrawal); *People v. Hertz*, 198 Colo. 522, 526, 608 P.2d 335, 338 (1979) (finding a violation of Colo. RPC 4.5 when an attorney made a clear threat of criminal prosecution intending to force a settlement of disputed property claims, when the attorney attempted to follow through on his threats by communicating with the district attorney).

[93] See Ex. 15 at 576-577; Ex. G at 26-27.

Likewise, we reach the same conclusion concerning Colo. RPC 8.4(d), which appears to be derivative of the People's Colo. RPC 4.5(a) claim, based, as it is, upon identical factual allegations. This rule proscribes conduct that is prejudicial to the administration of justice. We find that the People were unable to prove that Respondent violated this rule or coerced or threatened Eraybar in an effort to prevent her from filing a breach of contract action or a complaint with the People.

## IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[94] In imposing a sanction after a finding of lawyer misconduct, the Hearing Board must consider the duty violated, the lawyer's mental state, and the actual or potential injury 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*: Respondent violated his duty owed to the legal system and his duty owed as a professional when he contravened his order of suspension by practicing law. These actions, coupled with Respondent's misrepresentations by omission to several clients that he was authorized to practice law, also violated his duty owed to the public.

*Mental State*: Respondent's state of mind can be characterized as knowing, defined as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result."[95] Respondent knew he was subject to the PDJ's order of suspension but instead practiced law by offering clients legal advice and by holding himself out as a licensed attorney. His actions led clients to believe that he was authorized to assist them with their cases.

*Injury*: First, we find a lack of evidence demonstrating that Respondent caused actual or potential harm to any clients. For example, Respondent's actions did not deprive any clients of the opportunity to retain a licensed attorney because Eraybar had entered her appearance on their cases and was supervising Respondent's work. When she eventually withdrew from their cases, she refunded each client their attorney's fees in full and assisted them to retain new counsel. Moreover, two of these clients retained Respondent once he was reinstated. However, Respondent brought disrepute upon the legal system and the profession by involving himself in client matters while his license was suspended. His failure

[94] *See In re Roose*, 69 P.3d at 46-47.
[95] ABA *Standards* § III at 9.

to scrupulously honor his order of disciplinary suspension also had the potential to seriously undermine the authority and "respect due to courts and judicial officers."[96]

### ABA *Standards* 4.0-7.0 – Presumptive Sanction

The Hearing Board looks to ABA *Standards* 5.13, 6.22, 7.2, and 8.1 in this matter; one of these standards calls for a reprimand, two call for suspension, and one calls for disbarment. Reprimand is the presumptive sanction under ABA *Standard* 5.13 when a lawyer knowingly engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that adversely reflects on the lawyer's fitness to practice law.[97]

ABA *Standard* 6.22 states that suspension is generally appropriate when a lawyer knowingly violates a court order or rule, thereby causing injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. Pursuant to ABA *Standard* 7.2, suspension is likewise warranted when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

In contrast, ABA *Standard* 8.1(a) provides for disbarment when a lawyer intentionally or knowingly violates the terms of a prior disciplinary order when that violation causes injury or potential injury to a client, the public, the legal system, or the profession.

### ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.[98] The Hearing Board considers evidence of the following aggravating and mitigating circumstances in deciding the appropriate sanction. We begin our analysis with suspension as the presumptive sanction.[99]

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[96] *People v. Dalton*, 840 P.2d 351, 352 (Colo. 1992) (quoting *Losavio v. Dist. Court*, 182 Colo. 180, 185, 512 P.2d 266, 268 (1973)).

[97] Although ABA *Standard* 4.6 also applies to violations of Colo. RPC 8.4(c), the Hearing Board finds ABA *Standard* 5.13 more appropriate under the circumstances because we have no evidence before us demonstrating actual or potential injury to a client.

[98] *See* ABA *Standards* 9.21 & 9.31.

[99] Although Respondent's conduct implicates ABA *Standard* 8.1(a), which calls for disbarment, three of the standards also applicable here urge reprimand or suspension for the same misconduct. To read ABA *Standard* 8.1(a) strictly, any violation of Colo. RPC 5.5 would always yield a presumptive sanction of disbarment. To automatically apply this standard would be to undermine the Hearing Board's discretion, which would undercut the design and function of the disciplinary system. *See* ABA *Standards* § II at 6. ("While there may be particular cases of lawyer misconduct that are not easily categorized, the standards are not designed to propose a specific sanction for each of the myriad of fact patterns in cases of lawyer misconduct. . . . The standards are thus not analogous to criminal determinate sentences, but are guidelines which give courts the flexibility to select the appropriate sanction in each particular case of lawyer misconduct."); *See In re Attorney*

*Prior Disciplinary Offenses – 9.22(a)*: On April 8, 2010, Respondent was publicly censured when he pled guilty to two charges of driving while ability impaired. He failed to report either conviction to the People. On August 29, 2011, Respondent was suspended for a period of nine months, all stayed upon the successful completion of an eighteen-month period of probation; he was disciplined for failing to communicate with clients and for failing to diligently pursue matters. On February 24, 2012, the PDJ lifted the stay on Respondent's nine-month suspension and revoked his probation; the PDJ determined that Respondent had violated the monitored sobriety provision of his probation and had failed to abstain from alcohol consumption on multiple occasions in violation of his probation. Respondent was reinstated to the practice of law on November 29, 2012.

*Dishonest or Selfish Motive – 9.22(b)*: The Hearing Board determines that Respondent was dishonest when he held himself out as an attorney to potential clients. With the exception of Roberts, we find that he never expressly told any client that he was unable to practice law due to a suspended license. Respondent never corrected their subjective belief that he could lawfully give them advice about their cases. We find sufficient evidence of a dishonest motive to apply this factor in aggravation, giving it average weight.

*A Pattern of Misconduct – 9.22(c)*: Respondent engaged in a pattern of misconduct when he held himself out as a licensed attorney to four potential clients and practiced law over a two-month period of time while he was suspended. We give this factor average weight in aggravation.

*Multiple Offenses – 9.22(d)*: Respondent engaged in different types of misconduct on multiple occasions in violation of Colo. RPC 3.4(c), 5.5, and 8.4(c). However, because these rule violations arise out of the same misconduct, we apply no weight to this factor.

*Substantial Experience in the Practice of Law – 9.22(i)*: Respondent was admitted to the bar in 1998. The misconduct at issue here does not reflect well on such a long-standing practitioner.

*Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings – 9.32(e)*: Respondent testified, and the People did not object, that he cooperated in this matter. We therefore apply average weight to this mitigating factor.

*Character or Reputation – 9.32(g)*: The Hearing Board heard testimony from three character witnesses for Respondent: Andrea Waterhouse, LeAnn Trujillo, and Dan Peterson. All three witnesses are Respondent's former clients. Respondent represented Waterhouse in a revocation of probation matter; she testified that he actively represented her for over one year and that she believed he was very forthright. Waterhouse thought he was a good lawyer, but she was unaware of Respondent's disciplinary history or the subject matter of this disciplinary case.

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*F.*, 285 P.3d 322, 327 (Colo. 2012). Based on the facts here, we choose to start our analysis with suspension as the presumptive sanction.

Respondent represented Trujillo in her DUI case. Trujillo testified that she believes Respondent is "an all-around good guy." They know each other as friends, and Respondent represented her for over a year on a pro bono basis. She stated, however, that Respondent never told her about his prior discipline, nor did he discuss with her the instant case.

Peterson hired Respondent to represent him after he was charged with sexual assault and four traffic offenses. Peterson believed Respondent was very helpful and thought he "did a wonderful job" on his case. Respondent took $3,500.00 off his bill by allowing Peterson to paint Respondent's mother's house in exchange for fees. Peterson was unaware of Respondent's prior discipline and knew nothing about his current disciplinary case.

Although Respondent's character witnesses spoke highly of his legal representation, not one knew about Respondent's disciplinary history or the subject of this complaint. Thus, they were unable to offer helpful evidence of Respondent's good character applicable to this mitigating factor. We therefore give this factor little weight.

Remorse – 9.32(l): Respondent testified that he was remorseful about his conduct. He acknowledged that he did not intend to misrepresent his status as an attorney to any clients and that he sought only to assist Eraybar in developing her own firm. He knows now that he never should have met with any of her clients outside of her presence. Since the inception of this disciplinary case, Respondent has had lunch with several suspended attorneys in an effort to educate them about his conduct and to advise them not to follow a similar path. He hopes that these attorneys will benefit from his advice and experience. We find that Respondent's willingness to reach out to other attorneys in a similar position demonstrates some remorse for his actions, so we apply average weight to this factor in mitigation.

**Analysis Under ABA *Standards* and Colorado Case Law**

The Colorado Supreme Court has directed us to exercise our discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[100] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[101] The presumptive sanction may be increased or decreased not only in light of aggravating and mitigating factors, but also in consideration of the Colorado Supreme Court's disciplinary jurisprudence.[102] Ultimately, however, although prior cases are helpful by way of analogy, a hearing board should determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The Colorado Supreme Court has both disbarred and suspended attorneys who have practiced law while under orders of suspension. The Colorado Supreme Court often imposes

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[100] *See In re Attorney F.*, 285 P.3d at 327; *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).

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

[102] *See Olsen*, 326 P.3d at 1011.

less severe sanctions for violations of administrative suspension orders than for violations of disciplinary suspension orders.[103] Nevertheless, we find that disbarment is not appropriate under the circumstances of this case because no actual harm to a client has been shown.[104] Indeed, Colorado cases identify suspension as appropriate when a lawyer knowingly disregards a court order by practicing law following a suspension, particularly when clients have not suffered any actual injury.[105]

This case is serious in that Respondent failed to notify his clients of his suspension, held himself out as a licensed attorney by way of advertisements and omissions, and offered them legal advice while he was suspended from the practice of law. On the other hand, Respondent's conduct is not as aggravated as in *People v. Zimmerman;* there, Zimmerman accepted advanced fees in two client matters and failed to take the necessary steps to notify his two clients, the court, and opposing parties of his suspension.[106] Zimmerman's conduct caused actual harm to his clients because they received no benefit from the fees they paid him and had to pay additional fees to hire new counsel.[107] Likewise, Respondent's conduct was not as egregious as that in *People v. Redman,* where the attorney practiced law in violation of both administrative and disciplinary orders of suspension.[108] Despite his suspensions, Redman actively represented over four clients, including by making personal court appearances and filing pleadings, and caused his clients harm.[109]

In this case, Respondent failed to abide by a disciplinary order of suspension, causing intangible harm to the legal system and the profession. He did not cause actual harm to clients, however, and his underlying conduct occurred during a short timeframe while he was under the direct supervision of a licensed attorney. Moreover, we do not find that Respondent intentionally set out to violate his order of suspension while he was operating under the aegis of Eraybar's license. Although his plans were ill-conceived and poorly

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[103] *Compare People v. Rivers,* 933 P.2d 6, 8 (Colo. 1997) (suspending a lawyer for violating an administrative suspension order and for other misconduct) *with Zimmermann,* 960 P.2d at 88 (disbarring a lawyer who violated a disciplinary suspension order and engaged in other misconduct, causing actual harm to clients).

[104] *See People v. Swan,* 938 P.2d 1164, 1165-66 (Colo. 1997) (disbarring an attorney who failed to notify his client, opposing counsel, and the court of his suspension, and effectively abandoned the client by neglecting the case); *People v. Wilson,* 832 P.2d 943, 945 (Colo. 1992) (disbarring an attorney who continued to practice law while under an order of suspension with no efforts to wind up his practice and who failed to take action to protect his clients' legal interests, causing his clients serious harm); *People v. James,* 731 P.2d 698, 700 (Colo. 1987) (disbarring an attorney who made no efforts to unwind his affairs after he was suspended and who failed to take any action to protect the legal interests of his client in connection with a personal injury claim, resulting in the running of the statue of limitations).

[105] *See People v. Ross,* 873 P.2d 728, 729 (Colo. 1994) (suspending a lawyer for three years for practicing law while suspended and for failing to file an affidavit of compliance with his order of suspension where his conduct did not harm his client); *People v. Kargol,* 854 P.2d 1267, 1269 (Colo. 1993) (suspending an attorney for one year and one day for violating an administrative order of suspension where clients suffered no actual harm, but indicating that "[d]isbarment would be appropriate had such actual harm been shown.").

[106] 960 P.2d at 88.

[107] *Id.*

[108] 902 P.2d at 839.

[109] 902 P.2d at 839-40.

executed, it appears that Respondent desired to comply with his suspension order but crossed the line with his efforts to generate business for Eraybar. Yet he did not set out to practice law on his own by making any personal court appearances on behalf of the clients or by signing or filing any pleadings with the presiding tribunals. Moreover, no evidence was presented that Respondent attempted to filch Eraybar's clients for himself or that any client case was neglected or abandoned.

Although the balance of aggravating and mitigating facts do not counsel in favor of departing from the presumptive sanction of suspension, the nature of Respondent's misconduct forecloses consideration of a short period of suspension. In balancing the harm he caused the legal system and the profession, along with the ABA *Standards* and relevant Colorado Supreme Court case law, we conclude that the appropriate sanction here is an eighteen-month suspension, rather than disbarment.

## V. CONCLUSION

Respondent violated his duties to the legal system and the duties he owes as a professional by continuing to practice law after his law license was suspended in four client matters. In one matter, he assisted former clients with their legal case without informing them that he had been suspended. In the course of signing up the other three clients for Eraybar, he misrepresented by omission his status as a suspended attorney, leaving the clients with the distinct impression that he would be acting as their lawyer. As the late poet Maya Angelou once said, "I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel." Through what he did, and what he left unsaid, Respondent made these clients feel they could rest assured that *he* would be handling their legal matters. By misleading these clients, Respondent violated strictures against the unauthorized practice of law, dishonest conduct, and the knowing disobedience of a court order. His misconduct calls for an eighteen-month suspension.

## VI. ORDER

The Hearing Board therefore **ORDERS:**

1. **DERRICK DUANE CORNEJO**, attorney registration number 29438, is **SUSPENDED FOR EIGHTEEN MONTHS.** The **SUSPENSION SHALL** take effect only upon issuance of "Order and Notice of Suspension."[110]

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

[110] In general, an order and notice of sanction will issue thirty-five days after a decision is entered pursuant to 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.

3. The parties **SHALL** file any post-hearing motion or application for stay pending appeal with the Hearing Board **on or before Wednesday, August 13, 2014.** No extensions of time will be granted. If a party files a post-hearing motion or an application for stay pending appeal, any response thereto **SHALL** be filed within seven days, unless otherwise ordered by the PDJ.

4. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a "Statement of Costs" within fourteen days from the date of this order. Respondent's response thereto, if any, **SHALL** be filed within seven days, unless otherwise ordered by the PDJ.

5. The PDJ **GRANTS** the People's "Statement of Costs Pursuant to the Court's May 23, 2014, 'Order Granting in Part Respondent's Motion for Reconsideration,'" filed on June 18, 2014, and **ORDERS** Respondent to pay $360.00 in costs associated with the People's motion for sanctions and their response to Respondent's motion for reconsideration **within fourteen days** of the date of this order.

DATED THIS 30th DAY OF July, 2014.

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

LINDA S. KATO
HEARING BOARD MEMBER

PAUL J. WILLUMSTAD
HEARING BOARD MEMBER

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| Christopher T. Ryan<br>Colorado Supreme Court | Via Hand Delivery |

| SUPREME COURT, STATE OF COLORADO<br><br>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE<br>THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE<br>1300 BROADWAY, SUITE 250<br>DENVER, CO 80203 | MAY 16 2018<br><br>Office of the<br>Presiding Disciplinary Judge<br>By |
|---|---|
| **Complainant:**<br>THE PEOPLE OF THE STATE OF COLORADO<br><br>**Respondent:**<br>DERRICK DUANE CORNEJO | Case Number:<br>**13PDJ066** |

**AMENDED ORDER AND NOTICE OF SUSPENSION**[1]

From June 2 through 4, 2014, the Hearing Board held a hearing pursuant to C.R.C.P. 251.18. On July 20, 2014, the Hearing Board issued an "Opinion and Decision Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)," suspending Derrick Duane Cornejo ("Respondent") from the practice of law for a period of eighteen months. The Colorado Supreme Court affirmed the Hearing Board's decision on June 8, 2015.

Pursuant to C.R.C.P. 251.28(a), the Presiding Disciplinary Judge ("the Court") **ORDERS** that **DERRICK DUANE CORNEJO, ATTORNEY REGISTRATION NUMBER 29438, IS SUSPENDED** FROM THE PRACTICE OF LAW FOR A PERIOD OF **EIGHTEEN MONTHS, EFFECTIVE JULY 23, 2015,** and his name shall be stricken from the list of attorneys authorized to practice in the State of Colorado.

Within fourteen days of the effective date of this "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 Court setting forth pending matters and attesting, inter alia, to notification of clients and of other jurisdictions where the attorney is licensed.

Should he wish to resume the practice of law, Respondent must file a petition applying for reinstatement under C.R.C.P. 251.29(c).

DATED THIS 26TH DAY OF JUNE, 2015.
*Nunc Pro Tunc the 23rd day of June, 2015.*

William R. Lucero
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[1] The Colorado Supreme Court issued its mandate on June 23, 2015.

Exhibit
3

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