People v. Olsen. 10PDJ030. December 29, 2010. Attorney Regulation. Following a hearing, a Hearing Board publicly censured Daniel E. Olsen (Attorney Registration No. 20934), effective January 29, 2011. Olsen demonstrated a lack of attention to detail and to administrative skills resulting in a failure to timely file a stipulation in a client's dissolution matter. The Hearing Board, however, could not find that Olsen had inadequately communicated with his client or prejudiced the administration of justice. His misconduct constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 1.3.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DANIEL E. OLSEN	Case Number: **10PDJ030**

AMENDED DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(b)

On November 9 and 10, 2010, a Hearing Board composed of E. Michael Canges and Mickey W. Smith, members of the Bar, and William R. Lucero, the Presiding Disciplinary Judge ("the PDJ"), held a two-day hearing pursuant to C.R.C.P. 251.18. April M. McMurrey appeared on behalf of the Office of Attorney Regulation Counsel ("the People"), and Daniel E. Olsen ("Respondent") appeared pro se. The Hearing Board now issues the following "Amended Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)."[1]

I. ISSUE AND SUMMARY

A lawyer has the duty under Colo. RPC 1.3 to represent clients with reasonable diligence and promptness. If a lawyer has demonstrated a lack of attention to detail and to administrative skills resulting in a failure to timely file a stipulation in a client's dissolution matter, has the lawyer violated Colo. RPC 1.3? The Hearing Board finds such a violation in this case. However, the Hearing Board does not find clear and convincing evidence supporting the People's claims that Respondent failed to adequately communicate with his client or that he prejudiced the administration of justice.

[1] This order replaces the existing "Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)" in this matter. Page 15 of that order directed Respondent to pay *half* of the costs of these disciplinary proceedings. On January 13, 2011, the People filed a "Motion for Amendment of 'Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19,'" in which they asked the Hearing Board to assess *all* of the costs of these proceedings against Respondent. Respondent did not respond to the People's motion. Accordingly, the Hearing Board grants the People's motion and issues this amended order, which assesses all of the costs of these proceedings against Respondent. This nunc pro tunc order is dated February 7, 2011.

Though we find that Respondent violated Colo. RPC 1.3, the evidence as a whole demonstrates Respondent is a well-intentioned and skilled advocate who served his client well in difficult circumstances. Further, it is undisputed that he often provides legal services to other vulnerable clients who might not otherwise have access to the courts. Nevertheless, Respondent's legal knowledge and skills are not at issue; his organizational skills are. Respondent admits he violated Colo. RPC 1.3 by failing to tend to basic organizational skills including minding his calendar and timely reading his mail.

In light of Respondent's significant experience in the practice of law and his prior disciplinary history for similar misconduct, but also taking into account several mitigating factors and the lack of actual or potential injury to his client, the Hearing Board determines that public censure is warranted.

II. PROCEDURAL HISTORY

On March 10, 2010, the People filed a complaint, alleging Respondent violated Colo. RPC 1.3, 1.4(a) and (b), and 8.4(d). Kallman S. Elinoff filed an answer on Respondent's behalf on April 14, 2010. The PDJ held an at-issue conference on April 29, 2010. Mr. Elinoff appeared on behalf of Respondent, and Ms. McMurrey appeared for the People. Mr. Elinoff subsequently withdrew as Respondent's counsel. The People filed a stipulation of facts on October 29, 2010. During the hearing on November 9 and 10, 2010, the Hearing Board heard testimony and considered the People's stipulated exhibits 1-16 and Respondent's exhibit A.

III. FINDINGS OF FACT AND RULE VIOLATIONS

The Hearing Board finds the following facts and rule violations have been established by clear and convincing evidence:

Jurisdiction

Respondent took the oath of admission and was admitted to the Bar of the Colorado Supreme Court on October 29, 1991. He is registered upon the official records, Attorney Registration No. 20934, and is thus subject to the jurisdiction of the Hearing Board in these disciplinary proceedings.[2] Respondent's registered business address is 104 W. Linden Drive, Suite C, Jefferson, Wisconsin, 53549.

Representation of Michelle Rodriguez

In 2002, Michelle Martinez (n/k/a Michelle Rodriguez) ("Rodriguez") hired Respondent to represent her in a dissolution matter in Jefferson County

[2] *See* C.R.C.P. 251.1(b).

District Court.[3] Respondent also agreed to assist Rodriguez in a related dependency and neglect case concerning allegations that Rodriguez's then-husband ("Martinez") and their son had abused one of their two daughters. Rodriguez paid Respondent $1,780.00 for his representation in the cases.[4]

In Rodriguez's dissolution matter, the court entered temporary orders requiring Martinez to pay child support and maintenance in 2003.[5] The court then entered permanent orders in September 2003, which required Martinez to pay Rodriguez $637.00 in child support and $1,400.00 in maintenance each month.[6] Martinez appealed those orders. Respondent did not enter an appearance in the appeal. He testified that, in consultation with Rodriguez, he determined the trial court had erred in the permanent orders and there was no valid basis for contesting the appeal.

On December 3, 2004, the Colorado Court of Appeals issued an opinion that stated in part:

> The portions of the permanent orders relating to child support and maintenance are vacated, and the case is remanded to the trial court for reconsideration of child support and maintenance and entry of additional findings consistent with this opinion. The current orders of child support and maintenance shall remain in effect pending further order of the court. The remainder of the judgment is affirmed.[7]

Respondent believed the court of appeals' opinion was ambiguous regarding whether the permanent or the temporary orders of child support and maintenance remained in effect. But Respondent interpreted the court of appeals' phrase "[t]he current orders of child support and maintenance shall remain in effect" to mean that Martinez was still required to pay child support and maintenance under one or the other set of orders pending further review in the district court.

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[3] The case was captioned *Michelle Martinez v. Michael Martinez*, No. 02DR3699 (Jefferson County District Court).

[4] Stipulation of facts. This figure includes a credit of $200.00 for a netbook Respondent accepted as partial payment of the bill. Respondent advised Rodriguez he had earned additional fees of $2,000.00 for work he performed in 2009, but he also told her she only need pay him what she believed she owed. Rodriguez did not pay Respondent any additional money.

[5] Respondent testified the temporary orders required Martinez to pay Rodriguez $1,400.00 in maintenance per month and a monthly amount "comparable" to the $637.00 monthly child support requirement that the district court imposed in its permanent order.

[6] Stipulation of facts.

[7] People's exhibit 1 at 7. The court of appeals' opinion held that the trial court erred in imputing income to Martinez because the court had not found Martinez was voluntarily unemployed. *Id.* at 3. In addition, the trial court failed to make statutorily required findings in its maintenance determination. *Id.* at 4.

According to Respondent, he discussed the opinion with Rodriguez in December 2004 and later provided her a copy of the opinion. Rodriguez told the district court in 2008 that Respondent had not done so,[8] however, and she testified similarly before the Hearing Board.

After the court of appeals issued its opinion, Martinez did not request that the district court reconsider the child support and maintenance orders, and the court did not do so on its own initiative. Since it was Martinez who had filed the appeal, Respondent did not believe Rodriguez had any obligation to request that the district court reconsider the orders. Moreover, Respondent thought doing so would be unwise; given that Rodriguez had subsequently begun working and that Martinez no longer had a full-time job, Respondent believed the district court would award Rodriguez less financial support upon reconsideration of the orders. According to Respondent, Rodriguez agreed with his recommendation.

In the dependency and neglect matter, the court entered an order approving the parties' stipulation regarding parenting time and decision-making in April 2005. Rodriguez was awarded sole decision-making authority and responsibility with respect to her two daughters.[9]

From mid-2005 until late 2008, Respondent and Rodriguez were not in contact.[10] In 2007, Respondent moved to Wisconsin, where he was licensed to practice law the following year. He continued to represent clients in Colorado, while also representing clients in Wisconsin.[11]

During this period, Rodriguez did not receive any child support or maintenance payments from Martinez, and Rodriguez often was unsure of his whereabouts. Evidence before the Hearing Board indicated that Martinez had lost his full-time job as a pre-press technician at the Rocky Mountain News in 2003, and that he had become addicted to methamphetamines.

In September 2008, after learning that Martinez was being held in jail, Rodriguez decided to file a motion for contempt against Martinez in hopes of recovering some of the money he owed her.[12] Rodriguez did not consult with Respondent before filing her motion. At a hearing on October 27, 2008,

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[8] People's exhibit 14.

[9] Rodriguez's son was emancipated in September 2005.

[10] Respondent testified that Rodriguez did not ask him to take any further action on her matters during this period. Rodriguez testified that she made one unsuccessful attempt to reach Respondent at his former office in 2008 but made no further attempts to contact him. According to Respondent, he had maintained the same cell phone number and mailing address during that period.

[11] Respondent testified that, with the aid of a family member who works for an airline, he regularly flies back to Colorado to meet with and appear on behalf of clients.

[12] People's exhibit 2.

Rodriguez appeared pro se but Martinez failed to appear. Magistrate John Livingston issued a warrant for his arrest and set bond. In his remarks, Magistrate Livingston interpreted the court of appeals' opinion to mean there was no child support order in place for Rodriguez, or at least that there were questions as to whether such an order was in place.[13] The court set a hearing for November 13, 2008, to further consider the issues of child support and maintenance.

At the hearing on November 13, 2008, the court appointed Jennifer Melton ("Melton") to serve as Martinez's lawyer and continued the hearing. Melton saw Respondent's name on a pleading and contacted him regarding the case. Respondent then contacted Rodriguez and appeared by telephone on her behalf at Martinez's bond modification hearing on December 15, 2008. The court modified bond and re-set the hearing on Rodriguez's contempt motion to January 12, 2009.

Respondent advised Rodriguez that, in light of Magistrate Livingston's interpretation of the court of appeals' opinion, her motion for contempt was unlikely to succeed. Respondent further advised her that it would be unwise to proceed with that effort because she would have to pay Martinez's legal fees if he prevailed. Respondent then discussed his intention to withdraw the motion for contempt with Melton and Magistrate Livingston's clerk. The clerk informed Respondent he would need to file a motion to withdraw Rodriguez's motion before the scheduled hearing on January 12, 2009. Respondent filed his motion approximately two hours before the scheduled hearing.[14] Respondent, believing he had satisfied the clerk's directions, did not appear in court that day. Melton testified that she had understood Respondent would move to withdraw the contempt motion, so she did not arrange for her client to appear; while she was in the courthouse for other reasons, however, she looked into Magistrate Livingston's courtroom and confirmed the hearing was not going forward.

Three days later, Magistrate Livingston granted Respondent's motion in writing.[15] The fourth page of the court's order directed Respondent to set a hearing on the child support and maintenance issues within ten days, by January 25, 2009.[16] Respondent testified that the third page was blank and that he did not notice the fourth page. As a result, he did not set the matter for a hearing within ten days.[17]

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[13] People's exhibit 14 at 9 - 12.
[14] People's exhibit 5.
[15] People's exhibit 6.
[16] Stipulation of facts.
[17] *Id.*

On February 9, 2009, Respondent was at the courthouse for another matter. Magistrate Livingston's clerk spotted Respondent and they discussed scheduling the hearing on the child support and maintenance orders. The clerk cleared March 23, 2009, as a potential hearing date with Respondent, and Respondent said he would try to clear that date with Martinez and set the matter if the date cleared.[18] Respondent testified that he mailed a letter to Martinez, drove to his residence, and called his former attorney, but was unable to contact him.

Because he had been unable to clear the hearing date with Martinez, Respondent did not file a notice of hearing for March 23, 2009, nor did the court issue such a notice. Respondent checked the register of actions and did not see a hearing scheduled for March 23, 2009; he also spoke to a clerk in the court's domestic division, who told Respondent that no hearing was set.[19] Accordingly, believing that a hearing had not been set, Respondent did not appear in court on March 23, 2009. Instead, Respondent filed a notice that day in which he stated he would contact the court on April 7, 2009, to schedule the hearing.[20] When Respondent failed to appear on March 23, 2009, Magistrate Livingston issued an order setting the matter for a hearing on April 30, 2009.[21] In his order, Magistrate Livingston also noted that Rodriguez had previously testified she was unaware of the court of appeals' opinion and that he was reporting Respondent to the Office of Attorney Regulation Counsel.[22]

The matter was transferred to District Court Judge Randall Arp, who scheduled a hearing for August 27, 2009. Respondent left Rodriguez approximately three messages concerning the hearing, but she did not return the calls. Respondent asked his private investigator to deliver Rodriguez a letter on August 24, 2009, informing her of the imminent hearing. Rodriguez attended the hearing, and she agreed to reimburse Respondent for the $80.00 he had paid his private investigator.

At the hearing, the court ordered Respondent to prepare and submit a written stipulation for permanent orders by September 28, 2009.[23] Respondent did not timely submit the stipulation. On October 5, 2009, the court issued an order to show cause, directing Respondent to appear on October 22, 2009, unless he submitted the order.[24] Two days later, before Respondent had seen the order to show cause, the Office of Attorney

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[18] *Id.* Testimony by Magistrate Livingston's clerk regarding this conversation differs somewhat from the version of events in the stipulation of facts.

[19] It is unclear why Respondent did not ask Magistrate Livingston's clerk whether a hearing was set.

[20] People's exhibit 7.

[21] People's exhibit 9.

[22] *Id.*

[23] People's exhibit 10.

[24] People's exhibit 11.

Regulation Counsel contacted him. Respondent then completed the stipulation for permanent orders in consultation with Rodriguez and filed it on October 20, 2009.[25] The court approved the orders with effect retroactive to August 27, 2009. Respondent has not provided a copy of the final orders to Rodriguez, though he did give her a copy of the stipulation he filed with the court containing the final orders.

Colo. RPC 1.3

Colo. RPC 1.3 requires lawyers to "act with reasonable diligence and promptness in representing a client." The People allege that Respondent violated Colo. RPC 1.3 by failing to give to or discuss with Rodriguez the court of appeals' opinion, by failing to appear in court on January 12, 2009, and March 23, 2009, and by failing to file the stipulation for permanent orders by September 28, 2009.

The Hearing Board cannot find clear and convincing evidence that Respondent lacked diligence or promptness with respect to the court of appeals' opinion. That opinion clearly states that child support and maintenance orders remained in effect. Reopening the orders probably would have worked to Rodriguez's detriment, so it was a reasonable exercise of professional judgment for Respondent to not request that the district court reconsider the orders.[26]

Respondent and Rodriguez provided conflicting testimony as to whether Respondent gave Rodriguez a copy of the court of appeals' decision or discussed that decision with her. The Hearing Board ascribes no dishonest intent to Rodriguez, but we find that Rodriguez does not correctly remember a number of events and circumstances during the lengthy and stressful legal proceedings affecting her family. For example, Rodriguez testified before us that Martinez was employed on a full-time basis during a period when the court of appeals and district court found he was employed on an on-call basis.[27] As another example, Rodriguez categorically denied that Respondent ever discussed with her the provisions of the stipulation for permanent orders; however, upon more detailed questioning, Rodriguez admitted that she did remember discussing nearly every provision in the stipulation with Respondent.[28]

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[25] Stipulation of facts.

[26] The People argue that this decision harmed Rodriguez because the final orders entered in 2009 abated Martinez's obligation to pay interest on retroactive child support arrearages, while the entry of final orders at an earlier date might have resulted in less abatement of interest. The Hearing Board disagrees with the People's analysis on this point, and finds that Respondent exercised good professional judgment in focusing upon the likely consequences of Rodriguez's and Martinez's changed circumstances.

[27] People's exhibits 1 and 16.

[28] The record contains considerable additional evidence of Rodriguez's confusion regarding the facts surrounding the dissolution and dependency and neglect matters. For instance,

By contrast, the Hearing Board finds Respondent's testimony to be credible. Respondent demonstrated a strong recollection of relevant facts, and we find no inconsistencies in Respondent's testimony that would impugn his truthfulness. Accordingly, we credit Respondent's testimony that he discussed the court of appeals' opinion with Rodriguez in December 2004.[29] We therefore find Respondent met the strictures of Colo. RPC 1.3 with respect to communicating with Rodriguez about the appeal.

Turning to Respondent's failure to set Rodriguez's matter for a hearing within ten days of the court's order of January 15, 2009, we find that Respondent exhibited some lack of attention to detail. However, Respondent's inaction appears to be at least partly justified by the blank third page of the court's order, and Respondent's inaction caused negligible consequences for his client. Although it is a close question, we find that Respondent's failure to set the hearing does not rise to the level of a rule violation.

We do find, however, that Respondent acted in violation of Colo. RPC 1.3 by failing to comply with the district court's order that he prepare a stipulation for permanent orders by September 28, 2009. Indeed, Respondent admits that this was an instance of misconduct. He explains that his legal assistant was supposed to have placed this deadline on a "tickler system" but did not do so. Respondent rightfully takes responsibility for missing the deadline. A failure to meet this deadline, standing alone, might not be sufficient to constitute a rule violation. However, when viewed in the context of Respondent's earlier lack of attention to detail in other matters in this case, the Hearing Board finds that Respondent violated Colo. RPC 1.3 when he failed to timely file the stipulation for permanent orders.

In broadly assessing Respondent's compliance with Colo. RPC 1.3, we give weight to Rodriguez's testimony that she felt Respondent had been "there" for her. The Hearing Board finds that Respondent is knowledgeable about the area of law in which he practices, and he appears to have provided high-quality

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Rodriguez testified before the district court that Martinez was an editor at the Rocky Mountain News. Exhibit 14 at 8. According to the court of appeals' opinion and Martinez's father, however, Martinez was a pre-press technician. As another example, when asked at the hearing where she was living in March 2005, Rodriguez had no recollection of her residence. Rodriguez also maintained that she never knew of Martinez's appeal, but Martinez's mother and father both testified about specific conversations they had with Rodriguez in which they discussed the appeal. As a final example, she testified that Martinez's parental rights had been terminated, but the district court's order allocating parental responsibilities merely denied Martinez parenting time. People's exhibit 13.

[29] In making this determination, we note Rodriguez said at least once during the hearing that she simply "did not recall" any conversations with Respondent about the court of appeals' opinion. We also note that it was in 2008—approximately four years after the relevant timeframe—that Rodriguez told the district court that Respondent had not informed her of the court of appeals' opinion.

legal assistance to Rodriguez. Therefore, while we find that Respondent violated Colo. RPC 1.3 by not timely filing the stipulation for permanent orders, we also find that Respondent generally met his duty to represent Rodriguez with diligence and promptness.

At the same time, we note that—as he admitted—Respondent should have been somewhat more organized and meticulous in representing Rodriguez. Respondent notes that his former firm in Wisconsin provided him no administrative support for his Colorado case load. Respondent now has his own law firm, he maintains a tickler system to alert him to deadlines, and he conducts weekly meetings with assistants regarding his schedule. The Hearing Board is encouraged by such measures, and we urge Respondent to strictly follow these practices.

Colo. RPC 1.4(a) and (b)

Colo. RPC 1.4(a) and (b) require lawyers to, among other things, keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information from a client, and explain a matter sufficiently to permit the client to make informed decisions regarding the representation.[30] The People argue that Respondent failed to communicate adequately with Rodriguez over a period of many months. In addition, the People allege that Respondent failed to sufficiently explain the court of appeals' opinion to Rodriguez and to inform her of "material developments" in her case.

We do not agree that Respondent failed to communicate adequately with Rodriguez. Rodriguez's testimony that Respondent did not inform her about the appeal is controverted by Respondent's testimony. As discussed above, we find Respondent's testimony regarding events that occurred during Rodriguez's legal proceedings to be more credible.

Respondent admits he did not give Rodriguez a copy of the district court's final orders, though he did give her a copy of the stipulation he filed with the court. At the hearing, the People argued that Respondent's failure to give Rodriguez a copy of the final order was misconduct. But Respondent and Rodriguez testified that they thoroughly discussed the contents of the order, and the evidence indicates that the court approved the stipulation as provided by Respondent.[31] While we find that it is generally good practice for lawyers to promptly give clients copies of final orders or opinions, we do not find a rule violation in the circumstances presented here.

Accordingly, we find that Respondent adequately communicated with Rodriguez and that Respondent did not violate Colo. RPC 1.4(a) or (b).

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[30] The 2008 amendments to Colo. RPC 1.4 did not affect the portions of the rule cited here.

[31] At the hearing, the People cited Exhibit 16, which is the stipulation Respondent filed with the district court, as evidence of the provisions included in the final order.

Colo. RPC 8.4(d)

Colo. RPC 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. This interdiction encompasses conduct such as failure to appear for a hearing in a criminal case against the attorney,[32] failure to pay ordered costs of a disciplinary proceeding or to explain such failure,[33] continuing to practice law after having been suspended from the practice of law,[34] employing delaying tactics in litigation,[35] failing to file briefs in an appeal resulting in a client serving time in jail,[36] and abandoning a proceeding in contravention of a court's direct order.[37]

The People allege that Respondent prejudiced the administration of justice by failing to appear in court on January 12, 2009, by failing to set Rodriguez's matter for a hearing within ten days of the court's order of January 15, 2009, and by failing to appear in court on March 23, 2009.

With respect to Respondent's last-minute filing on January 12, 2009, Respondent properly admits that it was not the "best practice" to delay so long in filing the motion. We agree, but we also find it likely that the court could have used the spare time for other productive purposes notwithstanding the late notice. In addition, the court clerk testified that filing such a motion just a day or two before a hearing is acceptable and that there is no court policy regarding the timing for such filings. Accordingly, while it would have been more courteous and professional for Respondent to have filed his motion earlier, we find that Respondent's last-minute filing does not rise to the level of conduct prejudicial to the administration of justice.

Nor do we find that Respondent's failure to schedule a hearing within ten days of the court's order of January 15, 2009, is serious enough to constitute a violation of Colo. RPC 8.4(d). According to Respondent's testimony, the third page of the court's order was blank, and he did not see the fourth page, which directed him to set the matter for a hearing within ten days. While it would have been better practice for Respondent to have reviewed the order more closely, Respondent's mistake did not prejudice the administration of justice.

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[32] *People v. Myers*, 969 P.2d 701, 702 (Colo. 1998).
[33] *In re Bauder*, 980 P.2d 507, 508 (Colo. 1999).
[34] *In re Hugen*, 973 P.2d 1267, 1269 (Colo. 1999).
[35] *In re Tolley*, 975 P.2d 1115, 1118 (Colo. 1999).
[36] *In re Bobbitt*, 980 P.2d 538, 539 (Colo. 1999).
[37] *In re Roose*, 69 P.3d 43, 46 (Colo. 2003). Courts typically do not find that attorney conduct is prejudicial to the administration of justice unless the conduct has caused significant harm to the judicial system or to public confidence in that system. *See, e.g., Attorney Grievance Comm'n of Md. v. Reinhardt*, 892 A.2d 533, 540 (Md. 2006); *In re Mason*, 736 A.2d 1019, 1023 (D.C. 1999); *In re Smith*, 848 P.2d 612, 614 (Or. 1993).

Finally, we do not find that Respondent's failure to appear in court on March 23, 2009, prejudiced the administration of justice. As discussed in greater detail above, Respondent conscientiously attempted to clear that date with Martinez, Respondent's review of the register of actions showed that no hearing was scheduled for March 23, 2009, and Respondent appears to have had a good faith, reasonable belief that no hearing was set for that day.

While we urge Respondent to be more attentive to scheduling matters in the future, we find that Respondent did not violate Colo. RPC 8.4(d) with respect to the conduct addressed here.

IV. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law govern the selection and imposition of sanctions for lawyer misconduct. ABA *Standard* 3.0 mandates that, in selecting the appropriate sanction, the Hearing Board consider the duty breached, the injury or potential injury caused, Respondent's mental state, and the aggravating and mitigating evidence.

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

Duty: Respondent's failure to timely file a stipulation for permanent orders in violation of Colo. RPC 1.3 constitutes a dereliction of his duty to Rodriguez, his client.

Injury: Respondent's tardy filing of the stipulation does not appear to have caused any notable injury or potential injury to Rodriguez. In some instances, such as the filing of a complaint outside the statute of limitations, a late filing can prejudice a client. Here, by contrast, Respondent's late filing did not prejudice Rodriguez. The district court accepted the stipulation and entered the permanent orders with effect retroactive to August 27, 2009. In addition, as Martinez has failed to pay Rodriguez any child support or maintenance since the dissolution of their marriage, we cannot find that Respondent's late filing in any way deprived Rodriguez of child support or maintenance payments during this period. Moreover, it is difficult to perceive any potential injury to Rodriguez, since it seems quite unlikely that the district court would have penalized her for this type of a late filing. Although Respondent's late filing forced the court to issue an order to show cause, we find this injury to the court system to be negligible.

Mental State: Given Respondent's uncontroverted testimony that his legal assistant failed to place the deadline for filing the stipulation into a tickler system, we have no basis to find Respondent knowingly failed to file the stipulation by the deadline. We find Respondent's late filing was negligent.

ABA *Standard* 3.0 – Aggravating Factors

Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. The Hearing Board considers evidence of the following aggravating circumstances in deciding the appropriate sanction.

Prior Disciplinary Offenses – 9.22(a): In 2008, Respondent was suspended for a period of six months, with thirty days served and the remainder stayed during a two-year period of probation. The conduct underlying that suspension involved neglect of a client matter, inadequate communication with a client, failure to communicate the basis or rate of a fee, failure to hold client property separate from the attorney's property and to render an accounting, and failure to take appropriate steps to safeguard a client's interests upon termination of representation. That misconduct—particularly Respondent's failure to set a hearing and to promptly file a petition on behalf of a client—is similar to the misconduct at issue here.

Substantial Experience in the Practice of Law – 9.22(i): As Respondent has been a member of the Colorado bar since 1991, he has substantial experience in the practice of law.

ABA *Standard* 3.0 – Mitigating Factors

Mitigating factors are any considerations or factors that may justify a reduction in the degree of discipline imposed. The Hearing Board considers evidence of the following mitigating circumstances in deciding the appropriate sanction.

Absence of a Dishonest or Selfish Motive – 9.32(b): Respondent testified that he represented Rodriguez through a referral by the Women in Crisis shelter, and that he has accepted other referrals of domestic violence victims from that organization. Respondent received just $1,780.00 in payment for representing Rodriguez in two matters over the course of several years. The Hearing Board finds that Respondent's provision of low-cost legal services to a vulnerable client, coupled with the negligent nature of his mistake, evidences the lack of a selfish motive. We note, however, that providing low-cost representation does not absolve a lawyer of the duty to represent a client with diligence and promptness, as required by Colo. RPC 1.3.

Full and Free Disclosure to Disciplinary Board or Cooperative Attitude toward Proceedings – 9.32(e): The People concede that Respondent has consistently cooperated with their office throughout this proceeding. The Hearing Board also was impressed with Respondent's willingness to admit that he engaged in misconduct by not timely filing the stipulation and his willingness to accede to discipline.

Character or Reputation – 9.32(g): As noted above, Respondent provided low-cost legal services to a vulnerable client, without pressing her to pay him more than she could afford. In representing Rodriguez, Respondent often exceeded professional norms, for instance, by going to Rodriguez's home to discuss filings with her. The Hearing Board finds this to be evidence of good character.

Sanctions Analysis under ABA *Standards* and Case Law

In determining the appropriate sanction for Respondent's misconduct, we must balance two countervailing issues. On the one hand, the only conduct we have found to violate the Rules of Professional Conduct is Respondent's late filing of the stipulation for permanent orders. While Respondent's tardy filing amounts to a rule violation, we venture to guess that most practicing lawyers have missed at least one such deadline in the course of their careers. Moreover, this misconduct caused Rodriguez no harm. On the other hand, Respondent has engaged in similar rule violations in the past; his prior suspension was imposed for misconduct that included failure to set a hearing and failure to promptly file a petition on behalf of a client.

ABA *Standard* 4.44 provides that a private censure is generally appropriate when a lawyer negligently fails to represent a client with reasonable diligence but causes little or no actual or potential injury to the client. By contrast, ABA *Standard* 4.43 provides that public censure is typically appropriate when a lawyer's negligent failure to diligently represent a client does cause injury or potential injury to the client. Given that we find little or no actual or potential injury to Rodriguez, ABA *Standard* 4.44 seems at first blush to be more applicable to the misconduct here.

The ABA *Standards* also provide, however, that when a lawyer previously has been sanctioned for similar misconduct, a more stringent sanction should be imposed upon a repeat occurrence.[38] We have some reservations about applying ABA *Standards* 8.2 and 8.3, which provide for suspension and public censure, respectively, when a lawyer engages in repeat acts of misconduct and causes injury or potential injury.[39] Here, as noted above, we see little harm or potential for harm caused by Respondent's tardy filing. However, we must not disregard ABA *Standard* 8.4, which provides that a private censure is not generally appropriate when a lawyer has engaged in the same or similar misconduct in the past.

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[38] *See* ABA *Standard* 8.0.

[39] ABA *Standard* 8.2 states: "Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession." ABA *Standard* 8.3 states: "Reprimand is generally appropriate when a lawyer . . . has received an admonition for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession."

Colorado case law indicates that, were it not for Respondent's prior discipline, a sanction of private censure—at most—would be appropriate for the misconduct at issue here. Public censure is typically reserved for more severe cases of neglect that cause serious consequences for clients. For instance, public censure was imposed in *People v. Hockley* for an attorney without prior discipline who allowed the statute of limitations to run on her client's claim in violation of Colo. RPC 1.3.[40] Somewhat similarly, in *People v. Kram*, public censure was ordered for an attorney without prior discipline who failed to respond to a motion for summary judgment, and then failed to inform his client that her case had been dismissed.[41] We do not find these cases directly applicable here, however, because Respondent has been disciplined for similar misconduct.

A more relevant case is the Colorado Supreme Court's decision in *People v. Kolko*.[42] In that matter, an attorney failed to timely file proposed jury instructions, leading the judge to decide to conduct a bench trial.[43] The attorney then failed to perfect his client's appeal of the adverse judgment. The client suffered no actual injury because the attorney paid the judgment and refunded his fees, though the attorney's misconduct caused a risk of injury.[44] The Colorado Supreme Court determined that private discipline was "foreclosed" because the attorney previously had been sanctioned for similar misconduct; instead, the court imposed a public censure.[45]

Respondent's misconduct is somewhat less serious than the lawyer's misconduct in *Kolko*, because there was little or no injury or potential injury to the client. In addition, we have found just one instance of misconduct here, while in *Kolko* the lawyer violated professional standards in two separate instances. But in light of Respondent's significant legal experience and ABA *Standard* 8.4, which provides that a private censure is not generally appropriate when a lawyer has engaged in similar misconduct in the past, we find that a public censure is the most appropriate sanction here. In doing so, we note that the Colorado Supreme Court has held on numerous occasions that a respondent's prior discipline of a similar nature foreclosed the imposition of private discipline.[46] Accordingly, we impose a public censure upon Respondent.

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[40] 968 P.2d 109, 110 (Colo. 1998).
[41] 966 P.2d 1065, 1066 (Colo. 1998).
[42] 962 P.2d 979, 980 (Colo. 1998).
[43] *Id.*
[44] *Id.*
[45] *Id.* at 980-81.
[46] *See, e.g., People v. Williams*, 936 P.2d 1289, 1291 (Colo. 1997); *People v. Bonner*, 927 P.2d 836, 837 (Colo. 1996); *People v. Belsches*, 918 P.2d 559, 560 (Colo. 1996).

V. CONCLUSION

As he has admitted, Respondent's failure to timely file a stipulation for permanent orders on behalf of his client violated Colo. RPC 1.3. However, we find that most of the allegations in the People's complaint are not supported by clear and convincing evidence. Rather, we find that Respondent provided high-quality, low-cost legal assistance to Rodriguez. Indeed, the legal profession and the public are well served when lawyers provide representation to clients like Rodriguez who might not otherwise have access to the courts. Discounted fees, however, do not excuse attention to detail. Despite our opinion that Respondent is a capable and well-intentioned lawyer, the Hearing Board is concerned that Respondent demonstrated poor organizational skills in representing Rodriguez. Effective representation of clients necessitates close attention to the less glamorous aspects of legal practice, such as keeping track of deadlines. Respondent's lack of organization, if not corrected, could seriously harm his clients and lead to the imposition of more severe discipline. We strongly encourage Respondent to persevere in the measures he has instituted to improve his organization and administrative skills.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. **DANIEL E. OLSEN**, Attorney Registration No. 20934, is hereby **PUBLICALLY CENSURED**. The public censure **SHALL** become public and effective thirty-one days from the date of this order upon the issuance of an "Order and Notice of Public Censure" by the PDJ and in the absence of a stay pending appeal pursuant to C.R.C.P. 251.27(h).

2. Respondent **SHALL** file any post-hearing motion or application for stay pending appeal with the PDJ **on or before January 18, 2011**. No extensions of time will be granted.

3. Respondent **SHALL** pay the costs of these proceedings. The People shall submit a "Statement of Costs" within fifteen (15) days from the date of this order. Respondent shall have ten (10) days thereafter to submit a response.