***People v. Paul X. McMenaman*. 19PDJ018. April 8, 2020.**

A hearing board disbarred Paul X. McMenaman (attorney registration number 16407), effective April 8, 2020.

McMenaman has been suspended from the practice of law since 2006. In 2018, while his law license was suspended, McMenaman sought customers through several Craigslist postings, implying that he could complete the same work as a lawyer. In response, a customer contacted McMenaman for assistance with a landlord-tenant dispute. For an hourly rate, McMenaman provided legal services to the customer, including offering legal advice and drafting a letter on the customer's behalf that threatened further legal action against the tenant.

Through this conduct, McMenaman violated Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 5.5(a)(1) (a lawyer shall not practice law without a law license or other specific authorization); and Colo. RPC 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The case file is public per C.R.C.P. 251.31. Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** PAUL X. MCMENAMAN, #16407	Case Number: **19PDJ018**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

While he was suspended from the practice of law, Paul X. McMenaman ("Respondent") made several Craigslist postings advertising legal services. Based on the postings, Respondent was hired by a customer to assist in a landlord-tenant dispute. Respondent conducted legal research, provided legal advice, and ultimately drafted a letter making legal claims and threatening litigation on behalf of the customer. This misconduct, coupled with Respondent's disciplinary history, warrants disbarment.

I. PROCEDURAL HISTORY

On February 27, 2019, Jacob M. Vos, Office of Attorney Regulation Counsel ("the People"), filed a complaint against Respondent, alleging violations of Colo. RPC 3.4(c), Colo. RPC 5.5(a)(1), Colo. RPC 8.1(b), and Colo. RPC 8.4(c). On the People's motion, Presiding Disciplinary Judge William R. Lucero ("the PDJ") entered default against Respondent on May 9, 2019. In response, Respondent filed a motion to set aside default and to allow further proceedings; the PDJ granted the motion and set aside the entry of default on May 23, 2019. Respondent filed his answer on June 4, 2019.

On September 26, 2019, the PDJ granted the People's motion for summary judgment as to Claims I, II, and IV (premised on Colo. RPC 3.4(c), Colo. RPC 5.5(a)(1), and Colo. RPC 8.4(c), respectively). Shortly thereafter, the People moved to dismiss Claim III (Colo. RPC 8.1(b)), a request the PDJ granted on October 16, 2019. The PDJ ultimately set a sanctions hearing for January 2020, after allowing Respondent additional time to address ongoing medical issues.[1]

[1] A hearing was originally set for October 3-4, 2019, and Respondent moved to continue due to health reasons. In a status conference held on November 4, 2019, Respondent represented that he would be able to proceed with a one-day sanctions hearing in January 2020.

On January 9, 2020, a Hearing Board comprising the PDJ and lawyers Russel Murray III and James A. Shaner held a hearing on the sanctions under C.R.C.P. 251.18. Vos represented the People, and Respondent appeared pro se. During the hearing, the Hearing Board considered stipulated exhibits S1-S9,[2] the People's exhibits 1-4, and the testimony of Howard Horner and Respondent.

II. FACTS AND RULE VIOLATIONS

Respondent was admitted to the practice of law in Colorado on January 8, 1987, under attorney registration number 16407. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[3]

Established Facts on Summary Judgment

In case number 06PDJ064, Respondent's law license was suspended for three years, effective September 15, 2006.[4] To date, Respondent has not been reinstated from that suspension.

Respondent posted several Craigslist advertisements[5] after he was suspended, including one in August 2018 that read:

> I MANAGE YOUR LEGAL ISSUES AND EXPENSES
>
> Thank you for reading my ad. I practiced law for forty years. The learning curve was to manage other lawyers, to to [sic] restrain unnecessary activities and reduce all legal bills to a reasonable cost. You do not have to walk out of an attorney's office shivering with anxiety waiting for the next monthly bill over which you have no control. If you are handling your own affairs I can help you in the same fashion. With average legal expense really coming in at $180 per hour that is $7,200 a week. Call me. Lets [sic] talk about some relief for you. Insurance companies have claims managers whose main responsibility is

[2] Exhibit S6 (bates 461-469), as originally tendered to the Court, contained Respondent's and his wife's social security numbers. When notified of this error, the Court destroyed the original and replaced it with a redacted version of the same document.

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

[4] In that case, Respondent stipulated to violations of Colo. RPC 3.4(c) and Colo. RPC 8.4(c) (among others) for not complying with C.R.C.P. 251.28 and giving adequate notice of his suspension in case number 02PDJ051, and for misrepresentation through omission by failing to reveal his prior suspension to opposing counsel and a tribunal. Respondent's suspension in case number 02PDJ051 was effective December 20, 2002, through March 6, 2003.

[5] At the hearing, Respondent represented that he ran two postings on Craigslist in an effort to build a consulting business.

> to keep on [sic] eye on their attorneys cost. Why shouldn't you? Paul McMenaman 303-4[XX]-2[XXX].[6]

Howard Horner answered a Craigslist advertisement that Respondent had posted. Horner understood that Respondent was "an elderly, formerly practicing attorney that would, for a $40/hr rate, answer questions and assist me in my situation."[7] Respondent and Horner exchanged multiple email communications, and Respondent agreed to provide consulting services to Horner concerning "one specific [prior] tenant regarding one specific property rental."[8]

Respondent then crafted a letter that Horner could deliver to the prior tenant. The letter includes Respondent's name and address at the top; the body of the letter reads:

> Re: Tenancy violations at above address
> . . . .
> Dear [prior tenant], Please be advised that I am writing to you as agent for Mr. Howard Horner, your former landlord regarding the above premises. This is to inform you that all deposits made by you in conjunction with the lease herein have been retained. The basis of the retention is the damage you have caused and the loss of items which were a proper part of the premises. All such damages and losses occurred during your tenancy. They far exceed ordinary wear and tear and are in excess of the funds being retained. Your treatment of the premises was egregious and will cause a loss of rents as well as a significant out of pocket expense to restore the premises to its condition existing immediately prior to the time of your occupancy. All damage sustained was contrary to the terms and spirit of the lease. This letter is not intended to release you from any further claims for damages done by you to the premises. At the conclusion of repairs and replacements we will communicate with you further. Any replies to this letter should be directed to me at the address herein.
> Yours truly
> Paul McMenaman
> Agent[9]

After Horner reviewed the drafted letter, he chose to refund the tenant's deposit and decided not to seek additional payment for the damages to the rental unit. Horner then offered to pay Respondent $100.00 for his time, but Respondent disagreed about the

[6] Order Granting in Part Complainant's Mot. for Summ. J. at 3. This quoted posting post-dates Respondent's interactions with Howard Horner, as described below. Horner testified that the posting he responded to did not include Respondent's name, phone number, or the emphasis on insurance work. Respondent testified that he had inadvertently posted the advertisement Horner responded to, and that he only intended to publish the advertisement quoted here.
[7] Order Granting in Part Complainant's Mot. for Summ. J. at 3-4.
[8] Order Granting in Part Complainant's Mot. for Summ. J. at 4.
[9] Order Granting in Part Complainant's Mot. for Summ. J. at 5.

amount he was owed. Respondent made the following statements to Horner during this dispute:

- "I spent a total of nine hours to date including research for statutory law and then cases that involved that law plus drafting the letter and reviewing your communications and responding."[10]

- "My hope in preparing the type of letter was to end your relationship with your tenant not prolong it. I also was looking forward to working with you on other matters. My experience has been when you soft-pedal around money matters you invite endless comment. Unlike family issues where you do go easier."[11]

- "You hired me as a consultant to help you out of a situation. You did not like my consulting and terminated our relationship. Unless this is how you treat all your contractees you should pay your bills. If you think I cheated you, you are wrong. If you want to resolve this I will accept 50% of my bill just to move on."[12]

In an email exchange disputing Respondent's fee amount, Horner asserted, "I think this process has been very weird if not shady," and "[h]ow do I even know you were ever a lawyer and not just someone scamming me and setting me up for really big problems."[13] Respondent countered, "[t]he next email are pictures if [sic] my former [law] license and degree."[14] He then sent Horner photographs of a certificate from Villanova University School of Law for meritorious service as president of the student bar association and his State of Colorado law license dated January 8, 1987. Horner ultimately paid Respondent a sum of $400.00 and filed a grievance with the People.

Rule Violations

On summary judgment, the PDJ concluded the undisputed material facts showed that Respondent had violated Colo. RPC 3.4(c), Colo. RPC 5.5(a)(1), and Colo. RPC 8.4(c).

The PDJ determined that Respondent violated Colo. RPC 3.4(c), which provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal. The PDJ concluded that Respondent violated this rule because he knew he was suspended from the practice of law yet still offered to provide and did in fact provide a customer with legal counsel and services. The PDJ determined that these same actions also violated Colo. RPC 5.5(a)(1), which mandates that a lawyer shall not practice law without a law license or other specific authorization.

[10] Order Granting in Part Complainant's Mot. for Summ. J. at 6.
[11] Order Granting in Part Complainant's Mot. for Summ. J. at 6.
[12] Order Granting in Part Complainant's Mot. for Summ. J. at 6.
[13] Order Granting in Part Complainant's Mot. for Summ. J. at 6.
[14] Order Granting in Part Complainant's Mot. for Summ. J. at 6.

The PDJ further concluded that Respondent violated Colo. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The PDJ found that Respondent acted in contravention of this rule by misleading Horner and the general public when he misrepresented his ability to provide legal services.

Testimony at the Sanctions Hearing

At the hearing, Horner testified about the tenant dispute for which he wanted legal advice, explaining that he had taken ownership of a property that had a long-term tenant living in it. When the tenant later moved out, Horner discovered a substantial amount of damage to the property, which he estimated would cost at least $3,000.00 to fix. The damage included missing smoke alarms, a broken window, and a missing interior door. Horner stated that this damage was in addition to the normal and expected "wear and tear" to the property, which usually requires new carpeting and paint.

Because he took ownership of the property while it was occupied, and because some of the damage may have occurred before his ownership, Horner had questions about his legal rights and remedies, particularly about keeping the tenant's deposit and a $500.00 overpayment in rent. Since the deposit was only $800.00, Horner did not want to hire a lawyer to represent him, as he assumed the legal fees would be in excess of the deposit. But because the former tenant had threatened legal action of her own to compel the return of her deposit and rent money, Horner was anxious to learn whether he had a strong legal basis for keeping the money. Horner testified that after trying unsuccessfully to find this information on local municipalities' websites and through online searching, he saw Respondent's advertisement on Craigslist.

Horner verified his email communications with Respondent.[15] Horner stated that he sought advice about the specific legal grounds he could assert for withholding the deposit and rent overpayment, and that he turned to Craigslist out of "desperation." In addition to his desire to economize, Horner also wanted to avoid entering into a formal attorney-client relationship, which is why Respondent's posting appealed to him. Horner, however, said that he was soon frustrated by Respondent's failure to provide direct answers to his legal questions. Additionally, Horner felt that he was entering into a level of legal representation with Respondent that he did not want.

Horner recalled that the letter Respondent drafted on his behalf to the former tenant felt "harsh" and "mean spirited," which he held in stark contrast to the initial draft he had provided to Respondent. Horner believed that initial draft represented a "conciliatory" approach, as it offered a compromise to the former tenant, while Respondent's letter set him up for a big legal battle. Due to the tone of the letter, combined with his own personal wish to be done with the matter, Horner decided to refund the tenant's deposit and rent overpayment and not to pursue the matter further.

[15] Submitted as exhibit S1.

Horner said that he then offered to pay Respondent $100.00 for his time but that Respondent disputed the amount, alleging he was owed $500.00 for his work. The parties had escalating email exchanges about the matter, culminating in a heated phone call. At the hearing, Horner said that Respondent was "like a pit bull" on the call, "going from zero to sixty" by threatening to put a lien on his house.

Horner noted that his wife later took another call from Respondent. Horner said that Respondent "started out rough with her" but that she was able to calm him down by assuring him that they would pay him for his services. Horner also testified that they ultimately sent Respondent a payment for $400.00, the amount originally agreed upon, although additional discord between the parties was occasioned by Horner's request for a W-9 form for tax purposes.

Horner stated that he filed a grievance with the People because he did not want someone else to have a similar experience with Respondent. Horner added that he feels "sorry" for Respondent, and that he may have chosen a different course of action had he known more about Respondent's age and health situation.

Respondent began his testimony by describing his education and legal career in New York and New Jersey. He noted that he moved to Colorado in 1986 to operate a ranch in the western part of the state; his goal was to establish a new business selling meat directly to high-end restaurants in New Jersey. When he first moved to Colorado, Respondent had no intention of practicing law here, but a few years later he decided to leave the ranch to give his eight children better opportunities in the Denver metropolitan area. Respondent then worked with insurance companies to restructure their in-house procedures and to reduce their legal costs. Later, he started his own firm.

Respondent also spoke about his contributions to the legal profession, including his work to establish the Ave Maria School of Law in Florida, as well as his community volunteer work. He has been a member of and sponsor with Alcoholics Anonymous for forty-eight years, and he regularly volunteers with the Salvation Army, Catholic Charities, and the Denver Rescue Mission to help the local homeless population.

Respondent explained that his current business endeavors center around negotiating agreements with foreign investors to invest in renewable energy sources, such as solar and wind, on land owned by Native American tribes in the Midwest and the western United States. He hopes to create a steady, long-term income source for tribal members living in poverty by replacing income streams lost to changing environmental standards (*e.g.*, stricter regulations for coal mining). He also wants to bring to the reservations industries that are compatible with tribal cultures. Respondent does this work through the company Greater Plains Native Energy, LLC ("GPNE"), in which he has a 50 percent ownership interest.

Respondent also discussed his health. He currently faces a multitude of ailments and takes numerous medications to manage his conditions and symptoms. He acknowledged

that his health is failing, and he said he would like to live long enough to finish the projects he is currently involved with through GPNE.

Respondent testified that he was "terribly sorry" for what had happened with Horner and emphasized that he did not wish Horner any ill-will. Respondent stated, "I have no excuse, I did a stupid thing [by making the Craigslist posting]," but he also repeated that it was never his intention to practice law. Respondent noted that before this incident he had never tried to practice law since his 2006 suspension. Respondent said he posted the Craigslist advertisement because he had some downtime from the GPNE projects and wanted to help others. He pointed to his 2016-2018 tax returns[16] to show that he has not been earning income from a law practice.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[17] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[18] When imposing a sanction after a finding of lawyer misconduct, a hearing board must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

Where multiple charges of misconduct are proved, the ABA *Standards* counsel that "[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."[19] In all disciplinary proceedings, the Court's utmost concern is protecting the public from errant lawyer conduct.[20]

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

Duty: Members of the legal profession must respect the rule of law. The Hearing Board finds that Respondent violated his duty to comply with prior disciplinary orders when he engaged in the unauthorized practice of law. Further, Respondent violated duties owed to the public and to the legal system by engaging in dishonest conduct when he purported to be able to conduct the same work as a lawyer.[21]

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[16] *See* Exs. S6-S8.

[17] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).

[18] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

[19] ABA *Standards* at xx.

[20] *See People v. Richardson*, 820 P.2d 1120, 1121 (Colo. 1991).

[21] *See In re DeRose*, 55 P.3d 126, 131 (Colo. 2002) ("Truthfulness, honesty, and candor are core values of the legal profession. . . . [I]f lawyers are dishonest, then there is a perception that the [justice] system must also be dishonest. Attorney misconduct perpetuates the public's misperception of the legal profession and breaches the public and professional trust.") (internal citations omitted).

Mental State: The PDJ's order granting summary judgment found that Respondent knowingly engaged in the unauthorized practice of law and knowingly violated his prior suspension order. The PDJ also concluded that Respondent misled potential customers and misrepresented his ability to provide legal advice and services at least recklessly, and likely knowingly.[22] Based on the testimony presented at the sanctions hearing, the Hearing Board finds that Respondent acted knowingly as to all three claims.

Injury: Respondent collected $400.00 from Horner for work that he was not legally authorized to perform. This caused actual financial harm to Horner, but we do not consider this level of actual injury to be "serious" under the ABA *standards*.[23] Nonetheless, we find the potential injury to the public and legal system—given that the general public could see and respond to Respondent's Craigslist post, and given the possible harm that could result—to be serious.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The People advocate that we look to ABA *Standard* 8.1(a), which provides that disbarment is generally warranted when a lawyer "intentionally or knowingly" violates the terms of a prior disciplinary order, thereby causing injury or potential injury. We agree that this *Standard* applies. The People further assert that ABA *Standard* 8.1(b) should also apply, which states that disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. The People argue that Respondent's conduct of misrepresentation by omission in case 06PDJ064 (through failing to disclose affirmatively his suspension in case number 02PDJ051) is the same conduct and rule violations as in the instant case. We find that this *Standard* also governs here.

The People further contend that the presumptive sanction in this case is also established by ABA *Standard* 7.1, which calls for disbarment when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer, causing serious or potentially serious injury to a client, the public, the legal system, or the profession. As noted above, we do not find the actual or potential injury that Horner sustained to be serious. But because we adjudge the potential injury to the legal system and profession as substantial, disbarment is also a presumptive sanction under this *Standard*. We thus begin with the presumptive sanction of disbarment.

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[22] *See In re Fisher*, 202 P.3d 1186, 1203 (Colo. 2009) ("[A] mental state of at least recklessness is required for an 8.4(c) violation."); *People v. Rader*, 822 P.2d 950, 953 ("Under certain circumstances, an attorney's conduct can be so careless or reckless that it must be deemed to be knowing and will constitute a violation of a specific disciplinary rule.").

[23] *Compare* ABA *Standard* 7.1 *with* ABA *Standard* 7.2 (the difference between a presumptive sanction of disbarment and a presumptive sanction of suspension centers on whether the injury or potential injury was "serious" and whether there was intent to obtain a benefit for the lawyer).

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that justify an increase in the degree of the sanction to be imposed, while mitigating factors warrant a reduction in the severity of the sanction.[24] As explained below, the Hearing Board applies five factors in aggravation, one of which is assigned great weight, and four factors in mitigation, two of which are entitled to great weight. We evaluate the following factors.

Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): Respondent has twice before been suspended: first in 2002 and then in 2006. He never applied for reinstatement after his second suspension. We weigh this aggravator heavily.

In 2002, Respondent stipulated to a suspension of one year and one day, with sixty days served and the remainder stayed upon the successful completion of an eighteen-month period of probation. He was sanctioned for a lack of diligence and communication (violating Colo. RPC 1.3 and Colo. RPC 1.4). Respondent also recklessly misrepresented the dates on which he filed documents in violation of Colo. RPC 8.4(c). And in a separate client matter, Respondent failed to timely pay a deposition invoice in violation of Colo. RPC 8.4(h).

In 2006, Respondent stipulated to a three-year suspension for negligent conversion of client and third-party funds (violating Colo. RPC 1.15(a)) and for misrepresentation by endorsing without authorization settlement checks on behalf of a lienholder (violating Colo. RPC 8.4(c)). In another matter, Respondent neglected a client's legal matters (violating Colo. RPC 1.3), failed to communicate with his client (violating Colo. RPC 1.4), and failed to promptly return the client's file after termination (violating Colo. RPC 1.16(d)). Respondent also violated Colo. RPC 8.4(c) through omission when he failed to inform a trial court that he had been suspended from the practice of law from December 2002 through March 2003.

Dishonest or Selfish Motive – 9.22(b): Respondent offered legal services for a fee without a valid law license. Although Respondent represents that he posted the Craigslist advertisement because he wanted to help people, his unwillingness to waive his fee or to refund Horner's money indicates a selfish motive. We give this factor average weight.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People maintain that Respondent has refused to acknowledge his wrongdoing. Although Respondent's initial filings supported this position, his hearing brief and testimony recognize the wrongful nature of his conduct and demonstrate remorse. And even though Respondent did not change his position until after the PDJ had ruled on summary judgment, we do not find the timing to be dispositive. Accordingly, we decline to apply this factor in aggravation.

[24] *See* ABA *Standards* 9.21 and 9.31.

Vulnerability of the Victim – 9.22(h): Horner testified that he felt personally attacked by Respondent, "squeezed on all sides," and unable to defend himself within the legal system. Though we apply this factor, Horner is not part of a class generally seen as vulnerable,[25] so we give it very little weight.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has been licensed to practice law in Colorado since 1987. That he engaged in significant misconduct as a longstanding practitioner must be considered in aggravation. We give this factor average weight.

Indifference to Making Restitution – 9.22(j): Although Respondent volunteered to return Horner's fee at the hearing, there is scant, if any, evidence that he sought to make restitution on his own initiative. We do not find Respondent's assertions that he offered to take a reduced fee during his payment dispute with Horner to be particularly compelling. Nevertheless, we give some credence to his offer to make restitution at the hearing, so we weigh this aggravating factor only lightly.

Mitigating Factors

Absence of Selfish Motive – 9.32(b): Respondent argues that he did not have a selfish motive, emphasizing that he posted his Craigslist advertisements because he wanted to help people. We cannot adopt his position, however, given that he threatened to sue Horner and to put a lien on Horner's house, and given that he refused to refund Horner's money during the People's investigation and this proceeding. Accordingly, we decline to apply this factor in mitigation.

Cooperative Attitude towards Proceedings – 9.32(e): The People agree that Respondent has been cooperative in these proceedings. We award this factor average weight.

Character or Reputation – 9.32(g): Respondent testified to his good character, significant volunteer work, and meaningful community involvement over the years, all of which he asserts should be considered as strong mitigation in his favor. The People do not dispute this testimony. We find that Respondent has made many positive contributions to society, and we give this mitigating factor great weight.

Remorse – 9.32(l): Respondent asks us to apply this factor, stating that he is "personally ashamed" and "deeply remorseful" for his conduct. The People object, noting that Respondent has only shown contrition since the PDJ ruled against him on summary judgment. We find that Respondent is currently remorseful at this time, but we also agree

[25] Victims generally considered to be "vulnerable" are the elderly, children, those with an unequal power relationship (such as when lawyers enter into a sexual relationship with a client), those with physical or mental disability or impairment, and those lacking sophistication. *See* ABA *Standards* at 473-78.

with the People that he did not express remorse until late in the proceeding. We award this factor only very limited mitigating credit.

Remoteness of Prior Offenses – 9.32(m): Respondent's prior offenses, which occurred more than a decade ago, are mitigated by the passage of time. We find that this factor carries substantial weight in mitigation.

Analysis Under ABA *Standards* and Case Law

The Colorado Supreme Court has directed the Hearing Board to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[26] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[27] Though prior cases are instructive by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis. In some circumstances, cases predating the 1999 revision to this state's disciplinary system may carry less precedential weight than more recent cases.[28]

The People argue that Respondent should be disbarred, while Respondent asserts that there are sufficient mitigating circumstances to impose a private admonition or, alternatively, a public censure. Here, the ABA *Standards* call for disbarment as the presumptive sanction under several applicable standards, and the relative balance of mitigating and aggravating factors does not militate in favor of a different outcome. We thus turn to case law addressing a lawyer's knowing violation of a prior disciplinary order.

In support of their contention that "Colorado routinely disbars attorneys for practicing in violation of disciplinary suspension orders,"[29] the People point to *People v. Stauffer*.[30] They also draw parallels with *People v. Zimmermann*, where the Colorado Supreme Court applied ABA *Standard* 8.1(a) to impose disbarment.[31] In *Zimmermann*, the Colorado Supreme Court rejected the lawyer's argument that a three-year suspension would

[26] *See In re Attorney F.*, 2012 CO 57, ¶¶ 19-20 ("To arrive at a presumptive sanction, the misconduct first should be analyzed in terms of the duty violated, the attorney's mental state, and the extent of the actual or potential injury caused by the misconduct. Then to arrive at the ultimate sanction, aggravating and mitigating factors should be taken into account.") (internal citations omitted); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

[27] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

[28] *Id.*

[29] People's Hr'g Br. at 3.

[30] 858 P.2d 694, 699 (Colo. 1993) (a lawyer was immediately suspended based on criminal charges pending against him for possession of cocaine; he continued to practice law during that period in which he was immediately suspended, and the Colorado Supreme Court ultimately held that disbarment was the appropriate sanction).

[31] 960 P.2d 85, 87-88 (Colo. 1998).

suffice, noting that prior cases imposing sanctions less than disbarment involved violations of administrative—not disciplinary—suspension orders.[32]

Respondent argues that his lack of motive to cause harm or to violate his professional duties warrants a sanction far less than disbarment. In essence, he maintains that because he did not have the intention to practice law, he did not possess a mental state that would warrant imposition of disbarment. But he does not cite any legal authority to bolster his assertion that his discipline should be limited to a private admonition or a public censure.

In this case, we find persuasive *People v. Redman*, where the Colorado Supreme Court accepted a lawyer's stipulation to disbarment for representing several clients in contravention of a disciplinary suspension order.[33] The *Redman* decision cited ABA *Standards* 8.1(a) and 8.1(b) and observed that disbarment has generally been imposed "when a lawyer practices law while suspended or otherwise violates an order of suspension and causes harm to a client."[34]

Here, Respondent knew that he was suspended from the practice of law yet posted Craigslist advertisements offering legal services. He then conducted legal research, provided legal advice, drafted a letter making legal claims on behalf of a customer, and demanded that he be paid for the legal services he provided. Respondent engaged in these activities knowingly. Although Respondent's history of community involvement is a substantial mitigator, it is not sufficient to overcome the presumptive sanction, other aggravating factors, and the weight of the case law. Given the presumptive sanction, the balance of aggravating and mitigating factors, the relevant case law, and Respondent's prior discipline, we find that the appropriate sanction is disbarment.

IV. CONCLUSION

We conclude that the appropriate sanction here is disbarment. Respondent knowingly disobeyed an order suspending his license to practice law, exhibiting "a basic disrespect for the court and its authority."[35] His earlier order of suspension having had little effect, disbarment is the appropriate response here.

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[32] *Id*. at 88.

[33] 902 P.2d 839, 839-40 (Colo. 1995).

[34] *Id*. at 840 (citing, *inter alia*, *People v. Wilson*, 832 P.2d 943, 945 (Colo. 1992) ("A lawyer's continued practice of law while under an order of suspension . . . warrants disbarment.")); *but see People v. Cain*, 957 P.2d 346, 346-47 (Colo. 1998) (publicly censuring a lawyer whose mental state was "not readily determinable" for practicing law while suspended because the lawyer had already been suspended for eight years and would have to pass the bar examination before returning to the practice of law; the sanctions analysis, however, was inconsistent with the current ABA *Standards* framework and did not identify a presumptive sanction).

[35] ABA *Standards* at 382.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **PAUL X. MCMENAMAN**, attorney registration number **16407**, will be **DISBARRED**. The disbarment will take effect upon issuance of an "Order and Notice of Disbarment."[36]

2. Within fourteen days of issuance of the "Order and Notice of Disbarment," Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the PDJ setting forth pending matters and attesting, *inter alia*, to notification of clients and other state and federal jurisdictions where he is licensed.

3. The parties **MUST** file any posthearing motion **on or before Wednesday, March 18, 2020.** Any response thereto **MUST** be filed within seven days.

4. The parties **MUST** file any application for stay pending appeal **on or before Wednesday, March 25, 2020**. Any response thereto **MUST** be filed within seven days.

5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Wednesday, March 18, 2020**. Any response thereto **MUST** be filed within seven days.

[36] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 251.19(b). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

DATED THIS 4th DAY OF MARCH, 2020.

Original Signature on File
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File
RUSSEL MURRAY III
HEARING BOARD MEMBER

Original Signature on File
JAMES A. SHANER
HEARING BOARD MEMBER

Copies to:

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Paul X. McMenaman Respondent	Via Email pmcmenaman.wed@gmail.com
Russel Murray III James A. Shaner Hearing Board Members	Via Email Via Email
Cheryl Stevens Colorado Supreme Court	Via Hand Delivery