***People v. Bill Condon*. 16PDJ050. December 23, 2016.**

Following a sanctions hearing, the Presiding Disciplinary Judge suspended Bill Condon (attorney registration number 11924) from the practice of law for nine months, with the requirement of formal reinstatement proceedings. Condon's suspension took effect on January 27, 2017. To be reinstated, Condon will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

Condon was convicted five times of driving under the influence ("DUI") or driving while ability impaired ("DWAI"). His most recent conviction took place in 2011. Through this conduct, Condon 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).

Condon reported none of these convictions to disciplinary authorities, as he was required to do. In addition, Condon failed to attend two hearings on behalf of a developmentally disabled client. When asked to submit to an interview with disciplinary authorities about this conduct, Condon failed to appear for three separate interviews, and he then defaulted in this disciplinary proceeding.

Condon's failure to appear at his client's hearings violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client). By failing to report his own convictions to disciplinary authorities, Condon violated Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal). His failure to submit to interviews similarly contravened Colo. RPC 3.4(c). Last, Condon's refusal to appear for interviews also violated Colo. RPC 8.1(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority)

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:** BILL CONDON	Case Number: **16PDJ050**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Bill Condon ("Respondent") was convicted five times of driving under the influence ("DUI") or driving while ability impaired ("DWAI"). His most recent conviction took place in 2011. He reported none of the convictions to disciplinary authorities, as he was required to do. In addition, Respondent failed to attend two hearings on behalf of a developmentally disabled client. When asked to submit to an interview about this conduct, Respondent failed to appear for three separate interviews, and he then defaulted in this disciplinary proceeding. His misconduct violated Colo. RPC 1.3, 3.4(c), 8.1(b), and 8.4(b), and it warrants a nine-month suspension with the requirement of formal reinstatement proceedings.

I. PROCEDURAL HISTORY

On June 17, 2016, Alan C. Obye of the Office of Attorney Regulation Counsel ("the People") filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero ("the Court"), and sent copies via certified mail the same day to Respondent at his registered business address of 1122 9th Street, Suite 203, Greeley, Colorado 80631. Respondent failed to answer, and the Court granted the People's motion for default on September 7, 2016. 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 December 21, 2016, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Obye represented the People; Respondent did not appear. The People's exhibits 1-2 were admitted into evidence.

[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 May 18, 1982, under attorney registration number 11924.[2] He is thus subject to the Court's jurisdiction in this disciplinary proceeding.[3]

DUI Matters

In March 2011, Respondent was involved in an automobile collision in Greeley. He was driving alone when he hit a traffic light pole. He left the scene of the collision and continued to drive. Police soon thereafter found Respondent at his home, intoxicated. At the time of his arrest, his blood alcohol content was .319. In June 2011, Respondent pleaded guilty to DUI in County Court for Weld County, case number 11T-001304. He was later sentenced to 365 days in jail, suspended; ninety days' work release, with credit for sixty days of inpatient treatment; and three years of probation. He did not report the conviction to the People.

Respondent had prior convictions of a similar nature, none of which he reported to the People. He was convicted of DWAI in Larimer County in 2004; he was convicted of DUI in Carbon, Wyoming in 2000; he was convicted of DUI in Weld County in 1983; and he was convicted of DUI in Denver in 1979.

Guardianship Matter

In 1995, Respondent was appointed as counsel for a disabled person, J.L., in Weld County District Court case number 1995MH56. That same year, the court granted a petition for imposition of legal disability and removal of legal right. J.L. was placed in a residential facility for developmentally disabled persons, and the court held semi-annual review hearings beginning in 1996 to ensure that J.L.'s living arrangement remained appropriate. Respondent regularly attended these hearings on J.L.'s behalf from 1996 through June 2014.

On December 19, 2014, Respondent failed to attend J.L.'s scheduled review hearing. He did not call the court to explain his absence. Respondent also failed to appear at the next review hearing on June 3, 2015. Again, he did not call the court to say why he neglected to attend. Because Respondent had failed to attend two consecutive hearings, the court removed him from his representation and appointed other counsel.

Failure to Cooperate

In January 2016, the People scheduled an interview with Respondent through his then-counsel. Respondent failed to attend the interview. He also failed to appear for a rescheduled interview in April 2016. The People then agreed with Respondent's counsel to

[2] Compl. ¶ 1.
[3] *See* C.R.C.P. 251.1(b).

interview Respondent by telephone in May 2016. On the day of the scheduled interview, Respondent's counsel informed the People that the interview would not take place, giving no explanation. Respondent's counsel withdrew from the representation later that month.

Rule Violations

As established in the admitted complaint, Respondent's convictions for DUI and DWAI violated Colo. RPC 8.4(b), which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. These convictions also implicate C.R.C.P. 251.5(b), which states that any criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer amounts to grounds for discipline.

By failing to report his DUI convictions to the People as required by C.R.C.P. 251.20(b), Respondent violated Colo. RPC 3.4(c). That rule provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal. Respondent's failure to submit to interviews with the People as required by C.R.C.P. 251.5(d) similarly contravened Colo. RPC 3.4(c). And Respondent's refusal to appear for interviews with the People also violated Colo. RPC 8.1(b), which states that a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

Last, by failing to appear for J.L.'s hearings and neglecting to explain his absence to the court, Respondent violated Colo. RPC 1.3, which provides that a lawyer shall act with reasonable diligence and promptness when representing a client.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[4] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[5] 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: Respondent's convictions for DUI and DWAI represent a dereliction of his duty to the public. He violated his duty to the legal profession by failing to report those convictions and by disregarding the People's requests for interviews. By failing to appear for hearings in the guardianship matter, Respondent violated duties he owed both to his client and to the tribunal.

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

Mental State: The Court's order entering default establishes that Respondent knowingly violated Colo. RPC 3.4(c) and 8.1(b). The admitted facts in the complaint establish a strong inference that he also violated Colo. RPC 1.3 and Colo. RPC 8.4(b) with a knowing state of mind. Because Respondent—for eighteen years—had consistently attended scheduled hearings for J.L. and then missed two hearings in a row, the Court is convinced that Respondent acted knowingly. In addition, Respondent's extensive pattern of DUI and DWAI convictions shows that he knowingly committed these criminal acts.

Injury: Respondent caused great potential harm to the public by driving while intoxicated on multiple occasions. His blood alcohol content of .319 at the time of his 2011 arrest indicates that the risk Respondent presented to the public was severe. Those convictions also caused injury to the reputation of the legal profession. By failing to report his convictions and failing to submit to interviews, Respondent impeded the People's efforts to carry out their regulatory duties. Finally, in the J.L. matter, Respondent harmed his client by definition when he neglected the representation, and because J.L. lacked the opportunity over the span of a year to change his living arrangement—an arrangement that might have become entirely inappropriate for J.L.'s needs—Respondent caused his client potentially serious harm. Respondent also harmed the court system in the J.L. matter by wasting judicial resources.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Two ABA *Standards* are on point here. First, ABA *Standard* 4.42 provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes the client injury or potential injury. Second, ABA *Standard* 5.12 calls for suspension when a lawyer knowingly engages in criminal conduct that does not contain the elements listed in ABA *Standard* 5.11 (including dishonesty) and that seriously adversely reflects on the lawyer's fitness to practice.[6]

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.[7] Three aggravating factors are present here: a pattern of misconduct, multiple offenses, the vulnerability of Respondent's client, and Respondent's substantial experience in the practice of law.[8] The Court is aware of two mitigators: Respondent lacks a prior disciplinary record and he faced other penalties and sanctions based on his DUI and DWAI convictions.[9]

[6] *See, e.g., People v. Van Buskirk*, 962 P.2d 975, 976 (Colo. 1998) (applying ABA *Standard* 5.12 to a case involving a lawyer's DUI conviction); *People v. Reaves*, 943 P.2d 460, 462 (Colo. 1997) (applying ABA *Standard* 5.12 to a case involving a lawyer's DWAI conviction).
[7] *See* ABA *Standards* 9.21 & 9.31.
[8] ABA *Standards* 9.22(b)-(c) &(h)- (i).
[9] ABA *Standard* 9.32(a) & (k).

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,[10] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[11] 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 Court is not aware of other cases with the same mix of misconduct present in this matter. In two Colorado Supreme Court cases, lawyers were suspended for six months after receiving convictions for driving under the influence of alcohol as well as convictions for violence toward their wives.[12] The presence of domestic violence in those cases, however, serves to substantially distinguish them from the instant case. However, in another case where the lawyer was convicted of DUI twice and of disturbing the peace once, the Colorado Supreme Court also issued a six-month suspension, and required the lawyer to formally petition for reinstatement.[13]

Turning to case law involving neglect of clients, public censures have been imposed for many such matters. For instance, the Colorado Supreme Court publicly censured a lawyer who failed to review the district attorney's file or a transcript of the preliminary hearing before the trial in his client's assault case.[14] Public censure was also issued for a lawyer who in one representation neglected his clients' matter and failed to promptly return documents to them and who in a second representation failed to submit settlement papers to his client and failed to otherwise assist his client.[15] The Colorado Supreme Court has imposed served suspensions for comparatively more serious instances of neglect, such as where a lawyer willfully failed to act on a client's divorce case for a year, leading to dismissal of the case.[16]

Considering the presumptive sanction of suspension, the fact that aggravating factors predominate over mitigators, and the case law discussed above, the Court concludes that suspension for nine months is the appropriate sanction. The Court is particularly troubled by the fact that Respondent has knowingly engaged in such a diverse range of misconduct and that his conduct seriously jeopardized both the public and his vulnerable client. His refusal to participate in any phase of the disciplinary process underscores the need for a substantial sanction. In addition, the Court is concerned about Respondent's capacity to again practice law without endangering the interests of his clients, the legal

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[10] *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).

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

[12] *People v. Shipman*, 943 P.2d 458, 460 (Colo. 1997); *Reaves*, 943 P.2d at 462.

[13] *People v. McGuire*, 935 P.2d 22, 24 (Colo. 1997).

[14] *People v. Bonner*, 927 P.2d 836, 837 (Colo. 1996).

[15] *People v. Berkley*, 858 P.2d 699, 701 (Colo. 1993).

[16] *People v. Flores*, 804 P.2d 192, 193-94 (Colo. 1991); *see also People v. Barber*, 799 P.2d 936, 941 (Colo. 1990).

system, and the public. The Court thus deems it necessary for Respondent to formally petition for reinstatement under C.R.C.P. 251.29(c) before returning to the practice of law.

IV. CONCLUSION

Through his varied misconduct, Respondent has betrayed the trust placed in him by his client, the legal system, the public, and the legal profession. He will be required to serve a nine-month suspension from the practice of law, and he then must petition for reinstatement—successfully demonstrating his rehabilitation, fitness to practice law, and compliance with disciplinary orders and rules—before once again joining the roll of Colorado lawyers.

V. ORDER

The Court therefore **ORDERS:**

1. **BILL CONDON**, attorney registration number **11924**, is **SUSPENDED FOR NINE MONTHS**. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[17] Should Respondent wish to be reinstated to the practice of law, he **MUST** petition for reinstatement under C.R.C.P. 251.29(c).

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

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

4. The parties **MUST** file any posthearing motion or application for stay pending appeal **on or before January 13, 2017.** Any response thereto **MUST** be filed within seven days.

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

[17] In general, an order and notice of disbarment 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.

DATED THIS 23rd DAY OF DECEMBER, 2016.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

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Christopher T. Ryan Colorado Supreme Court	Via Hand Delivery