***People v. Ted Taggart*. 16PDJ087. June 13, 2017.**

Following a sanctions hearing, the Presiding Disciplinary Judge suspended Ted Taggart (attorney registration number 37737) from the practice of law for two years. Taggart's suspension took effect on July 18, 2017.

In 2014, Taggart agreed to represent a couple with their individual bankruptcy filings. Although the clients signed a fee agreement and asked for a copy several times, Taggart never gave them a copy. Taggart also cashed his clients' $950.00 fee immediately upon receipt, spending the money on personal needs.

Taggart sent the couple a draft of the wife's Chapter 7 bankruptcy petition, but it contained many errors. He then failed to implement her revisions. Taggart delayed filing the petition and then neglected to send the bankruptcy trustee the required financial statements. As a result, the wife's bankruptcy case was dismissed. Taggart did not inform the couple that the case had been dismissed, and they were unable to reach him by telephone. The wife could not legally reopen her Chapter 7 bankruptcy case. Taggart promised to refile the petition and pay the additional filing fee. He again sent the wife a draft petition that contained several errors. Taggart also failed to realize that the couples' credit counseling course had expired.

In July 2015, the couple terminated Taggart's representation. The wife filed a second Chapter 7 petition pro se. The couple later discovered that Taggart had filed a third Chapter 7 petition on behalf of the wife, two weeks after he had been terminated. The couple was unable to reach Taggart because his telephone number was disconnected. The wife's credit report shows three bankruptcy filings as opposed to one, tarnishing her credit. Taggart failed to participate in this disciplinary proceeding.

Through his conduct described above, Taggart violated Colo. RPC 1.1 (a lawyer shall provide competent representation); Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Colo. RPC 1.4(a)(3) (a lawyer shall keep a client reasonably informed); Colo. RPC 1.4(a)(4) (a lawyer must promptly comply with reasonable requests for information); Colo. RPC 1.5(a) (a lawyer shall not collect an unreasonable fee); Colo. RPC 1.5(b) (a lawyer shall inform a client in writing about the lawyer's fees and expenses within a reasonable time after being retained, if the lawyer has not regularly represented the client); Colo. RPC 1.15(A)(a) (a lawyer shall hold client property separate from the lawyer's own property); Colo. RPC 1.15(D) (a lawyer shall maintain adequate records of funds received, an accounting of funds held in trust, and copies of all statements showing how the funds were used or earned); Colo. RPC 1.16(d) (a lawyer must protect a client's interests upon termination of the representation); and Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from disciplinary authorities).

Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** TED TAGGART	Case Number: **16PDJ087**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Ted Taggart ("Respondent") was hired to file a bankruptcy petition for a married couple. After filing the petition, he failed to submit the required financial documents, and the bankruptcy case was dismissed. He promised to refile the petition but he did not do so promptly, so the clients terminated his representation. He did not refund any of his fees. The clients filed a second bankruptcy petition pro se, yet later learned that Respondent had filed a third petition for them after he had been terminated. He then disregarded requests for information from the disciplinary authorities, and he defaulted in this proceeding. Respondent's conduct violated Colo. RPC 1.1, 1.3, 1.4(a)(3) and (a)(4), 1.5(a), 1.5(b), 1.15(A)(a), 1.15(D), 1.16(d), and 8.1(b), and it warrants a suspension for two years.

I. PROCEDURAL HISTORY

On December 20, 2016, Erin R. Kristofco of the Office of Attorney Regulation Counsel ("the People") filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero ("the Court"), and sent copies the same day to Respondent at his registered home and business addresses. Respondent failed to answer, and the Court granted the People's motion for default on February 14, 2017. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.[1]

On May 23, 2017, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Kristofco represented the People; Respondent did not appear. The People's exhibits 1-10 were admitted into evidence and the Court heard testimony from Cora Gipson.

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

II. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court adopts and incorporates by reference the averments in the admitted complaint, presented here in condensed form. Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on September 18, 2006, under attorney registration number 37737. He is thus subject to the Court's jurisdiction in this disciplinary proceeding.[2]

Cora Gipson and her husband met with Respondent at a Starbucks cafe on November 17 or 18, 2014, to discuss filing for bankruptcy. At the time, Gipson was sixty-six years old and the couples' finances were in dire straits. They paid Respondent $905.00 to file a Chapter 7 bankruptcy petition for them.[3] Gipson signed a fee agreement but never received a copy of the agreement from Respondent, even though she requested a copy on several occasions. Respondent cashed the check on receipt, using the funds for his personal needs before earning them. He did not maintain adequate records of the funds he received from the couple.

The couple told Respondent they wanted their bankruptcy filed promptly because of an upcoming court date.[4] Respondent told the couple not to worry about the court date or paying creditors. He advised the couple to file under Chapter 13 rather than Chapter 7. Gipson was concerned about filing under Chapter 13 because of her age and the uncertainty of the required monthly payment amount. Respondent decided to file a Chapter 7 petition for Gipson and a Chapter 13 petition for her husband. Gipson did not understand his reasoning. Respondent did not answer her questions about filing under Chapter 13.

When Respondent sent Gipson the draft of the Chapter 7 petition, it was riddled with errors, including misspelling Gipson's name, checking a box indicating that Gipson lacked a social security number, and misstating her salary. Gipson gave Respondent a list of corrections yet he failed to implement them.

Respondent did not file the bankruptcy petitions until April 7, 2015. Respondent told Gipson that the filing was delayed because he was "waiting for a good trustee" and that the current trustee was "terrible."[5] A meeting of creditors was set for May 5, 2015. Even though the couple twice sent Respondent their required bank statements, he did not send them to the trustee. As a result, Gipson's petition was dismissed on May 29, 2015.[6] Respondent did not tell Gipson that her petition had been dismissed.

On June 5, 2015, Gipson was notified by the court that her petition had been dismissed. Gipson called Respondent but received a recording that his voice mailbox was

[2] *See* C.R.C.P. 251.1(b).
[3] *See* Ex. 10.
[4] Gipson testified at the sanctions hearing that her car had been repossessed and the dealership was seeking the substantial balance owed on the vehicle in that case.
[5] Compl. ¶ 16.
[6] Ex. 3.

not activated. She then emailed Respondent and sent him a message through Facebook. Respondent did not respond.

Gipson called the court and was directed to file a letter with the judge. The couple wrote the letter but it was too late as a matter of law to reopen her Chapter 7 bankruptcy. Thereafter, Respondent emailed Gipson, stating that he would refile her Chapter 7 petition for no charge. He then sent her a new draft of the petition; again, it contained many errors. Respondent failed to answer Gipson's questions about the refiling.

Respondent again delayed the filing of the second petition, claiming that he was waiting for a "good trustee."[7] Gipson realized that the credit counseling course that she and her husband completed had expired, which would have resulted in the dismissal of the second petition had Respondent filed it.

On July 20, 2015, Gipson emailed Respondent and terminated his representation, effective immediately. She requested that Respondent pay any filing fees associated with her pro se Chapter 7 filing. On August 3, 2015, Gipson filed a Chapter 7 petition pro se, attended the meeting of creditors on August 28, 2015, and later received a discharge of her debts. Gipson herself paid the additional filing fee of $335.00.

Gipson later discovered that Respondent had filed a third Chapter 7 petition for her on August 7, 2015—two weeks after he had been terminated. Gipson was shocked to learn of this and immediately called Respondent. She received a recording that his number was no longer in service. Respondent never told Gipson he had filed another petition, nor did he give her his new address or phone number. Gipson's credit report shows three bankruptcies as opposed to one.

The People sent Respondent numerous letters during their investigation. He failed to respond to any correspondence or to participate in this disciplinary proceeding.

As established in the admitted complaint, Respondent violated ten rules through his conduct described above: (1) Colo. RPC 1.1, which requires a lawyer to provide competent representation; (2) Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client; (3) Colo. RPC 1.4(a)(3), which requires a lawyer to keep a client reasonably informed; (4) Colo. RPC 1.4(a)(4), which requires a lawyer to promptly comply with reasonable requests for information; (5) Colo. RPC 1.5(a), which provides that a lawyer shall not collect an unreasonable fee; (6) Colo. RPC 1.5(b), which requires a lawyer to provide a client with a written communication stating the basis or rate of the fee and expenses to be charged; (7) Colo. RPC 1.15(A)(a), which requires a lawyer to hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property; (8) Colo. RPC 1.15(D), which requires a lawyer to maintain adequate records of funds received, an accounting of funds held in trust, and copies of all statements showing how the funds were used or earned;

[7] Compl. ¶ 31.

(9) Colo. RPC 1.16(d), which requires a lawyer to protect a client's interests upon termination of the representation; and (10) Colo. RPC 8.1(b), which prohibits a lawyer from knowingly failing to respond to a lawful demand for information from disciplinary authorities.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[8] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[9] When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: By abandoning Gipson's Chapter 7 bankruptcy, Respondent violated his duty to his client. He also violated several obligations central to the lawyer-client relationship, including his duties of diligence, communication, and to return client property. The ABA *Standards* denominate Respondent's charging of an unreasonable fee and his refusal to cooperate in this matter as violations of his duty to the profession.

Mental State: The Court's order entering default establishes that Respondent knowingly violated Colo. RPC 8.1(b). The evidence strongly suggests that Respondent acted knowingly with respect to his other rule violations.

Injury: At the sanctions hearing, Gipson testified about how Respondent's conduct caused her harm. Gipson explained that Respondent's failure to act with diligence and his filing of a third bankruptcy petition after he had been terminated resulted in three bankruptcies, rather than just one, appearing on her credit report. As a result, she stated, her credit was tarnished and she was unable to qualify for a new apartment lease. She and her husband wanted to downsize from a two-bedroom apartment to a one-bedroom apartment to save money on rent, but they were unable to due to their credit report. Additionally, Gipson testified that she was engaged in payment negotiations with the Internal Revenue Service ("IRS") concerning the couple's tax debts. She explained that the IRS stopped negotiating with her after it discovered three bankruptcies on her credit history, and as a result, she was penalized in the amount of $3,000.00 in interest and penalties. Respondent's conduct also caused Gipson unnecessary stress and anxiety because he did not inform her about the status of her case and because she had discovered that Respondent had filed a third petition without her authorization.

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

ABA *Standards* 4.0-7.0 – Presumptive Sanction

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

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.[10] Three aggravating factors are present here. Respondent committed ten different rule violations, Gipson was a vulnerable victim,[11] and Respondent has substantial experience in the practice of law.[12] The Court is aware of but one mitigator: Respondent does not have a disciplinary record.[13]

Analysis Under ABA *Standards* and Colorado Case Law

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[14] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[15] Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The People request that Respondent be suspended for two years based on his misconduct in this matter. Cases involving serious neglect or abandonment of clients where client funds were not converted have typically yielded lengthy suspensions.

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

[11] The People ask for application of this aggravating factor due to Gipson's age and dire financial status. Given the abbreviated record before the Court in these default proceedings, the Court sees no reason to stray from the application of this factor in aggravation. The Court applies average weight to this factor.

[12] ABA *Standard* 9.22(d)-(e), (h)-(i). The People also request application of ABA *Standard* 9.22(c)—a pattern of misconduct—but the Court declines to find that Respondent's conduct while representing Gipson amounted to a pattern of misconduct. Rather, the Court finds that his conduct reflected lack of diligence, competence, and reasonable communication in a single case. *See In re Roose*, 69 P.3d at 49 (apparently giving no weight to the aggravating factors of a pattern of misconduct or multiple offenses where an attorney's misconduct "actually involved only two separate acts, arising from the same lack of understanding, and the same misguided perception of zealous advocacy, in the same case"). Although the People also request application of ABA *Standard* 9.22(e)—bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency—the Court finds that Respondent's failure to participate in this proceeding is addressed by the Colo. RPC 8.1(b) charge, and the Court has no evidence that he otherwise intentionally acted in bad faith.

[13] ABA *Standard* 9.32(a).

[14] *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).

[15] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

For instance, the Colorado Supreme Court approved a stipulation to discipline and suspended a lawyer for one year and one day in *People v. Regan*, finding that the lawyer had engaged in a pattern of neglect and misrepresentation in two client matters.[16] The Colorado Supreme Court took into account several mitigating factors, including lack of prior discipline, absence of a dishonest or selfish motive, and the presence of significant personal and emotional problems during the time the misconduct occurred; no aggravating factors applied.[17]

In *People v. Shock*, a lawyer was suspended for three years following a default where the attorney had no prior discipline but had effectively abandoned two clients.[18] Noting that the record did not establish serious injury or serious potential injury, the Colorado Supreme Court applied ABA *Standard* 4.42.[19] The Colorado Supreme Court also took into account five other aggravating factors, including dishonest or selfish motive, multiple offenses, a pattern of misconduct, and indifference to making restitution.[20] A three-year suspension was imposed in *People v. Odem*.[21] In that case, the lawyer neglected to keep one client informed about her Supplemental Security Income case and failed to convey to her an offer to increase child support, causing her to lose child support.[22] The lawyer also abandoned a second client, who faced concealed weapon charges; in addition, the lawyer collected an unreasonable fee and committed a conflict-of-interest violation in the same case.[23] The Colorado Supreme Court took into account eight aggravating factors and no mitigators in arriving at the three-year suspension.[24]

This case is somewhat distinguishable from the cases discussed above because Respondent did not mistreat more than one client. The Court also determines from the limited record before it that Respondent's conduct does not rise to the level of abandonment or cause serious injury or serious potential injury such to warrant disbarment. On the other hand, Respondent failed to perform legal services for one client, and that failure had significant consequences, including unnecessarily tarnishing Gipson's credit report with three bankruptcy filings. Respondent's misconduct, coupled with his disregard for these disciplinary proceeding, persuades the Court that the public cannot be protected unless Respondent is required to demonstrate his fitness to practice law before seeking to reinstate his law license. Thus, taking into account the presumptive sanction, the balance of aggravating and mitigating factors, and the relevant case law, the Court concludes suspension for two years is warranted here.

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[16] 831 P.2d 893, 895-96 (Colo. 1992).
[17] *Id*. at 896-97.
[18] 970 P.2d 966, 968-69 (Colo. 1999).
[19] Id. at 967.
[20] *Id*. at 968.
[21] 914 P.2d 342, 345 (Colo. 1996).
[22] *Id*. at 343.
[23] *Id*. at 344.
[24] *Id*. at 345.

IV. CONCLUSION

By neglecting his client's case, Respondent disregarded the most basic of his obligations as a lawyer. That misconduct is compounded by his failure to respond to disciplinary authorities and his default in this proceeding. His misconduct warrants suspension for two years.

V. ORDER

The Court therefore **ORDERS:**

1. **TED TAGGART**, attorney registration number **37737**, is **SUSPENDED FROM THE PRACTICE OF LAW FOR TWO YEARS**. The **SUSPENSION WILL** take effect only upon issuance of an "Order and Notice of Suspension."[25]

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

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

4. The parties **MUST** file any posthearing motions **on or before Tuesday, June 27, 2017.** Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Wednesday, July 5, 2017.** Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Tuesday, June 20, 2017**. Any response thereto **MUST** be filed within seven days.

DATED THIS 13th DAY OF JUNE, 2017.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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

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