***People v. William F. Levings*. 16PDJ082. April 17, 2017.**

Following a sanctions hearing, the Presiding Disciplinary Judge suspended William Frederick Levings (attorney registration number 24443) from the practice of law for one year and one day, effective May 22, 2017.

Levings was hired to appeal his client's order of deportation. Levings abandoned his client by never filing an appeal brief and never communicating with the client after the initial consultation. He thereby violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client). Levings also collected an unreasonable fee by charging the client $2,200.00 despite failing to file the brief. By doing so, he violated Colo. RPC 1.5(a) (prohibiting a lawyer from charging an unreasonable fee or an unreasonable amount for expenses). Later, Levings disregarded requests for information from the disciplinary authorities in contravention of Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority). He defaulted in this disciplinary proceeding.

Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** WILLIAM FREDERICK LEVINGS	Case Number: **16PDJ082**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

William Frederick Levings ("Respondent") was hired to appeal an order of deportation. He abandoned his client by never filing an appeal brief and never communicating with the client after the initial consultation. He also collected an unreasonable fee by charging the client $2,200.00 despite failing to file the brief. Later, he disregarded requests for information from the disciplinary authorities, and he defaulted in this proceeding. Leving's conduct in violation of Colo. RPC 1.3, 1.5(a), and 8.1(b) warrants a suspension for one year and one day.

I. PROCEDURAL HISTORY

On November 3, 2016, Alan C. Obye of the Office of Attorney Regulation Counsel ("the People") filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero ("the Court"), and sent copies the same day to Respondent at his registered home address. Respondent failed to answer, and the Court granted the People's motion for default on January 18, 2017. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.[1]

On April 12, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Obye represented the People; Respondent did not appear. The People's exhibits 1-2 were admitted into evidence and the Court heard testimony by telephone from Jon Garde.

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, presented here in condensed form. Respondent took the oath of admission and

[1] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

was admitted to the bar of the Colorado Supreme Court on October 13, 1994, under attorney registration number 24443. He is thus subject to the Court's jurisdiction in this disciplinary proceeding.[2]

Respondent is a lawyer licensed only in Colorado. Because he practices immigration law, he need not be licensed in the state in which he practices. In August 2013, Respondent maintained offices in Los Angeles and Las Vegas.

Salvador Canas is a Salvadoran national whose applications for asylum and withholding of removal had been denied. In August 2013, Canas spoke with Respondent and hired him to appeal his order of deportation. Specifically, Canas retained Respondent to file an appeal alleging that Canas's trial attorney rendered ineffective assistance.

On August 19, 2013, Respondent and Canas entered into a contract whereby Respondent agreed for a fee of $3,000.00 to file an "EOIR 26 Appeal from Decision of Immigration Judge with Appellate Brief to Board of Immigration Appeals." A $1,000.00 retainer was required, with monthly payments thereafter of $300.00. In addition, Canas was to pay $110.00 in filing fees. Canas made the initial $1,000.00 payment that same day. He made additional payments of $300.00 each in the subsequent four months. In total, he paid Respondent $2,200.00 in attorney's fees.

Also on August 19, 2013, Respondent filed with the Board of Immigration Appeals ("BIA") a notice of appeal, a notice of entry of appearance, and the $110.00 filing fee. On November 14, 2013, the BIA notified Respondent that the deadline to file Canas's appeal brief was December 5, 2013. Respondent never filed the brief.

According to the record on appeal, the BIA mailed the briefing schedule to Respondent at the address listed on his entry of appearance. On December 13, 2013, Respondent wrote to the BIA asking about the status of the case, saying he had never received the briefing schedule. On December 23, 2013, a copy of the Department of Homeland Security's "Motion for Summary Affirmance" was served on Respondent at the address on his entry of appearance.

In mid-January 2014, Canas received an invoice showing he had an outstanding balance of $800.00. He had not spoken with Respondent since the August 19 consultation, nor, in fact, did Canas and Respondent ever speak again. Canas received a letter from an attorney named Airene Williamson later that month, stating that Respondent's Las Vegas office had merged with her office and that she would handle Canas's case going forward. Respondent had not discussed this change of counsel with Canas.

Williamson and Canas met at least three times, and he paid her $400.00 toward the balance on his account. In March 2014, she moved to withdraw Respondent's representation and to substitute herself as co-counsel. Respondent never filed a withdrawal, however, nor

[2] *See* C.R.C.P. 251.1(b).

did Williamson ever file a notice of entry of appearance, so Respondent remained attorney of record for Canas.

In May and September 2014, Williamson sent letters to the BIA asking about the status of the appeal and the briefing schedule. In the meantime, the BIA was sending status updates to Respondent, indicating the case was still pending.

Finally, on December 24, 2014, the BIA dismissed the appeal on its merits. When Williamson's firm notified Canas, he hired attorney Jon Garde, who succeeded in reopening the appeal.

On October 27, 2015, after the request for investigation was filed, Respondent emailed Garde, saying: "Boogyman comin' for ya. Maybe not tonight, maybe not tomorrow . . . but he comin' to get ya now. Boogyman be comin' for ya'." The next month, Respondent sent Garde a similar email reading: "Ain't no law can stop the Boogyman. He be invisible and he be comin' fo' ya right soon." Respondent never responded to the People's letter requesting that he explain his October email to Garde.

In this matter, Respondent violated three rules. First, by failing to file an appeal brief for Canas, he violated Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client. Second, by charging Canas $2,200.00 despite failing to file the appeal brief, Respondent violated Colo. RPC 1.5(a), which provides that a lawyer shall not collect an unreasonable fee. Third, by failing to cooperate with the People's request for information about his email to Garde and their request for an interview about this matter, Respondent violated Colo. RPC 8.1(b), which prohibits a lawyer from knowingly failing to respond to a lawful demand for information from disciplinary authorities.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[3] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[4] When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: By abandoning Canas's case, Respondent violated his duty to his client. The ABA *Standards* denominate Respondent's charging of an excessive fee and his refusal to cooperate in this matter as violations of his duty to the profession.

[3] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[4] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

Mental State: The Court's order entering default establishes that Respondent knowingly violated Colo. RPC 8.1(b). The evidence otherwise strongly suggests that Respondent knowingly abandoned Canas's case and knowingly charged him an excessive fee.

Injury: At the sanctions hearing, Garde testified about how Respondent's conduct harmed Canas. Garde explained that Respondent's failure to file an appeal brief resulted in Canas losing his right to an administrative appellate review. Although Garde ultimately successfully appealed the case and Canas now has legal status in the United States, there was an intervening period during which Canas was at risk of deportation to El Salvador—a country that Garde testified is particularly violent and unsafe. This risk, Garde said, caused Canas significant fear and stress. In addition, Garde testified that he charged Canas about $6,000.00 to $8,000.00 for his own legal work—work that would have been unnecessary if Respondent had successfully completed the duties Canas hired him to perform.

Garde also provided some context for the emails Respondent sent him. Garde and Respondent formerly had worked together. Garde filed a disciplinary grievance against Respondent related to the Canas case because Garde deemed such a grievance necessary to establish that Canas's proceedings should be reopened based on ineffective assistance of prior counsel. Although Respondent's emails to Garde do appear threatening at first blush, Garde did not indicate that the emails caused him any particular stress or other injury.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction for the gravamen of this disciplinary case—Respondent's abandonment of Canas—is established by ABA *Standard* 4.42(a), which provides that suspension is generally appropriate when a lawyer causes a client injury or potential injury by knowingly failing to perform services for the client.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.[5] Two aggravating factors are present here. Respondent has substantial experience in the practice of law, and he has refused to acknowledge the wrongful nature of his misconduct.[6] The Court is aware of but one mitigator: Respondent does not have a disciplinary record.[7]

[5] *See* ABA *Standards* 9.21 & 9.31.
[6] ABA *Standard* 9.22(g) & (i). Although the People also request application of ABA *Standard* 9.22(e)—bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency—the Court finds that Respondent's failure to participate in this proceeding is addressed by the Colo. RPC 8.1(b) charge, and the Court has no evidence that he otherwise intentionally acted in bad faith.
[7] ABA *Standard* 9.32(a).

Analysis Under ABA *Standards* and Colorado Case Law

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[8] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[9] Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The People request imposition of suspension for one year and one day in this matter. Cases involving abandonment of clients without any associated conversion of client funds have typically yielded lengthy suspensions.

For instance, in *People v. Rishel*, a respondent lawyer was suspended for a year and a day after abandoning two clients.[10] In the first client's case, a child custody matter, the lawyer failed to notify the client of a hearing, stopped communicating with her, and never refunded unearned fees.[11] In the second client's case, which involved debt and possible bankruptcy, the lawyer never responded to the client's request to return his file and unearned funds.[12] The Colorado Supreme Court identified eight aggravating factors and one mitigator, and also noted that there was "more than a suggestion [that the lawyer] . . . misappropriated [the clients'] funds," though no conversion was established.[13]

A three-year suspension was imposed in *People v. Odom*, where a lawyer also abandoned two clients.[14] The lawyer neglected to keep one client informed about her Supplemental Security Income case and failed to convey to her an offer to increase child support, causing her to lose that child support.[15] The lawyer also abandoned the second client, who faced concealed weapon charges; the lawyer also collected an unreasonable fee and committed a conflict-of-interest violation in the same case.[16] The Colorado Supreme Court took into account eight aggravating factors and no mitigators in arriving at the three-year suspension.[17]

The present case, unlike *Rishel* and *Odom*, does not involve a predominance of aggravating factors. This case is also distinguished from *Rishel* and *Odom* because

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[8] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[9] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[10] 956 P.2d 542, 544 (Colo. 1998).
[11] *Id.* at 543.
[12] *Id.*
[13] *Id.* at 543-44. Suspension for one year and one day was also imposed in *People v. Regan*, 831 P.2d 893, 895-96 (Colo. 1992), where the lawyer neglected but did not abandon several clients, where mitigators outweighed aggravators, and where the parties stipulated to the suspension.
[14] 914 P.2d 342, 345 (Colo. 1996).
[15] *Id.* at 343.
[16] *Id.* at 344.
[17] *Id.* at 345.

Respondent did not mistreat more than one client. On the other hand, Respondent's abandonment of a client facing deportation carried possibly serious consequences. And the grave nature of his conduct in the case coupled with his disregard for the disciplinary proceeding persuades the Court that the public cannot be protected unless Respondent is required to demonstrate his fitness to practice law before reclaiming his law license.[18] Thus, taking into account the presumptive sanction, the relative equipoise of aggravating and mitigating factors here, and the relevant case law, the Court concludes suspension for one year and one day is warranted here.

IV. CONCLUSION

By abandoning his client's case, Respondent disregarded the most basic of his obligations as a lawyer. That misconduct is compounded by his failure to respond to disciplinary authorities and his default in this proceeding. His misconduct will be answered by a suspension for one year and one day.

V. ORDER

The Court therefore **ORDERS:**

1. **WILLIAM FREDERICK LEVINGS**, attorney registration number **24443**, will be **SUSPENDED FROM THE PRACTICE OF LAW FOR ONE YEAR AND ONE DAY**. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[19]

2. To the extent applicable, 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.

3. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Suspension," an affidavit complying 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 other jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motion or application for stay pending appeal **on or before May 8, 2017.** Any response thereto **MUST** be filed within seven days.

[18] Although the Court's conclusion is not dependent on this testimony, the Court does note for the record Garde's testimony that Respondent may have or have had struggled with addiction to alcohol.

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

5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before May 1, 2017.** Any response thereto **MUST** be filed within seven days.

DATED THIS 17th DAY OF APRIL, 2017.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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