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

IN THE MATTER OF	§	
ARRON BURT NESBITT	§	**CAUSE NO. 60520**
STATE BAR CARD NO. 24049737	§	

FIRST 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, Arron Burt Nesbitt (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 First Amended Petition for Reciprocal Discipline at Arron Burt Nesbitt, 15635 E. Prentice Drive, Centennial, Colorado 80015.

3. On or about September 29, 2017, 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: Arron Burt Nesbitt, #40610*, 17 PDJ 068. (Exhibit 1).

4. On or about March 6, 2018, a Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct 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: Arron Burt Nesbitt, #40610, Case Number: 17PDJ068. (Exhibit 2).

5. On or about March 9, 2018, an Order Approving Conditional Admission of Misconduct and Imposing Sanctions 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: Arron Burt Nesbitt, #40610*, Case Number 17PDJ068, that states in pertinent part as follows:

> ...ARRON BURT NESBITT, attorney registration number 40610, is SUSPENDED from the practice of law for a period of ONE YEAR AND ONE DAY, WITH NINE MONTHS TO BE SERVED AND THE REMAINDER TO BE STAYED upon the successful completion of a TWO-YEAR period of PROBATION, subject to the conditions set forth in paragraph 19 of the stipulation...

(Exhibit 3).

6. In the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct, it was established that while acting as counsel for an insurance company involved in a probate matter, Respondent received a report detailing review of Plaintiff's depositions and medical records. Respondent sent the same report, with minor changes, to the insurance company claiming it to be his own work, for which Respondent ultimately billed 6.9 hours, amounting to $2,380.50. Similarly, Respondent billed $1,587 for review of deposition transcripts; work already done, and billed for, by co-counsel. In time, it was discovered that the two reports detailing the depositions and medical records were substantially similar. When questioned why the reports were so similar, Respondent had no substantive reply, and denied any plagiarism. Further, Respondent billed for attending a deposition which he never in fact attended, and, when asked about this, Respondent stated that he monitored the deposition from his cell phone while in his office.

In a subsequent matter, Respondent again billed for attending depositions that he never attended, billing $2,104.50 in fees. Respondent again stated that he monitored the depositions from his cell phone. However, a review of Respondent's cell phone bill indicates that he did not use his cell phone to monitor the deposition. Respondent's billing for these depositions was ultimately refunded by the insurance company he represented. Respondent admits that he did not attend these depositions and that he improperly billed for review and creations of reports in violation of the following Colorado Rules of Professional Conduct:

1.5(a)	A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses; and
8.4(c)	It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

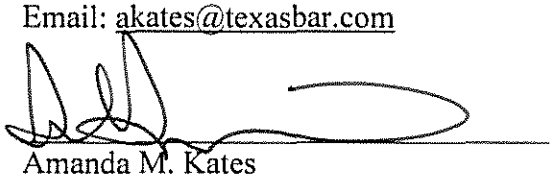
7. Copies of the Complaint, Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct, and Order Approving Conditional Admission of Misconduct and Imposing Sanctions are attached hereto as Petitioner's Exhibits 1 through 3, and made a part hereof for all intents 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, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this First 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, 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

Amanda M. Kates
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4167
Email: akates@texasbar.com



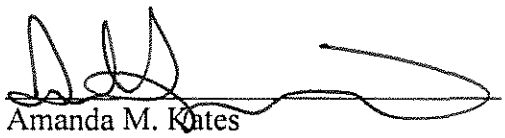
Amanda M. Kates
Bar Card No. 24075987

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 First Amended Petition for Reciprocal Discipline and the Order to Show Cause on Arron Burt Nesbitt by personal service.

Arron Burt Nesbitt
15635 E. Prentice Drive
Centennial, Colorado 80015



Amanda M. Kates

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015 and amended September 20, 2016

Contents

SECTION 1: 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 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, 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, 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) **A**bstracts 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.

SECTION 2: 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 him- or 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.

SECTION 3: 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.

SECTION 4: 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 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

(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.

(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, 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 post submission 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 appear.

(5) A court reporter or recorder must not lock any document that is part of the record.

(6) 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.

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. 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.

SECTION 5: 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.

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, 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.

SECTION 6: 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.

SECTION 7: 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.

SECTION 8: 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.

SECTION 9: 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.

SECTION 10: 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.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1300 Broadway, Suite 250 Denver, Colorado 80203	**FILED** SEP 2 9 2017 PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO
Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: ARRON BURT NESBITT, # 40610	▲COURT USE ONLY▲ Case Number: 17 PDJ 068
Geanne R. Moroye, #17476 Assistant Regulation Counsel James C. Coyle, #14970 Attorney Regulation Counsel Attorneys for Complainant 1300 Broadway, Suite 500 Denver, Colorado 80203 Telephone: (303) 457-5800x7856 Fax No.: (303) 501-1141 Email: G.Moroye@csc.state.co.us	**Supreme Court** State of Colorado Certified to be a full, true and correct copy MAY 1 5 2018 Office of the Presiding Disciplinary Judge 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

The respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on November 10, 2008, and is registered upon the official records of this Court, registration no. 40610. He is subject to the jurisdiction of this Court in these disciplinary proceedings. The respondent's registered business address is 1225 17th Street, Suite 2750, Denver, Colorado 80202.

General Allegations

1. From 2009 to March 2016, Respondent worked for Taylor|Anderson, LLP. In 2012, Respondent was made partner. Kevin Taylor and Brent Anderson are equity partners at Taylor|Anderson.

Exhibit
1

2. On March 23, 2016, Respondent left Taylor|Anderson to join Wilson Elser Moskowitz Edelman & Dicker.

The Lewis matter

3. During Respondent's tenure at Taylor|Anderson, the firm was serving as excess/monitoring counsel for Great American Insurance in the matter of *Katy Lewis, Deceased, et al v. Schnuck Markets* ("the Lewis matter").

4. An Indiana law firm, Jackson Kelly PLLC, was serving as local counsel.

5. On February 2, 2016, Angela Freel, an attorney with Jackson Kelly, emailed Respondent a 42-page report she drafted detailing her review of plaintiff depositions and medical records in the Lewis matter.

6. Ms. Freel also sent her report to Ellen Biondo, an insurance adjuster with Great American Insurance.

7. On February 26, 2016, Respondent emailed a nearly identical report to Ellen Biondo with minor changes he made to the opening and closing paragraphs, minor changes in the body of the report and a change in the valuation of the case. Respondent wrote, "Attached please find an updated status report and analysis."

8. Respondent subsequently submitted a statement of his billable hours to Taylor|Anderson indicating that on February 19, 2016, he had spent 3.6 hours working on the report; and on February 22, 2016, he had spent 3.3 hours working on the report. Respondent's billing rate was $345 per hour. Respondent billed $2,380.50 for this work.

9. Respondent also submitted a statement of his billable hours to Taylor|Anderson indicating that on February 12, 2016, he had spent 4.8 hours reviewing and analyzing the deposition transcript and medical records summary of Brian Lewis. Respondent billed $1,656 for this work.

10. On the same billing statement, Respondent indicated that on February 18, 2016, he spent 4.6 hours analyzing the deposition transcript and medical records summary of Kathryn Lewis. He billed $1,587 for this work.

11. Taylor|Anderson subsequently billed Great American Insurance for Respondent's time for these tasks.

12. Ms. Biondo, the adjuster at Great American Insurance, noticed that the report from Respondent was nearly identical to the report she had received from Ms. Freel and brought it to the attention of her supervisor, Jim Siessel.

13. On April 24, 2016, Mr. Siessel emailed Mr. Anderson to ask if Mr. Anderson

could explain why Respondent's report was "verbatim" to Ms. Freel's report.

14. By April 24, 2016, Respondent had left Taylor|Anderson.

15. In response to Mr. Siessel's email, Taylor|Anderson conducted an internal investigation and audit of Respondent's billing.

16. Mr. Siessel contacted Respondent to inquire about the reports.

17. The internal investigation established Respondent's billing included time for reviewing the deposition transcripts of Brian Lewis and Kathryn Lewis.

18. Taylor|Anderson did not receive the Brian Lewis and Kathryn Lewis deposition transcripts until after Respondent had left the firm.

19. Taylor|Anderson's database reflects that Respondent was the only employee to work on the report.

20. Respondent billed 5.8 hours for attending the deposition of Kenneth Mason on February 26, 2016. Respondent billed $2,001 for this work.

21. A copy of a transcript for the deposition of Kenneth Mason does not reflect Respondent's presence at the deposition.

22. Respondent asserts that he monitored the Mason deposition, meaning that he dialed into the deposition but did not announce his presence to the court reporter.

23. On January 10, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Mason deposition on his office phone at Taylor|Anderson.

24. Respondent had previously entered his appearance in the Lewis matter, in advance of the Mason deposition.

25. Ms. Freel has no independent recollection of whether Respondent monitored the deposition.

26. The Taylor|Anderson office phone records for February 26, 2016 reflect Respondent was not monitoring the Mason deposition on his office phone. At the time of the deposition Respondent was on his office phone on calls with various staff and clients at Taylor|Anderson, including a phone conference with Mr. Taylor.

27. On March 14, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Mason deposition on his cell phone.

28. Respondent's cell phone records for the date and time of the Mason deposition

indicate that Respondent did not use his cell phone to monitor the deposition.

The Culp matter

29. While working at Taylor|Anderson, Respondent billed for attending the depositions of James and Carly Culp on September 17, 2015.

30. A copy of the transcript identifying the attorneys who were present for the depositions indicates that Respondent was not in attendance.

31. Respondent billed 6.10 hours, totaling $2,104.50 in fees, to Great American Insurance for attending the depositions.

32. Respondent entered his appearance as excess liability counsel in the Culp matter on May 19, 2014.

33. According to Respondent, he was not in attendance for the depositions, but rather monitored the Culp depositions by phone.

34. On January 10, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Culp depositions on his office phone at Taylor|Anderson.

35. The Taylor|Anderson office phone records for September 17, 2015 reflect Respondent was not monitoring the Culp depositions on his office phone.

36. On March 14, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Culp depositions on his cell phone.

37. Respondent's cell phone records for the date and time of the Culp depositions indicate that Respondent did not use his cell phone to monitor the depositions.

CLAIM I
Colo. RPC 1.5(a): Unreasonable Fees

38. Paragraphs 1 through 37 are incorporated as if fully set forth.

39. Colo. RPC 1.5(a) provides that "a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

40. In the Lewis matter and Culp matters, Respondent's charges were unreasonable as he charged for work that he did not perform.

41. By such conduct, Respondent violated Colo. RPC 1.5(a).

WHEREFORE, Complainant prays at the conclusion of this Complaint.

CLAIM II
Colo. RPC 4.1(a): Truthfulness in Statements to Others

42. Paragraphs 1 through 37 are incorporated as if fully set forth.

43. Colo. RPC 4.1(a) provides "In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person."

44. In the Lewis matter and Culp matters, Respondent knowingly made a false statement of material fact to a third person when he submitted billing for work that he had not done. In the Lewis matter, Respondent also submitted a report he purportedly authored which was actually, in large part, written by another individual.

45. By such conduct, Respondent violated Colo. RPC 4.1(a).

WHEREFORE, Complainant prays at the conclusion of this Complaint.

CLAIM III
Colo. RPC 8.4(c): Misconduct

46. Paragraphs 1 through 37 are incorporated as if fully set forth.

47. Colo. RPC 8.4(c) provides it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

48. Respondent violated this rule and engaged in dishonest conduct by misrepresenting he did work on the Lewis and Culp matters, and by billing Great American Insurance for the work. For such conduct, Respondent violated Colo. RPC 8.4(c).

49. Respondent violated this rule and engaged in dishonest conduct by stating to investigators with the Office of Attorney Regulation Counsel that he utilized his office phone to monitor the Lewis and Culp depositions. Office phone records from Taylor|Anderson indicate Respondent did not use his office phone to monitor the Lewis or Culp depositions. Respondent violated this rule and engaged in dishonest conduct by stating to investigators with the Office of Attorney Regulation Counsel, in a subsequent interview, that Respondent utilized his cell phone to monitor the Lewis and Culp depositions. Respondent's cell phone records, indicate Respondent did not use his cell phone to monitor the depositions. For such conduct Respondent violated Colo. RPC 8.4(c).

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; the Respondent be appropriately disciplined for such misconduct; the Respondent be required to take any other remedial action appropriate under the circumstances; and the Respondent be assessed the costs of this proceeding.

DATED this 28th day of September, 2017.

Respectfully submitted,

Geanne R. Moroye, #17476
Assistant Regulation Counsel
James C. Coyle, #14970
Attorney Regulation Counsel
Attorneys for Complainant

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1300 Broadway, Suite 250 Denver, Colorado 80203	**FILED** MAR 06 2018 PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO
Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: ARRON BURT NESBITT, # 40610	▲COURT USE ONLY▲ Case Number: 17PDJ068
Geanne R. Moroye, #17476 Assistant Regulation Counsel Attorneys for Complainant 1300 Broadway, Suite 500 Denver, Colorado 80203 Telephone: (303) 457-5800x7865 Fax No.: (303) 501-1141 Victoria E. Lovato, # 31700 Respondent's Counsel S & D Law 1801 York St. Denver, CO 80206 Telephone: 303-399-3000	**Supreme Court** State of Colorado Certified to be a full, true and correct copy MAY 15 2018 Office of the Presiding Disciplinary Judge By:

STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT

On this 6th day of March, 2018, Geanne R. Moroye, Assistant Regulation Counsel and Arron Burt Nesbitt, the Respondent who is represented by attorney Victoria E. Lovato in these proceedings, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION: One-year-and-one-day suspension, with nine months served and the remainder stayed upon successful completion of a two-year period of probation with conditions.

1. The Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on November 10, 2008, and is registered as an attorney upon the official

Exhibit 2

records of this Court, registration no. 40610. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has become public under the operation of C.R.C.P. 251.31(c) as amended.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent has read and studied the complaint, a true and correct copy of which is attached as **Exhibit 1**, and is familiar with the allegations therein. With respect to the allegations contained in the complaint, Respondent affirms under oath that the following facts and conclusions are true and correct:

a. From 2009 to March 2016, Respondent worked for Taylor|Anderson, LLP. In 2012, he was made partner. Kevin Taylor and Brent Anderson are equity partners at Taylor|Anderson.

b. On March 23, 2016, Respondent left Taylor|Anderson to join Wilson Elser Moskowitz Edelman & Dicker ("Wilson Elser").

The Lewis matter

c. During Respondent's tenure at Taylor|Anderson, the firm was serving as excess/monitoring counsel for Great American Insurance in *Katy Lewis, Deceased, et al v. Schnuck Markets* ("the Lewis matter"). An Indiana law firm, Jackson Kelly PLLC, was serving as local counsel.

d. On February 2, 2016, Angela Freel, an attorney with Jackson Kelly, emailed Respondent a 42-page report she drafted detailing her review of plaintiff depositions and medical records in the Lewis matter. Ms. Freel also sent a copy of her report to Ellen Biondo, an

insurance adjuster with Great American

e. On February 26, 2016, Respondent emailed a nearly identical report to Ellen Biondo, with minor changes he made to the opening and closing paragraphs, minor changes in the body of the report and a change in the valuation of the case. Respondent wrote, "Attached please find an updated status report and analysis."

f. Respondent subsequently submitted a statement of his billable hours to Taylor|Anderson indicating that on February 19, 2016, he had spent 3.6 hours working on the report; and on February 22, 2016, he had spent 3.3 hours working on the report. Respondent's billing rate was $345 per hour. Respondent billed $2,380.50 for this work.

g. Respondent also submitted a statement of his billable hours to Taylor|Anderson indicating that on February 12, 2016, he had spent 4.8 hours reviewing and analyzing the deposition transcript and medical records summary of Brian Lewis. Respondent billed $1,656 for this work.

h. On the same billing statement, Respondent indicated that on February 18, 2016, he spent 4.6 hours analyzing the deposition transcript and medical records summary of Kathryn Lewis. He billed $1,587 for this work.

i. Taylor|Anderson subsequently billed Great American for Respondent's time for these tasks.

j. At some point, Ms. Biondo noticed that the report from Respondent was nearly identical to Ms. Freel's, and brought it to the attention of her supervisor, Jim Siessel.

k. On April 24, 2016, Mr. Siessel emailed Mr. Anderson questioning the similarity between the reports written by Ms. Freel and the Respondent.

l. Respondent had left the firm by then so they could not explain why the reports were so similar; however, in response to Mr. Siessel's email, Taylor|Anderson conducted an internal investigation and audit of Respondent's billing.

m. Respondent's billing included time for reviewing the deposition transcripts of Brian Lewis and Kathryn Lewis. After reviewing the firm database, Taylor|Anderson believes that those deposition transcripts were not received by the firm until more than a month after Respondent had left the firm.

n. Respondent would have received the Lewis transcripts from Ms. Freel's firm. Ms. Freel's records do not reflect that Jackson Kelly sent Respondent the transcripts.

o. Respondent admits that the two reports are very similar but he denies plagiarizing the status report. Although Respondent does not recall exactly what happened with the report, he

sent to Ms. Biondo, he surmises that he printed a copy of Ms. Freel's report and then made handwritten edits, which was his customary practice. That way, he could make the edits while he was traveling. Respondent believes he gave his handwritten edits to his assistant so that she could revise the report on the computer. Respondent states he likely did not follow up with his assistant to ensure that the edits were implemented, and he failed to look at the report carefully before sending it to Ms. Biondo.

p. Taylor|Anderson provided a screen shot from its database that captured Respondent's work on the report. The database shows that Respondent spent about three minutes working on the report before he emailed it to Ms. Biondo.

q. It is unlikely that Respondent would have been able to make the changes reflected in the report in three minutes. Respondent's assistant left the employ of Taylor|Anderson shortly after Respondent left the firm and her contact information is unknown.

r. Taylor|Anderson's internal audit showed that Respondent billed 5.8 hours for attending the deposition of Kenneth Mason on February 26, 2016; however, a copy of the transcript does not reflect Respondent's presence at the deposition. Respondent billed $2,001 for this work.

s. Respondent initially claimed that he "monitored" the Mason deposition, meaning that he dialed into the deposition but did not announce his presence to the court reporter. Respondent believes Ms. Freel was aware he was monitoring the deposition and that monitoring is common practice in the excess liability carrier industry.

t. Ms. Freel stated she has no independent recollection of whether Respondent monitored the Lewis depositions but stated that excess liability counsel, on occasion, monitor deposition without announcing their presence for the record.

u. Taylor|Anderson provided a phone log for February 26, 2016, the date of the Lewis depositions. The phone log shows that Respondent could not have been monitoring the Lewis deposition on the phone because at the time of the deposition he was on phone calls with various staff and clients at Taylor|Anderson, including a phone conference with Mr. Taylor.

v. When investigators asked Respondent about this discrepancy, he stated that he was monitoring the deposition using his cell phone in order to keep his office line free.

w. Respondent's cell phone records, for the date and time of the Lewis deposition, indicate that Respondent did not use his cell phone to monitor the deposition.

The Culp matter

x. Taylor|Anderson alleges that Respondent billed for attending the depositions of James and Carly Culp on September 17, 2015. A copy of the transcript memorializing the attorneys who were present for the deposition indicates that Respondent was not in attendance.

Respondent billed 6.10 hours, totaling $2,104.50 in fees, to the client for attending the depositions.

y. Respondent does not recall specifically how he monitored the Culp depositions, but he initially believed that he also monitored the depositions utilizing his cell phone.

z. Respondent's cell phone records, for the date and time of the Culp depositions, indicate that Respondent did not use his cell phone to monitor the depositions.

aa. Taylor|Anderson refunded Great American any amounts paid for Respondent's disputed work.

bb. Respondent states that while at Taylor|Anderson, he had a very heavy caseload and worked on numerous complex, high-exposure matters. He often billed in excess of 2,100 hours per year on multiple cases.

cc. By January 2016, Respondent had accepted a position with his new firm and knew he was leaving Taylor|Anderson sometime in March. He was trying to transition his practice while managing over 20 active cases which included a trial in mid-February, a significant mediation, and a corporate deposition in a large excessive wrongful death commercial trucking case in Texas.

dd. In retrospect, and after viewing the phone records, Respondent acknowledges that the records indicate he did not monitor the aforementioned depositions in the Lewis and Culp matters. Respondent realizes that he confused these matters with other cases he was working on at the time. This led to the mistakes in his billing entries. Respondent believed he had monitored the depositions over the phone and so informed OARC, but the phone records speak for themselves and upon review of those records, he realizes he was incorrect in his assertions to OARC and deeply regrets his error.

ee. Respondent admits that the report he sent to a former client was not the final, nor the complete version of the report that should have included all of the additional work that he did and the revisions he intended. Nevertheless, Respondent sent the report without reviewing it first, and this was a mistake. Only some of his revisions had been memorialized in the report. While he reviewed and revised this report, and billed for such work, he admits that the report that was saved into the system at Taylor|Anderson, and that he sent to the client, was not a proper reflection of that time.

ff. Respondent states that he was under an extreme amount of stress during the months leading to his departure from Taylor|Anderson. He was emotional because he was leaving a firm and mentors he had been associated with for years. He was managing an extremely heavy case load and doing his best to prepare for his new position while trying to provide thorough, competent work at Taylor|Anderson. Against this backdrop, he realizes he made mistakes in his billing. He did not do so knowingly or intentionally and had no incentive or motive to bill for time that was improper. He did not have to make billable hours. He had worked hard to establish a strong relationship with Great American who in the past highly valued

and respected his work. When he left Taylor|Anderson, Great American asked Respondent to handle some of their excess liability matters however due to his carelessness, his relationship with Great American has been ruined.

gg. Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.5(a), and Colo. RPC 8.4(c).

7. Claim II of the Complaint charges Respondent with a violation of Colo. RPC 4.1(a) which states in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person. Based on the discovery performed to date, Complainant moves that this alleged violation of the Colorado Rules of Professional conduct be dismissed. Respondent acknowledges that he billed for work that he did not perform, but did not do so knowingly. He failed to review the report he sent to Ms. Biondo, in its entirety, before submitting it. Had he done so, he would have seen that the changes he made to the report and his analysis were not included. In addition, Respondent believed he had monitored the depositions in the Lewis and Culp matters and did not realize that he did not monitor the depositions until he reviewed the phone records. Respondent acknowledges that he confused the Lewis and Culp depositions with other depositions that he monitored during this time frame. Further, the parties agree that the conduct forming the basis of this charge is better addressed by the Rule 8.4(c) violation discussed elsewhere in this Stipulation.

8. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of $224.00 (a copy of the statement of costs is attached hereto as **Exhibit 2**) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from thirty-five (35) days after the Presiding Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

9. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

10. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of one-year-and-one-day suspension, with nine months served and the

remainder stayed upon successful completion of a two-year period of probation with conditions, may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

11. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witness(es) in the matter(s) of the proposed disposition.

12. Respondent's counsel, Victoria E. Lovato, hereby authorizes Respondent, Arron Burt Nesbitt, and the non-lawyer individual in the Office of Attorney Regulation Counsel who is responsible for monitoring the conditions set forth herein to communicate directly concerning scheduling and administrative issues or questions. Respondent's counsel will be contacted concerning any substantive issue which may arise.

PRIOR DISCIPLINE

13. Respondent has no prior discipline.

ANALYSIS OF DISCIPLINE

14. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA *Standards*"), §3.0, the Court should consider the following factors generally:

a. The duty violated: Respondent violated his duty to not charge an unreasonable fee as well as his duty of honesty.

b. The lawyer's mental state: Reckless.

c. The actual or potential injury caused by the lawyer's misconduct: Respondent caused potential injury to his client by billing the client for monitoring depositions he did not monitor and for billing his client for a report that did not contain Respondent's complete and full analysis.

d. The existence of aggravating or mitigating factors: Factors in aggravation which are present include: multiple offenses and substantial experience in the practice of law. ABA *Standards* §9.22(d),(i). Factors in mitigation include: absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and remorse. ABA *Standards* §9.32(a),(b),(e),(l).

15. Pursuant to ABA *Standard* 4.6, suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. Pursuant to ABA

Standard 7.2, suspension is generally appropriate 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.[1]

16. The Colorado Supreme Court has imposed suspensions in cases involving attorneys who knowingly over-billed their clients. In *People v. Kotarek*, 941 P.2d 925 (Colo. 1997), the Supreme Court issued a three-month suspension where Kotarek submitted false time sheets and requests for reimbursement. Kotarek was under a large amount of personal stress, which mitigated the suspension down. Though *Kotarek* involved the application of Standard 9.32(h) for Kotarek's mental disability or impairment – a factor not present here – Kotarek acted with a knowing mental state when he billed for traveling to, and conducting, depositions that he knew did not take place. Kotarek received and cashed a reimbursement check for the fictitious travel and depositions. The *Kotarek* decision involved a conditional admission of misconduct and a stipulation of a three to six-month suspension, but did not explicitly discuss any of the ABA *Standards*. Likewise, in *People v. Walker*, 832 P.2d 935, 936–37 (Colo. 1992), the Colorado Supreme Court imposed a 90-day suspension where an attorney submitted false reimbursement vouchers in six juvenile cases, where he double-billed, triple-billed, and quadruple-billed travel time, in-court time, out-of-court time, and mileage charges on six days over a six-month period. Like *Kotarek*, *Walker* involved a conditional admission of misconduct and a stipulated range of discipline, and it did not explicitly discuss what ABA *Standards* it applied. Unlike the Respondent, the lawyers in *Kotarek* and *Walker* knowingly engaged in a pattern of false billing misconduct on multiple occasions over a period of time. *See also In re Sather*, 3 P.3d 403, 416 (Colo. 2000) (six-month suspension for knowingly misrepresenting fees paid as nonrefundable). In the matter of *People v. Cook*, 2017 WL 3587985 (Colo. OPDJ August 10, 2017), Cook was an associate at a law firm who, when faced with the prospect of failing to meet the firm's yearly billable hour expectation, knowingly falsified sixty time entries for a one-month billing cycle. In some entries she inflated legitimate time that had not yet been submitted; other entries she fabricated entirely. Her fabricated billing reflected nearly $40,000.00 in time that she had not worked. The court approved a conditional admission of misconduct and a stipulation to a nine-month suspension.[2]

Suspension is the presumptive sanction under *Standards* 4.6 and 7.2 of the American Bar Association *Standards for Imposing Lawyer Sanctions*. The ultimate sanction imposed . . . generally should be greater than the sanction for the most serious misconduct.[3] A served

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[1] Notably, Rule 8.4(c) does not require proof of any specific state of mind. *Compare, e.g.*, Colo. RPC 3.4(c) (prohibiting a lawyer from "knowingly" disobeying a court order). As such, and as clarified by Comment [7A] to Rule 1.0, the Colorado Supreme Court's case law holding that a reckless mental state is equivalent to a knowing mental state for purposes of finding culpability continues to apply in cases involving Rule 8.4(c)

[2] The parties are aware that Presiding Disciplinary Judge and disciplinary hearing board opinions offer guidance but do not have precedential effect. *In re Rosen*, 69 P.3d 43, 48 (Colo. 2003). For purposes of analyzing proportionality, however, citation to such an opinion is useful in this case.

[3] ABA Annotated *Standards for Imposing Lawyer Sanctions* xx (2015).

suspension of six-months typically is viewed as a baseline sanction, to be adjusted upward or downward in consideration of aggravating or mitigating factors.[4]

17. Considering all of the factors described above, as applied to this case, Respondent meets the eligibility requirements for probation set forth in C.R.C.P. 251.7(a).

CONDITIONS

18. The Initial, Served Suspension. Respondent must first complete the served portion of this suspension and comply with the requirements imposed by C.R.C.P. 251.28 and 251.29 that are applicable to the length of this served suspension. Once Respondent has successfully completed the served portion of the suspension, and is reinstated from that period of suspension pursuant to C.R.C.P. 251.29, then Respondent's probationary period shall begin.

19. Probation. The parties stipulate that Respondent is eligible for probation pursuant to C.R.C.P. 251.7(a). Successful completion of all these terms shall stay the imposition of the remaining 3-months and one day suspension.

a. Respondent shall be on probation for a 2 year period of time.

b. Mandatory Rule Condition. During the period of probation, Respondent shall not engage in any further violation of the Colorado Rules of Professional Conduct. *See* C.R.C.P. 251.7(b) ("The conditions [of probation]...shall include no further violations of the Colorado Rules of Professional Conduct").

c. Respondent shall attend and successfully pass the one-day ethics school sponsored by the Office of Attorney Regulation Counsel within one year of the date this Stipulation is approved. Respondent shall register and pay the costs of ethics school within thirty-five (35) days of the date this Stipulation is approved. Attendance at ethics school will count as 8 general CLE credits, including 7 ethics credits. Respondent may obtain the registration form for the ethics school on-line at www.coloradosupremecourt.com. (Go to the section for Lawyers, Practice Resources, and then Practice Management. The instructions for registering are on the registration forms) Instructions for registering are on the registration form.

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[4] *See, e.g., Cummings*, 211 P.3d 1136, 1140 (Alaska 2009) (imposing a three-month suspension based on a six-month "baseline" set forth in ABA *Standard* 2.3, considered in conjunction with applicable mitigating factors); *In re Moak*, 71 P.3d 343, 348 (Ariz. 2003) (noting that the presumptive suspension period is six-months); *In re Stanford*, 48 So.3d 224, 232 (La. 2010) (imposing a six-month deferred suspension after considering the "baseline sanction" of six-months served and deviating downward from that sanction based on one aggravating factor, four mitigating factors, and no actual harm caused); *Hyman v. Bd. of Prof'l Responsibility*, 437 S.W. 435, 449 (Tenn. 2014) (describing a six-month served suspension as a baseline sanction, to be increased or decreased based on aggravating or mitigating circumstances); *In re McGrath*, 280 P.3d 1091, 1101 (Wash. 2012) ("If suspension is the presumptive sanction, the baseline period of suspension is presumptively six months.").

20. **Violation of Conditions.** If, during the period of probation, the Office of Attorney Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order that requires the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. *See* C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.*

21. **Successful Completion of Conditions**. Within twenty-eight (28) days and no less than fourteen (14) days prior to the expiration of the period of probation, Respondent shall file an affidavit with the Regulation Counsel stating that Respondent has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. *See* C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall become effective upon the expiration of the period of probation. *Id.*

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a one-year-and-one-day suspension, with nine months served and the remainder stayed upon successful completion of a two-year period of probation with conditions as described above, be imposed upon Respondent. Respondent consents to the imposition of discipline of a one-year-and-one-day suspension, with nine months served and the remainder stayed upon successful completion of a two-year period of probation with conditions. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be thirty-five (35) days after the date of entry of the order (see C.R.C.P. 251.28(a), in order to allow Respondent to wind down the practice).

Arron Burt Nesbitt, Respondent; Victoria E. Lovato, attorney for Respondent; and Geanne R. Moroye, attorney for the Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.

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Arron Burt Nesbitt
15635 E. Prentice Dr.
Centennial,CO 80015
Telephone: 303-862-7129

Respondent

STATE OF COLORADO)
)ss:
COUNTY OF Denver)

Subscribed and sworn to before me this 6th day of March, 2018, by Arron Burt Nesbitt the Respondent.

Witness my hand and official seal.

My commission expires:
March 20, 2020

LAURA DEVICO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084009514
My Commission Expires March 20, 2020

Notary Public

Geanne Rae Moroye, #17476
Assistant Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203
Telephone: (303) 457-5800x7856
Attorney for the Complainant

Victoria E Lovato, #31700
S & D Law
1801 York St.
Denver, CO 80206
Telephone: 3033993000
Attorney for the Respondent

SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE
1300 Broadway, Suite 250
Denver, Colorado 80203

Complainant:
THE PEOPLE OF THE STATE OF COLORADO

Respondent:
ARRON BURT NESBITT, # 40610

Geanne R. Moroye, #17476
Assistant Regulation Counsel
James C. Coyle, #14970
Attorney Regulation Counsel
Attorneys for Complainant
1300 Broadway, Suite 500
Denver, Colorado 80203

Telephone: (303) 457-5800x7856
Fax No.: (303) 501-1141
Email: G.Moroye@csc.state.co.us

FILED

SEP 29 2017

PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF COLORADO

▲COURT USE ONLY▲

Case Number:

17 PDJ 068

COMPLAINT

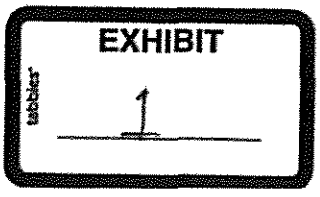
THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

Jurisdiction

The respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on November 10, 2008, and is registered upon the official records of this Court, registration no. 40610. He is subject to the jurisdiction of this Court in these disciplinary proceedings. The respondent's registered business address is 1225 17th Street, Suite 2750, Denver, Colorado 80202.

General Allegations

1. From 2009 to March 2016, Respondent worked for Taylor|Anderson, LLP. In 2012, Respondent was made partner. Kevin Taylor and Brent Anderson are equity partners at Taylor|Anderson.



2. On March 23, 2016, Respondent left Taylor|Anderson to join Wilson Elser Moskowitz Edelman & Dicker.

The Lewis matter

3. During Respondent's tenure at Taylor|Anderson, the firm was serving as excess/monitoring counsel for Great American Insurance in the matter of *Katy Lewis, Deceased, et al v. Schnuck Markets* ("the Lewis matter").

4. An Indiana law firm, Jackson Kelly PLLC, was serving as local counsel.

5. On February 2, 2016, Angela Freel, an attorney with Jackson Kelly, emailed Respondent a 42-page report she drafted detailing her review of plaintiff depositions and medical records in the Lewis matter.

6. Ms. Freel also sent her report to Ellen Biondo, an insurance adjuster with Great American Insurance.

7. On February 26, 2016, Respondent emailed a nearly identical report to Ellen Biondo with minor changes he made to the opening and closing paragraphs, minor changes in the body of the report and a change in the valuation of the case. Respondent wrote, "Attached please find an updated status report and analysis."

8. Respondent subsequently submitted a statement of his billable hours to Taylor|Anderson indicating that on February 19, 2016, he had spent 3.6 hours working on the report; and on February 22, 2016, he had spent 3.3 hours working on the report. Respondent's billing rate was $345 per hour. Respondent billed $2,380.50 for this work.

9. Respondent also submitted a statement of his billable hours to Taylor|Anderson indicating that on February 12, 2016, he had spent 4.8 hours reviewing and analyzing the deposition transcript and medical records summary of Brian Lewis. Respondent billed $1,656 for this work.

10. On the same billing statement, Respondent indicated that on February 18, 2016, he spent 4.6 hours analyzing the deposition transcript and medical records summary of Kathryn Lewis. He billed $1,587 for this work.

11. Taylor|Anderson subsequently billed Great American Insurance for Respondent's time for these tasks.

12. Ms. Biondo, the adjuster at Great American Insurance, noticed that the report from Respondent was nearly identical to the report she had received from Ms. Freel and brought it to the attention of her supervisor, Jim Siessel.

13. On April 24, 2016, Mr. Siessel emailed Mr. Anderson to ask if Mr. Anderson

could explain why Respondent's report was "verbatim" to Ms. Freel's report.

14. By April 24, 2016, Respondent had left Taylor|Anderson.

15. In response to Mr. Siessel's email, Taylor|Anderson conducted an internal investigation and audit of Respondent's billing.

16. Mr. Siessel contacted Respondent to inquire about the reports.

17. The internal investigation established Respondent's billing included time for reviewing the deposition transcripts of Brian Lewis and Kathryn Lewis.

18. Taylor|Anderson did not receive the Brian Lewis and Kathryn Lewis deposition transcripts until after Respondent had left the firm.

19. Taylor|Anderson's database reflects that Respondent was the only employee to work on the report.

20. Respondent billed 5.8 hours for attending the deposition of Kenneth Mason on February 26, 2016. Respondent billed $2,001 for this work.

21. A copy of a transcript for the deposition of Kenneth Mason does not reflect Respondent's presence at the deposition.

22. Respondent asserts that he monitored the Mason deposition, meaning that he dialed into the deposition but did not announce his presence to the court reporter.

23. On January 10, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Mason deposition on his office phone at Taylor|Anderson.

24. Respondent had previously entered his appearance in the Lewis matter, in advance of the Mason deposition.

25. Ms. Freel has no independent recollection of whether Respondent monitored the deposition.

26. The Taylor|Anderson office phone records for February 26, 2016 reflect Respondent was not monitoring the Mason deposition on his office phone. At the time of the deposition Respondent was on his office phone on calls with various staff and clients at Taylor|Anderson, including a phone conference with Mr. Taylor.

27. On March 14, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Mason deposition on his cell phone.

28. Respondent's cell phone records for the date and time of the Mason deposition

indicate that Respondent did not use his cell phone to monitor the deposition.

The Culp matter

29. While working at Taylor|Anderson, Respondent billed for attending the depositions of James and Carly Culp on September 17, 2015.

30. A copy of the transcript identifying the attorneys who were present for the depositions indicates that Respondent was not in attendance.

31. Respondent billed 6.10 hours, totaling $2,104.50 in fees, to Great American Insurance for attending the depositions.

32. Respondent entered his appearance as excess liability counsel in the Culp matter on May 19, 2014.

33. According to Respondent, he was not in attendance for the depositions, but rather monitored the Culp depositions by phone.

34. On January 10, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Culp depositions on his office phone at Taylor|Anderson.

35. The Taylor|Anderson office phone records for September 17, 2015 reflect Respondent was not monitoring the Culp depositions on his office phone.

36. On March 14, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Culp depositions on his cell phone.

37. Respondent's cell phone records for the date and time of the Culp depositions indicate that Respondent did not use his cell phone to monitor the depositions.

CLAIM I
Colo. RPC 1.5(a): Unreasonable Fees

38. Paragraphs 1 through 37 are incorporated as if fully set forth.

39. Colo. RPC 1.5(a) provides that "a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

40. In the Lewis matter and Culp matters, Respondent's charges were unreasonable as he charged for work that he did not perform.

41. By such conduct, Respondent violated Colo. RPC 1.5(a).

WHEREFORE, Complainant prays at the conclusion of this Complaint.

CLAIM II
Colo. RPC 4.1(a): Truthfulness in Statements to Others

42. Paragraphs 1 through 37 are incorporated as if fully set forth.

43. Colo. RPC 4.1(a) provides "In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person."

44. In the Lewis matter and Culp matters, Respondent knowingly made a false statement of material fact to a third person when he submitted billing for work that he had not done. In the Lewis matter, Respondent also submitted a report he purportedly authored which was actually, in large part, written by another individual.

45. By such conduct, Respondent violated Colo. RPC 4.1(a).

WHEREFORE, Complainant prays at the conclusion of this Complaint.

CLAIM III
Colo. RPC 8.4(c): Misconduct

46. Paragraphs 1 through 37 are incorporated as if fully set forth.

47. Colo. RPC 8.4(c) provides it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

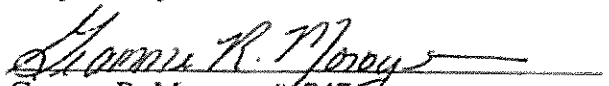
48. Respondent violated this rule and engaged in dishonest conduct by misrepresenting he did work on the Lewis and Culp matters, and by billing Great American Insurance for the work. For such conduct, Respondent violated Colo. RPC 8.4(c).

49. Respondent violated this rule and engaged in dishonest conduct by stating to investigators with the Office of Attorney Regulation Counsel that he utilized his office phone to monitor the Lewis and Culp depositions. Office phone records from Taylor|Anderson indicate Respondent did not use his office phone to monitor the Lewis or Culp depositions. Respondent violated this rule and engaged in dishonest conduct by stating to investigators with the Office of Attorney Regulation Counsel, in a subsequent interview, that Respondent utilized his cell phone to monitor the Lewis and Culp depositions. Respondent's cell phone records, indicate Respondent did not use his cell phone to monitor the depositions. For such conduct Respondent violated Colo. RPC 8.4(c).

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; the Respondent be appropriately disciplined for such misconduct; the Respondent be required to take any other remedial action appropriate under the circumstances; and the Respondent be assessed the costs of this proceeding.

DATED this 28th day of September, 2017.

Respectfully submitted,

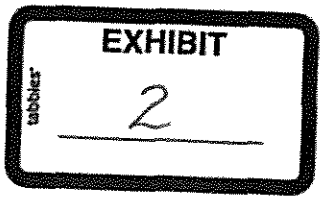


Geanne R. Moroye, #17476
Assistant Regulation Counsel
James C. Coyle, #14970
Attorney Regulation Counsel
Attorneys for Complainant

Statement of Costs

Arron Nesbitt
17PDJ068

3/2/2018	Administrative Fee	S	224.00
	AMOUNT DUE	S	224.00



SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** ARRON BURT NESBITT, #40610	Case Number: **17PDJ068**

ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT AND IMPOSING SANCTIONS UNDER C.R.C.P. 251.22

Before the Presiding Disciplinary Judge ("the Court") is a "Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct" filed by Geanne R. Moroye, Office of Attorney Regulation Counsel ("the People"), and Victoria E. Lovato, counsel for Arron Burt Nesbitt ("Respondent"), on March 6, 2018. In their stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).

Upon review of the case file and the stipulation, the Court **ORDERS**:

1. The stipulation is **APPROVED.**

2. **ARRON BURT NESBITT,** attorney registration number **40610,** is **SUSPENDED** from the practice of law for a period of **ONE YEAR AND ONE DAY, WITH NINE MONTHS TO BE SERVED AND THE REMAINDER TO BE STAYED** upon the successful completion of a **TWO-YEAR** period of **PROBATION,** subject to the conditions set forth in paragraph 19 of the stipulation.

3. Respondent violated Colo. RPC 1.5(a) and 8.4(c).

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

5. No later than fourteen days after the effective date of the 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.

6. Should Respondent wish to resume the practice of law after his suspension, he must submit to the People, within twenty-eight days before the expiration of the period of suspension, an affidavit complying with C.R.C.P. 251.29(b).

7. If, during the period of probation, the People receive information that any probationary condition may have been violated, the People may file a motion under C.R.C.P. 251.7(e) specifying the alleged violation and seeking an order that requires Respondent to show cause why the stay should not be lifted and the sanction activated. Under C.R.C.P. 251.7(e), the filing of such a motion tolls any period of suspension and probation until final action. When the alleged violation in a revocation hearing is a respondent's failure to pay restitution or costs, evidence of failure to pay constitutes *prima facie* evidence of a violation.

8. Per C.R.C.P. 251.7(f), no more than twenty-eight days and no fewer than fourteen days prior to expiration of the period of probation, Respondent shall file an affidavit with the People attesting to compliance with all terms of probation and shall file with the Court notice and a copy of such affidavit and application for an order terminating probation. Upon receipt of this notice and absent objection from the People, the Court will issue an order terminating probation, effective the date the period of probation expires.

9. Under C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of $224.00 within thirty-five days of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Office. Statutory interest shall accrue from thirty-five days after the date of this order. Should Respondent fail to pay the aforementioned costs within thirty-five days, Respondent will be responsible for all additional costs and expenses, including reasonable attorney's fees, incurred by the People in collecting the above-stated amount. The People may seek to amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

10. The People move for dismissal of Claim II of the complaint. The Court **GRANTS** that motion and **DISMISSES** Claim II of the complaint.

11. The Court **GRANTS** the People's "Motion to Vacate Hearing" and **VACATES** the hearing scheduled for April 3-5, 2018.

THIS ORDER IS ENTERED THE 9th DAY OF MARCH, 2018. THE EFFECTIVE DATE OF THE SUSPENSION IS THE 13th DAY OF APRIL, 2018.

William R. Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Respondent's Counsel
Victoria E. Lovato
S&D Law
1801 York Street
Denver, CO 80206
lovato@s-d.com **Via Email**

Office of Attorney Regulation Counsel
Geanne R. Moroye
1300 Broadway, Suite 500
Denver, CO 80203
g.moroye@csc.state.co.us **Via Email**

American Bar Association
c/o Kevin Hanks
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203
k.hanks@csc.state.co.us **Via Email**

Board of Continuing Legal Education and Colorado Attorney Registration
Elvia Mondragon
Office of Attorney Registration
1300 Broadway, Suite 510
Denver, CO 80203
elvia.mondragon@judicial.state.co.us **Via Email**

Colorado Bar Association
Patrick Flaherty, Executive Director
1900 Grant Street, Suite 950
Denver, CO 80203-4309
pflaherty@cobar.org **Via Email**

Colorado Supreme Court
Cheryl Stevens
2 East 14th Avenue
Denver, CO 80203
cheryl.stevens@judicial.state.co.us;
heather.petercarroll@judicial.state.co.us;
liz.cunningham@judicial.state.co.us **Via Email**

IRS, Office of Professional Responsibility
Kathy Gibbs
SE: OPR, 1111, Constitutional Ave., N.W.
Washington, DC 20224
kathy.a.gibbs@irs.gov **Via Email**

Martindale-Hubbell
Attn: Editorial Dept.
121 Chanlon Road, Suite 110
New Providence, NJ 07974
disciplinaryaction@lexisnexis.com **Via Email**

Supreme Court of the United States
Perry Thompson, Admissions Office
1 First Street Northeast
Washington, D.C. 20543
pthompson@supremecourt.gov
ptadmit@supremecourt.gov **Via Email**

United States Bankruptcy Court
Laura Guice
721 19th Street, Room 117
Denver, CO 80202-2508
laura_guice@cob.uscourts.gov
cobml_training@cob.uscourts.gov **Via Email**

United States Court of Appeals for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, CO 80257
disciplinaryorders@ca10.uscourts.gov **Via Email**

United States District Court, District of Colorado
Alfred A. Arraj U.S. Courthouse
Mark Fredrickson, Atty Services Coordinator
901 19th Street, Room A-105
Denver, CO 80294-3589
mark_fredrickson@cod.uscourts.gov
edward_butler@cod.uscourts.gov **Via Email**

United States Department of Justice, Executive Office for Immigration Review
Office of the General Counsel
Jennifer J. Barnes, Disciplinary Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
jeannie.park@usdoj.gov; **Via Email**

United States Department of Justice, Trustee's Office
Gregory Garvin, Assistant U.S. Trustee
999 18th Street, Suite 1551
Denver, CO 80202
gregory.garvin@usdoj.gov **Via Email**