

People v. Hemphill, No. 02PDJ054, 04.28.03. Attorney Regulation. The Hearing Board suspended Respondent, Danny R. Hemphill, attorney registration number 17833, for a period of one year and one day following a sanctions hearing in this default proceeding. The conduct giving rise to the proceeding involved two separate client matters. In the first matter, respondent failed to provide discovery to opposing counsel and failed to cooperate in the preparation of the case management order constituting neglect in violation of Colo. RPC 1.3. As a result of respondent's neglect, the suit was dismissed. Respondent failed to communicate with the client in violation of Colo. RPC 1.4(a) and failed to explain the matter to the client to permit the client to make informed decisions with regard to the representation in violation of Colo. RPC 1.4(b). In the second matter, respondent represented a client on a medical malpractice claim, and failed to file a proof of service resulting in the dismissal of the suit in violation of Colo. RPC 1.3, failed to communicate with the client in violation of Colo. RPC 1.4(a) and failed to adequately explain the matter to the client in order to enable the client to make informed decisions with regard to respondent's representation in violation of Colo. RPC 1.4(b). Respondent failed to return the client's file upon termination in violation of Colo. RPC 1.16(d). Respondent was ordered to pay the costs of the disciplinary proceeding.

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 600 17th Street, Suite 510-South Denver, Colorado 80202</p> <hr/> <p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: DANNY R. HEMPHILL</p>	<hr/> <p>Case Number: 02PDJ054</p>
<p>REPORT, DECISION AND IMPOSITION OF SANCTION</p>	

Opinion by the Presiding Disciplinary Judge Roger L. Keithley and Hearing Board Members Thomas J. Overton and Terry F. Rogers, both members of the bar.

SANCTION IMPOSED: ATTORNEY SUSPENDED FOR ONE YEAR AND ONE DAY

A sanctions hearing pursuant to C.R.C.P. 251.15 was held on January 13, 2003, before the Hearing Board consisting of the Presiding Disciplinary Judge ("PDJ") Roger L. Keithley and two hearing board members, Thomas J. Overton and Terry F. Rogers, both members of the bar. Terry Bernuth, Assistant Regulation Counsel, represented the People of the State of Colorado (the "People"). Danny R. Hemphill, the respondent ("Hemphill"), did not appear either in person or by counsel.

The People filed a Complaint in this matter on July 1, 2002. The Citation and Complaint were sent via regular and certified mail to Hemphill on the same date to four addresses, including Hemphill's registered home and business addresses. The People filed a Proof of Attempted Service on August 2, 2002, indicating that the Citation and Complaint were returned undeliverable. Hemphill failed to file an Answer or otherwise respond to the Complaint.

Upon the People's motion, by order dated October 17, 2002, the PDJ granted default as to the facts set forth in the Complaint, which were deemed admitted, and as to the violations of the claims set forth in the Complaint, which were deemed established, with the exception of the claim of abandonment, which was subsequently dismissed.

At the sanctions hearing, the People's exhibits 1, 2 and 3 were admitted into evidence. The Hearing Board considered the People's argument, the facts and violations established by the entry of default, the exhibits admitted, and made the following findings of fact which were established by clear and convincing evidence.

I. FINDINGS OF FACT

Danny R. Hemphill has taken and subscribed to the oath of admission, was admitted to the bar of the Supreme Court on Oct. 27, 1988 and is registered upon the official records of this court, attorney registration number 17833. Hemphill is subject to the jurisdiction of this court pursuant to C.R.C.P. 251.1(b).¹

All factual allegations set forth in the Complaint were deemed admitted by the entry of default, and are therefore established by clear and convincing evidence. See Complaint attached hereto as exhibit 1. The violations set forth in the Complaint were also deemed established by the entry of default.

¹ On November 8, 2002, Hemphill was administratively suspended from the practice of law in Colorado for failing to timely pay inactive Attorney Registration fees.

II. CONCLUSIONS OF LAW AND IMPOSITION OF SANCTION

The Complaint alleges three violations of the Colorado Rule of Professional Conduct (“Colo. RPC”) arising from two separate client matters: Colo. RPC 1.3 (neglect of a legal matter), Colo. RPC 1.4(a)(failing to keep the client reasonably informed and promptly comply with reasonable requests for information), Colo. RPC 1.4(b)(failing to adequately explain a matter to a client to permit the client to make an informed decision regarding the representation), and Colo. RPC 1.16(d)(upon termination of representation, taking steps to protect the client’s interest, including failing to return the client’s file).

In the first matter, Hemphill failed to provide discovery to opposing counsel and failed to cooperate in the preparation of the case management order constituting neglect in violation of Colo. RPC 1.3. As a result of Hemphill’s neglect, the suit was dismissed. Hemphill failed to communicate with the client in violation of Colo. RPC 1.4(a) and failed to explain the matter to the client to permit the client to make informed decisions with regard to the Hemphill’s representation in violation of Colo. RPC 1.4(b).

In the second matter, Hemphill represented a client on a medical malpractice claim. Hemphill failed to file a proof of service resulting in the dismissal of the suit in violation of Colo. RPC 1.3, failed to communicate with the client in violation of Colo. RPC 1.4(a) and failed to adequately explain the matter to the client in order to enable the client to make informed decisions with regard to Hemphill’s representation in violation of Colo. RPC 1.4(b). Hemphill failed to return the client’s file upon termination in violation of Colo. RPC 1.16(d).

The ABA *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) (“ABA *Standards*”) is the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct. ABA *Standard* 4.42(a) provides that suspension is generally appropriate when “a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.” In both matters giving rise to this proceeding, Hemphill caused serious injury to the clients: both clients’ claims were barred by the statute of limitations upon dismissal of their lawsuits due to Hemphill’s neglect.

Colorado case law also imposes a period of suspension for neglect of legal matters and failing to communicate with clients. See *People v. Paulson*, 930 P.2d 582 (Colo.1997)(attorney suspended for one year and one day for misconduct arising in a default proceeding where, among other rule violations, attorney neglected three client matters, failed to communicate in two matters, and failed to deliver funds or other property to the client and render a full accounting); *People v. Barr*, 818 P.2d 761, 763 (Colo.1991)(attorney suspended from the practice of law

for one year and one day for, among other rule violations, neglect of one client's matter and failure to promptly return property or funds to the client).

Pursuant to ABA *Standards* 9.22 and 9.32 respectively, aggravating and mitigating factors were considered in determining the appropriate sanction. Hemphill did not participate in these proceedings, and therefore no mitigating factors were established. The file indicates, however, that Hemphill has had no prior disciplinary history, a mitigating factor pursuant to 9.32(a). The facts deemed admitted in the Complaint established several aggravating factors pursuant to ABA *Standard* 9.22. Hemphill demonstrated a pattern of misconduct, *see id.* at 9.22(c); he engaged in multiple offenses, *see id.* at 9.22(d); and Hemphill had substantial experience in the practice of law, having been licensed in Colorado since 1988, *see id.* at 9.22(i). Given the mitigating and aggravating factors presented, a one year and one day suspension is warranted in this default proceeding.

III. ORDER

It is therefore ORDERED:

1. DANNY R. HEMPHILL, attorney registration number 17833 is SUSPENDED from the practice of law for a period of one year and a day effective thirty-one days from the date of this Order.
2. Hemphill is ordered to return Domoni Toler's file to her within thirty (30) days of the date of this Order.
3. Hemphill 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 28th DAY OF APRIL, 2003.

(SIGNED)

ROGER L. KEITHLEY
PRESIDING DISCIPLINARY JUDGE

(SIGNED)

THOMAS J. OVERTON
HEARING BOARD MEMBER

(SIGNED)

TERRY F. ROGERS
HEARING BOARD MEMBER

EXHIBIT 1

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 600 17th Street, Suite 510-South Denver, Colorado 80202</p> <hr/> <p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: DANNY R. HEMPHILL</p> <hr/> <p>TERRY BERNUTH, #13146 Assistant Regulation Counsel JOHN S. GLEASON, #15011 Regulation Counsel Attorneys for Complainant 600 17th Street, Suite 200-South Denver, Colorado 80202 Telephone: (303) 893-8121 ext. 313 Fax No.: (303) 893-5302</p>	<hr/> <p>Case Number: 02PDJ054</p>
<p>COMPLAINT</p>	

THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

Jurisdiction

1. The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on October 27, 1988, and is registered upon the official records of this court, registration no. 17833. He is subject to the jurisdiction of this court in these disciplinary proceedings. The respondent's registered business address is 325 5th Street, Suite 1, Las Animas, CO 81054. The respondent's registered home address is 7562 Crestview Drive, Longmont, CO 80501. The respondent's most recent known address is 603 Clarendon Drive, Longmont, CO 80501.

General Allegations

The Ragsdale Matter

2. On October 23, 1995, Wendy Martinez was seriously injured when her vehicle collided with Rolanda Moffett's vehicle.

3. Ms. Moffett was cited for failure to yield the right of way which resulted in the accident.

4. Ms. Martinez suffered serious injuries and was hospitalized. Her injuries interfered with her ability to work for a period of two years.

5. Ms. Martinez retained respondent within a few days of the accident. She executed a contingent fee agreement with respondent. An attorney-client relationship was formed.

6. Subsequent to retaining him, Ms. Martinez called respondent at his office telephone number many times. From the beginning, it was difficult for Ms. Martinez to get in touch with respondent. She left many messages for respondent to call her back. The respondent failed to respond to many of these messages. When she did speak to respondent, he repeatedly said he was having trouble locating Ms. Moffett who apparently was in the military at the time of the accident.

7. On September 28, 1998, nearly three years after she retained him, respondent filed a complaint in Adams County District Court, stylized as *Wendy Martinez, Plaintiff v. Rolanda Moffett, Defendant*, Case No. 98CV3176. The complaint alleged that the defendant Rolanda Moffett was negligent in operating the vehicle and that the negligence resulted in Ms. Martinez' injuries.

8. On December 8, 1998, the district court sent respondent a delay reduction order and noted that proof of service on the defendant had not been filed. The court ordered plaintiff to file proof of service within thirty days.

9. Subsequent to receiving the delay reduction order, the respondent timely filed motions for extension of time to serve the defendant. These motions were granted.

10. On August 29, 1999, the sheriff of Bexar County, Texas served Ms. Moffett in San Antonio. Respondent filed the return of service with the district court on August 31, 1999.

11. On September 20, 1999, an answer was filed on behalf of Ms. Moffett. Initial disclosures were filed on behalf of Ms. Moffett on October 18, 1999.

12. Respondent failed to file initial disclosures, which were due October 20, 1999, on behalf of plaintiff as required by the rules of civil procedure. Respondent failed to seek any extensions of time to comply with such requirement.

13. Despite multiple requests on the part of defense counsel, respondent failed to submit any disclosures and also failed to respond to a formal discovery request.

14. Respondent also failed to cooperate in preparation of a case management order.

15. On May 1, 2000, defense counsel for Ms. Moffett moved the district court for an order of dismissal for failure to prosecute, which was granted on June 19, 2000. Respondent failed to respond to defense counsel's motion.

16. Respondent had no contact with Ms. Martinez during the calendar year of 2000 or subsequent to that. Attempts she made to contact respondent were not successful. Ms. Martinez was not able to reach respondent despite the numerous messages she left. The respondent failed to respond to her calls.

17. Respondent failed to inform Ms. Martinez that her lawsuit had been dismissed by the court. She learned from the Office of Attorney Regulation Counsel that her case had been dismissed for failure to prosecute.

The Toler Matter

18. Domoni Toler was the alleged victim of a dentist's malpractice. She used that dentist for over twenty years before she discovered that he had not done satisfactory work on her teeth.

19. In 1999, Ms. Toler was experiencing significant pain and bleeding gums. As a result of the poor dental work, she lost permanent teeth and suffered extensive bone loss.

20. Ms. Toler has worked as a paralegal in a Canon City law firm since 1988. In 1990 and 1991, respondent worked at the same law firm. Ms. Toler and respondent stayed in touch even after respondent left the firm.

21. In August, 1999, Ms. Toler spoke to respondent about her dental malpractice case. Respondent offered to have an expert he knew in Illinois review her case. After Ms. Toler sent her x-rays to the expert for review, she had a discussion with respondent about her case.

22. Respondent told Ms. Toler that she had a viable claim and that he wanted to represent her. Ms. Toler was pleased and agreed to respondent representing her. No discussion of attorney's fees or a fee agreement took place. Nevertheless, an attorney-client relationship was formed.

23. Respondent informed Ms. Toler that due to the statute of limitations, her last day to file suit against the dentist was March 31, 2000.

24. After the initial discussions about her case, respondent did not initiate contact with Ms. Toler.

25. In January, 2000, Ms. Toler became increasingly anxious about the fact that she had not heard from respondent for quite some time. She sent respondent a letter conveying her anxiety about the impending statute of limitations. In February, 2000, respondent told Ms. Toler that he needed all the original documents regarding her case. Ms. Toler immediately provided those documents to respondent.

26. Ms. Toler was aware that a certificate of review must be filed. The dentist who was doing her corrective work offered to do a certificate of review for her but he needed a written request from an attorney.

26. Ms. Toler called respondent numerous times and sent him letters asking that he make a written request to the dentist. Respondent failed to respond to Ms. Toler's inquiries and never sent the request to the dentist for the certificate of review.

28. Ms. Toler finally asked one of the attorneys in the law firm in which she worked to make the written request.

29. In March, 2000, Ms. Toler wrote two letters to respondent expressing her anxiety over the statute of limitations. Respondent did not respond to those letters. Ms. Toler left a number of telephone messages in March, 2000 which were not returned by respondent.

30. At Ms. Toler's request, an attorney she worked with faxed a letter to respondent expressing his concern about the statute of

limitations. Ms. Toler faxed a letter to respondent on the same date. Respondent did not respond to either faxed letter.

31. On March 31, 2000 respondent faxed a complaint to Ms. Toler's work in Canon City with no correspondence. Ms. Toler arranged to have the complaint filed in Pueblo which was the proper venue.

32. Ms. Toler sent a file-stamped copy of the complaint to respondent. She asked respondent for a written fee agreement.

33. During April, May, and June of 2000, Ms. Toler left telephone messages and sent faxes to respondent requesting a status report. Respondent did not respond to her telephone messages or faxes.

34. Finally, on June 27, 2000, Ms. Toler reached respondent by telephone. Respondent told Ms. Toler he would contact the defendant to request settlement negotiations as she had requested that he do. Respondent made no attempts to contact the defendant.

35. On September 26, 2000, Ms. Toler was again able to speak on the telephone to respondent. He told her that he would return her files so she could find a new attorney. The respondent failed to do so and has not returned the client file as of the filing of this complaint.

36. In October, 2000, the district court sent a notice of dismissal to respondent since no proof of service had been filed. Respondent did not respond nor did he alert Ms. Toler in any way. On November 15, 2000, the court dismissed Ms. Toler's case.

37. Ms. Toler learned of the dismissal of her case when she called the district court.

Claim I

[A Lawyer Shall Act With Reasonable Diligence And Promptness In Representing A Client And Shall Not Neglect A Legal Matter Entrusted To That Lawyer-Colo. RPC 1.3]

38. Paragraphs 1 through 37 are incorporated herein as if fully set forth.

39. Colo. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client, and that a lawyer shall not neglect a legal matter entrusted to that lawyer.

40. The respondent failed to act with reasonable diligence and promptness and neglected both clients' legal matters in the following respects:

- a. by failing to prosecute the cases which resulted in their dismissals;
- b. by failing to provide disclosures and discovery in the Ragsdale matter; and
- c. by failing to cooperate in preparation of a case management order in the Ragsdale matter.

41. The respondent knew or should have known that his lack of diligence and promptness, and/or neglect continued to occur over a period of months and involved a pattern and practice of lack of diligence and promptness, and/or neglect in both cases.

42. The respondent's lack of diligence and promptness, and/or neglect caused serious or potentially serious injury to each client involving the dismissal of each client's legal matter.

43. The respondent's pattern and practice of failing to accomplish his professional tasks for each client constitutes abandonment of the professional responsibilities owed to each of these clients.

44. Each of these failures by the respondent constitutes a separate incident of lack of diligence and promptness, and/or neglect, as do all of them together

45. The foregoing conduct of the respondent establishes grounds for discipline as provided in C.R.C.P. 251.5, and violates Colo. RPC 1.3.

WHEREFORE, the complainant prays at the conclusion hereof.

Claim II

[A Lawyer Shall Keep A Client Reasonably Informed About The Status Of A Matter, Promptly Comply With Reasonable Requests For Information, And Explain A Matter To The Extent Reasonably Necessary To Permit The Client To Make Informed Decisions Regarding The Representation-Colo. RPC 1.4(a) and (b)]

46. Paragraphs 1 through 37 are incorporated herein as if fully set forth.

47. Colo. RPC 1.4(a) provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

48. This respondent failed to keep Ms. Martinez and Ms. Toler reasonably informed about the status of each legal matter and failed to comply promptly with reasonable requests for information in the following respects:

a. by failing to respond to numerous phone calls and/or phone messages in both the Ragsdale and Toler matters;

b. by failing to advise Ms. Martinez and Ms. Toler, and the possible legal effects of failing to do so;

c. by failing to inform Ms. Martinez and Ms. Toler of the status of their respective matters;

d. and by failing to maintain minimum communications with either client throughout the course of the representation.

49. Each of these failures to communicate adequately with the client constitutes a separate violation of Colo. RPC 1.4(a) as do all of them together.

50. The respondent knew or should have known that he had failed to communicate adequately with his clients over an extended period of months.

51. The respondent's pattern and practice of failing to communicate with both clients caused serious or potentially serious injury to each client.

52. The respondent's failure to communicate on these matters constitutes abandonment of the professional responsibilities owed to each client.

53. Colo. RPC 1.4(b) provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

54. The respondent failed to explain to either client the matter in which the client was involved to the extent reasonably necessary to permit the client to make informed decisions in the following respects:

a. by failing to explain sufficiently each client's legal rights and obligations in the district court proceedings, and explain the practical implications therein;

b. and by failing to inform each client fully and promptly of material developments in the matter to permit each client to make informed decisions regarding the representation.

55. Each of these failures to explain in each matter constitutes a separate violation of Colo. RPC 1.4(b) as do both of them together.

56. The respondent knew or should have known that he failed to adequately explain the legal matter to each client over an extended period of months.

57. The respondent's pattern and practice of failing to explain these legal matters to each client caused serious or potentially serious injury to the client.

58. The respondent's failure to adequately explain each client matter constitutes abandonment of the professional responsibilities owed to each client.

59. The foregoing conduct of the respondent establishes grounds for discipline as provided in C.R.C.P. 251.5, and violates Colo. RPC 1.4(a) and (b).

Claim III

**[Upon Termination Of Representation, A Lawyer Shall Take Steps To The Extent Reasonably Practicable To Protect A Client's Interests, Such As ...Surrendering Papers And Property To Which The Client Is Entitled-
Colo. RPC 1.16(d)]**

60. Paragraphs 18 through 37 are incorporated herein as if fully set forth.

61. Respondent's failure to return Ms. Toler's file, which contained original documents critical to the case, and his failure to give her notice of the court's intention to dismiss the case are separate violations of Colo. RPC 1.16(d).

62. The foregoing conduct of the respondent establishes grounds for discipline as provided in C.R.C.P. 251.5; and violates Colo. RPC 1.3, 1.4(a) and 1.16(d).

WHEREFORE, it is prayed that the respondent be found guilty of violations of various rules of conduct which establish grounds for discipline as provided in C.R.C.P. 251.5, and the Colorado Rules of Professional Conduct and that he be appropriately disciplined and assessed the costs of these proceedings.

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