People v. Graham, 07PDJ064. July 31, 2008. Attorney Regulation.
Following a hearing pursuant to C.R.C.P. 251.18, a Hearing Board suspended Raymond Anson Graham (Attorney Registration No. 14106) from the practice of law for a period of ninety days, all stayed upon the successful completion of a one year period of probation, with conditions. Respondent entered guilty pleas to two misdemeanors and then failed to report either of them to the People. Respondent's misconduct constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 8.4(b), the former C.R.C.P. 241.16, C.R.C.P. 251.5(b) and C.R.C.P. 251.20(b).

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO, **Respondent:** RAYMOND ANSON GRAHAM.	Case Number: **07PDJ064**

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

On April 30, 2008, a Hearing Board composed of William J. Martinez and Andrew A. Saliman, both members of the Bar, and William R. Lucero, the Presiding Disciplinary Judge ("PDJ"), held a Sanctions Hearing pursuant to C.R.C.P. 251.18. April M. Seekamp appeared on behalf of the Office of Attorney Regulation Counsel ("the People") and Michael H. Berger appeared on behalf of Raymond Anson Graham ("Respondent"). The Hearing Board now issues the following Opinion and Order Imposing Sanctions pursuant to C.R.C.P. 251.19.

I. ISSUE

Suspension is appropriate when a lawyer knowingly engages in criminal conduct not enumerated in ABA *Standard* 5.11 that *seriously adversely reflects* on his fitness to practice law. Public censure is appropriate when a lawyer knowingly engages in *any other conduct* that *adversely reflects* on his fitness to practice law. Respondent entered pleas to two misdemeanors and then failed to report either of them to the People. What is the appropriate sanction?

II. SUMMARY

The Hearing Board finds that Respondent's DWAI conviction *and* subsequent knowing failure to report it to the People *adversely reflects* upon his fitness to practice law. Likewise, Respondent's failure to register as a sex offender and failure to report that conviction to the People *adversely reflects* upon his fitness to practice law. An isolated incident might warrant a public censure under ABA *Standard* 5.13. However, in this case, Respondent was

convicted of two separate misdemeanors and *knowingly* avoided reporting his DWAI conviction to the People when he knew that he had a duty to do so. We find these circumstances warrant more than a public censure, because they show a knowing disregard of his duties as a lawyer to follow disciplinary rules promulgated by the Colorado Supreme Court.

SANCTION IMPOSED: ATTORNEY SUSPENDED FOR NINETY DAYS (90), ALL STAYED ON THE SUCCESSFUL COMPLETION OF A ONE-YEAR PERIOD OF PROBATION WITH CONDITIONS INCLUDING ETHICS SCHOOL.

III. PROCEDURAL HISTORY

On September 26, 2007, the People filed a complaint that charged Respondent with four separate claims arising from two separate misdemeanor convictions and his failure to report them to the People. Respondent filed his answer on October 24, 2007, and his amended answer on November 19, 2007.

On April 7, 2008, the PDJ granted in part and denied in part a motion for judgment on the pleadings filed by the People and also denied Respondent's motion to dismiss claims arising out of his failure to report his DWAI conviction based on the applicable statute of limitations. The PDJ entered judgment as a matter of law as to Claim I (Colo. RPC 8.4(b) and C.R.C.P. 251.5(b)), Claim II (C.R.C.P. 251.20), Claim III (Colo. RPC 8.4(b)), and Claim IV (C.R.C.P. 241.16) and dismissed Claim III (C.R.C.P. 251.5(b)) and Claim IV (C.R.C.P. 251.20(b)). Therefore, the sole issue for the Hearing Board's determination is the appropriate sanction for violation of these rules.

IV. ESTABLISHED MATERIAL FACTS AND RULE VIOLATIONS

The following facts and rule violations have been established by clear and convincing evidence.[1] Respondent took and subscribed the Oath of Admission and gained admission to the Bar on October 30, 1984. He is registered upon the official records, Attorney Registration No. 14106, and is therefore subject to the jurisdiction of the Hearing Board.

DWAI Conviction and Failure to Report

In February 1998, Respondent was arrested and charged with driving while ability impaired (DWAI) in Pitkin County. In April 1998, Respondent pled guilty to DWAI, C.R.S. §42-4-1301(1)(b), in *People v. Raymond Anson Graham*, case no. *98T0112*. Respondent failed to report this DWAI conviction to the People as required by C.R.C.P. 241.16(b), the former rule requiring a lawyer to report a conviction of a driving offense involving the use of alcohol.

[1] *See* "Order Re: Motion for Judgment on the Pleadings" dated April 7, 2008.

Respondent engaged in criminal conduct by driving while his ability was impaired. This conduct violated Colo. RPC 8.4(b). Respondent was required to notify the People of the criminal conviction in *98T0112* within ten days of the conviction but failed to do so. By such conduct, Respondent violated C.R.C.P. 241.16(b). This conduct occurred approximately eighteen months after Respondent entered into a conditional admission of misconduct in *People v. Graham*, 933 P.2d 1321 (Colo. 1997), in which he verified that he was familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys.

Failure to Register as a Sex Offender and Failure to Report

In 1995, Respondent pled guilty to third degree sexual assault, C.R.S. §18-3-404(1)(2) (a class 1 misdemeanor) in *People v. Raymond Anson Graham*, 94CR1084 (Jefferson County).[2] Respondent was sentenced to a four-year period of probation as a result of his guilty plea. Following this conviction, Respondent registered as a sex offender in Denver County where he resided at the time.[3] He then registered in Elbert County after moving there sometime in 1997. Respondent resided in Elbert County with his parents at their ranch in Elizabeth where he maintained an office and practiced law.

In 1998, Respondent purchased a condominium in Aspen (Pitkin County), which he owned until 2006. Respondent renovated the Aspen condominium from 1998 through approximately 2001. Respondent, along with approximately twelve other individuals who owned property in the building, were members of the homeowner's association for the building. During the renovation of the building, beginning in 1998, Respondent served as president of the renovation committee for the homeowner's association.

Respondent did not stay in the Aspen condominium for more than ten days at a time while he owned it and less frequently during the winter. The Aspen condominium was never rented. Respondent performed limited "legal work" during his time in Aspen. His condominium had a filing cabinet and desk, which he used at various times. He also utilized a laptop computer and, at some point in time, a desktop computer.

The Aspen Police Department cited Respondent for failure to register as a sex offender in Pitkin County on April 10, 2000, and initiated a criminal matter, *People v. Raymond Anson Graham*, *2000M0098*, alleging he violated C.R.S. §18-3-412.5(4)(a)(I). Respondent retained counsel for this matter.

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[2] Following his conviction for misdemeanor sexual assault, the Colorado Supreme Court suspended Respondent from the practice of law for a period of six months. *See People v Graham*, 933 P.2d 1321 (Colo. 1997).

[3] *See* C.R.S. §16-22-103.

On April 24, 2000, before the resolution of the criminal matter, Respondent registered as a sex offender in Pitkin County. In June 2000, the Pitkin County district attorney dismissed the case after Respondent produced evidence of his registration in Elbert County. Respondent continued to be registered in Aspen until December 2000. However, he thereafter failed to renew his registration and therefore ceased to be registered in Pitkin County as of December 2000.

In January 2006, the Aspen Police Department again cited Respondent for failure to register as a sex offender and initiated a second criminal matter, *People v. Raymond Anson Graham*, *2006M0016*, alleging he violated C.R.S. §18-3-412.5(1)(a)(3). Respondent again retained counsel. In February 2006, before the case was resolved, Respondent registered as a sex offender in Pitkin County.

On July 12, 2006, Respondent pled guilty to failing to register as a sex offender, C.R.S. §18-3-412.5(1)(a)(3), a class 1 misdemeanor, and received an 18-month deferred judgment in *2006M0016*. Respondent failed to report this conviction to the People.

Respondent engaged in a criminal act in violating C.R.S. §18-3-412.5(1)(a)(3). By such conduct, Respondent violated Colo. RPC 8.4(b) and C.R.C.P. 251.5(b). Furthermore, Respondent violated C.R.C.P. 251.20(b) when he failed to report this conviction within ten days.

V. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct. *In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003). While the facts and rule violations have already been established by clear and convincing evidence, the Hearing Board also considered additional testimony presented in the Sanctions Hearing and incorporated below for the purpose of determining the appropriate sanction in this case.

Analysis Under the ABA Standards

In imposing a sanction after a finding of lawyer misconduct, the Hearing Board must first consider the duty breached, the mental state of the lawyer, the injury or potential injury caused, and the aggravating and mitigating factors pursuant to ABA *Standard* 3.0.

Generally, sanctions are more onerous the greater the injury, and the more culpable a lawyer's conduct. For example, disbarment is generally appropriate when a lawyer *intentionally* engages in felony criminal conduct involving intentional killing, fraud, deceit, or misrepresentation. This category of crime, by definition, *seriously adversely* reflects on his fitness to practice law. *See* ABA *Standard* 5.11. Included in this class of misconduct are the most serious of crimes: including homicide, extortion, theft, and false swearing.

Suspension, on the other hand, is generally appropriate when a lawyer knowingly engages in criminal conduct not listed in the ABA *Standard* 5.11, but which nevertheless *seriously adversely* reflects on the lawyer's fitness to practice. Included in this class of offenses is felony possession of drugs and sexual assault. *See* ABA *Standard* 5.12.

Public censure is generally applicable when a lawyer knowingly engages *in any other conduct* involving dishonesty, fraud, deceit, or misrepresentation [not amounting to a felony] that *adversely* [not seriously adversely] reflects on the lawyer's fitness to practice law. *See* ABA *Standard* 5.13.

A. The Duty Violated

Respondent violated a duty to the public when he drove with his ability impaired by the consumption of alcohol, failed to register as a sex offender, and failed to report either of these convictions to the People. The public expects lawyers, above all other citizens, to exhibit the highest standards of personal integrity and abide by the laws of the State of Colorado. *See In re DeRose*, 55 P.3d 126, 130 (Colo. 2002) ("An attorney has a special duty to respect, abide by, and uphold the law."). When a lawyer fails to abide by these laws, he or she undermines public confidence in the legal system and thus violates a duty to the legal profession.

B. The Lawyer's Mental State

The Hearing Board considered all three mental states as provided in the ABA *Standards*: intent, knowledge and negligence. A lawyer acts with intent when he acts with the *conscious objective* or *purpose* to accomplish a particular result. A lawyer acts with knowledge when he is aware of his conduct, but without the conscious objective or purpose to accomplish a particular result. A lawyer acts with negligence when he *fails to be aware of a substantial risk that circumstances exist* or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *See* ABA *Standards*, *Theoretical Framework* and *Definitions*.[4]

[4]The Hearing Board notes that criminal law and the ABA Standards define intent, knowledge, and negligence in similar, but not interchangeable terms.

DWAI Conviction and Failure to Report

In April 1998, Respondent pled guilty to DWAI in violation of C.R.S. §42-4-1301(1)(b). The substantive crime of DWAI is a *strict liability* offense and therefore a conviction of the same does include evidence of a culpable mental state. *See People v. Ellison*, 14 P.3d 1034, 1038 (Colo. 2000) (only requires proof that defendant acted voluntarily). Furthermore, neither party presented evidence in the Sanctions Hearing concerning Respondent's state of mind at the time he committed the crime of DWAI. Thus, the Hearing board cannot conclude that Respondent acted intentionally, knowingly, or negligently when he drove with his ability impaired and violated Colo. RPC 8.4(b). Nevertheless, we are satisfied that Respondent acted voluntarily.

After his conviction for DWAI, Respondent failed to report this conviction to the People as required at the time by C.R.C.P. 241.16(b). Respondent initially testified that his failure to report the DWAI conviction was a "mistake" resulting from the turmoil and distress in his life at the time due to his separation from his wife and children and the death of his father. He later admitted, however, that he had read C.R.C.P. 241.16(b) soon after his DWAI conviction and understood that he had a duty to report the conviction to the People. Nevertheless, he failed to report it. Thus, the Hearing Board concludes that Respondent *knowingly* violated C.R.C.P. 241.16(b).

Failure to Register as a Sex Offender and Failure to Report

On July 12, 2006, Respondent pled guilty to failing to register as a sex offender in Pitkin County, C.R.S. §18-3-412.5(1)(a)(3). The People argue that Colorado Court of Appeals case law supports their assertion that Respondent, as a matter of law, *knowingly* failed to register as a sex offender. *See People v. Lopez*, 140 P.3d 106 (Colo.App. 2005) (mental state of "knowingly" is an element of the offense of failure to register as a sex offender).[5] Therefore, the People assert that the guilty plea precludes Respondent from arguing or presenting any evidence in these proceedings that he acted with any other state of mind than knowingly.

The Hearing Board rejects the People's argument that *Lopez* would preclude Respondent from offering testimony as to his mental state in a disciplinary sanctions hearing. If the Hearing Board accepted the People's argument on *Lopez*, it would ignore the clear mandate of the Colorado Supreme Court that we should look to the ABA *Standards* as guiding authority on sanctions. Further, the record here is devoid of any evidence concerning admissions Respondent may have made regarding his state of mind pursuant to his guilty plea for failure to register as a sex offender. For these reasons, the

[5] The Hearing Board notes that the jury in *Lopez* found the defendant guilty of a *felony* (class 5) failure to register as a sex offender.

Hearing Board cannot find that Respondent *knowingly* failed to register as a sex offender in this case.

In fact the evidence is to the contrary. Although the evidence shows Respondent failed to register in Aspen, he consistently maintained his annual registration in the counties in which he considered himself a *resident* following his 1995 conviction. Respondent repeatedly testified that he never considered himself a *resident* of Pitkin County after he purchased the Aspen condominium as an investment property in 1998. He stayed in Aspen once or twice a month to renovate the condominium, sometimes with his children, but the undisputed testimony shows that he never stayed for more than ten days at a time. Respondent also performed limited legal work in Aspen, but the undisputed evidence again shows that he had only two Aspen clients: a plumber who needed advice about mechanics liens; and a retailer who had been sued on a contract involving a Swiss citizen.

After the Aspen Police Department cited Respondent for failure to register as a sex offender in 2000, Respondent received the advice of counsel with regard to the issue of registering in Pitkin County. Counsel advised Respondent to register in Pitkin County as a matter of *expediency*. This lawyer helped Respondent obtain a letter from the sheriff in Elbert County in order to demonstrate to the district attorney in Aspen that Respondent was in compliance with the law. The evidence is unclear as to whether the district attorney dismissed the matter because Respondent registered in Pitkin County, or because the district attorney felt that the letter from Elbert County demonstrated Respondent's compliance with the law. Nonetheless, Respondent and his counsel mistakenly believed that Respondent only needed to register in the county of his residence. Therefore, Respondent did not renew his registration in Pitkin County when it expired at the end of the year.

When the Aspen Police Department again cited Respondent for failure to register as a sex offender in 2006, he received the advice of new counsel with regard to the issue of registering in Pitkin County. Respondent again registered in Pitkin County prior to the resolution of the matter, but this time the district attorney chose not to dismiss the case. On the advice of counsel, Respondent entered into a deferred judgment plea agreement, a "no-brainer" according to Respondent's counsel. Although Respondent and his counsel believed the law did not require Respondent to register in Pitkin County, they agreed that it would be better to accept a deferred judgment to the charge of misdemeanor failure to register as a sex offender rather than risk a jury verdict on the charge.[6]

[6] The Hearing Board notes that the registration requirements law for sexual offenders (C.R.S. §18-3-412.5(1)(a)(3) changed at least three times before Respondent's second arrest for failure to register.

Based on this evidence, the Hearing Board finds that by virtue of his guilty plea to failure to register, we must find that he violated Colo. RPC 8.4(b). Nevertheless, for purposes of our analysis under the ABA *Standards* we find Respondent *mistakenly* believed that he did not have to register base upon his failure to heed a substantial risk in not registering in Aspen, rather than consciously attempted to avoid his responsibilities under the law. Thus, he acted negligently.

Respondent also failed to report the conviction for failure to register to the People as required by C.R.C.P. 251.20(b).[7] Respondent testified that before he pled guilty to failing to register, his counsel explained to him that a deferred judgment was *not a conviction*. Thus, Respondent pled guilty and accepted a deferred judgment with the mistaken belief that he would not have to report this conviction to the People.

Respondent, however, did not specifically ask his counsel to research the issue of whether or not he would be required to report the deferred judgment to the People for disciplinary purposes. Based upon this incomplete analysis of his ethical duties, Respondent mistakenly believed he did not need to report the deferred judgment. Although Respondent followed the advice of his attorney, he nevertheless acknowledged his ultimate responsibility for failing to notify the People of his conviction during the Sanctions Hearing.

While Respondent's mental state in failing to go beyond his lawyer's advice could be described as careless, especially in light of his previous experience with the disciplinary system, there is no evidence that Respondent made a conscious effort to avoid reporting this conviction to the People. Moreover, there is no evidence that Respondent's failure to report his guilty plea to a deferred judgment arose out of disrespect or lack of concern for the disciplinary process.

Accordingly, the Hearing Board concludes that Respondent violated C.R.C.P. 251.20(b) but his state of mind was more akin to negligence when he failed to heed a substantial risk that the rules required him to report a deferred judgment.

*C. **The Actual or Potential Injury***

Respondent's misconduct *adversely reflects* on his fitness to practice law. "Attorney misconduct perpetuates the public's misperception of the legal

[7] "The term conviction as used in these Rules shall include any ultimate finding of fact in a criminal proceeding that an individual is guilty of a crime, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of *nolo contendere*, and irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court." C.R.C.P. 251.20(h); *See also People v Barnthouse*, 941 P.2d 916 (Colo. 1997).

profession and breaches the public and professional trust." *In re DeRose*, 55 P.3d 126, 131 (Colo. 2002) (paraphrasing *In re Paulter*, 47 P.3d 1175, 1178 (Colo. 2002)). As a lawyer, Respondent is obligated to know and obey the law as well as abide by its processes. While extenuating circumstances exist surrounding Respondent's failure to report his deferred judgment, his actions in failing to report his DWAI demonstrate a *knowing* and *conscious* disregard for the disciplinary process and these actions cause serious potential injury to the profession.

D. Aggravating and Mitigating Factors

The Hearing Board considered evidence of the following aggravating circumstances in deciding the appropriate sanction to impose. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline imposed. ABA *Standard* 9.21.

Prior Disciplinary Offenses – 9.22(a)

As a result of his 1995 guilty plea to third degree sexual assault, the Colorado Supreme Court suspended Respondent for a period of six months in March of 1997. *See People v. Graham*, 933 P.2d 1321 (Colo. 1997). The Hearing Board notes that undisputed evidence in these proceedings is that Respondent has not repeated this inappropriate behavior.

Multiple Offenses – 9.22(d)

The Hearing Board finds that Respondent engaged in multiple offenses: DWAI, failure to register as a sex offender, and failure to report this conduct to the People. However, the Hearing Board notes that 8 years separate Respondent's DWAI conviction and his failure to register as a sex offender. Therefore, the Hearing Board gives this factor less weight than would otherwise be ascribe to multiple offenses in close temporal proximity.

Substantial Experience with the Practice of the Law – 9.22(i)

At the time of the DWAI and his failure to report the same, Respondent had been practicing law for approximately 14 years. At the time he failed to register in Pitkin County and failed to report his deferred judgment conviction, Respondent had been practicing for approximately 22 years.

While it is understandable that Respondent may not have been as familiar with the nuances of the criminal law and procedures given his exclusive practice in the civil law, the Colorado Supreme Court's suspension of his license for six months following his sexual assault conviction provided him with notice of his obligations in the disciplinary process.

Illegal Conduct – 9.22(k)

Though DWAI and failure to register as a sex offender are misdemeanor crimes, they are nevertheless illegal.

The Hearing Board also considered evidence of the following mitigating circumstances in deciding what sanction to impose. Mitigating circumstances are any considerations, or factors that may justify a reduction in the degree of discipline imposed. ABA *Standard* 9.31.

Absence of a Dishonest Motive – 9.32(b)

While Respondent's action in not reporting his conviction of DWAI was dissembling, this offense occurred nearly ten years ago. Furthermore, Respondent candidly and truthfully testified throughout these proceedings, including his explanation of the circumstances surrounding his deferred judgment and failure to report this conviction to the People. The Hearing Board also notes that Respondent has been continuously registered as a sex offender in Denver County and later in Elbert County, since his conviction for misdemeanor sexual assault in 1995.

Personal or Emotional Problems – 9.32(c)

At the time Respondent failed to report his conviction for DWAI, he had been separated from his wife and family, his father had recently died of a heart attack, and he had been suffering from depression. While these circumstances do not excuse Respondent's failure to report his DWAI, the Hearing Board considered them in deciding the appropriate sanction.

Full and Cooperative Attitude toward the Proceedings – 9.32(e)

Respondent acted cooperative and respectful throughout the proceedings. He answered all questions asked of him in a forthright manner and fully acknowledged the wrongfulness of his conduct. The Hearing Board considered Respondent's candor in admitting he had a duty to report his DWAI conviction.

Imposition of Other Sanctions or Penalties – 9.32(k)

Respondent answered publicly to the criminal courts for his DWAI and failure to register as a sex offender.

Remorse – 9.32(l)

Two members of the Hearing Board found Respondent to be remorseful; one did not. What makes this determination difficult is that while Respondent appears to understand and appreciate that he has violated the law and should therefore be sanctioned, he also testified that he could not figure out why he keeps getting into trouble with the criminal law and the disciplinary system. The answer should be obvious; he has not followed the law and the procedures outlined in the attorney disciplinary system.

Analysis Under Case Law and Standards

The People argue that a suspension of less than one year is appropriate with conditions of probation for a period of years citing *People v. Hickox*, 57 P.3d 403 (Colo. 2002) and ABA *Standard* 5.12. Respondent argues that a public censure is sufficient citing *People v. Barnthouse*, 941 P.2d 916 (Colo. 1994), as authority for a lesser sanction. Yet, both parties acknowledge the absence of directly applicable Colorado case law addressing the appropriate sanction for failure to report a DWAI or a failure to register as a sex offender.

ABA *Standard* 5.12 states that a suspension is generally appropriate when a lawyer commits a crime (not involving an intentional act such as murder or felony theft) that *seriously adversely* reflects on the lawyer's fitness to practice law. For example, felony possession of narcotics or sexual assault, are crimes that generally call for suspension. However, not every lawyer who commits a crime should be suspended. *See* ABA *Standard* 5.12, Comments.

ABA *Standard* 5.13 applies to any other conduct involving dishonesty and the like that *adversely reflects* on the lawyer's fitness to practice law. However, a pattern of repeated offenses, even ones of minor significance when considered separately, can indicate such indifference to legal obligation as to justify a reprimand (public censure). *See* ABA *Standard* 5.13, Comments. Therefore, the Hearing Board finds ABA *Standard* 5.13 applicable and a more appropriate starting point than ABA *Standard* 5.12, because Respondent's two misdemeanor convictions *adversely* rather than *seriously adversely* reflect on his fitness to practice law.[8]

[8] *See* ABA *Standard* 1.3 ("The Standards constitute a model, setting forth a comprehensive system for determining sanctions, permitting flexibility and creativity in (1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2)

While Respondent's criminal conduct *adversely reflects* on his fitness to practice law, his deliberate and knowing failure to report his DWAI, standing alone, is a sufficient aggravating factor that makes public censure inappropriate. Respondent argues that in *Barnthouse*, 941 P.2d at 916, the respondent failed to report a deferred judgment conviction for disorderly conduct, a class 2 misdemeanor, yet the Colorado Supreme Court determined that a public censure was the appropriate sanction. In Respondent's view, his conduct is similar to that of *Barnthouse*.

However, unlike the respondent in *Barnthouse*, Respondent committed two separate crimes and failed to report either. Most important, in one instance, he consciously chose not to abide by his ethical duty to report a DWAI. Although Respondent's criminal conduct does not involve force or violence as was the case in *People v. Hickox*, 57 P.3d 403 (Colo. 2002), his conduct involves two serious misdemeanors with a failure to report them to the People. Taken as a whole, Respondent's conduct is more egregious than that of *Barnhouse* and warrants a greater sanction than public censure.

Therefore, after considering the ABA *Standards* and Colorado case law, the Hearing Board concludes that a short suspension, all stayed upon the successful completion of a period of probation with conditions, is the most appropriate sanction given the totality of the circumstances.

VI. CONCLUSION

Weighing the mitigating factors against the aggravating factors as well as those we must under ABA *Standards* 3.0, the Hearing Board finds that a ninety-day suspension stayed on the condition Respondent completes a one-year period of probation, engages in no further violations of the rules, and attends ethics school is an appropriate sanction.

Respondent argues that public censure and even a diversion are often meted out to lawyers who commit misdemeanor offenses such as DWAI, a strict liability crime. In *People v. Kearns*, 991 P.2d 824, 827 (Colo. 1999), the Colorado Supreme Court approved a public censure for a lawyer who was convicted of a class four felony, vehicular assault and DUI. However, the lawyer in *Kearns* reported the offense to the People, was sentenced to three years in the Department of Corrections, and presented evidence of his good character and reputation.

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consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.").

When a lawyer shuns the responsibilities that the Colorado Supreme Court has mandated, such conduct is inimical to our system of justice and the confidence the public places in the lawyers who serve it. Taking all these circumstances as a whole, Respondent's conduct adversely reflects on his fitness to practice law and calls for a sanction greater than public censure.

VI. ORDER

The Hearing Board therefore orders:

1. **RAYMOND ANSON GRAHAM**, Attorney Registration No 14106, is **SUSPENDED** from the practice of law for a period of **NINETY DAYS, ALL STAYED** upon the successful completion of a **ONE (1) YEAR** period of probation with conditions set forth below, effective thirty-one (31) days from the date of this order.

2. 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").

3. Respondent **SHALL** attend and successfully pass the one-day ethics school sponsored by the People within one year of the date of this order. Respondent shall register and pay the costs of ethics school within thirty (30) days of the date of this order.

4. RAYMOND ANSON GRAHAM **SHALL** pay the costs of these proceedings. The People shall submit a Statement of Costs within fifteen (15) days from the date of this order. Respondent shall have ten (10) days thereafter to submit a response.

DATED THIS 31ST DAY OF JULY, 2008.

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File
WILLIAM J. MARTINEZ
HEARING BOARD MEMBER

Original Signature on File
ANDREW A. SALIMAN
HEARING BOARD MEMBER

Copies to:

April M. Seekamp Office of Attorney Regulation Counsel	Via Hand Delivery
Michael H. Berger Counsel for Respondent	Via First Class Mail
William J. Martinez	Via First Class Mail
Andrew A. Saliman Hearing Board Members	Via First Class Mail
Susan Festag Colorado Supreme Court	Via Hand Delivery