

*People v. Eamick*. 06PDJ086. June 21, 2007. Attorney Regulation. Following a hearing, a Hearing Board publicly censured Respondent Dennis L. Eamick (Attorney Registration No. 34259) and ordered him to pay restitution, effective July 22, 2007. Respondent ordered a deposition transcript on behalf of his client and later refused to pay the court reporter for it while citing Colo. RPC 1.8(e). His misconduct constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 8.4(d) and (h).

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO,	Case Number: <b>06PDJ086</b>
<b>Respondent:</b> DENNIS L. EAMICK.	
<b>OPINION AND ORDER IMPOSING SANCTIONS          PURSUANT TO C.R.C.P. 251.19</b>	

On April 16, 2007, a Hearing Board composed of Sherry A. Caloia and Marna M. Lake, both members of the Bar, and William R. Lucero, the Presiding Disciplinary Judge (“the Court”), held a hearing pursuant to C.R.C.P. 251.18(d). Kim E. Ikeler and Lisa E. Frankel appeared on behalf of the Office of Attorney Regulation Counsel (“the People”) and Dennis L. Eamick (“Respondent”) appeared *pro se*. The Hearing Board issues the following Opinion and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19.

**I. ISSUE/SUMMARY**

Reprimand is appropriate when a lawyer *negligently* engages in conduct that violates a duty owed to the profession and causes injury. Respondent ordered a deposition transcript on behalf of a client and later refused to pay for it. The custom and practice in Colorado is that attorneys are responsible for the payment of transcripts they order in the absence of another agreement with the court reporter. Did Respondent violate Colo. RPC 8.4(d) or (h)?

The Hearing Board concludes that when Respondent ordered a deposition transcript on behalf of a client without disclosing that neither he nor his client would assume the responsibility for its preparation, he assumed responsibility for the costs. The Hearing Board rejects Respondent’s argument that the reporter should have protected herself by making inquires or otherwise obtaining a written agreement for payment in advance of completing the work. Respondent’s conduct was both prejudicial to the administration of justice and adversely reflects on his fitness to practice law. His conduct violated Colo. RPC

8.4(d) and (h) and warrants the imposition of a public censure with the condition that he pays restitution to the reporter in the amount of \$528.85.

**SANCTION IMPOSED: PUBLIC CENSURE WITH CONDITIONS**

## **II. PROCEDURAL HISTORY**

On October 25, 2006, the People filed a complaint in this matter. Respondent filed an answer on November 15, 2006. The parties chose not to file any dispositive motions, but they filed a joint “Stipulation of Facts” on March 30, 2007.

## **III. FINDINGS OF MATERIAL FACT**

The Hearing Board finds that the following facts have been established by clear and convincing evidence.

Respondent took and subscribed the oath of admission and gained admission to the Bar of the Colorado Supreme Court on October 29, 2002. He is registered upon the official records of the Colorado Supreme Court, Attorney Registration No. 34259, and is therefore subject to the jurisdiction of the Court. His registered business address is 3000 Highway 84, Unit D, Pagosa Springs, CO 81147.

### **Stipulated Facts**

1. In July 2005, Respondent engaged Sherry L. Rowe, doing business as Animas Reporting Service, to report depositions for Respondent. At the time he did so, Respondent did not tell Ms. Rowe that the client would be responsible for paying her fees and that he would not.
2. Respondent ordered copies of four of the depositions. Ms. Rowe transcribed the depositions and sent them to Respondent. Ms. Rowe sent Respondent a statement for \$528.85 for this work.
3. Respondent failed to pay Ms. Rowe for her services. Ms. Rowe sent Respondent a letter requesting payment. Respondent did not contest the amount of the bill. Respondent continued not to pay.
4. Ms. Rowe placed the matter with a collections bureau. Respondent disputed his obligation to pay for the services. Respondent contends that he is not obligated to pay for Ms. Rowe’s services; rather, only the client is obligated. Respondent has not paid the court reporter to date and does not have plans to do so.

5. Respondent contends that, during the events described in paragraphs 1 and 2 above, he was engaged as the attorney for and acting as a disclosed agent for his client.

### **Testimony of Sherry L. Rowe**

Sherry L. Rowe has worked as a certified court reporter for Animas Reporting in Durango, Colorado since 1986. Ms. Rowe previously served as a court reporter for Judge Knous and Judge Plank in the Denver District Court. She has transcribed and reported thousands of transcripts for attorneys over the past twenty years. In her experience, attorneys, rather than clients, typically pay for her court reporting services.

In May 2002, Respondent telephoned Ms. Rowe and requested that she prepare a deposition transcript for one of his cases. When Respondent ordered the transcript, neither he nor Ms. Rowe discussed who would pay the costs. Ms. Rowe completed the deposition transcript and sent it to Respondent with an invoice for \$528.85. The total cost included an appearance fee and a charge of \$3.95 per page for the transcription of 435 pages.<sup>1</sup>

Respondent thereafter refused to pay the invoice for Ms. Rowe's services and claimed that the responsibility belonged to his client. However, Respondent never advised Ms. Rowe about his belief that Colo. RPC 1.8(e) required his client to pay the deposition transcript costs. After sending him five monthly invoices, Ms. Rowe wrote to Respondent and told him that if he failed to pay the invoice, she would report him to the People.<sup>2</sup> Finally, Ms. Rowe turned her claim over to a collection agency.<sup>3</sup>

When the collection agency failed to collect the deposition transcript costs from Respondent, Ms. Rowe contacted Mr. Crane, her business lawyer and a mediator in Durango. Mr. Crane attempted to resolve the matter with Respondent, but was unsuccessful. Ms. Rowe decided against filing a lawsuit against him because of the costs and Respondent's threats to file a counter-lawsuit against her. Finally, Ms. Rowe reported Respondent's conduct to the People.<sup>4</sup> To date, Respondent refuses to pay Ms. Rowe for the deposition transcript costs.

### **Testimony of Jason Meadows**

Jason Meadows has been a court reporter for over thirty years. He presently owns Meadows Court Reporting in Larimer County. He has taken

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<sup>1</sup> See Exhibit 7.

<sup>2</sup> See Exhibit 11.

<sup>3</sup> See Exhibit 14.

<sup>4</sup> See Exhibit 19.

over five thousand depositions in his career. He has twice been elected president of the Colorado Court Reporter Association and has been a leader in that organization. Mr. Meadows has also participated in the Colorado Bar Association Interdisciplinary Committee as a court reporter.

Mr. Meadows testified that in his practice in Colorado and elsewhere, the custom and practice amongst attorneys and court reporters is that lawyers are ultimately responsible for the cost of any transcript they order in the absence of another agreement. After reading the depositions Ms. Rowe prepared, the complaint and answer in these proceedings, the correspondence between Ms. Rowe and Respondent, and the citations of law made by Respondent, it is Mr. Meadows' expert opinion that Respondent, based upon custom and practice in Colorado, was responsible for the costs of preparing the deposition transcripts.

### **Testimony of Respondent**

Respondent received his law license in October 2002 after attending night school and graduating in 1997. Before attending law school, he served in the United States Air Force. After leaving the service, Respondent worked as a defense contractor for two and a half years. In 2002, Respondent drew unemployment, and in 2003, he and his wife settled in Pagosa Springs. They divorced shortly thereafter. Respondent's current practice consists of divorce cases and other civil matters. His taxable income in 2006 was \$7,000.00.

In 2002, a Mrs. Heinrick was charged with cruelty to animals. Although Respondent was not her lawyer at that time, Respondent took an interest in the case and convinced Mrs. Heinrick to file a lawsuit against certain individuals who participated in an investigation, which resulted in a criminal prosecution and conviction of Mrs. Heinrick. Respondent agreed to represent Mrs. Heinrick in the proposed civil suit on a contingency basis because she did not have the money to pay for the litigation. As Respondent describes it, Mrs. Heinrick was "land rich but cash poor." Respondent testified that other than filing fees and \$450.00 Mrs. Heinrick paid Respondent in advance, he represented her *pro bono*.

Respondent's testified that he did not have a duty to disclose to Ms. Rowe the fact that his client did not have the money to pay for the deposition transcript. Likewise, he did not have a duty to tell Ms. Rowe that he would not pay for the deposition transcript. Respondent further argues that it was up to Ms. Rowe to protect herself and clarify who was going to pay for the deposition transcript. Finally, Respondent holds the People responsible for creating a legally unfounded expectation amongst court reporters that they should look to lawyers for payment under these circumstances.

## **IV. CONCLUSIONS OF LAW – SUBSTANTIVE ALLEGATIONS**

In Claim I, the People charged Respondent with violation of Colo. RPC 8.4(d), conduct prejudicial to the administration of justice and 8.4(h), conduct that adversely reflects on a lawyer's fitness to practice law.

The Hearing Board finds clear and convincing evidence that Respondent violated Colo. RPC 8.4(d) by ordering a transcript when he knew neither he nor his client could afford to pay for the same and without disclosing these facts to Ms. Rowe. Had Respondent made such a disclosure, Ms. Rowe would not have prepared the deposition transcript in the first instance.

Respondent's argument that he would have violated his duty of confidentiality to his client had he told Ms. Rowe that neither he nor his client could pay for her services is misplaced. Respondent had a duty to act honestly and openly with others, especially those so closely associated with the judicial process. More important, Respondent would not have had to disclose *confidential information* about his client's financial condition to Ms. Rowe when he ordered the deposition transcript. He could have told Ms. Rowe that he would not be responsible for the payment of costs or that she would have to look to Mrs. Heinrick for payment.

Respondent also argues that Colo. RPC 1.8(e) excuses him from paying the costs for transcript he ordered from Ms. Rowe. This rule states as follows:

While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the lawyer's client except expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses. A lawyer may forego reimbursement of some or all of the expenses of litigation if it is or becomes apparent that the client is unable to pay such expenses without suffering substantial financial interests.

Colo. RPC 1.8(e)

Though a lawyer *shall not guarantee financial assistance* for a client, he or she *may* advance the cost of obtaining evidence as long as the client is ultimately responsible. Here, Ms. Rowe relied on a well-established custom and practice when she prepared the deposition transcript at Respondent's request. Respondent's position that it was up to Ms. Rowe to make inquiries of him ignores this well-recognized practice. Most important, however, is Respondent's understanding that neither he nor his client could pay the costs of Ms. Rowe's labor when he ordered the deposition transcript.

Such conduct is prejudicial to the effective administration of justice and diminishes the ability of other attorneys to easily and economically obtain court reporter cooperation and assistance in obtaining transcripts. Respondent's interpretation of the ethical rules and belief that he acted properly does not excuse his conduct. See *In re Attorney D*, 57 P.3d 395, 400 (Colo. 2002).

The Hearing Board also finds that Respondent violated Colo. RPC 8.4(h) by clear and convincing evidence for the same reasons stated above. If Respondent cannot operate openly and fairly with a court reporter who provided a deposition transcript at his request, this does not bode well for him in other matters routinely encountered in the practice of law.

## **V. SANCTIONS**

The ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992) ("ABA Standards") and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct. *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003). In imposing a sanction after a finding of lawyer misconduct, the Hearing Board must first consider the duty breached, the mental state of the lawyer, the injury or potential injury caused, and the aggravating and mitigating evidence pursuant to ABA Standard 3.0.

### **A. Duties Breached**

Respondent breached his duty to the legal profession by failing to acknowledge any responsibility for the cost of the deposition transcript Ms. Rowe prepared for him. Respondent also failed to act openly and fairly when he dealt directly with Ms. Rowe and thereby breached his duty to the public. Citizens should be able to rely on the good faith and integrity of lawyers licensed to practice law in Colorado.

### **B. State of Mind**

Respondent acted knowingly when he ordered the deposition transcript. He also acted knowingly when he refused to pay Ms. Rowe for the cost of the deposition transcript. Respondent acted negligently in assessing his responsibility to pay the cost of the preparation of the deposition transcript. However, his mistaken belief that he has no responsibility does not excuse this ethical lapse.

### **C. Injury**

Respondent caused actual financial injury to Ms. Rowe in the amount of \$528.85 and potential injury to the good standing of lawyers who rely on the services provided by court reporters in this state.

**D. Aggravating and Mitigating Factors – ABA Standard 9.22 and 9.32**

***Dishonest or selfish conduct – 9.22(b)***

Respondent failed to disclose that neither he nor his client would be responsible for paying the costs for the deposition transcript. This was misleading given the fact that Respondent knew when he ordered the deposition transcript that neither he nor his client could or would likely pay the costs for the court reporter's services. Even if his actions were not intentionally misleading, they were selfish in that he was more concerned about his financial interests and not the predicament in which he placed Ms. Rowe.

***Refusal to acknowledge wrongful nature of conduct – 9.22(g)***

Respondent testified that he would not accept the custom and practice that the attorney pays for transcripts. The Hearing Board views this position as a failure to accept the wrongful nature of his conduct.

***Indifference to making restitution – 9.22(j)***

Based upon the evidence presented, the Hearing Board finds that Respondent not only failed to recognize the wrongful nature of his conduct, he also is indifferent to making the court reporter whole. Respondent testified that he could not pay the reporter even a small portion of the amount owed monthly until the debt is paid. Because Respondent so firmly believes in his legal and ethical analysis that he owes no nothing to the court reporter, he is indifferent to paying the same.

***Absence of a prior disciplinary record – 9.32(a)***

Respondent has no prior disciplinary record.

***Inexperience in the law – 9.32(f)***

At the time Respondent ordered the deposition transcript in question, he had practiced in Colorado less than three years.

**Analysis of ABA Standards and Case Law**

The ABA *Standards* suggest that the presumptive sanction for the misconduct evidenced by the facts and rule violations in this case is public

reprimand. *ABA Standard 7.3* states “reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public or the legal system.”

Respondent’s conduct warrants public discipline. Ordering a deposition transcript and refusing to pay for it under the circumstances demonstrated here shows a disregard for the integrity of the legal profession and its processes. This conduct was both prejudicial to the administration of justice and reflects adversely on his fitness to practice law. *See People v. Whitaker*, 814 P.2d 812 (Colo. 1991).

## **VI. CONCLUSION**

One of the primary goals of our disciplinary system is to protect the public from lawyers who pose a danger to it. The facts establish, *at a minimum*, a problem with Respondent’s ability to recognize his ethical responsibility to the legal profession and those who serve it. Upon consideration of the *ABA Standards* and Colorado Supreme Court case law, the Hearing Board concludes that Respondent should be publicly reprimanded and ordered to pay restitution to Ms. Rowe in the amount of \$528.85.

## **VII. ORDER**

The Hearing Board therefore **ORDERS**:

1. **DENNIS L. EAMICK**, Attorney Registration No. 34259, is hereby **PUBLICLY CENSURED** effective thirty-one (31) days from the date of this order.
2. **DENNIS L. EAMICK** shall pay restitution to Sherry L. Rowe in the amount of \$528.85.
3. **DENNIS L. EAMICK** shall pay the costs of these proceedings. The People shall submit a Statement of Costs within fifteen (15) days of the date of this order. Respondent shall have ten (10) days within which to respond.

