***People v. Sean Gardner Saxon*. 16PDJ018. November 7, 2016.**

A hearing board suspended Sean Gardner Saxon (attorney registration number 36387) from the practice of law for three years, effective December 21, 2016. Saxon's appeal to the Colorado Supreme Court is pending.

Saxon, a married attorney, hired an escort and then began a romantic relationship with her. Later, he physically assaulted and repeatedly emotionally harassed her in a course of conduct designed to control and humiliate her. After she ceased communication, he repaid her for her "coldness" by encouraging her to kill herself, despite knowing her history of mental illness; by threatening to expose her as a prostitute; and by threatening to have her criminally prosecuted. Then, unannounced, he appeared at her father's home in rural Tennessee, where he knew she would be caring for her father after he had surgery. When she spurned this advance, he sent letters to her family members and classmates, disclosing her status as a prostitute, describing various sexual acts she performed with clients, and providing highly graphic nude photos of her. Through this conduct, Saxon violated Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) and Colo. RPC 8.4(h) (a lawyer shall not engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on the lawyer's fitness to practice law).

Saxon later violated a protective order that the same woman had obtained, leading to his conviction of a class-two misdemeanor. This conduct transgressed Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal).

Please see the full opinion and partial concurrence/partial dissent 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:** SEAN GARDNER SAXON	Case Number: **16PDJ018**

OPINION AND DECISION IMPOSING SANCTIONS
UNDER C.R.C.P. 251.19(b)

Sean Gardner Saxon ("Respondent"), a married attorney, hired an escort and then began a romantic relationship with her. Later, he physically assaulted and repeatedly emotionally harassed her in a course of conduct designed to control and humiliate her. After she ceased communication, he repaid her for her "coldness" by encouraging her to kill herself, despite knowing her history of mental illness, by threatening to expose her as a prostitute, and by threatening to have her criminally prosecuted. Then, unannounced, he appeared at her father's home in rural Tennessee, where he knew she would be caring for her father after his surgery. When she spurned this advance, he sent letters to her family members and classmates, disclosing her status as a prostitute, describing various sexual acts she performed with clients, and providing highly graphic nude photos of her. He later violated a protective order she had obtained, leading to his conviction of a class-two misdemeanor. This conduct warrants a suspension for three years.

I. PROCEDURAL HISTORY

On February 24, 2016, Alan C. Obye, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ"), alleging Respondent had violated Colo. RPC 3.4(c), Colo. RPC 8.4(b) and C.R.C.P. 251.5(b), and Colo. RPC 8.4(h).

Five days later, the PDJ held a status conference, attended by Obye and Nancy L. Cohen, Respondent's counsel, to address concerns about the privacy of Jerene Dildine, the alleged victim of Respondent's misconduct. The Court elected to suppress the complaint and directed the People to file an amended complaint with Dildine's name and certain other information redacted. Later, at the hearing in this matter, both parties agreed that Dildine's

name could be used freely. The People represented that Dildine did not object to that course of action.[1]

After the People filed their amended complaint on March 4, 2016, Respondent submitted his answer on March 28, 2016. The PDJ then set a hearing for August 30 and 31, 2016.

On April 26, 2016, complaining witness Thomas J. Overton, who is Dildine's attorney, moved to disqualify Cohen from representing Respondent. Overton argued that Cohen's membership on the Colorado Supreme Court's Advisory Committee created an inherent appearance of impropriety. The PDJ determined that Overton lacked standing to file his motion and that C.R.C.P. 251.34 does not mandate Cohen's disqualification.

On August 30 and 31, 2016, a Hearing Board comprising Paul J. Willumstad and Donald ("Chip") F. Cutler IV, members of the bar, and the PDJ held a hearing under C.R.C.P. 251.18.[2] Obye represented the People, and Respondent appeared with Cohen. During the hearing, the Hearing Board considered the stipulated facts, stipulated exhibits S1-S58,[3] the People's exhibit 5, Respondent's exhibits A and B, and the testimony of Tami Ward, Ivy Bishop-McClure, John Dildine, Jerene Dildine, Craig May, Dr. David S. Wahl, and Respondent.

II. FACTS AND RULE VIOLATIONS

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on May 18, 2005, under attorney registration number 36387.[4] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[5]

Findings of Fact[6]

The Hearing Board notes at the outset that these factual findings may be disturbing to many readers because, among other things, they involve graphic language and descriptions of sexual activity. We include these facts below because we believe they are

[1] Dildine's attorney was present in the courtroom for the entire disciplinary hearing.

[2] At the outset of the hearing, the PDJ reserved ruling on Respondent's motion in limine, filed on August 26, 2016, which asked the PDJ to preclude introduction of court orders or transcripts from other judicial proceedings involving Respondent. Those orders and transcripts ultimately were not admitted. The PDJ now deems Respondent's motion in limine **MOOT**.

[3] Before the hearing, the parties submitted to the Hearing Board stipulated exhibits S1-S57. Some of those exhibits contained revealing photographs of Dildine and Respondent. At the hearing, the PDJ struck stipulated exhibits S1-S57 and ordered the parties to refile the stipulated exhibits, divided into two groupings, which the parties did. The first grouping contains photos of Dildine and Respondent and is **SUPPRESSED**. The second grouping, comprising all other documents and materials, is publicly available.

[4] Respondent testified that he was licensed in Tennessee in 1997, and he also holds a law license in California and the District of Columbia.

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

[6] Where not otherwise noted, these facts are drawn from testimony offered at the disciplinary hearing.

critical to understanding the nature of the misconduct here and the harm caused by that misconduct.

This case arises out of a relationship between Respondent and Dildine in late 2013 and early 2014. At the time, Respondent was a married father of three young girls. He had worked for Wheeler Trigg O'Donnell LLP since 2005, handling pharmaceutical and medical device litigation.

Dildine, who graduated from the University of Tennessee and had taught English as a Second Language and Spanish, began working as an escort, or prostitute, in 2013. She did so, she testified, because she could not pay her bills on a teacher's salary.[7] She also began taking courses to obtain an aesthetician's license in January 2014. Using fictitious names, including "Jessica Kent," Dildine advertised her escort services on a handful of websites.[8] Her online advertisements included photos of her body, but not her face. As such, she was not publicly identifiable as a prostitute.

Respondent contacted Dildine in early fall 2013 through www.preferred411.com. He testified that for a few years, he had sporadically hired other escorts. Respondent and Dildine first met in person in November 2013. He paid her for sex on that occasion and on one or two later occasions.[9] Their arrangement then evolved into a somewhat more conventional dating relationship that lasted until the middle of March 2014.

Their relationship appears to have been marked by some genuine affection, sustained by shared intelligence as well as common interests and perspectives.[10] But periods of harmony in their affair were punctuated by repeated conflicts, which stemmed in part from Respondent's frustration with Dildine's choice of work. Respondent wanted her to stop working as an escort, avoid meeting with clients before seeing him, and not perform certain acts with clients.[11] In mid-December, Respondent and Dildine apparently argued after he saw a photo of her engaging in a sexual act with a client.[12] Respondent emailed her: "I wanted so bad to believe that I could 'wish away' the truth about who you are. It was stupid and I feel like a fool."[13] But Respondent and Dildine soon reunited, and Dildine promised she would not see any clients on the days that she saw him.

The same issues flared up again on January 15, 2014, during one of Respondent's visits to Dildine's apartment. As Dildine recalls, Respondent had seen evidence of a client's visit to her apartment; after having sex together, Respondent picked her up by her throat,

[7] Dildine testified that she stopped working as an escort in spring 2015.
[8] Stip. Facts ¶ 6. According to Dildine, the websites on which she advertised screened their customers. She did not use Twitter to advertise as an escort but did use a Twitter account associated with her escort work.
[9] *See* Stip. Facts ¶ 3.
[10] *See* Ex. S30 (containing the record of text messages Respondent and Dildine sent to one another between December 2, 2013, and April 3, 2014).
[11] *See* Stip. Facts ¶ 8.
[12] *See* Ex. S30 at 00139.
[13] Ex. S7 at 00066.

threw her on the concrete floor, and called her a "nasty little whore."[14] He then raised his fist. When she pleaded with him not to hurt her, he said he didn't know what had come over him. She was scared, thinking she was cornered in her apartment, but he complied when she asked him to leave.

In contrast to Dildine's account, Respondent testified that he mentioned during sex that he had earlier seen a client's can of alcohol in the bathroom. When she admitted that it was a client's, he grabbed her sweatshirt, picked her up so that he could get off the futon, pulled up his own pants, used profane language,[15] and left the apartment. He insisted that after he lifted Dildine up, she ended up on the futon, not the floor. Respondent maintained that he has never been violent with a female since he was seventeen, when he once grabbed his girlfriend's arm in a way that he concluded was too rough—an action he resolved never to repeat. He said that his mother was the victim of physical abuse when he was a child, and such violence was not something he ever wanted to be "part of."

The Hearing Board finds clear and convincing evidence that Respondent did physically assault Dildine on January 15. According to Dildine, she stood 5'1" tall and weighed 105 pounds at the time.[16] Respondent was significantly taller and larger. He worked out in his basement, where he kept weights, and at one point bragged to Dildine that he weighed 193 pounds, down from 227 pounds when they met.[17] We thus believe he was physically able to throw Dildine, or at least shove her forcefully with his hand on her throat, as Dildine credibly testified. Indeed, he had previously demonstrated the physical capacity to injure her: just ten days earlier, during a sunny phase in their relationship, Dildine had texted him: "Btw – my back is bruised from you pushing on it. Like really, really bruised . . . ."[18] He responded: ". . . I'm so sorry. I had no idea I was hurting you . . . ."[19]

Even more persuasive evidence of the assault is found in the text messages that Respondent and Dildine exchanged after the incident. On January 18, she texted: "I'm very shaken and depressed. I don't want to be alone with you."[20] Two days later she said: "You want to hold me and kiss me until you get mad and then you want to *grab me by the throat* and call me names."[21] She also referred to being "reminded of the awful things you said *and did*."[22] Respondent did not challenge her assertions that he had physically injured her; in

[14] In reference to the allegation that he grabbed Dildine's throat, Respondent elicited testimony from Dildine that she enjoyed being choked during sex. She explained that during sex, such physical contact feels loving and heightens sexual sensation. But she said the throat-grabbing incident on January 15 did not occur during sex, it involved greater physical pressure, and it was in a different position, under her jaw.

[15] Stip. Facts ¶ 9.

[16] Her reported height and weight correspond with the Hearing Board's observations at the hearing.

[17] *See* Ex. S30 at 00229.

[18] Ex. S30 at 00162 (emojis omitted).

[19] Ex. S30 at 00163.

[20] Ex. S30 at 00177.

[21] Ex. S30 at 00177 (emphasis added).

[22] Ex. S30 at 00177 (emphasis added); *see also* Ex. S30 at 00178 (text messages dated January 20 in which Dildine said "I've been trying to forget about you and move on. Scaring me like you did is unforgivable," And "I really don't think I can get over it. My tremors are so bad now, even with medicine . . . .").

fact, after she said that he had scared her, he wrote: "I understand. You're right . . . . I love you [and] will never hurt you or scare you or make you feel bad. I was wrong . . . ."[23] These texts, written shortly after the events in question, strongly support the conclusion that Dildine suffered not only emotional harm from name-calling but also physical harm.

The fact that Dildine did not report the assault to the police does not, as Respondent suggested at the hearing, provide meaningful evidence that the assault never occurred. Had she reported the assault, she could have faced charges for prostitution—a significant deterrent to reporting. Nor does Dildine's later reconciliation with Respondent suggest that the assault did not occur. To the contrary, the pattern of their relationship reflects the three commonly recognized phases in the cycle of domestic violence that expert witness Dr. David Wahl confirmed at the disciplinary hearing: building tension, violent behavior, and loving contrition.[24]

As an attempt to win back Dildine's favor after the January 15 altercation, Respondent secured the dismissal of a traffic citation, a Class C misdemeanor charge, that Dildine had received during an earlier trip to Tennessee. Respondent twice spoke to the prosecutor in Tennessee, who agreed to dismiss the charge upon learning that Dildine lived in Colorado and had no criminal record.[25] On January 17, 2014, Respondent sent Dildine a formal letter on Wheeler Trigg stationery stating that her traffic citation had been dismissed.[26] Respondent said that he used the official stationery in an attempt to be "cute" and "woo her back." Despite Respondent's protestations to the contrary, the Hearing Board finds that Respondent was practicing law on Dildine's behalf by securing the dismissal of her citation. Soon thereafter, in another effort to entreat Dildine, Respondent texted her on January 20 that he would cash out his investment account so that he could set up an apartment with her and buy her a new car.[27] Respondent's efforts were successful: they again renewed their relationship, though he did not thereafter obtain a new apartment or car for Dildine.

Over the next couple of months, Respondent and Dildine's relationship was alternately calm and stormy. For instance, in late February 2014, following some unknown event, Respondent texted: "I have never been treated with such disregard and disrespect by someone that supposedly cares for me and to whom I have given so much of myself."[28] While standing outside her apartment building a couple of hours later, he followed up by directing her to "[b]uzz [him] in" so he could retrieve a massage table he had recently given

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[23] Ex. S30 at 00178.

[24] Dr. Wahl also said that in this cycle, an abuser's threats often escalate when the victim attempts to leave the relationship.

[25] According to Respondent, he merely called the prosecutor to find out if Dildine needed to be present in Tennessee to resolve the ticket, and he planned to refer the case to an attorney friend in Tennessee. It is unclear when Respondent's conversations with the prosecutor took place, but it appears likely that Dildine gave Respondent the ticket before the altercation. *See* Ex. S51 at 03372.

[26] Ex. S3.

[27] Ex. S30 at 00177.

[28] Ex. S27 at 00099.

her.[29] When she refused, he texted: "Fuck it. Keep the damn thing."[30] Dildine told him the relationship was over two days later,[31] yet Respondent took this message with "something of a grain of salt" because it fit into an ongoing pattern in which she distanced herself, he persisted, and she finally expressed gratitude for his persistence.[32]

After their February fight, Respondent continued to text Dildine, saying "Cannot give up," and "Want to run away with you immediately," among other things.[33] In early March, Dildine and Respondent again mended their relationship. They planned a weekend getaway in late March and both appeared excited for the trip.[34] But the interchange of text messages came to an end on March 19, 2014, when Dildine told Respondent that she wasn't feeling "confident" about the planned trip and then stopped responding to his texts altogether.[35] Later that day and the next day, Respondent sent Dildine twenty-two texts, asking her not to "freeze [him] out," among other things.[36]

On March 21, Dildine emailed Respondent, saying in part:

> I'm really so sorry to treat you this way. You are so sweet and generous to me. I'm insanely attracted to you and I love being your friend. But I don't want to be in a relationship with you . . . .[37]

Later that same day, Respondent commenced in earnest to harass her via text: "Okay. I'm done. Please delete and destroy everything from or about me. Ring, necklace,

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[29] Stip. Facts ¶ 10; Ex. S27 at 00099. According to Dildine, at the time Respondent sent this text he was banging on the window to her apartment while she fearfully hid in her bathroom. The People argue that this conduct was part of Respondent's pattern of harassment. In a text message sent soon thereafter, Dildine mentioned his "banging on my door, Indian-giving" and he responded "I'm sorry about that," *see* Ex. S30 at 00219, though other testimony suggests that he probably did not have access to the internal door of the apartment. The Hearing Board finds it possible that Respondent was banging on the window of Dildine's ground-level apartment while sending his texts, but we cannot resolve this factual ambiguity.

[30] Ex. S27 at 00100.

[31] Ex. S27 at 00102.

[32] Respondent said that throughout the relationship he experienced a push-pull dynamic, in which she would repeatedly "disrespect" or "reject" him. *See* Ex. S17. The Hearing Board notes that his characterization of her nonresponsiveness and "disrespect" finds scant support in the evidence. As just one example, Respondent texted Dildine on January 3, saying that she had been "so non responsive" and that it made him feel "insecure," but he and Dildine had seen each other the previous day, when she had also sent him sixteen texts. Ex. S30 at 00159-60. And she had already sent him three texts on January 3, one of which said "I miss you." Ex. S30 at 00160-61.

[33] Ex. S30 at 00218.

[34] Ex. S30 at 00237-41.

[35] Ex. S30 at 00242. We do not have evidence directly explaining Dildine's decision, though she testified that she had earlier concluded Respondent was not "good" for her because he was "controlling" and "mean."

[36] Ex. S30 at 00242-43.

[37] Ex. S12.

pictures, text, email. More payback coming your way. Fuck off and kill yourself you pathetic nasty whore."[38] He then wrote her a lengthy email, saying in part:

> You have treated me with coldness and disrespect for the last time . . . . I can honestly say you are the most toxic person I have ever encountered on a personal level . . . .
>
> . . . I have encounter[ed] numerous bipolar patients in my work, and I have never—I mean never—seen one that could sustain even a semi-healthy long-term committed relationship . . . .
>
> I was willing to try to overlook . . . the three divorces, two nervous breakdowns, . . . sagging tits, . . . pathological promiscuity, obvious alcoholism, . . . white trash family, etc. . . .
>
> However, I soon realized—and it was a painful realization—that you are a whore at heart.
>
> You know how you say being a whore is empowering? Well, you are going to get the chance to stand behind that! I have [a] nice collection of pictures, reviews, escort profiles, and twitter post[s] for distribution. The list of recipients is still under review. Your landlord (there are kids in that building and they shouldn't be exposed to that)? Family? . . . Classmates? …I will retain copies for any future employers or boyfriends I learn about. (Please understand, I am not doing this to stop you from being a whore . . . . I am doing it because you have been so fucking mean to me with no reason and despite what I have done for you.)
>
> . . . .
>
> Now that I see your life, the people you touch, and the ruin in your wake I am quite surprised you are still here. (The suicide rate for Bipolar II is five times the national average.) . . . You only have a few years left before you have to start lowering your rates . . . . [T]here is no way you can earn enough licking stranger's [sic] assholes to sustain yourself for the next 25 years. Then what? Get a real job? Unlikely. (Plus, you can be assured the Jessica Kent portfolio will eventually resurface.)[39]

Dildine responded the next day, saying that she was "very sorry" she had hurt him.[40] She continued: "You're absolutely right about everything you said in your emails . . . . I'm sorry you were affected negatively by my behavior. Please don't do anything to fuck up my shit, and I won't do anything to fuck up yours."[41] She attached a compilation of the thousands of texts she and Respondent had exchanged during their affair.[42] Respondent sent two emails in response, saying "Thanks for the text [sic]. It reminded me how fucking

[38] Ex. S30 at 00243.

[39] Ex. S13. In this email and subsequent emails and letters Respondent sent, we have excised much of the offensive language, keeping only what seems necessary to convey the tone of the communications.

[40] Ex. S14.

[41] Ex. S14.

[42] Ex. S14.

awful to me you were. Also, I just realized that have [sic] all the email addresses from your classmates in those messages you forwarded to me!"[43] The second email said "Take your best shot. I'm taking mine."[44]

On March 24, Respondent sent Dildine two emails separated by several hours. The subject line of the first read "Know what's really sad . . .," while the body of the email said simply "How much I miss you."[45] The second contained a photo of four manila envelopes, addressed to John Dildine, Dildine's father, who lived Tennessee; Jason and Jessica Dildine, Dildine's brother and sister-in-law, also residents of Tennessee; Dildine's mother and stepfather, both Texans; and Tami Ward, Dildine's cousin and sole close friend, a Coloradan.[46] The subject line read "Need stamps . . . .," and the body of the email read "Loved your latest review [presumably on an escort website], but alas it came too late to be included."[47]

Two days later, he wrote an email captioned "Apology," saying in part:

> I got carried away by anger and frustration . . . . You could make me feel loved and treasured, and then disrespected and rejected all within a few hours . . . . I couldn't take it anymore and I used my knowledge of your past and my understanding of your insecurities to come up with nasty terrible things to say to you. I am very sorry . . . .[48]

Respondent did not text Dildine again until March 28, when he sent messages striking an incongruous joking tone, including pictures of himself unclothed and asking her opinion about his weight and build.[49]

Respondent knew Dildine would be traveling to Tennessee to help her father, who had recently undergone surgery for cancer.[50] In fact, before their relationship deteriorated, Respondent and Dildine had planned to travel there together, and Respondent had concocted a story that he had a deposition to justify his absence from his family and perhaps his firm. On March 31, he texted her: "Do I have to fight a cab driver in front of your building tomorrow so I can take you to the airport??"[51] He followed up: "I'm really sorry if I hurt you. Really really sorry."[52] Respondent's seventeen texts to Dildine between March 28 and April 3

[43] Ex. S14.
[44] Ex. S14.
[45] Ex. S16.
[46] Ex. S15.
[47] Ex. S15.
[48] Ex. S17.
[49] Ex. S30 at 00244; Ex. S27 at 00109-112.
[50] Stip. Facts ¶ 11.
[51] Ex. S30 at 00244 (emoji omitted).
[52] Ex. S30 at 00244.

all went unanswered.[53] He also sent her three emails during this period, to which she apparently did not reply.[54]

During the afternoon of April 3—twelve full days since she had last responded to any of Respondent's texts or emails—Dildine returned to her father's house in Tennessee after running an errand to find Respondent sitting at the kitchen table with her father.[55] Respondent had appeared at John Dildine's house, knocked on the door, and represented himself as a friend of Dildine's.[56] According to John Dildine, his daughter was so shocked that she dropped the packages she was carrying. Dildine herself recalls feeling "terror." She told Respondent she wanted him to leave.[57] When Respondent did so, John Dildine recalls, his daughter sank down onto the floor of the kitchen. Dildine said that she and her father later drove up and down the main road of the town to make sure that Respondent had truly departed. At the disciplinary hearing, Respondent explained his visit to John Dildine's house by saying that "it was a very [] misguided [] attempt to make some grand gesture to [] her as [] part of the pursuit [he] had engaged in earlier that had been ultimately successfully on many occasions."

Later on April 3, Dildine texted Respondent, in part: "Please just leave me alone. Please please please. I really care about you but we have an unhealthy relationship. Let's hold on to the good memories and not make any more bad ones."[58]

Instead, Respondent launched his next volley on April 6, sending Dildine an email containing a proposed draft of an email to her family.[59] The draft exposed her as a prostitute and contained graphic details about sexual acts she performed, among other things.[60] In his prefatory comments to Dildine herself, Respondent wrote in part:

> You could have saved me (and ultimately yourself) a lot of trouble and unnecessary bullshit if you had had the basic decency to communicate with me over the past two weeks.
>
> . . . .
>
> . . . [H]ere is what I propose: I will not contact the police to have you prosecuted for prostitution, nor will I volunteer the existence or location of the proceeds of your illegal activities (which should be seized). If you make any attempt to contact any of my family, friends, or business associates, I will seek to have you prosecuted for criminal harassment. Otherwise I intend to treat you with the same level of disregard and meanness that you have repeatedly showed to me.

[53] Ex. S30 at 00244.
[54] Exs. S18-S20.
[55] Stip. Facts ¶ 14.
[56] Stip. Facts ¶ 12.
[57] Stip. Facts ¶ 15.
[58] Ex. S30 at 00244-45.
[59] Ex. S21.
[60] Ex. S21.

In truth, you should be "exposed" for who and what you really are.[61]

The next day, Respondent made good on his threat and sent letters to John and Jason Dildine via email, copying Dildine herself; Respondent sent hard-copy versions to Ward and to Dildine's mother and stepfather.[62] The lengthy letter read in part:

> I am writing to you because I have no other option. I know it will end my relationship with [Dildine] but I am willing to make that sacrifice if it will help . . . .
>
> . . . I first met Jerene as Jessica Kent. Jessica (a name she took from her sister-in-law—someone she referred to as 'cunt'…) is a mid-level prostitute . . . . If you are interested, you can find out more about her on [escort website and identification number provided] . . . I have attached her escort profile, some of her twitter posts, and some [of] the on-line reviews she has received for her activities . . . .
>
> . . . .
>
> I allowed myself to become emotionally involved with her for a time. As I am sure you know from firsthand experience, that was a roller coaster characterized by her selfishness and disregard for anything other than what she wants at the time.
>
> . . . [A]fter I began to have stronger feelings for her, I also started to become concerned for her health. I *begged* her to stop letting clients ejaculate in her mouth, which she would then swallow . . . and to stop licking client's [sic] anuses . . . . You can find a complete list of her services (more complete than any other escort in Denver) on her attached P411 profile . . . .[63]

John Dildine testified that he did not know his daughter had been working as a prostitute until he received Respondent's letter. Although John Dildine did not open the attachments to the letter, Jason Dildine apparently did, since John Dildine recalls his son reporting that the attachments were "convincing." Dildine had advised Ward that she might receive such a letter, so Ward took the envelope to Overton, who it appears Dildine had retained in early April. Ward did glance at the contents of the envelope at Overton's suggestion. Before Ward learned about this letter, she had not known that Dildine was working as an escort.

Dildine's own reaction on learning that Respondent had sent the letters to her family was, "that was it, I'm done, I'll probably never talk to my mother again." Contemplating her father's reaction was "terrible, embarrassing, the worst thing ever."

[61] Ex. S21.
[62] Ex. S22.
[63] Ex. S22.

Later on April 7, Respondent emailed Dildine: "I will stop. Nothing else."[64] Dildine said she felt some relief, yet she didn't know if she could trust his promise, thinking that "he ha[d] all the power." On April 11, he expressed by email his wish that she would let him "take it all back, fix everything" and "go away with" him.[65]

Dildine responded:

> Great! Thank you so much. If you could please fix my previously fabulous relationships with my father and brother, which may include: erasing images of my pussy from their minds, helping my father not to worry himself sick about me, having my brother consider letting me near his children again sometime in the future, having my sister-in-law ever talk to me, that sort of thing, that would be awesome . . . .[66]

Respondent's next salvo came on April 17, 2014, when he sent an email to Ivy Bishop-McClure, an administrator at Dildine's aesthetician school, and at least seven students in Dildine's class.[67] It read, in part:

> . . . [Y]ou should know that Jerene Dildine is a whore/prostitute/escort/call girl . . . . She engages in *extremely* high risk activities. Her "services" are listed on her Preferred 411 escort profile and include swallowing come . . . .
>
> . . . .
>
> I have attached printouts from various websites, her [] Twitter account, and on-line[] reviews detailing this . . . .[68]

The attachments included client reviews, which described in detail sexual acts Dildine had engaged in and the most intimate parts of her body, as well as various fully nude, highly graphic photos of Dildine.[69]

At the disciplinary hearing, Bishop-McClure testified that when she received Respondent's email and scrolled to the bottom, she saw previews of the photos that were attached to the email. She was shocked and confused. She forwarded the email to Dildine to ask why she had received it. She also spoke by phone with Dildine, who was very distraught and "beside herself," Bishop-McClure said. Dildine herself remembers that when she learned Respondent had emailed people at her school, she believed she was "ruined."

During the evening of April 17, the boyfriend of one of Dildine's classmates who had received Respondent's missive sent an email to him and to Respondent's wife, opining that

[64] Ex. S24.
[65] Ex. S26.
[66] Ex. S26.
[67] Ex. S2.
[68] Ex. S2.
[69] Ex. S2.

Respondent's earlier email had been "shameful."[70] About an hour later, Dildine sent her own email to Respondent's wife, stating that Respondent and Dildine had been in an "ongoing affair . . . since November."[71] She continued:

> I'm so sorry to disturb your life in this way, but you need to know that your husband is violent and is threatening me and harassing me in the most deranged of ways . . . . He once grabbed me by the throat and threw me to the f[l]oor, calling me a nasty whore, and he has not ceased in shaming me and harassing my friends and family . . . . I am afraid of him.[72]

On April 18, 2014, Dildine obtained an ex parte temporary civil protection order against Respondent in Denver County Court case number 14W0475.[73] The order was served on him on April 21, 2014.[74]

On April 24, Dildine texted Respondent: "You get your wish. I'm going to fuck off and kill [myself]."[75] He responded a half-hour later: "Please please forgive me. I'm so sorry. I've been horrible and immature and completely lame."[76] Dildine and Respondent then traded a series of texts in which Respondent said, among other things, that he wanted to fix the situation, that she did not "deserve" what he did, and that he would be "there" for her.[77] Three days later, Dildine replied that he had "ruined her."[78] Respondent then proposed a scheme by which he could convince her family that his letters to them had been a hoax, but she responded that she was "[e]nding it tonight."[79] She went on: "I was so happy before I met you . . . . I can't believe you fucked up my world in every possible way . . . ."[80]

The following morning, on April 27, Respondent texted: "I never did or said anything about you that wasn't 100% true and factual. Still I will fix it. You want to do something for your father? [T]hen stop being an escort. I saw your new post on P411 yesterday."[81] When she did not respond, he followed up: "I'm calling 9-1-1 for a welfare check if no response in 5."[82] He testified that he then did in fact call 9-1-1. More than an hour later, she sent another series of texts.[83] Respondent did not answer, nor has he had any further contact

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[70] Ex. 5.
[71] Ex. S4.
[72] Ex. S4.
[73] Stip. Facts ¶ 18.
[74] Stip. Facts ¶ 19.
[75] Ex. S28 at 01680.
[76] Ex. S28 at 01680.
[77] Ex. S28 at 01680-82.
[78] Ex. S28 at 01682.
[79] Ex. S28 at 01682-83.
[80] Ex. S28 at 01685-86.
[81] Ex. S28 at 01687-88.
[82] Ex. S28 at 01689.
[83] Ex. S28 at 01689-92.

with Dildine since April 27.[84] In total, he sent her fifteen texts on April 24 and 27, 2014.[85] He admits he violated the temporary protection order by doing so.[86]

A hearing on Dildine's request for a permanent protection order was held on two dates, May 21 and June 4, 2014, in Denver County Court.[87] Dildine, John Dildine, Ward, and Bishop-McClure testified.[88] Respondent, however, did not testify or offer any evidence.[89] Dildine said at the disciplinary hearing that attempting to secure a protective order was "terrifying" because she thought Respondent might retaliate against her. After an initial adverse ruling on Dildine's request and an appeal, the temporary civil protection order was made permanent on December 29, 2014.[90] Respondent has not violated the permanent protection order.[91]

On January 15, 2015, Respondent pleaded guilty in Denver County Court to violation of a protection order, a class-two misdemeanor.[92] The court's order stated that the factual basis of the offense included an act of domestic violence and an intimate relationship under C.R.S. section 18-6-800.[93] On March 3, 2015, Respondent was sentenced to twenty-four months of probation.[94] He has complied with the terms of the court order and his probation, which include completing a domestic violence evaluation and group therapy sessions.[95]

At the disciplinary hearing, Respondent explained his conduct toward Dildine by saying that he experienced ongoing sexual abuse by an older stepsister while he was young. Respondent said that his relationship with Dildine involved more "hypersexual talk" than he had been accustomed to, as well as use of bad names, deprivation, and a push-pull dynamic that was similar to a dynamic his stepsister used to control him. He said his relationship with Dildine became "way too much for [him] to handle." This led to his drinking more alcohol, he said, though he stopped drinking in April 2014. Respondent theorized that Dildine got caught up in his own "baggage" concerning his sexual past. Respondent also explained that he thought he might be able to make peace with the fact that he was in love with an escort as

[84] Stip. Facts ¶¶ 21-22.
[85] Ex. S28 at 01680-89.
[86] Stip. Facts ¶ 20.
[87] Stip. Facts ¶ 24.
[88] Stip. Facts ¶ 25.
[89] Stip. Facts ¶ 26.
[90] Stip. Facts ¶¶ 27-29; Ex. S54. The court imposed an additional condition prohibiting Respondent from possessing firearms under the Brady Act. Stip. Facts ¶ 30; Ex. S54. Respondent moved to strike that provision based on a theory that Dildine was not his "intimate partner" under the Act. Stip. Facts ¶ 31. According to Respondent, he did so because the only possession his father had left him was a rifle, and he wanted permission to keep the gun. The court denied the motion. Stip. Facts ¶ 32.
[91] Stip. Facts ¶ 36.
[92] Stip. Facts ¶ 33; Ex. S52.
[93] Ex. S52. The basis for the finding of the act of domestic violence was not made clear.
[94] Stip. Facts ¶ 34.
[95] Stip. Facts ¶ 37.

long as she did not engage in the same sexual acts with her clients and did not have the same connection with them; when he read client reviews, however, he learned otherwise.

Beginning in January 2015, after learning of the request for investigation in this case, Respondent received treatment from psychiatrist Dr. Wahl for eight months. Respondent had never previously sought therapy. Dr. Wahl testified at the disciplinary hearing as Respondent's treating physician, not as an independent expert.[96] Dr. Wahl said that when he initially met with Respondent, he was experiencing acute stress, which caused profound despondency, fear, distrust, and some suicidal ideation. Respondent became more stable over the course of about six weeks. When Respondent disclosed his childhood abuse, Dr. Wahl diagnosed him with posttraumatic stress disorder ("PTSD"), and that condition became the predominant focus of the treatment.

Dr. Wahl offered the Hearing Board some perspectives on Respondent's behavior. According to Dr. Wahl, one characteristic of PTSD is dissociation, whereby people who have suffered past trauma may later "lose track" of who they are in certain situations. Dr. Wahl opined that Respondent was experiencing psychotic transference, a condition in which a person transfers feelings toward someone in the person's past to a person in the present. This may occur when a person in the present triggers memories of the past. The result is that the person may be unable to differentiate the present relationship from the past relationship.[97] Here, Dr. Wahl said, Respondent viewed Dildine as having a mercurial, negative nature, which reminded him of his mother, with whom he had a difficult relationship, and his stepsister, who abused him. Notably, Dr. Wahl did not testify that the episode of psychotic transference directly caused Respondent's misconduct in this case.[98]

According to Dr. Wahl, Respondent expressed humiliation and shame about how he acted toward Dildine. To Dr. Wahl, these statements indicated that Respondent had a healthy level of remorse. Because of the pain Respondent caused himself and his family, Dr. Wahl believes it is highly improbable that Respondent will repeat the type of conduct that brought him before this tribunal. Dr. Wahl also believes that Respondent is competent to practice law in accordance with ethical standards.

Although the Hearing Board believes that Respondent may have experienced some degree of psychotic transference during his misconduct, we do not believe that this

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[96] Dr. Wahl noted that, as a treating physician, his primary interest is Respondent's well-being, and Dr. Wahl believes that Respondent's best interests would be served by returning to the practice of law. Dr. Wahl said he thus views his role in this proceeding, in part, as that of Respondent's advocate. The Hearing Board takes this factor into account in considering Dr. Wahl's testimony, while also recognizing that Dr. Wahl was a credible witness and is duty-bound to testify truthfully.

[97] In an episode of psychotic transference, Dr. Wahl said, a person's dissociative response is limited to circumstances with the person triggering the transference, which here meant that Respondent was able to function normally in other parts of his life.

[98] The Hearing Board also notes that psychotic transference does not appear as an official diagnosis in the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013).

condition is principally responsible for his behavior. Based on the continuing, premeditated nature of Respondent's conduct, the testimony we heard from various parties, and our assessment of Respondent's credibility, we instead believe that he retained the ability to understand the vicious nature of his actions and the emotional devastation they would wreak, yet he still elected to carry out his campaign of harassment. Unlike Dr. Wahl, we do not have full confidence that Respondent would not retaliate against another victim—even a person he encounters through the practice of law—if the victim's actions caused Respondent to feel rejected or slighted, as Dildine's actions did. And we are troubled that Respondent chose to discontinue mental health treatment after just eight months—a seemingly short period given the serious nature of childhood abuse he says he suffered, the degree of cruelty he exhibited toward Dildine, and the devastating impacts of his actions on Dildine as well as on himself and his family.[99]

As a brief postscript to this case's factual history, Respondent was terminated from his position at Wheeler Trigg in 2014 when the firm learned of the allegations underlying this case. Aside from assisting one client with a buyout matter, he has essentially not worked as a lawyer since his termination. He now stays home with his children, and the family relies on his wife's income. Though his marriage has suffered strain as a result of his conduct, he and his wife have stayed together. As for Dildine, she dropped out of her school for a time after Respondent's email to her classmates, though she later completed her program. The testimony and evidence indicates that she has grown more distant from her friends and family. Dildine currently has a civil claim pending against Respondent, who filed counterclaims against both her and Overton. The Hearing Board does not have evidence about any of these claims. Last, the Hearing Board notes that we heard no evidence that Respondent has disposed of his "collection of pictures, reviews, escort profiles, and twitter post[s]" that he threatened to retain and send to "any future employers or boyfriends [he] learn[s] about,"[100] although we recognize that acting on this threat would amount to another violation of the protective order.

Rule Violations

The first claim in the People's complaint is that Respondent violated Colo. RPC 3.4(c), which provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists. The People contend that Respondent violated this rule when he sent text messages to Dildine after he had been served with the temporary protection order.

The Hearing Board finds that the People have proved this claim. Respondent knew he was subject to the protective order (a point he does not dispute), yet he still communicated with Dildine multiple times. As a lawyer, he surely understood that his communications

[99] Dr. Wahl was somewhat equivocal in discussing whether he recommended additional therapy for Respondent, saying it was not a necessity but also might be useful, and noting that treatment for PTSD generally continues for years.

[100] *See* Ex. S13.

contravened the terms of the order. This is particularly true given that he sent Dildine a total of fifteen texts on two different dates and that the texts were not simply attempts to deter her from committing suicide. For instance, he asserted in one of the texts that he had reviewed her latest escort review and that she should stop working as an escort if she wanted to "do something for [her] father."[101] We thus have no trouble concluding that Respondent transgressed Colo. RPC 3.4(c).

In Claim II of their complaint, the People contend that Respondent violated Colo. RPC 8.4(b) and committed acts constituting grounds for discipline under C.R.C.P. 251.5(b). Colo. RPC 8.4(b) states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, while C.R.C.P. 251.5(b) provides that such conduct is grounds for discipline. According to the People, Respondent transgressed these rules in two respects: (1) he violated the temporary protective order, leading to his criminal conviction and (2) he physically assaulted Dildine on January 15, 2014—an action that could have been prosecuted as a third-degree assault.[102]

The Colorado Supreme Court has previously deemed a rather wide array of conduct to reflect adversely on a lawyer's fitness to practice law, including using lewd and sexually offensive language with a potential client,[103] knocking on the back door of what an attorney mistakenly thought was his girlfriend's home, frightening the inhabitant,[104] receiving convictions for third-degree assault and driving while ability impaired,[105] failing to pay court-ordered child support,[106] and failing to appear at hearings involving driving with a revoked driver's license.[107] Not all criminal actions reflect adversely on a lawyer's fitness to practice, however.[108] Instead, the comments to Colo. RPC 8.4(b) indicate that

> [A] lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses including violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.[109]

The Hearing Board concludes that Respondent's violation of the protective order was a criminal act that adversely reflected on his fitness to practice law. Both prongs of the rule

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[101] Ex. S28 at 01688-89.
[102] *See* C.R.S. § 18-3-204(1)(a).
[103] *People v. Meier*, 954 P.2d 1068, 1069 (Colo. 1998).
[104] *People v. Van Buskirk*, 962 P.2d 975, 976 (Colo. 1998).
[105] *People v. Flores*, 871 P.2d 1182, 1182-83 (Colo. 1994).
[106] *People v. Primavera*, 904 P.2d 883, 884–85 (Colo. 1995).
[107] *People v. Hughes*, 966 P.2d 1055, 1055-56 (Colo. 1998).
[108] Colo. RPC 8.4 cmt. 2.
[109] *Id.*

are met: it is undisputed that Respondent was convicted of a misdemeanor for violating the protective order, and we find that his actions reflected poorly on his fitness to practice. It is possible that we would have found otherwise if Respondent's texts had been limited to an effort to keep Dildine from harming herself (a goal he also could have pursued simply by calling 9-1-1). But as noted above, in his texts he re-engaged in his pattern of emotional abuse by further shaming Dildine for working as an escort—possibly pushing her even closer to suicide. Set against the backdrop of his course of conduct over the preceding months, Respondent's violation of the protective order reflected not only an indifference to his legal obligations but also a failure to exercise even a modicum of good judgment, as well as an inability to recognize how his actions harmed another person. We also take into account Respondent's knowing mental state, the fact that his actions affected a victim, and the fact that he had engaged in other criminal conduct in his relationship with the victim, as discussed below.[110] And we observe that Respondent did not violate the protective order on just one occasion, but rather sent her fifteen texts three days apart, establishing a pattern of repeated offenses.[111]

As to the second charged basis of Claim II, we conclude that Respondent transgressed Colo. RPC 8.4(b) by physically assaulting Dildine on January 15, 2014.[112] The People assert that Respondent's assault violated C.R.S. section 18-3-204(1)(a), which provides that a person commits third-degree assault if the person "knowingly or recklessly causes bodily injury to another person."[113] Respondent's actions fit within this definition: we find that he acted with a reckless state of mind, at minimum, when he threw or pushed Dildine while grabbing her by the throat. He understood his capacity to harm her based on the prior injury he caused her and based on their sheer disparity in size. And Dildine's response to the events of January 15, including numerous subsequent text messages, convinces us that she suffered some bodily pain and injury, even if not severe enough to necessitate medical attention.[114] For disciplinary purposes, it is immaterial that Respondent

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[110] *In re Conduct of White*, 815 P.2d 1257, 1265 (Or. 1991) (holding that considerations in determining whether a criminal act violates RPC 8.4(b) "include the lawyer's mental state; the extent to which the act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct").

[111] *See* Colo. RPC 8.4 cmt. 2.

[112] For brevity's sake, we mention Claim II here and in the remainder of the opinion by reference simply to Colo. RPC 8.4(b), omitting reference to C.R.C.P. 251.5(b).

[113] We reject Respondent's assertion that Claim II is ambiguous because the People did not specify whether they were relying on the portion of C.R.S. section 18-3-204(1)(a) noted above or the portion providing that a person commits third-degree assault if "with criminal negligence the person causes bodily injury to another person by means of a deadly weapon." There were no allegations here concerning the presence of a weapon, and the complaint thus provided ample notice to Respondent that the People were relying on the other prong of the statute.

[114] *See* C.R.S. § 18-1-901(3)(c) (defining "bodily injury" to mean "physical pain, illness, or any impairment of physical or mental condition"); *People v. Lobato*, 187 Colo. 285, 288, 530 P.2d 493, 495 (1975) (upholding a conviction for third-degree assault involving an episode in which the defendant choked a woman with one hand while he was reaching through her car door, and holding that an "injury need not be of a crippling or otherwise incapacitating nature to be within the statutory prohibition").

was never charged with or convicted of a crime for this conduct.[115] Comments to Colo. RPC 8.4(b) and case law both make clear that crimes of violence, such as Respondent's assault of Dildine, should be answerable under Colo. RPC 8.4(b), and we thus find this claim to be proved by clear and convincing evidence.[116]

The People's final claim is that Respondent violated Colo. RPC 8.4(h), which states that it is professional misconduct for a lawyer to engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on the lawyer's fitness to practice law. The People contend that Respondent's course of conduct toward Dildine, including physically harming her, threatening her, stalking and intimidating her, and sending letters to her family and friends amounted to a violation of this rule.[117]

Colo. RPC 8.4(h) was enacted in 2008, and there is no Colorado Supreme Court case law interpreting this rule,[118] though as noted above some decisions have addressed the types of conduct that reflect adversely on a lawyer's fitness to practice law. We thus consider the People's Colo. RPC 8.4(h) claim simply by examining whether Respondent's conduct (1) directly, (2) intentionally, and (3) wrongfully (4) harmed Dildine (5) in a manner that adversely reflected on his fitness to practice.

To briefly review the facts most relevant to this claim, Respondent physically assaulted Dildine, he appeared unannounced at John Dildine's house in Tennessee while Dildine was helping her father recover from cancer surgery and after she had rebuffed Respondent's efforts to communicate for nearly two weeks, he threatened to expose her as a prostitute and to have her prosecuted, he encouraged her to kill herself despite knowing that she had suffered "nervous breakdowns," he informed her brother that she had referred to his wife as a "cunt," he called her names like "pathetic nasty whore," and he outed her as a prostitute to her close family members and to her professional acquaintances in a highly graphic fashion.

To logically assess the five prongs of Colo. RPC 8.4(h), we must first decide whether Respondent harmed Dildine and others. The evidence is irrefutable: Dildine suffered considerable injury—emotional, physical, and reputational—at Respondent's hands. She suffered bodily pain, her trust was betrayed by someone she had cared for, and she was identified as a prostitute to her family and acquaintances against her wishes. Without question, Respondent's pattern of behavior amounted to emotional harassment of Dildine.

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[115] *People v. Odom*, 941 P.2d 919, 921 (Colo. 1997).

[116] Colo. RPC 8.4(b) cmt. 2; *People v. Reaves*, 943 P.2d 460, 461 (Colo. 1997) (finding that an incident of domestic violence transgressed Colo. RPC 8.4(b); ABA *Annotated Model Rules of Professional Conduct* 612 (2011) ("Violent crimes are clearly among those covered by Rule 8.4(b).").

[117] The Hearing Board restricts our consideration of this claim to the types of conduct enumerated in the complaint.

[118] The prior version of Colo. RPC 8.4(h) provided that "[i]t is professional misconduct for a lawyer to . . . engage in *any other* conduct [*i.e.*, conduct not covered by the preceding subsections of Colo. RPC 8.4] that adversely reflects on the lawyer's fitness to practice law."

Her testimony, testimony of other witnesses, evidence that she became less close to friends and family, her decision to drop out of school, and her contemporaneous writings, among other things, indicate that she was devastated by Respondent's harassment.

We next consider whether this harm was direct, intentional, and wrongful. We find that Respondent did directly harm Dildine, since he assaulted her physically and sent her abusive and threatening communications, while the letters he sent her family and acquaintances directly resulted in emotional pain. We also conclude that he acted intentionally. Although Dr. Wahl testified that Respondent was subject to an episode of psychotic transference, Dr. Wahl never testified that this condition caused Respondent's misconduct. Rather, the ongoing, calculated nature of Respondent's letters and his premeditated visit to John Dildine's house, in particular, convince us that Respondent was aware of his actions and their likely result, and that he thus acted with intent. Indeed, he admitted in his own emails that he was acting in retribution: "I am not doing this to stop you from being a whore . . . . I am doing it because you have been so fucking mean to me with no reason and despite what I have done for you."[119] Likewise, we do not hesitate to conclude that Respondent's actions were wrongful. He physically harmed Dildine, threatened her, and shamed her, among other things.

Finally, we have already reviewed the legal authorities relevant to determining whether certain conduct adversely reflects on a lawyer's fitness to practice law. We conclude that Respondent's actions greatly harmed others, as described above. His pattern of behavior represented an ongoing abdication of judgment. Moreover, he tried to curry favor with Dildine after physically assaulting her by practicing law on her behalf: he contacted the Tennessee prosecutor using his law firm's telephone and email, he obtained a dismissal of her misdemeanor charge, and he sent her a letter confirming this result on official law firm stationery. In addition, he threatened to abuse the legal process by having Dildine prosecuted for criminal harassment if she contacted any of his family, friends, or colleagues. By doing so, he used the power imbalance inherent in their relationship and inherent in his possession of a law license to Dildine's disadvantage. Finally, he exhibited an ongoing and knowing pattern of harassment that grievously harmed a victim and that involved criminal conduct.[120] We therefore conclude that Respondent's conduct meets all five prongs of Colo. RPC 8.4(h).

Respondent advances a First Amendment defense to this charge, citing *In re Green*[121] for the proposition that an attorney may be disciplined for a statement only if the statement is proved to be a false statement of fact or a statement of opinion that necessarily implied an undisclosed false assertion of fact. *Green* involved charges that a lawyer violated Colo. RPC 8.4(d), (g), and (h) by accusing a judge of racism.[122] Framing its analysis in terms of

[119] Ex. S13.
[120] *See* Colo. RPC 8.4 cmt. 2; *In re White*, 815 P.2d at 1265.
[121] 11 P.3d 1078 (Colo. 2000).
[122] *Id.* at 1082-83.

when a lawyer may be disciplined for criticizing a judge, the Colorado Supreme Court noted that "if an attorney's activity or speech is protected by the First Amendment, disciplinary rules governing the legal profession cannot punish the attorney's conduct."[123] Because the "principal purpose of the First Amendment: safeguarding public discussion of governmental affairs" was implicated in *Green*, the Colorado Supreme Court applied the test for First Amendment protection in defamation cases set forth in *New York Times v. Sullivan*.[124] The *Green* court ultimately ruled that the lawyer could not be sanctioned for his criticism of the judge under the *New York Times* test because his speech did not "involve false statements of fact or represent statements of opinion necessarily implying undisclosed false assertions of fact."[125]

Green is inapposite for several reasons. First, the *Green* court confined its analysis to the narrow issue of when a lawyer may be disciplined for criticizing a judge. Next, Respondent inaccurately assumes that his communications with Dildine and with her family and acquaintances were otherwise protected by the First Amendment. But abusive or harmful communication may be punished in a variety of contexts, both criminal and disciplinary. For instance, a person may be found guilty of harassment "if, with intent to harass, annoy, or alarm another person, he or she . . . initiates communication with a person . . . by . . . text message [or] computer, . . . in a manner intended to harass . . . , or makes any comment . . . by telephone [or] computer . . . that is obscene."[126] And a person may be found guilty of stalking if the person knowingly "[r]epeatedly follows [or] contacts . . . another person [or] a member of that person's immediate family . . . in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress."[127] We view Respondent's conduct as falling within those parameters. Moreover, a lawyer's First Amendment protections may be subject to heightened limitations.[128] Finally, Respondent's defense lacks merit because our determination here is premised not only on his speech but also his physical conduct, including his physical assault of Dildine, his appearance at her father's house, and his decision to contact her in violation of the protective order.[129] We thus reject Respondent's First Amendment defense.

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[123] *Id*. at 1083.

[124] *Id*. at 1085 (*citing New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)).

[125] *Id*. at 1086.

[126] C.R.S. § 18-9-111(1)(e).

[127] C.R.S. § 18-3-602(1)(c). The statute provides that "a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress." *Id*.

[128] *See In re Foster*, 253 P.3d 1244, 1251–52 (Colo. 2011) (noting that the state may limit lawyers' First Amendment protections if the state has a compelling interest in regulating an aspect of lawyers' speech or conduct). The Rules of Professional Conduct in fact contain provisions that restrict lawyers' speech even if that speech is truthful. *See, e.g.*, Colo. RPC 4.2 (communication with a person represented by counsel) and Colo. RPC 7.3 (direct contact with prospective clients).

[129] We also reject Respondent's argument that the Hearing Board must choose between finding either a Colo. RPC 8.4(b) violation or a Colo. RPC 8.4(h) violation. This argument appears to be premised on the repealed version of Colo. RPC 8.4(h), which provided that "[i]t is professional misconduct for a lawyer to . . . engage in *any other* conduct that adversely reflects on the lawyer's fitness to practice law." The new version provides no

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[130] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[131] When imposing a sanction after a finding of lawyer misconduct, a hearing board must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: Respondent's violation of Colo. RPC 8.4(b) and 8.4(h) represented a dereliction of his duties owed to the public. His failure to observe Colo. RPC 3.4(c), meanwhile, transgressed an obligation he owed to the legal system.

Mental State: Respondent's guilty plea and the other evidence in this case establish that he knowingly violated the protective order.[132] As discussed above, we also conclude that he knowingly assaulted and harassed Dildine.

Injury: Respondent's failure to maintain his personal integrity damaged the public's trust in the legal profession. His violation of the protective order consumed the legal system's resources. And Respondent's own family has suffered as a result of his actions. But most significant here is the acute harm Respondent inflicted upon Dildine and her family.

The evidence makes clear that Dildine was in a vulnerable position, emotionally and otherwise. Her family lived elsewhere, she had only one close female friend, she was financially unstable, and she considered Respondent her "best friend in the whole world."[133] In addition, she said she previously had been diagnosed with depression and bipolar disorder. Respondent assaulted and harassed Dildine despite understanding her vulnerability—indeed, perhaps because he knew her vulnerability. His visit to Tennessee shook her deeply: according to John Dildine, Dildine started to tremble on seeing Respondent, and her trembling lasted the rest of the day. When asked how long it took for his daughter to recover from the shock of seeing Respondent there, John Dildine replied: "I don't know that she has recovered."

Dildine was still more devastated when Respondent sent letters to her family and classmates. She withdrew from the school for a period. Bishop-McClure testified that her

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textual support for such a defense. And the Hearing Board is not aware of any other legal basis for requiring the People to lodge a claim of misconduct under a single Rule of Professional Conduct.

[130] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

[131] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

[132] Ex. S52 at 00318 (indicating that the elements of the crime to which Respondent pleaded guilty included a knowing mental state).

[133] Ex. S51 at 03379.

friendship with Dildine tapered off, and Ward likewise testified that their previously close relationship grew more distant. In addition, Dildine indicated that her sister-in-law stopped speaking to her and that her brother would not let her see her nephews. The evidence indicates that this dealt a heavy blow to Dildine, who cared deeply for her nephews.[134]

The process of obtaining a protective order against Respondent was also emotionally taxing for Dildine. According to Ward, at the hearing for a permanent protective order Dildine was "physically shaken" and crying. Bishop-McClure likewise recalled that Dildine was "shaking," teary, and "very emotional." Dildine's testimony and the Hearing Board's own observations indicate that this disciplinary case has been similarly painful for her.

Dildine testified that she was diagnosed with PTSD related to the events of this case. Her testimony that she has suffered lasting effects from Respondent's conduct finds support in the accounts of Ward and Bishop-McClure, who said, among other things, that Dildine has become notably more guarded. Finally, we note that Respondent's threat to retain copies of photos, escort reviews, and escort profiles to send to Dildine's future employers or boyfriends still hangs over Dildine.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction for Respondent's violation of Colo. RPC 3.4(c) is ABA *Standard* 6.22, which provides that suspension is appropriate when a lawyer knowingly violates a court order, causing injury or potential injury to another party or interference or potential interference with a legal proceeding. The presumptive standard for Respondent's misconduct under Colo. RPC 8.4(b) and (h) is established by ABA *Standard* 5.12, which states that suspension is generally warranted when a lawyer knowingly engages in criminal conduct that does not contain the elements listed in ABA *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.[135] We believe that Respondent's physical assault and his pattern of harassment amounted to crimes under three separate statutes,[136] and case law makes plain that the infliction of bodily harm on another person does seriously adversely reflect on a lawyer's fitness to practice.[137] Where multiple charges of misconduct are proved, the ABA *Standards* counsel that "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct

[134] *See* Ex. S40 (email from Dildine to Respondent in December 2013, saying "my sole goal in life is to stay alive and be a productive member for my family, my dad, . . . and more principally for my nephews").

[135] The elements listed in *Standard* 5.11 include dishonesty, theft, sale of controlled substances, intentional killing, and other elements that do not apply here.

[136] *See* C.R.S. § 18-3-204(1)(a); C.R.S. § 18-9-111(1)(e); C.R.S. § 18-3-602(1)(c).

[137] *In re Hickox*, 57 P.3d 403, 405 (Colo. 2002). This is because lawyers who engage in violence undermine the legal system itself, which "requires respect, restraint, and resort to the legal process." *Iowa Supreme Court Attorney Disciplinary Bd. v. Deremiah*, 875 N.W.2d 728, 735 (Iowa 2016); *see also In re Grella*, 777 N.E.2d 167, 171 (Mass. 2002) ("[e]ngaging in violent conduct is antithetical to the privilege of practicing law"). Case law imposing disbarment for harassment (*see infra*) also implicitly indicates that such conduct seriously adversely reflects on an attorney's fitness to practice. *See, e.g., In re Keaton*, 29 N.E.3d 103, 111 (Ind. 2015).

among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct."[138]

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that may justify an increase in the degree of the sanction to be imposed, while mitigating factors may warrant a reduction in the severity of the sanction.[139] As explained below, we apply six factors in aggravation, two of which carry relatively little weight. We also apply five mitigating factors, three of which merit comparatively little weight.

Aggravating Factors

Dishonest or Selfish Motive – 9.22(b): We conclude that Respondent acted selfishly when he physically and emotionally abused Dildine. Through the use of violence, threats, and harassment, Respondent sought to exercise control over a person in a vulnerable position.[140] We categorically reject his assertion that he was in some fashion trying to aid Dildine by sending the letters to her family and classmates. If he had truly been trying to help her stop working as a prostitute he could have chosen a variety of less damaging routes. His true motivation, as reflected in the wording of his own emails, was to retaliate against Dildine for rejecting him.[141]

Pattern of Misconduct – 9.22(b): Respondent harassed Dildine over a period of months. We thus consider this factor in aggravation.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): Respondent repeatedly maintained that he wrote to Dildine's family and classmates to help Dildine, despite the overwhelming evidence that he was in fact trying to hurt her, as he stated at the time. At the disciplinary hearing, he recalled being in pain, being confused, and drinking during that period, seeming to deflect responsibility for his actions. Also, when asked whether as of March 30, eight days since Dildine had last responded to his texts or emails, there was an understanding that he would not be traveling to Tennessee with her, he responded: "I don't know if I'd say that." We thus apply this factor in aggravation, though we accord it relatively little weight because Respondent does acknowledge that some of his conduct was "misguided."

Vulnerability of Victim – 9.22(h): Respondent was twice Dildine's size, and he physically assaulted her in her home—a location where it was unlikely that anyone would come to her aid.[142] She also was emotionally vulnerable to threats by a romantic partner, as discussed above. And we note the significant power differential in their relationship:

[138] ABA *Annotated Standards for Imposing Lawyer Sanctions* xx (2015).
[139] *See* ABA *Standards* 9.21 & 9.31.
[140] *See, e.g., State v. Zurmiller*, 544 N.W.2d 139, 142 (N.D. 1996) (Levine, J., concurring) (noting that domestic violence is a means of exercising control over a partner).
[141] *See* Ex. S13.
[142] *People v. Brailsford*, 933 P.2d 592, 595 (Colo. 1997).

Respondent was a successful attorney, while Dildine was a prostitute whose source of income was dependent upon violating the law.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has practiced law since 1997. We find his lengthy tenure as a lawyer relevant to his violation of the temporary protective order. Lawyers are particularly well-equipped to understand the import and nuances of protective orders, as well as to appreciate the consequences of transgressing such orders. His extensive experience as an attorney has limited relevance to his physical and emotional abuse, however, since legal experience does not necessarily make such misconduct less likely.[143] We thus consider this factor in aggravation but accord it relatively little significance in our analysis.

Illegal Conduct – 9.22(k): Respondent's physical assault, harassment, and stalking could have been prosecuted as criminal offenses,[144] as discussed above, while his violation of the protective order led to a criminal conviction. This factor thus applies in aggravation.

Mitigating Factors

Absence of Prior Disciplinary Record – 9.32(a): We consider in mitigation the fact that Respondent has not been disciplined in the course of his legal career.

Personal or Emotional Problems – 9.32(c): Dr. Wahl testified that Respondent's relationship with Dildine triggered an episode of psychotic transference, in which Respondent was reminded of childhood sexual abuse. As noted above, we are not convinced that Respondent's memories of childhood abuse directly translated into his treatment of Dildine, nor are we convinced that Respondent's personal history adequately explains the vicious nature of his conduct. Meanwhile, other personal problems Respondent has experienced, such as strain in his marriage, appear to be the result—not a cause—of his misconduct, so they are not especially persuasive in this analysis.[145] We thus elect to apply relatively little weight in mitigation to this factor.

Timely Good Faith Effort to Make Restitution or Rectify Consequences of Misconduct – 9.32(d): Respondent urges us to apply this factor, apparently on the grounds that he completed probation in his criminal case. ABA *Standard* 9.4(a) states that forced or compelled restitution is neither aggravating nor mitigating, and we thus decline to consider Respondent's probation in mitigation under *Standard* 9.32(d).

Cooperative Attitude Toward Proceedings – 9.32(e): Respondent asks us to weigh this factor in mitigation. The People made no argument in opposition, and the procedural history

[143] *Hickox*, 57 P.3d at 407.
[144] *See* C.R.S. § 18-3-204(1)(a); C.R.S. § 18-9-111(1)(e); C.R.S. § 18-3-602(1)(c); *see also In re Depew*, 237 P.3d 24, 35 (Kan. 2010) (approving application of ABA *Standard* 9.22(k), even though the respondent was not charged with or convicted of criminal conduct); *In re Kamb*, 305 P.3d 1091, 1099 (Wash. 2013) (same).
[145] *See, e.g., In re Cimino*, 3 P.3d 398, 402 (Colo. 2000); *In re Hicks*, 214 P.3d 897, 904 (Wash. 2009).

of this case does not indicate any lack of cooperation on Respondent's part. We thus give him credit in mitigation under this standard.

Character or Reputation – 9.32(g): Craig May, a partner at Wheeler Trigg who worked with Respondent, testified that Respondent was a talented lawyer, was bright and diligent, and was highly knowledgeable about medical device and pharmaceutical law. According to May, Respondent had a very good reputation among his colleagues who worked in this practice area. May testified that he never saw Respondent experience any problems in his interactions with clients or staff. May also claimed that he was unfamiliar with the nature of Respondent's misconduct.

Although we do not doubt that Respondent was a skilled lawyer, we award him relatively little credit in mitigation for his previously good reputation in his practice area. His misconduct does not involve issues of professional competence. Rather, it involves physical and emotional abuse. The Colorado Supreme Court has found that a good reputation is of little importance in cases involving matters of domestic violence or sexual assaults, since such acts "commonly occur in secret and remain unknown to the public until the victim complains."[146]

Delay in Disciplinary Proceedings – 9.32(j): Respondent's counsel asserts we should apply this factor because Respondent has essentially not worked since losing his position at Wheeler Trigg, instead choosing not to take on clients because he did not know whether he would be able to continue to represent them. This argument is not persuasive, in part because we lack testimony from Respondent himself or other evidence about why he has not been working as a lawyer. The procedural history of this case also does not call for application of this factor. The People filed their complaint in February 2016, about a year after Respondent entered his guilty plea. Courts have generally applied this mitigating factor only where delays are significantly lengthier than any claimed delay here.[147]

Imposition of Other Penalties or Sanctions – 9.32(k): We consider that Respondent lost his job as a result of the facts underlying this case and was sentenced to twenty-four months of probation. But we assign relatively little weight to this factor, because his sentence was not particularly onerous and his conviction accounts only for his violation of the protective order, not the other misconduct in this case.

Remorse – 9.32(l): We do not believe that Respondent has demonstrated genuine contrition for his conduct. His and Dr. Wahl's testimony indicated that he feels some shame for his actions and that he regrets how his actions affected himself and his own family, but none of the testimony convinced us that he feels true remorse for how he harmed Dildine and her family.

[146] *People v. Musick*, 960 P.2d 89, 93 (Colo. 1998) (quotations omitted).
[147] ABA *Annotated Standards for Imposing Lawyer Sanctions* at 485-89 (collecting cases).

Analysis Under ABA *Standards* and Case Law

The Colorado Supreme Court has directed the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[148] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[149] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis. The Colorado Supreme Court has suggested that cases predating the 1999 revision to this state's disciplinary system carry less precedential weight than more recent cases.[150]

We consider three categories of case law here: (1) cases involving violations of Colo. RPC 3.4(c), (2) Colorado case law involving domestic violence, which is relevant both to Respondent's physical assault[151] and, to a somewhat lesser degree, to his emotional harassment, and (3) cases from other jurisdictions involving similar patterns of emotional harassment, because no Colorado case law exists concerning similar facts.

First, the Hearing Board is not aware of Colorado case law addressing Colo. RPC 3.4(c) claims for violating a protective order. Much of the case law concerning this rule pertains to attorneys' conduct while representing clients. The closest parallel we can find is to case law involving attorneys who failed to comply with child support orders in violation of Colo. RPC 3.4(c). Sanctions for such conduct have ranged from public censure[152] to short[153] or even lengthy suspensions.[154]

Turning to Colorado disciplinary case law addressing domestic violence, the seminal Colorado case is *In re Hickox*.[155] In that case, the Colorado Supreme Court commented:

> We have traditionally taken a serious view of misconduct by an attorney involving the infliction of bodily harm on another. In numerous recent decisions, we have considered similar conduct and found it sufficiently serious to warrant suspension. In each case, the length of the suspension depended

[148] *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).
[149] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[150] *Id.*
[151] Ex. S52; C.R.S. § 18-6-800.3(1) (defining "domestic violence" as "an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship").
[152] *People v. Primavera*, 904 P.2d 883, 885 (Colo. 1995). We have also identified one instance of a public censure being issued for an attorney's violation of a protective order on behalf of a client. *Matter of Koyste*, 111 A.3d 581, 590 (Del. 2015).
[153] *People v. Tucker*, 837 P.2d 1225, 1229 (Colo. 1992) (imposing fully served suspension of six months).
[154] *People v. Hanks*, 967 P.2d 144, 146 (Colo. 1998) (imposing fully served suspension of one year and one day).
[155] 57 P.3d 403.

on the seriousness of the assault and the aggravating and mitigating factors present.[156]

The respondent in *In re Hickox* caused his estranged wife injuries when he angrily turned her arm behind her back while escorting her up a staircase, causing her to stumble and fall.[157] He then failed to report his conviction to disciplinary authorities, believing that the victim's filing of a grievance relieved him of the duty to report.[158] The Colorado Supreme Court considered two aggravating factors and three mitigating factors as well as the comparatively moderate level of violence at issue, ultimately determining that the lawyer should serve a suspension of six months.[159]

The *Hickox* court cited several pre-1999 cases involving lawyers' violent conduct, which we briefly review here. In *People v. Musick*, a lawyer physically assaulted his girlfriend on three separate occasions, causing her pain but no serious injury; he also threatened to throw her out of a sixteenth-floor window and restrained her with a belt.[160] Taking into account three aggravators and three mitigators, one of which carried relatively little weight, the Colorado Supreme Court suspended the lawyer for one year and one day.[161] In *People v. Reaves*, a lawyer pleaded guilty to a misdemeanor harassment charge after engaging in a "pushing and shoving match" with his wife, and he pleaded guilty to a petty offense of disorderly conduct after throwing a drink at his wife, grabbing her, and engaging in another "pushing and shoving match."[162] He also was convicted of driving while ability impaired.[163] The Colorado Supreme Court approved the parties' stipulation to a six-month suspension based on consideration of one aggravating factor and at least four mitigators.[164] Last, in *People v. Shipman,* a lawyer pleaded guilty to driving while ability impaired and also to assault and battery of his wife.[165] The lawyer's wife stated that he threw her on the floor and attempted to strangle her, but the lawyer averred that he only "pushed her"; that factual discrepancy was not resolved in the disciplinary opinion.[166] The lawyer also failed to report his conviction to disciplinary authorities.[167] Taking into account two aggravators and six mitigators, the Colorado Supreme Court approved a stipulation to a six-month suspension.[168]

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[156] *Id*. at 405.
[157] *Id*. at 404.
[158] *Id*.
[159] *Id*. at 405-08.
[160] 960 P.2d at 90.
[161] *Id*. at 93.
[162] 943 P.2d 460, 461-62 (Colo. 1997).
[163] *Id*. at 461.
[164] *Id*. at 462.
[165] 943 P.2d 458, 459 (Colo. 1997).
[166] *Id*.
[167] *Id*.
[168] *Id*. at 460.

We note that in recent years other jurisdictions have tended to impose served suspensions for incidences of domestic violence.[169] Courts across the country are increasingly recognizing that acts of domestic violence are corrosive and that they reflect negatively upon a lawyer's fitness to practice.[170]

Last, we consider case law involving patterns of emotional abuse and harassment from other jurisdictions. Despite conducting a relatively exhaustive search, the Hearing Board has located just a handful of cases with comparable underlying facts, and all of these matters resulted in disbarment. The *Keaton* decision from Indiana concerns a married attorney who began an affair with his daughter's college roommate (coincidentally named J.D. in the record).[171] After J.D. ended their relationship three years later, Keaton sent her thousands of "threatening, abusive, and highly manipulative" emails and voicemails over the course of several years.[172] In some instances, Keaton threatened that if J.D. did not immediately respond, he would kill himself or disseminate explicit photos of her to family, friends, and others to prove she was a "slut" and mentally ill.[173] Ultimately, Keaton did carry out his threats to disseminate such pictures, both by emailing them to people J.D. knew and posting them on adult-oriented websites.[174] As of the date of his disciplinary hearing, Keaton continued to maintain a blog that named J.D. and included "disparaging diatribes . . . and explicit photographs of her."[175] Keaton also appeared unannounced at J.D.'s home and at the library of the law school she was attending.[176] The Indiana Supreme Court held that Keaton's stalking, harassment, and intimidation adversely reflected on his fitness to practice law.[177] Considering that conduct, along with Keaton's false statements to the disciplinary commission and communication-related rule violations in a client matter, the court disbarred Keaton.[178] In so doing, the court observed that Keaton had engaged in "a scorched earth campaign of revenge," reflecting "a fundamental betrayal of the trust that ha[d] been placed in him."[179]

In the *Shanbour* case, the Oklahoma Supreme Court disbarred a lawyer who waged a "relentless campaign to harass a former secretary" as well as her boyfriend and the boyfriend's eleven-year-old daughter.[180] Shanbour continued his action for nearly two

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[169] *See, e.g, Fla. Bar v. Schreiber*, 631 So. 2d 1081, 1081-82 (Fla. 1994); *Deremiah*, 875 N.W.2d at 730, 739; *In re Cardenas*, 60 So. 3d 609, 610, 614 (La. 2011); *Grella*, 777 N.E.2d at 173-74; *State ex rel. Okla. Bar Ass'n v. Zannotti*, 330 P.3d 11, 13, 17 (Okla. 2014).
[170] *See, e.g., Custody of Vaughn*, 664 N.E.2d 434, 437-38 (Mass. 1996); *Grella*, 777 N.E.2d at 171; *Matter of Principato*, 655 A.2d 920, 922 (N.J. 1995).
[171] 29 N.E.3d at 104.
[172] *Id.* at 104, 107.
[173] *Id*. at 105.
[174] *Id*.
[175] *Id*. at 106.
[176] *Id*.
[177] *Id*. at 109-11.
[178] *Id*.
[179] *Id*. at 110.
[180] *Okla. Bar Ass'n v. Shanbour*, 84 P.3d 107, 110-12 (Okla. 2003).

years.[181] He sent obscene images and writings containing some of "the most vile language imaginable" to his targets.[182] The materials "were, at a minimum, impliedly threatening and caused fear in one or more of the victims."[183] Shanbour was convicted of one count of stalking and nine counts of distribution or attempted distribution of obscene material.[184] Despite evidence that he had been suffering from depression or obsessive/compulsive disorder during his misconduct and that he since had been "cured," the Oklahoma Supreme Court concluded that disbarment was appropriate given that Shanbour "displayed a complete abdication of judgment, even though [he] knew the wrongfulness of his actions."[185]

The Nebraska Supreme Court's *Janousek* decision addressed the conduct of a lawyer over a three-month period toward a former romantic partner, whom he also had represented during their relationship.[186] After Janousek denied owing a debt to the victim and used racial slurs against her, she obtained a protective order, which he violated by "pounding and yelling" outside her home for forty-five minutes.[187] Janousek then sent a series of four threatening and degrading letters.[188] One letter, addressed to the black victim, purported to be from the "White Aryan Resistance"; the letter contained offensive sexual commentary, noted that the lock on her door was broken, and told her she was "being watched."[189] A second letter purported to be written to Janousek's former attorney by the victim; the threatening letter accused the attorney of being mentally ill.[190] The third letter, ostensibly written to the victim's own attorney by the victim, purported to terminate the attorney-client relationship.[191] The last letter purported to be a request by the victim to withdraw from her graduate program.[192] In addition, Janousek filed an apparently groundless legal claim against the victim, and he threatened that he could shoot her through her window as she slept at night.[193] Using its own framework for imposing attorney discipline rather than the ABA *Standards*, the Nebraska Supreme Court disbarred Janousek.[194]

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[181] *Id*. at 110-11.
[182] *Id*. at 111.
[183] *Id*.
[184] *Id*. at 108.
[185] *Id*. at 111-12.
[186] *State ex rel. Counsel for Discipline of Neb. Supreme Court v. Janousek*, 674 N.W.2d 464, 467-69 (Neb. 2004).
[187] *Id*. at 467-68.
[188] *Id*. at 468-69.
[189] *Id*. at 468.
[190] *Id*. at 469.
[191] *Id*.
[192] *Id*.
[193] *Id*. at 468-69.
[194] *Id*. at 472-73. Another somewhat comparable case in which disbarment was imposed concerned an attorney who sent "extremely hateful and vile" letters to a romantic partner "as their relationship deteriorated." *In re Frick*, 694 S.W.2d 473, 475, 481 (Mo. 1985). For example, one letter referred to "cheap and tawdry things [she had] done" and threatened her if she reported his actions to the bar. *Id*. In a series of "anonymous" letters to the victim, the lawyer criticized her sexual activity, used vulgarity, and sought to intimidate her into moving. *Id*. at 476. He also sent "anonymous" letters to third parties that contained "unfriendly and debasing comments"

On the whole, we consider the case law discussed above to be on a general par with the facts in the instant case but slightly more aggravated. The *Keaton* case is the most serious case because the conduct in that matter continued for several years and involved countless distinct episodes of harassment. It is somewhat difficult to compare our case with *Shanbour*, given the paucity of details in that opinion, but the presence of a child victim there serves to distinguish it somewhat. Last, although there was no campaign to destroy the victim's professional and personal reputation in *Janousek*, that case did involve a threat of deadly violence and racial slurs in addition to emotional harassment.

Returning to the framework set forth in the ABA *Standards*, we must consider the appropriate sanction for Respondent's three rule violations and then determine whether aggravating or mitigating factors call for adjustment of that sanction—an analysis that may be informed by relevant case law. Here, the majority of the Hearing Board finds as follows: ABA *Standard* 6.22 and case law support imposition of a short served or stayed suspension for Respondent's violation of Colo. RPC 3.4(c). Next, Respondent's physical assault in violation of Colo. RPC 8.4(b) merits a suspension under ABA *Standard* 5.12, and the *Hickox* line of case law indicates that such misconduct probably warrants a suspension in the neighborhood of six months. Finally, ABA *Standard* 5.12 indicates that a suspension should be imposed for Respondent's pattern of emotional harassment, and case law from other jurisdictions suggests that such misconduct warrants a suspension lasting two or three years. Taking these conclusions together, and considering that the aggravating factors here predominate somewhat over mitigators, the majority of the Hearing Board concludes that the appropriate sanction is a three-year suspension.

As a final note, all members of the Hearing Board strongly urge Respondent to immediately begin the process of rehabilitating himself from the conduct that brought him before this tribunal. To show his rehabilitation in a future petition for reinstatement, he should consider building a meaningful record of activities that help him to appreciate how violence and harassment affect women or vulnerable members of our society. Such activities might include volunteering at nonprofits, taking educational courses, or lecturing to community groups. It will be Respondent's own responsibility to identify what activities will best help him to recognize the effects of his misconduct in this case and to set him on a course to avoid any such actions in the future.

IV. CONCLUSION

Respondent transgressed his duties to the public and the legal system by committing a physical assault, violating a protective order, and, most egregiously, carrying out a

about the victim, including a letter mailed to a fraternity suggesting that the members call the victim if they wanted "a good time." *Id*. In addition, the lawyer committed a number of acts of vandalism against the victim, such as scratching the word "whore" into her car and painting her porch light red. *Id*. at 477. And last—a fact that distinguishes *Frick* from the instant case—the lawyer fired a gun in the direction of a security patrol when the patrol interrupted one of his acts of vandalism, resulting in a felony conviction. *Id*.

retributive campaign of emotional harassment against a vulnerable victim. By doing so, he failed to meet the standards expected of lawyers and betrayed the trust placed in him as a member of the bar. Because the profession cannot tolerate such behavior, we require him to serve a three-year suspension, after which he must demonstrate his rehabilitation and fitness as a lawyer before once again joining the roll of attorneys.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **SEAN GARDNER SAXON**, attorney registration number 36387, is **SUSPENDED FOR THREE YEARS**. The suspension will take effect upon issuance of an "Order and Notice of Suspension."[195]

2. 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. Within fourteen days of issuance of the "Order and Notice of Suspension," Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the PDJ setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.

4. If Respondent wishes to resume the practice of law after serving his suspension, he **MUST** file a petition for reinstatement under C.R.C.P. 251.29(c).

5. The parties **MUST** file any posthearing motion or application for stay pending appeal with the Hearing Board **on or before November 28, 2016**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a statement of costs **on or before November 21, 2016**. Any response thereto **MUST** be filed within seven days.

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

HEARING BOARD MEMBER PAUL J. WILLUMSTAD, *concurring in part and dissenting in part*:

I concur with the majority's factual findings and the majority's conclusion that Respondent violated Colo. RPC 3.4(c), Colo. RPC 8.4(b), and Colo. RPC 8.4(h). I believe, however, that the appropriate sanction here is suspension for two years, not three years. In my view, a three-year suspension is overly punitive. In arriving at that conclusion, I note that Respondent has no prior discipline, he has voluntarily ceased practicing law since he was terminated from his law firm, he is currently subject to a civil lawsuit for his misconduct, and his burden in seeking reinstatement will be heavy. Because disciplinary sanctions should be designed to provide an opportunity for rehabilitation rather than to punish an erring attorney, I believe a two-year suspension is the fitting sanction here.

DATED THIS 7th DAY OF NOVEMBER, 2016.

Original Signature on File
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File
PAUL J. WILLUMSTAD
HEARING BOARD MEMBER

Original Signature on File
DONALD F. CUTLER IV
HEARING BOARD MEMBER

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