

*People v. Wilson-Gebhart*. 10PDJ057. January 5, 2011. Attorney Regulation. Following a Sanctions Hearing, the PDJ suspended Pamela Wilson-Gebhart (Attorney Registration No. 24848) from the practice of law for a period of one year and one day, effective February 5, 2011. In two cases involving motions to terminate her clients' parental rights, Respondent failed to competently represent her clients, neglected to appropriately litigate their appeals, and failed to adequately or sufficiently communicate with them about their rights, the status of their respective cases, and the consequences of legal positions she took on their behalf. Her misconduct constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 1.1, 1.2(a), 1.4(a), 1.4(b), and 8.4(d).

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202</p>	<hr/> <p>Case Number: <b>10PDJ057</b></p>
<p><b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO</p> <p><b>Respondent:</b> PAMELA WILSON-GEBHART</p>	
<p><b>DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(c)</b></p>	

On November 29, 2010, the Presiding Disciplinary Judge (“the Court”) held a Sanctions Hearing pursuant to C.R.C.P. 251.15(b). Margaret B. Funk appeared on behalf of the Office of Attorney Regulation Counsel (“the People”). Pamela Wilson-Gebhart (“Respondent”) did not appear, nor did counsel appear on her behalf. The Court now issues the following “Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(c).”

**I. ISSUE AND SANCTION**

In two cases involving motions to terminate of her clients’ parental rights, Respondent failed to competently represent her clients, neglected to appropriately litigate their appeals, and failed to adequately or sufficiently communicate with them about their rights, the status of their respective cases, and the consequences of legal positions she took on their behalf. After considering the many aggravating factors and Respondent’s failure to participate in these disciplinary proceedings or respond to the People’s requests for information, the Court concludes it must impose a suspension for one year and one day.

**II. PROCEDURAL HISTORY**

On April 9, 2010, the People petitioned the Colorado Supreme Court to immediately suspend Respondent under C.R.C.P. 251.8.6. Respondent did not participate in that proceeding, and the Colorado Supreme Court granted the petition, effective May 3, 2010. On May 24, 2010, the People filed a complaint alleging that Respondent violated several Rules of Professional Conduct.

Respondent failed to answer the complaint, and the Court granted a motion for default on September 14, 2010. Upon the entry of default, the Court deems all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.<sup>1</sup>

### **III. ESTABLISHED FACTS AND RULE VIOLATIONS**

The Court hereby adopts and incorporates by reference the factual background of this case fully detailed in the admitted complaint.<sup>2</sup> Respondent took and subscribed the Oath of Admission and gained admission to the Bar of the Colorado Supreme Court on October 14, 1994. She is registered upon the official records, Attorney Registration No. 24848, and is therefore subject to the jurisdiction of the Court pursuant to C.R.C.P. 251.1.

#### **The Hangatu Jateny Matter**

On September 28, 2005, Respondent was appointed as counsel for Hangatu Jateny, a teenage emigrant from Ethiopia. Respondent was assigned to represent Jateny in *In the Interest of Jamari Alexander*, Case No. 05JV1186, a dependency and neglect matter filed in Arapahoe County District Court. Specifically, Arapahoe County moved to terminate the parent-child legal relationship between Jateny and her son, Jamari Alexander. Upon this appointment, an attorney-client relationship was formed, obligating Respondent to represent Jateny in accordance with the Rules of Professional Conduct.

On March 9, 2007, a plea/disposition hearing was held in the case. During that hearing, the court became concerned that Jateny did not understand the proceedings due to language difficulties, so it continued the trial date until an interpreter could be retained. The trial was held on April 3, 2007. The court accepted Respondent's assertion that Jateny admitted the allegations in the government's petition and had given up her parental rights.<sup>3</sup> Jateny maintains she never agreed to forfeit her parental rights and does not know why Respondent advised the court that she had entered into such an agreement.

The court then set a contested placement hearing, which ultimately was held August 24, 2007. But on that day, the court determined that the termination case had to be re-tried due to language interpretation issues in the April trial. Jateny recalls Respondent was responsible for bringing an interpreter to court for the April trial.

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<sup>1</sup> See *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987); C.R.C.P. 251.15(b).

<sup>2</sup> See the People's complaint in 10PDJ057 for further detailed findings of fact.

<sup>3</sup> See People's Exhibit 4, ¶ 4.

As a result, Arapahoe County filed in March 2008 a new motion to terminate Jateny's parent-child relationship, and a new trial to terminate Jateny's parental rights was held in May 2008. However, the interpreter retained by Respondent, whom Respondent found at a local Ethiopian restaurant, was not certified, nor did she speak the same dialect as Jateny. Nevertheless, the trial proceeded and at the conclusion of the hearing the court ruled that Jateny was not substantially compliant with her treatment plan, terminating her parental rights.

Unsure if Respondent would appeal on her behalf, Jateny filed a pro se motion with the Colorado Court of Appeals, Case No. 08CA1101, on May 23, 2008, to regain custody of her son. On May 27, 2008, Respondent filed a notice of appeal on Jateny's behalf. The court issued an advisement of filing on May 29, 2008. The advisement noted that Jatney's petition was due on June 16, 2008, with the record on appeal due on July 8, 2008.

On June 11, 2008, Respondent filed a motion for an extension of time to file a petition on appeal and a motion to withdraw as Jateny's court-appointed counsel, but she later filed the petition on appeal and a motion for extension of time on June 23, 2008. The court of appeals granted Respondent's motion for extension of time on July 2, 2008, but it denied her motion to withdraw as counsel.

On August 13, 2008, the court of appeals ordered the parties to submit supplemental briefs. Although the Guardian Ad Litem and the attorney for Jateny's son filed a joint brief, Respondent failed to file a supplemental brief on behalf of Jateny. Accordingly, the court of appeals affirmed the trial court's judgment against Jatney on October 16, 2008.

Respondent never notified Jateny that her case had been dismissed on appeal. Instead, around October 18, 2008, Jateny contacted the court of appeals to check on the status of her case, and the court of appeals informed her of the case's dismissal. Jatney then made several calls to Respondent, all of which went unanswered.

On February 4, 2009, the proceedings involving Jatney's son were officially dismissed, since her son's adoption to another family was finalized on January 30, 2009. During these proceedings, Jateny received no correspondence from Respondent, and their communication was sparse, limited almost exclusively to several minutes of conversation before court appearances.

Respondent failed to provide competent legal representation to Jatney by neglecting to prepare Jateny for the trial court proceedings; by failing to secure an adequate interpreter; by failing to respond to the court of appeals' request for supplemental briefing; by lacking the necessary thoroughness and

preparation for the representation; and by abandoning Jateny's interests through waiver of Jateny's parental rights without her permission or full understanding. Respondent's failure to provide competent legal representation violated Colo. RPC 1.1.

Further, Respondent violated Colo. RPC 1.2(a) by failing to abide by and pursue Jateny's wish to defend her parental rights. Specifically, Respondent waived Jateny's parental rights without an informed instruction by Jateny to do so, and she failed to vigorously litigate an appeal of the order severing Jateny's rights.

Respondent also violated Colo. RPC 1.4(a) and (b) by failing to comply with her duty to communicate adequately with Jateny. Respondent failed to prepare Jateny for the termination proceedings; failed to secure a competent translator to aid Jateny in understanding the proceedings; failed to explain to Jateny the legal consequences of the positions taken on her behalf; failed to maintain minimum communications with Jateny, particularly with respect to Jateny's legal rights and obligations; failed to promptly inform Jateny of decisions or circumstances that required Jateny's informed consent; and failed to reasonably consult with Jateny about the means by which her objectives were to be accomplished and material developments in the matter.

Finally, Respondent engaged in conduct prejudicial to the administration of justice in violation of Colo. RPC 8.4(d) by failing to timely secure an adequate translator and by failing to respond to the appellate court's request for supplemental briefing. By doing so, Respondent directly delayed or altered the course of court proceedings concerning the determination of parental rights for Jateny, prejudicing the administration of justice.

### **The Ricky Mallard Matter**

On February 13, 2008, Respondent was appointed as counsel for Ricky Mallard in a dependency and neglect matter, *In the Interest of Dominique Monet Mallard*, Case No. 08JV160, which was brought in Arapahoe County District Court. The matter involved determination of whether Mallard's parental rights to Dominique and Ricky, his daughter and son, should be terminated. Upon Respondent's appointment, an attorney-client relationship was formed, obligating Respondent to represent Mallard in accordance with the Rules of Professional Conduct.

On March 5, 2008, the court held a plea/disposition hearing, whereupon temporary custody of Dominique and Ricky was granted to parties other than Mallard, and Mallard was ordered to submit to an amended mental health/addiction treatment plan administered by the Colorado Department of Human Services. Because Mallard objected to the terms of the plan, the court set a contested disposition hearing for July 11, 2008, during which the court

ordered Mallard to participate in an inpatient drug and alcohol treatment program in Nebraska and to satisfy the prior terms of his plan. The court also continued the dispositional hearing to a later date.

Respondent and Mallard attended an “appearance review” with the court on September 15, 2008, and again in December 2008. Mallard reported at both hearings that he was working toward completing the terms of his treatment plans. Mallard also agreed to take a polygraph test at his December 2008 appearance review. The court noted that Mallard had been sober for several months and was making progress. On January 30, 2009, Respondent and Mallard attended a status conference before the court. Respondent requested and the court granted a sixty-day continuance, designed to give Mallard additional time to work on his treatment plan. The continuance pushed the hearing concerning termination of Mallard’s parental rights to April 2009.

The termination hearing began on April 13, 2009. On that day, Respondent requested another continuance, alleging she had just received the polygraph results for Mallard, which provided “no opinion.” The court denied her request for a continuance and the hearing proceeded, concluding on April 27, 2009. The court ruled Mallard had not complied with several aspects of his treatment plan, and it entered an order terminating Mallard’s parental rights with respect to Ricky. On May 13, 2009, a permanent plan hearing was held regarding Dominique. The court determined Dominique should be placed in long-term foster care, since she would turn eighteen in August 2009.

On May 18, 2009, Respondent filed a notice of appeal and designation of record, Case No. 09CA1045, on Mallard’s behalf, but she failed to file any additional pleadings. Mallard sent Respondent an email on May 29, 2009, asking whether she filed an appeal of the court’s termination decision and the status of that appeal. Respondent never responded. On July 10, 2009, the court of appeals issued an order requesting that Respondent file Mallard’s petition and a written explanation to show cause why Mallard’s appeal should be accepted out of time. The court of appeals also warned that Mallard’s appeal would be dismissed if these briefs were not filed in compliance with its order to show cause. Yet Respondent failed to file either document, and on August 3, 2009, the court of appeals dismissed Mallard’s appeal with prejudice. Respondent never notified Mallard of the appeal or its dismissal.

The last time Mallard spoke with Respondent was on July 15, 2009, when he saw her at a review hearing concerning Dominique. At the hearing, Mallard again asked about the status of the appeal, but Respondent told him she had not yet filed an appeal.

On August 11, 2009, Mallard sent Respondent an email expressing his dissatisfaction with her lack of communication. The next day, Mallard filed his

own motion with the trial court to request Respondent be dismissed from his case. Although the trial court denied his request on September 22, 2009, Mallard's case had already been dismissed by the court of appeals on August 3, 2009. Thus, believing in August 2009 that his appeal was still pending, Mallard asked the trial court to send him transcripts of specific hearings, having received no response from Respondent with respect to the same request.

On August 31, 2009, Mallard sent Respondent an email begging her to contact the courts to stop the adoption of his son to another family. She never responded. Mallard has since learned that Respondent attended a hearing on his behalf in February 2010 with respect to his daughter. Respondent never told Mallard about the hearing, never contacted him so he could decide whether to participate, and never responded to Mallard's attempts to contact her, notwithstanding her apparent continued representation of him.

Respondent violated Colo. RPC 1.1 by failing to provide Mallard competent legal representation. In particular, she failed to adequately prepare for the final termination hearing; waited until the day of trial to request a continuance to investigate the results of the polygraph; failed to timely file Mallard's appeal; and failed to respond to the appellate court's order to show cause why the court should accept a late filing.

Moreover, Respondent violated Colo. RPC 1.2(a). She failed to advise Mallard of upcoming court hearings, failed to return Mallard's calls and emails, and failed to diligently pursue her client's appeal. Respondent also violated Colo. RPC 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client, since she failed to prepare and timely move for a continuance of Mallard's final termination hearing; failed to timely file Mallard's appeal; and failed to respond to the appellate court's order to show cause.

Further, Respondent failed to communicate with Mallard and explain to him his legal rights in violation of Colo. RPC 1.4(a) and (b). She did not tell Mallard that she had filed a notice of appeal on his behalf, did not tell him his appeal had been dismissed, and did not advise him of the hearing set in February 2010. Respondent also failed to respond to Mallard's repeated requests for information about his case; failed to advise Mallard of the legal consequences arising from the positions she had taken on his behalf; failed to explain to Mallard his legal rights and obligations in the parental rights proceedings; failed to maintain minimum communications with him during the course of her representation; failed to promptly inform Mallard of decisions requiring his informed consent; and failed to reasonably consult with Mallard regarding his objectives and the means by which those objectives were to be accomplished.

Finally, Respondent engaged in conduct prejudicial to the administration of justice in violation of Colo. RPC 8.4(d) by failing to respond to the appellate court's order to show cause. As a result, Respondent directly delayed and/or altered the course of court proceedings concerning the determination of Mallard's parental rights.

### **The People's Requests for Information**

Respondent refused to participate in the investigations concerning the Jateny or Mallard matters, despite repeated written advisements that refusal to cooperate in such investigations constitutes a violation of C.R.C.P. 251.5. Indeed, Respondent was sent eight letters to her registered address requesting that she respond to the allegations made by Jateny and Mallard, but she failed to respond to any of those letters. Respondent has also refused to return numerous voicemail messages and emails requesting her response to these allegations.

Respondent violated C.R.C.P. 251.5(d) by failing to respond to repeated requests by the People for information concerning the Jateny and Mallard matters. Respondent also violated Colo. RPC 3.4(c) by knowingly disobeying her obligation to respond to the People's requests for information and Colo. RPC 8.1(b) by knowingly failing to respond to a lawful demand for information from a disciplinary authority.

## **IV. SANCTIONS**

The ABA Standards for Imposing Lawyer Sanctions ("*ABA Standards*") and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct.<sup>4</sup> In imposing a sanction after a finding of lawyer misconduct, the Court must first consider the duty violated; the lawyer's mental state; the actual or potential injury caused by the lawyer's misconduct; and the existence of aggravating and mitigating evidence pursuant to *ABA Standard 3.0*.

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

*Duty:* Respondent violated a duty to her clients by engaging in a pattern of neglect with respect to client matters entrusted to her, and she breached her duties of communication and loyalty by failing to adequately advise and update Jateny and Mallard. Further, Respondent violated her duties to the profession and the legal system by failing to cooperate or participate in the People's investigation of the Jateny and Mallard matters and by engaging in conduct prejudicial to the administration of justice.

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<sup>4</sup> See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

Mental State: The order of default establishes that Respondent knowingly failed to provide competent legal representation to Mallard and Jateny and knowingly failed to communicate with both clients. With respect to the Mallard matter, Respondent also knowingly failed to act with reasonable diligence to pursue her client's appeal. Finally, Respondent knowingly failed to respond to repeated demands for information from the People.

Injury: Although the Court does not attribute to Respondent any conscious objective to cause particular injury to her clients, Respondent's misconduct harmed Jateny and Mallard, who both felt that Respondent was unconcerned about their best interests.<sup>5</sup> Both clients also suffered potential injury from Respondent's failure to provide competent representation; in both cases, Respondent's misconduct denied her clients a fair chance to understand and participate in their court proceedings, possibly contributing to the termination of their parental rights.

### **ABA Standard 3.0 – Aggravating and Mitigating Factors**

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of discipline to be imposed,<sup>6</sup> while mitigating circumstances include any considerations or factors that may justify a reduction in the degree of discipline to be imposed.<sup>7</sup> The Court considers evidence of the following aggravating and mitigating circumstances in deciding the appropriate sanction.

Pattern of Misconduct – 9.22(c): Respondent's misconduct, while perhaps not yet appropriately characterized as a pattern, affected both Jateny and Mallard in similar ways: Respondent neglected both clients, failing to effectively represent, advise, or communicate with them. The Court is troubled by the similarity of Respondent's behavior in each case and takes note of what appears, on its face, to be an incipient practice.

Multiple Offenses – 9.22(d): In the course of representing Jateny and Mallard, Respondent violated at least five Rules of Professional Conduct. She violated several other rules by refusing to comply with the People's requests for information in their investigations.

Vulnerability of the Victim – 9.22(h): The Court considers Jateny to have been a particularly vulnerable client. Not only was Jateny a teenager at the time her parental rights were terminated, but she was a recent immigrant who did not speak English as a first language and who was unfamiliar with the legal system in the United States.

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<sup>5</sup> People's Exhibit 4, ¶ 5; People's Exhibit 5, ¶ 15.

<sup>6</sup> See ABA Standard 9.21.

<sup>7</sup> See ABA Standard 9.31.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the bar in 1994 and thus had enjoyed membership in the Colorado bar for fourteen years during the time of her misconduct in the case.

Absence of Prior Disciplinary Record – 9.32(a): The People acknowledge Respondent has no prior disciplinary history.

### **Analysis Under ABA Standards and Colorado Case Law**

ABA *Standard* 4.42 provides that suspension is generally appropriate when a lawyer causes a client injury or potential injury by knowingly failing to perform services for the client or engaging in a pattern of neglect.<sup>8</sup> The ABA *Standards* further provide that, in cases involving multiple charges of misconduct, “[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.”<sup>9</sup>

Recent Colorado case law suggests that a lengthy suspension is appropriate where an attorney has failed to diligently work on client matters and has violated other rules regarding client communication. For instance, *People v. Rishel* supports a substantial suspension.<sup>10</sup> In that case, a lawyer who defaulted in his disciplinary proceedings was suspended for a year and a day for seriously neglecting two client matters by moving his practice out of state without warning.<sup>11</sup> *People v. Regan* is also comparable to the instant case.<sup>12</sup> There, an attorney engaged in a pattern of neglect and lack of communication with respect to several client matters.<sup>13</sup> Notwithstanding significant mitigation, including an absence of prior disciplinary history, the lawyer was suspended for one year and one day.<sup>14</sup> Likewise, *People v. Lloyd* is analogous to the matter at hand; there, a lawyer was suspended for a year and a day after two instances of neglect, including one instance in which a court dismissed the matter for lack of prosecution, leading to the expiration of the statute of limitations.<sup>15</sup>

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<sup>8</sup> Although Appendix 1 of the ABA *Standards* indicates that ABA *Standard* 4.5 applies to incompetent representation, ABA *Standard* 4.5 is oriented towards lack of legal knowledge or skill rather than lack of thoroughness or preparation. Accordingly, ABA *Standard* 4.4 (lack of diligence) is more relevant to Respondent’s misconduct.

<sup>9</sup> See ABA *Standards* § II at 7.

<sup>10</sup> 956 P.2d 542 (Colo. 1998).

<sup>11</sup> *Id.* at 543-44.

<sup>12</sup> 831 P.2d 893 (Colo. 1992).

<sup>13</sup> *Id.* at 895-96.

<sup>14</sup> *Id.* at 896.

<sup>15</sup> 696 P.2d 249, 250-51 (Colo. 1985). See also *People v. Davies*, 926 P.2d 572, 573 (Colo. 1996) (suspending lawyer with previous discipline for a year and a day for violating Colo. RPC 1.1 by incorrectly calculating client’s child support and by failing to respond to the People’s requests

Accordingly, the Court finds that a suspension lasting one year and one day in this case is well supported by the governing case law. Although a small number of similar cases have found a six month suspension appropriate under similar circumstances,<sup>16</sup> the weight of the available authority tips in favor of a more lengthy period of suspension, particularly given the number of aggravating factors at play here. Protection of the public also favors a period of suspension necessitating that Respondent apply for reinstatement of her license before resuming the practice of law. Indeed, the Court is troubled by Respondent's default in this case and her failure to appear for the sanctions hearing—conduct somewhat similar to the underlying violations established in the complaint—and thus it concludes that Respondent should appear to “provide proof that [s]he has made all necessary efforts to remediate whatever the nature and source of [her] problems so as to preclude a repeat”<sup>17</sup> of her misconduct in the Jateny and Mallard matters.

## V. CONCLUSION

Respondent's misconduct in the Jateny and Mallard matters—as well as her complete refusal to participate in these proceedings—evidences a profound neglect of her duties to her clients and to the legal system. Because Respondent has not participated in these disciplinary proceedings, the Court is ill-equipped to appreciate Respondent's motivations and strategies in these matters, along with any factors that may have mitigated her misconduct. For the same reason, the Court is reluctant to impose any sanction that would facilitate Respondent's re-entry to the practice of law without a close examination of the underlying problems that may have led to the misconduct in these cases or, for that matter, that may have led to her default in this

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for information); *People v. Eaton*, 828 P.2d 246, 247-48 (Colo. 1992) (suspending lawyer for one year and one day for neglecting three client matters and deceiving clients about work she performed, but where substantial mitigation existed, including no prior history of discipline and presence of significant mental disability); *People v. Convery*, 758 P.2d 1338, 1340 (Colo. 1988) (suspending lawyer who filed frivolous motion, failed to respond to interrogatories, failed to take action on case, leading to garnishment of client's bank account, and failed to inform client of a deposition, causing court to order sale of client's property); *People v. Madrid*, 700 P.2d 558, 559-60 (Colo. 1985) (suspending lawyer for one year and one day for neglecting to contact witnesses, file motions, subpoena witnesses in preparation for trial, and respond to client).

<sup>16</sup> See, e.g., *People v. Davis*, 950 P.2d 596, 597-98 (Colo. 1998) (imposing six-month suspension for pattern of misconduct involving failure to submit documents in response to court orders, failure to file responsive pleadings, and failure to follow client directions, where significant aggravating factors, including extensive prior discipline, were present); *People v. Barber*, 799 P.2d 936, 941 (Colo. 1990) (suspending attorney with prior discipline for six months for failing to follow client directions and failing to file claim within applicable statute of limitations, where two factors mitigated misconduct); *People v. Dolan*, 771 P.2d 505, 506-07 (Colo. 1989) (suspending attorney for six months for failing to respond to repeated client inquiries and ceasing all work on matter, where several aggravating factors were present).

<sup>17</sup> *Rishel*, 956 P.2d at 544.

