

People v. Garrow, No. 00PDJ068, 9.25.01. Attorney Regulation.

The Presiding Disciplinary Judge and Hearing Board suspended the Respondent, William F. Garrow, from the practice of law for a period of one year and one day. Respondent violated Colo. RPC 5.5(a), Colo. RPC 4.1(a) and Colo. RPC 8.4(c) by engaging in negotiations for a client in one matter and counseling a client in an arbitration matter while he was under administrative suspension. Respondent also failed to timely file an affidavit following his administrative suspension as required by C.R.C.P. 251.28(d). Respondent was ordered to pay the costs of the proceeding.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 600 17TH STREET, SUITE 510-S DENVER, CO 80202</p>	
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Respondent: WILLIAM F. GARROW.</p>	<p>Case Number: 00PDJ068</p>
<p>REPORT, DECISION AND IMPOSITION OF SANCTION</p>	

Opinion by Presiding Disciplinary Judge Roger L. Keithley and Hearing Board members, William R. Gray and Cynthia F. Covell both members of the bar.

SANCTION IMPOSED: ONE YEAR AND ONE DAY SUSPENSION

A sanctions hearing pursuant to C.R.C.P. 251.15 was held on September 19, 2001, before the Presiding Disciplinary Judge (“PDJ”) and two hearing board members, Cynthia F. Covell and William R. Gray, both members of the bar. Charles E. Mortimer, Jr., Assistant Attorney Regulation Counsel, represented the People of the State of Colorado (the “People”). William F. Garrow (“Garrow”), the respondent, did not appear either in person or by counsel.

The Second Amended Complaint (the “Complaint”) in this action was filed January 8, 2001. Garrow did not file an Answer to the Complaint. On March 19, 2001, the People filed a Motion for Default. Garrow did not respond. On May 14, 2001, the PDJ issued an Order granting default, stating that all factual allegations set forth in the Complaint were deemed admitted pursuant to C.R.C.P. 251.15(b), and all violations of The Rules of Professional Conduct (“Colo. RPC”) alleged in the Complaint were deemed established.

At the sanctions hearing, exhibit 1 was offered by the People and admitted into evidence. The PDJ and Hearing Board considered the People's argument, the facts established by the entry of default, the exhibit admitted, and made the following findings of fact which were established by clear and convincing evidence, and reached the following conclusions of law.

I. FINDINGS OF FACT

William F. Garrow has taken and subscribed to the oath of admission, was admitted to the bar of the Supreme Court on October 21, 1976 and is registered upon the official records of this court, registration number 07650. Garrow is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b).

On June 3, 1997, the Supreme Court of Colorado issued an order administratively suspending Garrow from the practice of law due to his failure to comply with C.R.C.P. 260 concerning mandatory legal education. The Order of Suspension was served upon Garrow in accordance with Colorado law. Following his administrative suspension, Garrow failed to submit an affidavit to the Colorado Supreme Court as required by CRCP 251.28(d) verifying that he had notified all clients and all opposing parties in litigation of his administrative suspension. Garrow failed to notify his clients of his administrative suspension.

On June 2, 2000, Garrow contacted an attorney in Denver, Colorado, and introduced himself as an attorney representing a Colorado resident with a gender harassment claim against the attorney's client. During the weeks following June 2, 2000, Garrow engaged in negotiations with opposing counsel to resolve his client's employment claim, and advanced his client's legal claims against opposing counsel's client. In a separate matter, Garrow counseled a client in Colorado concerning the client's legal rights regarding an arbitration matter.

II. CONCLUSIONS OF LAW

The Order entering default granted default as to the violations of The Rules of Professional Conduct ("Colo. RPC") set forth in the Complaint: claim one, Colo. RPC 5.5(a)(a lawyer shall not practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction), claim two, C.R.C.P. 251.28(d)(within ten days after the date of suspension, the attorney shall file with the Supreme Court an affidavit setting forth a list of all pending matters in which the attorney served as counsel), claim three, Colo. RPC 8.4(c)(engaging in conduct involving dishonesty, deceit, fraud or misrepresentation), claim four, Colo. RPC 4.1(a)(in the course of representing a client, a lawyer shall not knowingly make a false or misleading statement of fact or law to a third person).

Garrow's communications with opposing counsel in the one matter, and counseling a client with regard to an arbitration in another matter, while under administrative suspension, constituted the practice of law in the state of Colorado and constitutes a violation of Colo. RPC 5.5(a)(a lawyer shall not

practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction). Garrow's representation that he was an attorney representing a Colorado client concerning a matter that occurred in the State of Colorado necessarily includes a representation that he is licensed to practice law and to represent clients in the state of Colorado. Garrow's tacit representation to opposing counsel that he was an attorney licensed to practice law in the State of Colorado was false at the time it was made. Because Garrow had been properly served with a copy of the Order of Suspension, it may be inferred that he knew the representation that he was authorized to practice law was false. Garrow's knowingly false statement constitutes conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Colo. RPC 8.4(c)(engaging in conduct involving dishonesty, deceit, fraud or misrepresentation), and the making of a false or misleading statement of fact to a third person during the representation of a client, in violation of Colo. RPC 4.1(a)(in the course of representing a client, a lawyer shall not knowingly make a false or misleading statement of fact or law to a third person).

Garrow's failure to notify his clients of his administrative suspension and to file an affidavit with the Colorado Supreme Court verifying that he had notified all clients and all opposing parties of his administrative suspension constitutes a violation of CRCP 251.28(d)(within ten days after the date of suspension, the attorney shall file with the Supreme Court an affidavit setting forth a list of all pending matters in which the attorney served as counsel), constituting grounds for discipline pursuant to C.R.C.P. 251.5(c).

III. ANALYSIS OF SANCTION

The ABA *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") are the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct. ABA *Standard 7.0* provides: "[s]uspension is generally appropriate when a lawyer knowingly 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." ABA *Standards 6.22* provides: "[s]uspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding." In the present case, Garrow knew that he was under an administrative suspension at the time he engaged in negotiations with another attorney on his client's behalf, and counseled another client with regard to an arbitration. By practicing law while under administrative suspension, Garrow violated the Supreme Court's order suspending his license to practice law. Although Garrow's misconduct did not result in harm, no finding of harm is necessary to impose sanctions on an attorney who practices while under administrative suspension. See *People v. Clark*, 900 P.2d 129, 130 (Colo. 1995)(holding that in cases involving an

administrative suspension where no actual harm is shown, the court may impose a period of suspension rather than disbarment).

Colorado case law holds that a period of suspension is warranted for Garrow's misconduct. See *Clark*, 900 P.2d at 130 (attorney suspended for one year and one day for practicing law following an administrative suspension for failure to comply with mandatory CLE requirements); *People v. Kargol*, 854 P.2d 1267 (Colo. 1993)(attorney suspended for a year and a day due to his representation of many clients after he had been suspended for failure to comply with mandatory CLE requirements).

Determination of the appropriate sanction requires the PDJ and Hearing Board to consider aggravating and mitigating factors pursuant to ABA *Standards* 9.22 and 9.32 respectively. Since Garrow did not participate in these proceedings, no mitigating factors were established. In aggravation, Garrow had prior disciplinary offenses; he was suspended from the practice of law for a period of seven months following the termination of his administrative suspension in *People v. Garrow*, No. 00PDJ006 (Colo. PDJ July 30, 2001), 2001 Colo. Discipl. LEXIS 66, for failing to protect his client's interests upon termination and provide the client's file upon request, and for failing to cooperate with the Office of Attorney Regulation Counsel's investigation, see *id.* at 9.22(a). Additionally, Garrow had substantial experience in the practice of law, having been licensed in the State of Colorado in 1976, see *id.* at 9.22(i).

IV. ORDER

It is therefore ORDERED:

1. William F. Garrow, attorney registration number 07650 is suspended from the practice of law for a period of one year and one day. The suspension shall run concurrently with the seven month suspension imposed in *People v. Garrow*, No. 00PDJ006, which shall commence upon the termination of Garrow's administrative suspension.
2. If Garrow seeks reinstatement, in addition to establishing that he has fulfilled the requirements of C.R.C.P. 251.29, he must establish by clear and convincing evidence either (a) that he did not accept fees for the legal work he performed while under suspension, or (b) that any fees he received while under suspension were disgorged with interest prior to the filing of the Petition for Reinstatement.
3. Garrow is Ordered to pay the costs of these proceedings; the People shall submit a Statement of Costs within ten (10) days of the date of this Order. Respondent shall have five (5) days thereafter to submit a response thereto.

DATED THIS 25th DAY OF SEPTEMBER, 2001.

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

CYNTHIA F. COVELL
HEARING BOARD MEMBER

WILLIAM R. GRAY
HEARING BOARD MEMBER