

People v. Smith, No.03PDJ073. June 4, 2004. Attorney Regulation. Following a sanctions hearing at which Respondent did not appear, the Hearing Board suspended Respondent, attorney registration number 15658, from the practice of law for one year and one day, effective July 5, 2004. Respondent was retained to represent a client in the probate of her husband's estate and also for the estate and related tax matters concerning her deceased sister-in-law. The client learned that Respondent had not filed tax returns for either estate. The client spoke to Respondent, who agreed to file the tax returns, though he did not do so. Thereafter, the client was unable to reach Respondent. Respondent's conduct violated Colo. RPC 1.3 (lawyer shall act with diligence and promptness and avoid neglected an entrusted matter); Colo. RPC 1.4(a) (lawyer shall keep client informed and comply with requests for information); and, Colo. RPC 1.16(d) (on termination lawyer shall take steps to protect client's interests and surrender papers.) Respondent also did not respond to requests from the Office of Attorney Regulation Counsel during its investigation of this matter three years after the client hired him. This conduct violates Colo. RPC 8.1(b) and C.R.C.P. 251.5(d).

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| <p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 600 17th STREET, SUITE 510-South DENVER, CO 80202</p> | |
| <p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: BRIAN M. SMITH</p> | <p>Case Number: 03PDJ073</p> |
| <p>REPORT, DECISION AND IMPOSITION OF SANCTION</p> | |

Opinion by the Hearing Board, consisting of Presiding Disciplinary Judge William R. Lucero and Hearing Board Members, Lisa Hogan and Mickey W. Smith, both members of the Bar.

SANCTION IMPOSED: ATTORNEY SUSPENDED FOR ONE YEAR AND ONE DAY

I. BACKGROUND

On September 25, 2003, the Office of Attorney Regulation Counsel (the "People" or "Complainant") filed a Complaint in this matter. The Citation and Complaint were sent to Respondent Brian Mark Smith ("Smith" or "Respondent") via certified and regular mail at his last known business and home addresses. On October 9, 2003, the People filed a Proof of Service of the Citation showing that Smith received the Citation and Complaint on September 26, 2003. Smith did not file an answer to the complaint or otherwise respond.

On November 5, 2003 the People moved for default on the claims set forth in the Complaint. On November 6, 2003, the Presiding Disciplinary Judge ("PDJ") entered an order of default on the complaint. All factual allegations set forth in the Complaint were therefore deemed admitted and all rule violations set for in the Complaint were deemed proven pursuant to C.R.C.P. 251.15(b) and are therefore established by clear and convincing evidence. *E.g. People v. Richards*, 748 P.2d 341 (Colo. 1987). The Complaint is attached as Exhibit A.

A sanctions hearing pursuant to C.R.C.P. 251.15 was held on April 5, 2004. Fredrick J. Kraus of the Office of Attorney Regulation Counsel, appeared on behalf of the People. Smith, did not appear either in person or by counsel.

Before his death, Mr. Jess Waggoner, brother of Pearl Morris, hired Respondent to probate the estate of his sister, Pearl Morris. After Mr. Waggoner's death, Respondent continued to work on the estate of Pearl Morris at the request of Hope Waggoner, wife of Jess Waggoner. Respondent also represented Mrs. Hope Waggoner in the estate of her late husband, Jeff Waggoner. Thus, Respondent represented Pearl Morris in probating the estate of Jeff Waggoner, her husband, and tax matters concerning, deceased sister in law, Pearl Morris.

Respondent hired an accountant to file an estate tax return on the Jess Waggoner estate and filed a return for the same in 2000. Respondent offered Mr. Jess W. Waggoner's will for probate in Jefferson County, Colorado, in case number 99-PR-0685. Hope W. Waggoner was appointed as the personal representative of the estate of Jess W. Waggoner shortly after Mr. Waggoner's will was offered for probate.

In June 2002, Mrs. Waggoner received notice from the Internal Revenue Service of a tax delinquency for the estate of Pearl Morris estate and that a return had not been filed for the Jess Waggoner estate for the period ending on 12/31/00. Mrs. Waggoner turned these tax matters over to the Respondent for resolution. The Respondent agreed to handle both. However, when Hope Waggoner did not hear back from the Respondent on the progress of these matters, she placed several calls to him seeking information. Respondent returned none of these calls.

More than three years after Mrs. Waggoner hired Respondent, the Office of Attorney Regulation Counsel (“OARC”) made several attempts to get information from Respondent about the status of the Jess Waggoner and Pearl Morris estates. When the Respondent did not respond to these requests, OARC initiated an investigation pursuant to the Colorado Rules of Civil Procedure 251.9 and gave respondent twenty days to respond. He did not do so within that time period, March 14, 2003. The People filed a complaint in this matter in September 2003.

The Hearing Board considered the People’s argument, the facts established by the entry of default, and Exhibits 1 and 2 offered by the People and admitted into evidence, including the testimony of R. Sterling Ambler, an attorney, testified on behalf of the People. After considering the evidence and the People’s arguments, the Hearing Board made the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

Smith has taken and subscribed to the oath of admission, was admitted to the Bar of the Supreme Court on May 21, 1986, and is registered upon the official records of this Court, registration number 15658. Accordingly, Smith is subject to the jurisdiction of this Court pursuant to C.R.C.P. 251.1(b).

Smith has not participated in these proceedings though proper notice of this disciplinary proceeding has been duly served upon him according to the applicable rules. C.R.C.P. 251.14(b) and C.R.C.P. 251.15(b). All factual allegations set forth in the Complaint deemed admitted by the entry of default and are therefore established by clear and convincing evidence. *See* the Complaint attached hereto as Exhibit 1.

R. Sterling Ambler testified at the hearing that Mrs. Waggoner hired him to represent her and to retrieve the files from Respondent and complete the work on the Waggoner and Morris estates that Respondent neglected. Mr. Ambler testified at the hearing that he charged her \$2,000.00 in attorney’s fees. Mr. Ambler stated that these fees were charged when he was forced to seek sanctions against Respondent for not returning Mrs. Waggoner’s files concerning her husband’s and Pearl Morris’ estates as requested.

III. CONCLUSIONS OF LAW

The facts established by the entry of default prove the following misconduct:

Colo. RPC 1.3

A lawyer shall act with reasonable diligence and promptness in representing a client and shall not neglect a legal matter entrusted to that lawyer

The Hearing Board finds Respondent neglected the legal matters entrusted to him in violation of Colo. R.P.C. 1.3 by failing to complete the probate of the deceased husband's estate, and by failing to resolve tax deficiencies with the Internal Revenue Service in the Pearl Morris' estate. The facts established by the entry of default demonstrate that Respondent effectively deserted and/or rejected his client. Such misconduct constitutes abandonment. Smith effectively terminated the attorney-client relationship when he failed to communicate with his client from June of 1999 to September of 2002 and failed to accomplish specific professional tasks for the client: address the tax deficiency of the Pearl Morris estate and probate the estate of Jess Waggoner.

Colo. R.P.C. 1.4(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

From June 2002 to June 2003, Respondent failed to maintain meaningful communications with his client Hope Waggoner. Respondent failed to keep Mrs. Waggoner reasonably informed about the status of the case and he failed to comply promptly with reasonable requests for information from her. Respondent did not return his client's telephone calls nor did he respond to written requests for information. He also failed on numerous occasions between January to June 2003 to respond to verbal and requests from OARC for information about the Waggoner and Morris estates. This conduct was in violation of Colo. R.P.C. 1.4(a).

Colo. R.P.C. 1.16(d)

Upon termination, a lawyer shall take steps to protect a client's interests and surrender papers and property to the client.

After Respondent abandoned his client and was terminated by his client, he should have followed the requirements of Colo. R.P.C. 1.16(d). Respondent should have taken reasonable steps to protect the client's interest upon termination and surrendered papers and property to which the client was entitled. Respondent did not do so at the request of Mrs. Waggoner and R. Sterling Ambler, the attorney she hired when Respondent failed to complete the tasks he was hired to perform. He only turned over the requested files when the district court ordered him to do so. Mrs. Waggoner paid new counsel, Mr.

Ambler \$2,000 to accomplish this task. Such conduct was in violation of Colo. R.P.C. 1.16(d).

Colo. R.P.C. 8.1(b)

A lawyer in connection with a disciplinary matter shall not knowingly fail to respond reasonably to a lawful demand for information from a disciplinary authority, except if the information is protected by Colo. R.P.C. 1.6 or there is a good faith challenge to the demand.

C.R.C.P. 251.5(d)

An attorney shall respond to a request by the regulation counsel for information necessary to carry out the performance of regulation counsel's duty.

In September 2002, over three years after Mrs. Waggoner hired Respondent, OARC contacted Respondent and requested information about the status of the Jess Waggoner and Pearl Morris estates. Respondent promised a detailed report on both estates to OARC, but he did not provide one. OARC placed additional phone calls to Respondent, but Respondent did not return them..

In January 2003 the Office of Attorney Regulation Counsel notified the Respondent in writing that it was starting a formal investigation pursuant to C.R.C.P. 251.9 and gave him 20 days to respond. Respondent received the letter, but made no response. OARC made several more attempts to secure a written response from Respondent. Respondent promised to send a response, but he never did so.

Further, after Attorney Regulation Counsel notified Respondent that it was conducting an investigation, he refused to provide certain information and files to Attorney Regulation Counsel for examination. Such conduct was in violation of Colo. R.P.C. 8.1(b) and C.R.C.P. 251.5(b).

IV. IMPOSITION OF SANCTIONS

Under the ABA *Standards for Imposing Lawyer Sanctions* (1991 and Supp. 1992), neglect arising to the level of abandonment warrants a sanction ranging from suspension to disbarment, depending on the facts of the case. See ABA *Standard* § 4.42(a) (providing that “[s]uspension is generally appropriate when (a) a lawyer knowing fails to perform services for a client and causes injury or potential injury to the client”); ABA *Standard* § 4.41(a) (providing that “[d]isbarment is generally appropriate when a lawyer abandons the practice and causes serious or potential serious injury to a client”). Colorado case law is consistent with this range of sanction. In this case, the Hearing Board finds that suspension rather than disbarment is appropriate.

In *People v. Paulson*, 930 P.2d 582 (Colo. 1997) the attorney was suspended from the practice of law for one year and one day for neglect of client matters and failure to communicate with his clients. In *People v. Odom*, 914 P.2d 342 (Colo. 1996), the attorney was suspended for three years for failing to keep one client informed regarding an offer by the estranged spouse to increase child support and failing to keep the client informed regarding Social Security benefits, misconduct which resulted in harm to the client. In a separate case, the attorney failed to perform requested services in a criminal matter, failed to refund a retainer, and abandoned the client. The attorney was suspended for three years. In *In re McKee*, 980 P.2d 506 (Colo. 1999), a reciprocal attorney discipline proceeding, the Colorado Supreme Court upheld the two year suspension imposed by another court for the attorney's failure to communicate with five clients. In this case, Smith's misconduct resulted in additional interest and penalties accruing to the Internal Revenue Service on the Pearl Morris estate. His failing to turn over papers of the client necessitated the filing of an action against him costing the client an additional \$2,000 in attorney's fees.

Pursuant to ABA *Standards* § 9.22 and § 9.32, aggravating and mitigating factors are considered in arriving at the appropriate sanction. Because Smith did not participate in these proceedings, there was no evidence of mitigation. The People informed the Hearing Board, however, that Smith has had no prior disciplinary history, which is considered a mitigating factor pursuant to ABA *Standards* § 9.32(a). In aggravation, Smith engaged in a pattern of misconduct, *See ABA Standard* § 9.22(c), and had substantial experience in the practice of law, *See ABA Standard* § 9.22(i).

Given the mitigating and aggravating factors presented, a one year and one day suspension is warranted in this default proceeding; additionally, restitution to Hope Waggoner for the attorney's fees she incurred in the sum of \$2,000 is appropriate.

IV. ORDER

It is therefore ORDERED:

a. Brian Mark Smith, attorney registration number 15658, is SUSPENDED from the practice of law for a period of one year and one day, effective thirty-one (31) days from the date of this Order.

b. In the event Smith wishes to resume the practice of law in the State of Colorado, he must undergo formal reinstatement proceedings pursuant to C.R.C.P. 251.29(c) and (d).

c. Smith is ordered to pay restitution to his client in the sum of \$2,000.00, prior to reinstatement.

d. Smith is ordered to 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 thereafter to submit a response thereto.

DATED THIS 4TH DAY OF JUNE, 2004.

(SIGNED)

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

(SIGNED)

MICKEY W. SMITH
HEARING BOARD MEMBER

(SIGNED)

LISA HOGAN
HEARING BOARD MEMBER

Copies to:

Fredrick J. Kraus Via Hand Delivery
Office of Attorney Regulation Counsel

Brian M. Smith Via First Class Mail
Respondent PO Box 1129
1628 Pine Street Boulder, CO 80302
Boulder, CO 80302

Mickey W. Smith Via First Class Mail
Lisa Hogan Via First Class Mail
Hearing Board Members

Mac Danford Via Hand Delivery

Colorado Supreme Court

EXHIBIT 1

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| <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: BRIAN MARK SMITH</p> <hr/> <p>Fredrick J. Kraus, #30507 Assistant Regulation Counsel John S. Gleason, #15011 Regulation Counsel Attorneys for Complainant 600 17th Street, Suite 200-South Denver, Colorado 80202</p> <p>Telephone: (303) 893-8121 ext. 302 Fax No.: (303) 893-5302</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 03PDJ073</p> |
| COMPLAINT | |

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

The respondent has taken and subscribed the oath of admission, was admitted to the bar of this court on May 21, 1986, and is registered upon the official records of this court, registration no. 15658. He is subject to the jurisdiction of this court in these disciplinary proceedings. The respondent's registered business address is 1628 Pine Street, Boulder, Colorado 80302. Another known address for the respondent is P.O. Box 1129, Boulder, Colorado 80302.

General Allegations

2. The respondent was retained by Hope Waggoner to handle the estate of her late husband, Jess W. Waggoner. An attorney-client relationship was thus formed.

3. Jess W. Waggoner died in June of 1999.
4. Jess W. Waggoner had previously retained respondent to assist in the administration of the estate of Pearl Morris. An attorney-client relationship thus already existed between respondent and Jess W. Waggoner.
5. Jess W. Waggoner was the brother of Pearl Morris, and had been the personal representative of the estate of Pearl Morris.
6. Respondent offered Mr. Jess W. Waggoner's will for probate in Jefferson County, Colorado, in case number 99-PR-0685.
7. Hope W. Waggoner was appointed as the personal representative of the estate of Jess W. Waggoner shortly after Mr. Waggoner's will was offered for probate.
8. The respondent hired an accountant to file an estate tax return for the estate of Jess W. Waggoner. The return was filed in 2000.
9. In June 2002, Hope Waggoner received notice from the Internal Revenue Service that a tax return for the Waggoners had not been filed for the tax period 12-31-00. She also received a tax notice of delinquency on the Estate of Pearl Morris. Upon receipt, Ms. Waggoner turned these notices over to respondent and requested he take care of the matters. The respondent agreed to handle these matters.
10. After turning the tax matters over to respondent, Ms. Waggoner did not hear from respondent as to the status of either estate and began making repeated telephone calls to the respondent seeking information.
11. The respondent was aware of Ms. Waggoner's attempts to contact him, but failed to respond to these calls.
12. On September 5, 2002, the Office of Attorney Regulation Counsel (OARC) contacted respondent and requested information as to the status of the two estates.
13. On September 5, 2002, Respondent told OARC that the Waggoner estate was still open and that he was negotiating with the Internal Revenue Service about the tax delinquency notice on the estate of Pearl Morris. Respondent promised a detailed report to Hope Waggoner and OARC on both estates by September 27, 2002.
14. On October 22, 2002 the OARC again contacted respondent by

telephone in regard to obtaining the reports on the estates. Respondent did not reply.

15. On January 14, 2003, OARC contacted respondent in writing inquiring about the status of the estates. Respondent did not reply.

16. Thereafter, on January 29, 2003, OARC notified respondent in writing that it was starting a formal Request for Investigation pursuant to the Colorado Rules of Civil Procedure 251.9 and gave respondent twenty days to respond. The letter was sent by certified mail return receipt requested. Respondent received the letter on January 30, 2003. Attached hereto, marked as Exhibit "A," and specifically incorporated by reference is a copy of the letter and return receipt.

17. Respondent did not respond to the letter of January 29, 2003.

18. On February 26, 2003, OARC wrote respondent to inform him the answer to the Request for Investigation was overdue. Respondent did not respond to the letter.

19. On March 10, 2003, respondent called OARC and told them an answer would be filed on March 14, 2003.

20. Respondent did not file an answer on March 14, 2003.

21. On April 3, 2003, OARC wrote respondent to inform him he had not filed a response, and to inform him that failure to respond to the Request for Investigation was a separate ground for discipline.

22. Respondent did not respond to the letter of April 3, 2003.

23. On June 20, 2003, OARC was able to speak with respondent about filing the report to the Request for Investigation. Respondent promised an answer by June 27, 2003. Respondent stated that he had been ill and could not respond previously.

24. Respondent did not file any response on June 27, 2003.

25. Respondent did not transmit any information on the status of the estates of Jess W. Waggoner or Pearl Morris after months of repeated requests by OARC.

26. On June 9, 2003, Hope Waggoner wrote a letter to respondent informing him that he had been terminated as the attorney for the Estate of Jess W. Waggoner and the Estate of Pearl Morris.

27. Simultaneously on June 9, 2003, Hope Waggoner requested by separate letter to respondent that all files on both estates be turned over to her new attorney, Sterling Ambler.

28. On July 28, 2003, Mr. Ambler made a second written request to the respondent on behalf of Hope Waggoner asking for the files of the estate of Jess Waggoner and Pearl Morris.

29. Respondent did not respond to any requests for information requested by Hope Waggoner or her new attorney and did not turn over his files on the estates of Pearl Morris and Jess W. Waggoner to Hope Waggoner's new attorney.

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]

30. Paragraphs 1 through 29 are incorporated herein as if fully set forth.

31. 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.

32. The respondent failed to act with reasonable diligence and promptness and neglected the legal matters entrusted to him by Hope Waggoner in each of the following respects:

- a. by failing to prosecute both cases entrusted to him to conclusion;
- b. by failing to complete the probate of the estate of Jess W. Waggoner;
- c. by failing to complete negotiations with the Internal Revenue Service in regard to an alleged delinquency of the estate of Pearl Morris;
- d. by failing to communicate with the Internal Revenue Service concerning a tax return due by the estate of Jess W. Waggoner;
- e. by failing to communicate with his client or the his client's new counsel.

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

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

34. The respondent's lack of diligence and promptness, and neglect caused injury or potential injury to the client.

35. The respondent's pattern and practice of failing to accomplish his professional tasks for the client constitutes abandonment of the professional responsibilities owed to that client.

36. The foregoing conduct of the respondent establishes grounds for discipline as provided in C.R.C.P. 251.5, and also 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 -- Colo. RPC 1.4(a)]

37. Paragraphs 1 through 29 are incorporated herein as if fully set forth.

38. 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.

39. The respondent failed to keep the client reasonably informed about the status of the legal matter and failed to comply promptly with reasonable requests for information in the following respects:

a. by failing to respond to his client's repeated telephone calls and written requests for information;

b. by failing to respond to the verbal requests for information by the OARC about the status of Jess W. Waggoner and Pearl Morris estates;

c. by failing to respond to written requests by the OARC made on January 14 and 19, 2003, February 26, 2003, March 10, 2003, April 3,

2003, and June 20, 2003 and by failing to maintain minimum communications with the client from June 2002 to the date the client was forced to retain new counsel in June of 2003;

d. by failing to respond to the client's new counsel's reasonable requests for information and the files.

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.

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

41. The respondent's pattern and practice of failing to communicate with the client caused injury or potential injury to the client.

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

43. By such conduct, the respondent violated Colo. RPC 1.4(a).

WHEREFORE, the complainant prays at the conclusion hereof.

CLAIM III

[Upon Termination, a Lawyer Shall Take Steps to Protect a Client's Interest and Surrender Papers and Property to the Client -- Colo. RPC 1.16(d)]

44. Paragraphs 1 through 29 are incorporated herein as if fully set forth.

45. Colo. RPC 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that had not been earned.

46. The respondent effectively terminated the attorney-client relationship by failing to communicate with the client after June 20, 2002, despite the client's numerous attempts to communicate with the respondent, and by failing to take any other action on behalf of the client.

47. The respondent failed to give the client notice that he had terminated the representation, failed to advise the client to obtain other counsel, and otherwise failed to take steps to protect the client's interest.

48. The attorney who replaced respondent and the client made requests June 9, and July 28, 2003, for the client's file from respondent.

49. Respondent failed to return the client's files and papers despite demands and requests to do so.

50. By such conduct, the respondent violated Colo. RPC 1.16(d).

CLAIM IV

[An Attorney Shall Respond To A Request By The Regulation Counsel For Information Necessary To Carry Out The Performance Of Regulation Counsel's Duty -- C.R.C.P. 251.5(d); A Lawyer Shall Not Knowingly Fail to Respond Reasonably To A Lawful Demand for Information From A Disciplinary Authority -- Colo. RPC 8.1(b)]

51. Paragraphs 1 through 29 are incorporated herein as if fully set forth.

52. C.R.C.P. 251.5(d) requires that an attorney respond to a request by the Attorney Regulation Counsel for information to carry out the performance of its duties.

53. After September 5, 2002, the respondent failed to respond to repeated attempts by the OARC for information from the respondent.

54. The respondent knew or should have known that he was failing to cooperate and respond to the request by Attorney Regulation Counsel.

55. The foregoing conduct of the respondent in failing to respond to requests of Attorney Regulation Counsel establishes grounds for discipline as provided in C.R.C.P. 251.5.

56. Colo. RPC 8.1(b) provides that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond reasonably to a lawful demand for information from a disciplinary authority, except if the information is protected by Colo. RPC 1.6 or there is a good faith challenge to the demand.

57. The respondent knowingly violated the rule by failing to respond to the demands for information made by Attorney Regulation Counsel during the investigation of the subject matter of this disciplinary proceeding.

58. The information sought did not require disclosure of information otherwise protected by Colo. RPC 1.6.

59. The respondent made no good faith challenge to the demand by Attorney Regulation Counsel for such information.

60. The foregoing conduct of the respondent in failing to respond to requests of regulation counsel establishes grounds for discipline as provided in C.R.C.P. 251.5, and violates Colo. RPC 8.1(b).

WHEREFORE, the people pray that the respondent be found to have engaged in misconduct under C.R.C.P. 251.5 and the Colorado Rules of Professional Conduct as specified above; the respondent be appropriately disciplined for such misconduct; the respondent be required to return client files or other client property; the respondent be required to take any other remedial action appropriate under the circumstances; and the respondent be assessed the costs of this proceeding.

Dated this 25th day of September, 2003.

Fredrick J. Kraus, #30507
Assistant Regulation Counsel
John S. Gleason, #15011
Regulation Counsel
Attorneys for Complainant