***People v. David L. Olson II*. 15PDJ062, consolidated with 16PDJ007. July 25, 2016.**

Following a disciplinary hearing, a hearing board suspended David L. Olson II (attorney registration number 37228) for thirty months, effective August 29, 2016. To be reinstated, Olson will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law.

In 2014, Olson was convicted of disorderly conduct stemming from a domestic dispute with his then-wife. The Office of Attorney Regulation Counsel filed a disciplinary complaint against Olson based on the conviction, and a hearing was set. Olson then twice attempted to persuade his wife to soften her testimony and to avoid the People's subpoena.

Olson's acts of domestic violence violated Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). Olson's efforts to engage in witness tampering in violation of C.R.S. sections 18-8-707(1)(a) and (1)(c) violated Colo. RPC 3.4(a) (a lawyer shall not unlawfully obstruct another party's access to evidence); Colo. RPC 3.4(f) (a lawyer shall not request a person other than a client to refrain from voluntarily giving relevant information to another party); Colo. RPC 8.4(b); and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

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:** DAVID L. OLSON II	Case Number: **15PDJ062** **(consolidated with 16PDJ007)**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)	

David L. Olson II ("Respondent") was convicted of disorderly conduct stemming from a domestic dispute with his then-wife. The Office of Attorney Regulation Counsel ("the People") filed a disciplinary complaint against Respondent based on the conviction, and a hearing was set. Respondent then attempted to persuade his wife to soften her testimony and to avoid the People's subpoena. Respondent's misconduct warrants suspension for thirty months.

I. PROCEDURAL HISTORY

Jacob M. Vos filed a complaint for the People in case number 15PDJ062 on July 24, 2015, alleging one claim premised upon Respondent's criminal conviction for disorderly conduct (unreasonable noise), a petty offense. Respondent filed his answer on August 14, 2015, denying that he engaged in any misconduct. Presiding Disciplinary Judge William R. Lucero ("the PDJ") set the case for a hearing on December 16, 2015.

On November 9, 2015, the People filed a motion for summary judgment, but the PDJ denied the motion a month later. The parties appeared before the PDJ for a prehearing conference on November 23, 2015. There, the PDJ continued the hearing because the People intended to file a second complaint against Respondent premised on upon new allegations. The PDJ ordered the parties to attend a scheduling conference on January 19, 2016. During that conference, the PDJ reset the hearing for May 2-3, 2016, and ordered the parties to engage in alternative dispute resolution.

On January 25, 2016, the People filed a complaint in case number 16PDJ007 asserting claims for relief based upon Respondent's alleged witness tampering and harassment. The next day, the PDJ consolidated the new complaint with case number 15PDJ062. Respondent

responded to the second complaint on February 16, 2016. Soon thereafter the PDJ reset the hearing for May 17-18, 2016.

The parties filed numerous pretrial motions. On March 31, 2016, the PDJ denied Respondent's motion asserting marital privilege, finding that Respondent's marriage had terminated *nunc pro tunc* on August 31, 2015, and thus any conversations he had with his ex-wife, Jamie Olson, after that date were not protected by the marital privilege. The People filed a motion in limine, asking the PDJ to exclude the testimony of Respondent's nonretained expert witness, Dr. Randy Braley, claiming that his anticipated testimony concerning Ms. Olson would be privileged and that any testimony he might give regarding Respondent's good character or habit for truthfulness would be inadmissible. The PDJ agreed with the People, in part, and on April 19, 2016, he limited Dr. Braley's testimony to statements about Respondent's individual care and treatment and Respondent's character and reputation in mitigation. On May 5, 2016, the PDJ granted the People's motion to compel the production of certain correspondence between Respondent and Ms. Olson. On May 6, 2016, the PDJ denied the People's motion in limine to limit the number of Respondent's character witnesses. Also on that day, the PDJ granted Respondent's motion to strike portions of the People's hearing brief and ordered the People to file an amended hearing brief, which they did.

The PDJ held a prehearing conference on May 10, 2016. There, the PDJ granted the parties' request for a sequestration order and permitted an advisory witness to sit with Respondent during the hearing. The PDJ also placed time limits on the parties' opening and closing statements.

On May 17-18, 2016, a Hearing Board comprising Thomas J. Herd and Douglas D. Piersel, members of the bar, and the PDJ held a hearing per C.R.C.P. 251.18. Vos represented the People, and Respondent appeared pro se.[1] The Hearing Board considered the stipulated facts and testimony from Officer Vincent Lopez, Jamie Olson, Patrick Sawhill, Mike Malone, Doreen Malone, Dr. Randy Braley, Officer John Frahm, Mary Lynne Elliott, Nathan Rand, Steve Fast, G.O.,[2] Terri Sahli, Kathleen Sullivan, and Respondent. The PDJ admitted stipulated exhibits S1-S3, the People's exhibits 4-5, 7-8, 10, 12, and 14-18, and Respondent's exhibits D, F, I, K, U, and V.

At the close of his case, Respondent moved for a directed verdict on the People's witness tampering claims. Respondent argued that the People had not presented clear and convincing evidence that he dissuaded Ms. Olson from testifying at the disciplinary hearing originally set in December 2015. The People contended that factual disputes existed and that Respondent's motion should be denied. The PDJ, viewing the evidence in the light most favorable to the People, denied Respondent's motion. The People also made an offer of proof with respect to certain testimony from Patrick Sawhill and Mike and Doreen Malone, which the PDJ had excluded as hearsay.

[1] Inactive and retired attorney Arthur Karstaedt sat with Respondent during the hearing as his advisory witness.
[2] We refer to this witness by her initials because she is a minor.

II. FINDINGS OF FACTS[3] AND RULE VIOLATIONS

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on May 15, 2006, under attorney registration number 37228.[4] He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[5]

Respondent graduated from the University of Nebraska in 1997 with a degree in marketing and finance. He attended the university on an athletic scholarship for long-distance running and track. While there, Respondent was the captain of the cross-country team and was nationally ranked as a long-distance runner. After he graduated, Respondent trained for the 2000 Olympic trials, until he had a career-ending injury.

Ms. Olson and Respondent were married in 1997. He described their roles within their marriage as very traditional—"1950s Americana"—as he worked full-time and she stayed home to raise their children. Respondent testified that he and Ms. Olson both came from difficult backgrounds and that they wanted to "form the roots of a new family tree." During their eighteen-year marriage, the Olsons had three children—two daughters and one son.

From 1997 to 2002, Respondent worked full-time as an adjuster for State Farm Insurance Company. During this period, he also attended the University of Nebraska College of Law, where he served as the executive editor of the *Nebraska Law Review*.

In 2006, Respondent and his family moved to Colorado, where he became licensed to practice law. He began his legal career in private practice, eventually working at a large firm. He was so fixated on becoming a partner that he missed two Christmases with his family and gained sixty pounds. He realizes now that his lifestyle then was fundamentally flawed, as he did not appreciate the notion of equity within the family. Around 2013, Respondent left private practice and became general counsel for Colorado School Districts Self Insurance Pool ("CSDSIP"),[6] where he earns about $125,000.00 a year. Respondent describes himself as passionate about school law and public education. At present, Ms. Olson is a kindergarten teacher and earns approximately $30,000.00 a year.

In 2013, the Olsons separated. Respondent moved to an apartment in Denver while Ms. Olson remained in the family home in Broomfield. In June 2014, Respondent moved back into the family home to work on their marriage.

Respondent's Criminal Conviction

Respondent and Ms. Olson largely agree about the facts giving rise to the incident occurring on June 18, 2014; they disagree, however, as to the severity of harm Ms. Olson

[3] Where not otherwise indicated, these facts are drawn from testimony provided at the hearing.
[4] Stip. Facts ¶ 1.
[5] Stip. Facts ¶ 1. *See* C.R.C.P. 251.1(b).
[6] CSDSIP offers insurance products and risk management solutions for its school-district members.

suffered. That day, Ms. Olson had discovered Respondent's relationship with another woman during their period of separation, and she was very upset. She called Respondent to discuss what she had found, but Respondent did not want to talk. He recalled that during this conversation, Ms. Olson told him that she could not "do it anymore" and, as he described, sounded as though she were in a frenzied emotional state.

When Respondent came home that evening, Ms. Olson stated that she "very much wanted" to have a conversation with Respondent, but he "flat out didn't want to talk about it, at all." Rather than speaking with Ms. Olson, Respondent decided to take his daughter G.O. on a drive until around 10:30 p.m. Later that night, while they were in bed, the Olsons argued about Respondent's infidelity. Ms. Olson had a picture of the other woman on her iPad, which she kept showing Respondent.

According to Ms. Olson, Respondent did not want to speak to her about the other woman and pushed her out of the bed with his hands, his body, and his feet. She did not shove him back, she said; instead, she fell out of bed, grabbed her cell phone from their nightstand, and curled up into a ball on the floor. She next remembered Respondent forcefully placing himself on top of her, causing the side of her face to hurt. She thought maybe Respondent had pushed, shoved, or held her in place on the floor, but she was not positive. While lying on the floor, she recalled Respondent pushing her toward the bedroom door while she resisted. Ms. Olson testified that at some point Respondent picked her up and tossed her toward the door. This hurt, she stated, and she told him "Please stop, don't." As she got closer to the door, she indicated to him that she would call the police, at which point he walked away. After that, she left the bedroom and ran to her daughters' room because she was worried about them. She spoke with a 9-1-1 dispatcher, and a short time later the police appeared. According to Ms. Olson, she called the police because she was worried about her safety, she believed that she and her children had value, and she wanted this behavior to stop. She later told Mary Lynne Elliott, the People's investigator, that this type of event had not happened earlier in their marriage and was not typical of their relationship.[7]

Respondent provided a somewhat different account of the incident than did Ms. Olson. He remembered lying in bed when Ms. Olson began shoving her iPad in his face. He told her that he did not want to talk, but Ms. Olson would not let it be. Ultimately, he stood up, grabbed her iPad, and told her that he would throw it off the "f-ing deck." At this point, "things" escalated. He testified that he grabbed the comforter from the bed and headed to the bedroom door, but Ms. Olson blocked the door and would not let him leave. He returned to the bed, where she continued to shove her iPad in his face. He again grabbed the iPad, and this time tossed it. Respondent stated that they both placed their hands on each other and engaged in a "tension tug-of-war." He stated that he was trying to "slide her" off of the bed. Once on the floor, Ms. Olson curled up in a ball. By this time, Respondent said, he was really angry and proceeded to pick her up by her waist and carry her toward the bedroom

[7] *See* Ex. U at 2.

door. He remembered her resisting, struggling, and kicking. He testified that it was his intent all along to simply remove her from the room because he wanted to sleep. After she said, "f-you, I'm calling the police, you're going to jail," he let her go and started packing his bags. He did not see her again until he was escorted out of the house in handcuffs.

Officers Vincent Lopez and Michael Carvill of the City and County of Broomfield responded to the Olson residence that night. Lopez's testimony is set forth in the following three paragraphs. Lopez stated that he received a phone call from a dispatcher on June 18, 2014, at approximately 11:46 p.m., who referenced a "physical domestic."[8] The dispatcher reported to Lopez that a female—later identified as Ms. Olson— called 9-1-1 and said her husband, from whom she was separated, had shoved her and hit her in the face.[9] Lopez and Carvill approached the front door, where they were met by Ms. Olson.[10] Respondent was upstairs packing, and Lopez went upstairs to interview him while Carvill stayed with Ms. Olson.[11]

Upstairs, Lopez found Respondent to be cooperative and nonaggressive.[12] Lopez took a statement from Respondent, who reported that he and Ms. Olson had been arguing about his infidelity.[13] Lopez testified that Respondent told him that he pushed Ms. Olson to give himself some space and that they both engaged in a pushing match.[14] Respondent indicated that he pushed Ms. Olson with enough force that she fell off the bed,[15] which Lopez recalled here as being low to the floor. Lopez found Respondent hesitant to label his push as a shove,[16] but remembered Respondent making the statement that he "won the shoving match, round one goes to David,"[17] when describing pushing Ms. Olson off the bed.

After speaking with Respondent, Lopez next interviewed Ms. Olson, who relayed, in part, a similar story to Respondent's.[18] Unlike Respondent, however, Ms. Olson indicated that she never deliberately pushed or kicked Respondent.[19] She told Lopez that Respondent shoved her off the bed onto the ground and she felt pain on her face.[20]

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[8] *See* Ex. S2 (Lopez's report) at 000018-19. Lopez explained that a "physical domestic" means a physical argument between two people in a relationship, where someone had been hit, pushed, or shoved.
[9] *See also* Ex. S2 at 000019.
[10] *See also* Ex. S2 at 000019.
[11] *See also* Ex. S2 at 000019.
[12] *See also* Ex. S2 at 000019 (stating that Respondent was extremely cooperative and that there were no safety concerns).
[13] *See also* Ex. S2 at 000020.
[14] *See also* Ex. S2 at 000020.
[15] *See also* Ex. S2 at 000020.
[16] *See also* Ex. S2 at 000020.
[17] *See also* Ex. S2 at 000020.
[18] *See also* Ex. S2 at 000021-23.
[19] *See also* Ex. S2 at 000022.
[20] *See also* Ex. S2 at 000021 ("Jamie said as she landed on the floor she then felt an extreme amount of force on her right cheek and lower front pelvic area.").

Lopez then completed a case summary, took a written statement from Ms. Olson, and asked her to diagram where she felt pain or was struck.[21] In his summary, he did not check any boxes under the "Victim Injuries" section.[22] Lopez observed redness on Ms. Olson's face but found that she had not been hit in the face, as the 9-1-1 dispatcher had reported.[23] The Hearing Board credits Ms. Olson's testimony as to the level of pain and harm she suffered that evening. Although she did not suffer grave bodily injury, she had visible redness on her check, and she felt pain when Respondent pushed her off the bed and used force in an attempt to remove her from the bedroom.

Thereafter, Lopez took Respondent into custody, where he was held for domestic violence and harassment.[24] The harassment charge was ultimately dismissed,[25] and on July 30, 2014, Respondent pleaded guilty to the petty offense of disorderly conduct (unreasonable noise) under C.R.S. section 18-9-106(1)(c).[26] The charging document for this offense stated "Domestic Violence Status" and "Proven."[27] Respondent self-reported his conviction to the People.

Respondent testified that he "absolutely acknowledges" what he did that night and that in no way does he want to minimize his conduct. He never wished to injure Ms. Olson or cause her pain that evening, he said; he only wanted her to leave the bedroom. He stated that he understands that he "absolutely should have simply walked away," not because of the consequences he faced, but because it was inappropriate to put his hands on her. When he heard Ms. Olson calling 9-1-1, he thought "wow, this was really happening." Respondent avowed that he has accepted responsibility for his conduct and has learned that his actions have consequences. He knows how important it is to express empathy and sympathy, and to honor and respect the person he is with. He believes that he received a second chance after this incident and would not do anything to jeopardize that opportunity. Respondent testified that since June 2014 he has been in therapy with Dr. Randy Braley and, as a result, he now lives a more "authentic and realistic life" and is a better man. Throughout these proceedings Respondent stated that he has had a remarkable opportunity to reconstruct his

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[21] *See* Ex. S2 at 000031-33. Lopez testified that the case summary is filled out by the officer with the victim. The victim then fills out the diagrams by herself, marking an "x" where she felt pain or was struck. Ms. Olson recalled writing her statement and marking the diagram, and she testified that these documents accurately reflect the pain and injuries she sustained that evening. Ex. S2 at 000031-33.

[22] Ex. S2 at 000032.

[23] *See also* Ex. S2 at 000019; Ex. S2 at 000028 (indicating no injury or hospitalization); Ex. S2 at 000032 (indicating pushing and shoving but no pain). There was a bruise on her cheek, she said, from an altercation with Respondent earlier that week, which she did not report to the police.

[24] Lopez agreed on cross examination that Respondent might have been charged with third-degree assault had Ms. Olson been physically injured or suffered noticeable visual abrasions. The day after Respondent's arrest, on June 19, 2014, the court issued a mandatory protection order against Respondent. Ex. S1 at 000007. Although Ms. Olson moved to dismiss the protection order on June 23, 2014, she changed her mind four days later and asked the court to keep the protection order in place. Ex. S1 at 000009-10.

[25] Ex. S1 at 000002, 000014.

[26] Stip. Facts ¶ 8; Ex. S1 at 000002, 000014.

[27] Ex. S1 at 000001. His petty offense charge contained a domestic violence enhancer.

life and inner circle. He does not, however, believe that his actions on June 18, 2014, merit the level of disciplinary sanctions the People have pursued in this case.

After concluding their investigation of Respondent's criminal conviction, the People offered Respondent a public censure in July 2015, but he rejected this offer.[28] The executive director of CSDSIP, Steve Fast, testified that he has never told Respondent he would lose his job because of this disciplinary action, that he was aware of the People's settlement offer,[29] and that he suggested to Respondent a public censure or private admonition was a good option.

The People allege that Respondent's physical altercation with Ms. Olson violated Colo. RPC 8.4(b) and C.R.C.P. 251.5(b). Colo. RPC 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as an attorney in other respects. Under C.R.C.P. 251.5(b), grounds for discipline include "[a]ny criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Comment two of Colo. RPC 8.4(b) states that "[a]lthough a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate a lack of those characteristics relevant to law practice." In that category are offenses involving violence, dishonesty, breach of trust, and serious interference with the administration of justice.[30] The Colorado Supreme Court has traditionally taken a serious view of misconduct by an attorney "involving the infliction of bodily harm on another" and has concluded that such conduct "seriously adversely reflects" on an attorney's fitness to practice.[31]

For his part, Respondent contends that the altercation with Ms. Olson does not reflect adversely on his fitness as an attorney, especially because he was charged only with a petty offense—rather than assault—and because he believes Ms. Olson in fact suffered no serious bodily harm or injury as a result of his actions. As the Colorado Supreme Court observed in *People v. Brailsford*, the actual nature of the conduct at issue is more significant than its statutory label for disciplinary purposes.[32] Although Respondent ultimately pleaded guilty to a petty offense, it is the events giving rise to his charge that concern us, not the statutory label placed on that charge. Here, Respondent admitted that he pushed Ms. Olson with enough force to knock her off the bed and even gave himself credit for winning the

[28] Ex. 18 (rejecting the People's offer and indicating that he hoped a hearing board would "stop short of the more serious sanctions of disbarment, suspension, or public censure"). This exhibit was admitted to show Respondent's motive. Respondent stated he was concerned about the stigma of public discipline.

[29] *See* Ex. 18.

[30] Colo. RPC 8.4(b) cmt. 2.

[31] *In re Hickox*, 57 P.3d 403, 405 (Colo. 2002) (finding that a lawyer's guilty plea to disturbing the peace, assault, and domestic violence seriously adversely reflected on his fitness to practice where he had grabbed his estranged wife's wrist, turned her arm behind her back, and escorted her up the stairs, causing her to stumble and fall).

[32] 933 P.2d 592, 595 (Colo. 1997); *see also See People v. Musick*, 960 P.2d 89, 92 (Colo. 1998) ("[W]e have never held that a complaint must charge a violation of the criminal law before physically assaultive behavior can be found to reflect adversely on a lawyer's fitness to practice.").

first round of the "shoving match" when describing his conduct to Lopez. Respondent also conceded that he picked Ms. Olson up off the floor from her fetal position and tried to physically remove her from the room by dragging or carrying her toward the door, despite her resistance and pleas to stop. Ms. Olson credibly testified that she experienced pain, felt force, and was fearful for her safety. Ms. Olson indicated on her witness statement and corresponding diagram—made the same evening as the event—that Respondent struck her on four places of her body. Lopez likewise observed redness on her face, even though he determined that Respondent had not hit her in the face.

Such conduct on the part of an officer of the court is grave, and we find that the nature of Respondent's conduct toward Ms. Olson and the pain she suffered seriously adversely reflect on his fitness as a lawyer. Accordingly, we conclude that the People have proved by clear and convincing evidence that Respondent's conduct contravenes Colo. RPC 8.4(b) and warrants discipline under C.R.C.P. 251.5(b).

Witness Tampering

The People filed a disciplinary complaint against Respondent in case number 15PDJ062 in July 2015, and a hearing was set for December 2015. Ms. Olson testified that the People contacted her sometime in fall 2015 to inform her that she might be called as a witness in the hearing.

During August and September 2015, the Olsons finalized their divorce, including the division of marital property and the development of a parenting plan. Respondent described their interactions during this period as very toxic and contentious.[33] On September 29, 2015, the district court entered its final decree of dissolution, *nunc pro tunc* to August 31, 2015. Per the final decree, Respondent must pay Ms. Olson $3,750.00 a month in spousal maintenance and child support.

Ms. Olson stated that in September 2015 Respondent began repeatedly calling her, relaying a "panicked message," and implying that she did not realize the seriousness of his impending disciplinary case. During those conversations, she said, he would inquire about whether the People had asked her questions and whether she was going to testify at the disciplinary hearing in December. According to Ms. Olson, Respondent asked her to "work with [him]" by describing the events of June 18, 2014, "as not as bad" or even to ignore the People's subpoena when it came. She said that she told him she would do neither. She also testified that his frequent urgent phone calls interfered with her work.[34] She requested that he stop calling her and instead email or send her text messages, but he continued to try to speak with her in person.[35]

[33] *See* Ex. 15.
[34] *See* Ex. 15 (indicating that on September 21, 2015, Respondent called Ms. Olson ten times, left her four voice mails, and sent her ten text messages and twenty-two emails, including many such communications during work hours).
[35] *See* Ex. 15.

Patrick Sawhill, Ms. Olson's fiancé, recalled Respondent's incessant pattern of calling and texting Ms. Olson during September 2015, and he observed the stress that these communications caused her. Although Sawhill never personally overheard Respondent suggesting that Ms. Olson ignore a subpoena, it was his impression that Respondent wanted her to rethink her participation in his disciplinary case. Mike Malone, Ms. Olson's father, testified that he spent a great deal of time with her during fall 2015. According to Mr. Malone, Ms. Olson told him that Respondent was constantly contacting her about his disciplinary case. Ms. Olson indicated that around this time she began recording her phone conversations with Respondent but was only able to record three or four conversations. In none of those conversations did Respondent ask her to avoid the People's subpoena.

The People's allegations of witness tampering are based on two specific events: the first on September 9, 2015, and the second on September 25, 2015. At 3:34 p.m. on September 9, 2015, Ms. Olson sent Respondent an email, stating the following:

> Please give the issue of you asking me to ignore a court ordered (or whatever agency it is) subpoena. Asking me to meet with you to talk about what might happened [sic] does seem like you are trying to influence a witness that could potentially offer testimony that you may not like. You told me that I could ignore the subpoena if I receive one and that it is not against the law. You also said that I could refuse to speak to "them" or just be out of town. Please provide documentation about that [which] indicates those actions would be lawful.[36]

Ms. Olson testified that she wrote this email to ask Respondent whether she could lawfully ignore a subpoena, and she was "not afraid to call him out" by sending it. Respondent did not respond to this email.

Later that evening, the Olsons attended their daughter G.O.'s cross-country meet in Boulder. Their accounts of what occurred after the meet vary drastically. Ms. Olson's version of events is set forth in the following two paragraphs. After their daughter's race ended, she said Respondent approached her, wanting to speak with her privately while they walked to her car. He repeatedly asked the children to walk in front of them so that they would not hear their conversation. Respondent stressed the importance of his upcoming disciplinary hearing and emphasized that she did not understand what might happen to him. Respondent told her that the People might subpoena her but that she could be "out of town" or "forget" that she had been subpoenaed. Despite her attempts to avoid the conversation, she said, Respondent grabbed her elbow to stop her from walking any farther, took her car keys from her hand, and threw the keys to the ground. He then snatched her phone and asked if she was recording their conversation. As soon as Ms. Olson was able to get into her car, she immediately called Sawhill to tell him about the conversation. Elliott testified she later learned from Sawhill that Ms. Olson called him, upset, right after her

[36] *See* Ex. 4.

conversation with Respondent.[37] Sawhill reported to Elliott that Ms. Olson repeated what Respondent had said, asserted that he had grabbed her arm, and noted that he had taken her keys to force her to speak with him.[38]

Ms. Olson testified that she took detailed notes about the conversation shortly after or within a week of the occurrence. She saved these notes in her draft email folder.[39] She took these notes because a "lot of strange things had been happening or said over the last several months" and she wanted a record of the details. Sawhill encouraged her to take notes and even assisted her to transcribe them. He remembered Ms. Olson taking these notes shortly after her conversation with Respondent.

Respondent's recollection of their conversation differs from Ms. Olson's account, however. In fact, he denies that any conversation, as Ms. Olson relays it, took place and avers instead that Ms. Olson fabricated the entire conversation. Respondent stated that after G.O.'s cross-country meet, he, Ms. Olson, and their two daughters walked to Ms. Olson's car together and on the way, he sat on a bench with G.O. while Ms. Olson talked with two friends. He and G.O. waved goodbye to Ms. Olson and their other daughter and then left for dinner. He testified that he observed nothing after the meet that would have upset Ms. Olson enough to call Sawhill from her car. He "absolutely" believes that Ms. Olson made up this entire conversation.

Likewise, G.O. testified that the conversation between Respondent and her mother never occurred. In her version of events, after running two races, she was "out of it." After cooling down, she and her family walked across the field toward her mother's car together. She remembered sitting on a bench with her father to discuss the race, and when the family arrived at her mother's car, they all said goodbye. She then left with her father to have dinner. According to G.O., she walked next to her father the entire distance to the car and she heard everything that her parents said. She never heard her father threaten her mother, nor did she see her father grab her mother's car keys. She did not overhear him telling her mother to not testify, or to go on vacation, or to ignore a subpoena. G.O. also said that on many occasions her mother told her not to testify at the hearing and that her grandmother, Doreen Malone, also told her to "stay out of" the hearing.

A second significant conversation, the People allege, occurred between Ms. Olson and Respondent on the evening of September 25, 2016. Respondent disputes what was said during this conversation as well.

Ms. Olson's testimony is set forth in the following two paragraphs. As Ms. Olson described, when Respondent dropped off their two daughters at her house on September 25, he asked to speak with her outside.[40] She did not want to talk to him.

[37] *See* Ex. U.
[38] See Ex. U at 20.
[39] *See* Ex. 7.
[40] *See also* Ex. U at 7-8.

Eventually, she said, he pulled out a folder, which he claimed contained their taxes, and which bore the label "baby mama." He asked Ms. Olson to take the folder from him, but she refused because he was agitated and wanted to talk about his hearing. She got the impression that he wanted her to understand the implications of what could happen to his career and the possible financial impact on her and the children if he lost his job. According to Ms. Olson, he told her to "soften" her testimony by saying that the events of June 18, 2014, were not as bad as reflected in the police report; she could say that it was "a one-time moment" or she could go out of town, ignore the subpoena, or forget about the subpoena, he told her. Eventually Respondent threw the tax folder to the ground and walked back to his car, pointing his finger at her and raising his voice.

As she did on September 9, 2015, Ms. Olson took notes that evening documenting her conversation with Respondent. She saved her notes as a separate draft email.[41] Sawhill—who witnessed this conversation from down the street while sitting in his car—encouraged her to write down her observations. He testified that her notes correspond with what he witnessed, although he did not hear what was said. Later that evening, Ms. Olson stated, she and Respondent exchanged a series of text messages in which Respondent insisted that she read her email.[42] Ms. Olson does not recall speaking with Respondent but noted in her draft email narrative that Respondent called her an additional six times that evening.[43] She did not know what these calls were about but assumed they were related to his disciplinary case, so she did not answer them.[44]

Respondent's recollection of their conversation is as follows. According to Respondent, he had unsuccessfully tried to get Ms. Olson to sign their tax forms and was very frustrated. He decided to hand her the tax forms in person when he picked up the children for the weekend in order to ensure that she would sign them. She would not take the folder from him, he stated, so he tossed it on the front step, and the conversation concluded with additional yelling. According to Respondent, their entire exchange was about the tax forms, nothing more. When he returned home after having dinner with his children, he checked his email and discovered that Ms. Olson's attorney had filed a motion in their divorce case.[45] He then called and texted Ms. Olson to discuss the motion, not his disciplinary hearing.[46]

Respondent contends that Ms. Olson has lied in her allegations of witness tampering. Her motive, according to Respondent, is to retain control over him and their children. She does not care about his financial support, he says, and her "end game is total destruction" of me. In support, he argues that at most he was facing a public censure for his criminal

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[41] *See* Ex. 8.
[42] *See* Ex. 14. Respondent's text messages appear in blue and Ms. Olson's are in white.
[43] Ex. 8 at 000197.
[44] *See* Ex. S3 at 000043; Ex. 8 at 000197.
[45] *See* Ex. D at 3 (indicating that Ms. Olson's attorney filed a proposed decree and parenting plan with the court at 4:19 p.m. on September 25, 2015).
[46] *See* Ex. 14 at 000231-32.

conviction, and that the witness tampering allegations make no sense when viewed in the context of the People's settlement offer.[47] Respondent also points to two emails: the first dated September 21, 2015, which demonstrates that he and Ms. Olson had been arguing about the parenting plan during this time;[48] and a second email sent by Ms. Olson to the People on October 23, 2015, informing them of Respondent's behavior.[49] According to Respondent, this is the email in which Ms. Olson first fabricates her allegations of witness tampering. He contends that she sent this email to the People in retaliation for his attempts to enforce the parenting plan, which he alleged Ms. Olson had been violating throughout October. Ms. Olson, on the other hand, testified that she reported Respondent's conduct to the People because she had "had enough."[50] Ms. Olson believed that by making Respondent's conduct known to the People, he might stop talking to her about his case and pressuring her.

The People reported Ms. Olson's allegations of witness tampering to the Broomfield Police Department. On October 28, 2015, Ms. Olson and Sawhill met with Detective John Frahm, and Ms. Olson detailed her allegations.[51] At that meeting, Ms. Olson gave Frahm copies of her notes documenting the conversations on September 9 and 25, 2015.[52] Sawhill testified that he attended this meeting with Ms. Olson to lend support. He recalled her reluctance to speak with Frahm. Frahm also remembered her hesitation to speak with him. Respondent maintained that Ms. Olson was reluctant to speak with Frahm because she was lying and her tendency to "allege, allege, allege" caused her to hesitate when confronted. After Frahm concluded his investigation, including speaking with both Ms. Olson and Respondent, Frahm presented his case to the district attorney, but no charges were filed.[53]

During autumn 2015, Respondent engaged in additional troubling dialogue with Ms. Olson's father and stepmother on two occasions. According to Mr. Malone, Ms. Olson's father, Respondent approached Ms. Olson's front door sometime around Thanksgiving, demanding in an agitated manner to speak with Mr. Malone. When Mr. Malone declined, Respondent yelled something like "Isn't twenty years worth anything!" Ms. Malone also witnessed this. Respondent does not deny this event but disagrees as to its timing. Mr. Malone also testified that sometime between November and December 2015, he and Ms. Malone dropped by to visit Ms. Olson and her children. He does not recall the specific

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[47] *But see* Ex. 18 (stating to the People that he has "no other choice but to defend himself before the [PDJ] and Hearing Board at this hearing. I am hopeful that after careful consideration of the evening of June 18, they stop short of more serious sanctions of disbarment, suspension, or public censure.").

[48] *See* Ex. 16.

[49] Ex. F.

[50] Respondent is presently subject to a permanent restraining order entered against him in February 2016. Per the restraining order, Respondent and Ms. Olson are permitted to communicate only through talkingparents.com, a monitored email system. *See* Ex. 10.

[51] Ex. S3 (Frahm's report) at 000041.

[52] The date on these emails is October 28, 2015, rather than September 9 or 25, 2015. Ms. Olson testified that these emails were kept in her draft email folder until she sent them to herself on October 28, 2015, so that she could print them and give them to Detective Frahm later that day.

[53] *See* Ex. S3 at 000044 (indicating that the district attorney decided not to file charges).

time or day, only that they were sitting in their parked car in front of Ms. Olson's house when Respondent appeared at Mr. Malone's driver's side window. According to Mr. Malone, Respondent told him to "knock some sense into [his] daughter's head because she cannot testify" at the disciplinary hearing. Respondent's words caught them off guard and scared them, he said. He got the impression that Respondent did not want Ms. Olson to testify at his disciplinary hearing. Ms. Malone's testimony was consistent with Mr. Malone's account. Respondent maintained that this "event simply did not happen."

During the timeframe of the disciplinary hearing in May 2016, the Malones were the subject of another outburst from Respondent. Mr. Malone testified that as he and Ms. Malone were crossing the street to the court building, Respondent—who was also crossing the street—yelled loudly in a threatening tone, "You're going to lie about December!" Mr. Malone observed his wife trembling. Respondent's raised voice and smirk scared her, she said. Respondent does not deny that he yelled at the Malones but states that he was "having a very human visceral moment." He was frustrated when he saw the Malones on the street, he said, and he knows that he should not have shouted at them.

We are tasked with determining what in fact took place on September 9 and 25, 2015. Though we have carefully considered Respondent's position, we do not find his versions of the two conversations credible. The testimony and evidence before us largely support Ms. Olson's account. The Hearing Board credits Ms. Olson's testimony concerning the two conversations she had with Respondent in September, in part, because of her manner and demeanor on the witness stand, which we found to be truthful and convincing. In addition, her testimony about Respondent's conduct runs contrary to her financial interests and thus she lacks a motive to fabricate allegations about Respondent's behavior. If Respondent is sanctioned, Ms. Olson stands to lose up to $3,750.00 per month in spousal and child support—a significant sum when she makes only $30,000.00 a year.

The Hearing Board was also presented with evidence that corroborates Ms. Olson's testimony. Both Sawhill and Mr. Malone testified that they were aware of Respondent's unremitting calls and text messages to Ms. Olson about his disciplinary case during autumn 2015. Additionally, Ms. Olson's near-contemporaneous notes, which are consistent with her testimony at the disciplinary hearing, lend credence to her version of events. Both she and Sawhill convincingly testified that she made these notes on or near the relevant dates. Even though the emails themselves were dated a month after the events, a plausible explanation for this inconsistency was given by Ms. Olson—she sent the emails to herself on October 28, 2015, in order to give them to Frahm. Further, Ms. Olson's testimony was also consistent with what she told Frahm on October 28 over the telephone and again in person, and her reluctance to pursue criminal charges against Respondent undermines his accusation that her end game was his "total destruction."[54] Sawhill and Frahm both testified that Ms. Olson was hesitant to speak with Frahm about her allegations. We find her hesitation plausibly

[54] *See* Ex. S3 at 000042-43; *see also* Ex. 4 at 10.

explained by the fact that the People, rather than Ms. Olson, reported Respondent's conduct to the Broomfield Police Department.[55]

Although G.O. testified that Respondent never made any threatening statements to Ms. Olson on September 9, 2015, we are unable to accept her testimony. We conclude that G.O., who appeared to enjoy a close relationship with her father, was telling the truth as she remembered that evening. G.O. had just finished a big race and was tired and hungry, and she may have forgotten that her parents had a short discussion at the time.

Moreover, the Malones' believable testimony lends significant support to Ms. Olson's account. The Malones' testimony demonstrates that Respondent has a history of verbal outbursts, including yelling at Mr. Malone through Ms. Olson's front door sometime in November 2015 and making threats to the Malones in November or December 2015 about "knock[ing] some sense" into Ms. Olson. That Respondent—at the time of his own disciplinary hearing—yelled at the Malones on a public street about whether they were going to lie during their testimony further supports our finding. The fact that Respondent would say something like this to a witness greatly undermines his credibility. In light of this event, it is easy to find plausible that Respondent had similar "human visceral" moments in the past, such as urging Ms. Olson not to testify at his hearing.

Finally, we do not credit Respondent's defense that it would have been illogical to pressure Ms. Olson, since he believed that his criminal conviction warranted at most a public censure. In July 2015, he acknowledged that it was possible a hearing board might impose disbarment or suspension, and he testified that he was fearful of the stigma of public discipline, given that the basis was his criminal conviction. Nor do we find Respondent's theory—that Ms. Olson's October 23, 2015, email was nothing but deceit—conceivable given the timing of this email. To find Respondent's version of events credible, we would have to believe that Ms. Olson planted the seed of her untruths back in early September 2015 by sending Respondent her email on September 9, 2015. We would also have to determine that she thereafter successfully convinced three witnesses—Sawhill and the Malones—to lie to the People's investigator and to commit perjury during this hearing to support her falsehoods. We would further have to trust that Sawhill and Ms. Olson agreed to lie to Frahm during his criminal investigation in order to support her allegations. We find these witnesses credible and do not believe that these four people would concoct such a scheme to ruin Respondent's legal career when the scheme would carry such great personal risk of criminal charges, all the while working to Ms. Olson's own financial detriment.

In light of these findings, the Hearing Board concludes that the People have proved by clear and convincing evidence that Respondent intentionally tampered with a witness as provided in C.R.S. sections 18-8-707(1)(a) and (1)(c) and thereby violated Colo. RPC 8.4(b) and C.R.C.P. 251.5(b). C.R.S. section 18-8-707 provides:

[55] *See* Ex. 4 at 10.

> (1) A person commits tampering with a witness or victim if he intentionally attempts without bribery or threats to induce a witness or victim or a person he believes is to be called to testify as a witness or victim in any official proceeding or who may be called to testify as a witness to or victim of any crime to:
>
> (a) Testify falsely or unlawfully withhold any testimony; or
>
> (b) Absent himself from any official proceeding to which he has been legally summoned; or
>
> (c) Avoid legal process summoning him to testify.[56]

We have already rejected Respondent's assertion that Ms. Olson fabricated her allegations of witness tampering. Instead, we find that Respondent intentionally attempted to induce Ms. Olson to ignore the People's subpoena and to testify falsely by "softening" her description of the events of June 18, 2014. Respondent knew that disciplinary charges were pending against him and that Ms. Olson had spoken with the People about being a witness at his hearing. Given these facts, we find that he intended to induce her not to testify at his hearing because he was worried about the sanction and his ability to continue supporting his children. This conduct is sufficient to satisfy the elements of C.R.S. section 18-8-707(1)(a) and (1)(c),[57] and it adversely reflects on his fitness as a lawyer in contravention of Colo. RPC 8.4(b).

Although we are concerned that Respondent tried to force Ms. Olson to communicate with him by grabbing her arm and car keys on September 9, 2015, we do not find a violation of Colo. RPC 8.4(b) by clear and convincing evidence based on an alleged intent to harass, annoy, or alarm Ms. Olson by subjecting her to physical contact under C.R.S. section 18-9-111(1)(a).[58] It appears that Respondent was frustrated and upset with the direction of the conversation and was attempting to control his ability to speak with her rather than trying to harass, annoy, or alarm her.

Next, we find that Respondent violated Colo. RPC 3.4(a), which, among other things, precludes a lawyer from unlawfully obstructing another party's access to evidence. On more

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[56] Tampering with a witness or victim is a class four felony in Colorado. C.R.S. § 18-8-707(2).

[57] Although we find that in September 2015 he also urged Ms. Olson to absent herself from the disciplinary hearing by "forgetting" that she had been subpoenaed or by going on vacation, we find that Respondent violated subsections (a) and (c) but not (b) because no evidence was presented showing that Ms. Olson had been legally summoned to testify as of September 2015. *See People v. Yascavage*, 101 P.3d 1090, 1095-96 (Colo. 2004) (holding that C.R.S. section 18-8-707(1)(b), prohibiting an attempt to induce a witness to absent him or herself from a proceeding to which *he or she has been legally summoned*, requires that the witness has some obligation to appear) (emphasis added).

[58] Harassment provides that a "person commits harassment if, with the intent to harass, annoy, or alarm another person, he or she: (a) Strikes, shoves, kicks, or otherwise touches a person or subjects him to physical contact." C.R.S. § 18-9-111(1)(a).

than one occasion, Respondent attempted to induce Ms. Olson to absent herself from his disciplinary proceeding, encouraging her to ignore the subpoena, go on vacation, and forget about the subpoena. He also asked her to change her testimony to make the facts in the police report appear in a better light. We conclude that such conduct contravened Colo. RPC 3.4(a).[59]

We also determine that by attempting to dissuade Ms. Olson from testifying at his disciplinary hearing, Respondent transgressed Colo. RPC 3.4(f), which prohibits a lawyer from requesting a person other than a client to refrain from voluntarily giving relevant information to another party.[60] Finally, we find that the People have proved by clear and convincing evidence that Respondent prejudiced the administration of justice through this same conduct. Asking a witness in a disciplinary hearing to alter her testimony or to ignore a subpoena has the potential to interfere with the outcome of the People's case. Likewise, it may prevent a hearing board from considering all the relevant evidence. Accordingly, we find that Respondent violated Colo. RPC 8.4(d).

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[61] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[62] In imposing a sanction after a finding of lawyer misconduct, the 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 in consideration of aggravating and mitigating factors.

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

Duty: Under the ABA *Standards*, Respondent disregarded duties he owed to the legal system and to the public by violating Colo. RPC 3.4(a), 3.4(f), 8.4(b), and 8.4(d). Both while representing clients and in their personal conduct, lawyers are expected to maintain standards of personal integrity upon which the public relies. Public confidence in lawyers is undermined when a lawyer engages in illegal conduct. Further, as officers of the court,

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[59] *See, e.g., Harlan v. Lewis*, 982 F.2d 1255, 1262 (8th Cir. 1993) (finding that attempting to procure the absence of a witness constituted an ethical violation when a defense lawyer suggested to a treating physician that he not testify for the plaintiffs); *In re Geisler*, 614 N.E.2d 939, 942-43 (Ind. 1993) (finding that a lawyer obstructed a prosecutor's access to evidence by helping a witness become unavailable for service and trial); *In re Jensen*, 191 P.3d 1118, 1120 (Kan. 2008) (finding that a lawyer obstructed access to evidence when he told a nonparty witness subpoenaed by an adversary that the witness need not appear at the scheduled hearing unless he heard from the lawyer); *Restatement (Third) of the Law Governing Lawyers* § 116(3) (2000) ("a lawyer may not unlawfully induce or assist a prospective witness to evade or ignore process obliging the witness to appear and testify").

[60] *See In re Kornreich*, 693 A.2d 877, 883 (N.J. 1997) (finding a violation of RPC 3.4(f) when a lawyer attempted to deter a witness from returning from another state to testify at trial).

[61] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

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

lawyers are expected to abide by rules and procedures that govern the truth-seeking process.

Mental State: We conclude that Respondent knowingly committed domestic violence. We find that Respondent acted intentionally while committing violations of Colo. RPC 3.4(a), 3.4(f), 8.4(b), and 8.4(d) by attempting to induce Ms. Olson to testify falsely and to avoid the People's subpoena. Respondent's conduct was intentional because it was done with the conscious objective to dissuade Ms. Olson from testifying truthfully at the hearing.

Injury: By committing domestic violence and thus failing to maintain personal integrity, Respondent's actions eroded the public's trust in the legal profession. When Respondent discouraged Ms. Olson from testifying and asked her to alter her testimony, he caused potential interference with his disciplinary proceeding.[63] Had his efforts succeeded, they would have undermined the very truth-seeking function of the judicial process lawyers pledge to uphold.

Under the specific facts of this case, however, we do not find that Respondent's conduct caused potentially significant interference with possible outcomes of his December 2015 disciplinary proceeding.[64] At the time of his misconduct, the People's complaint contained one claim premised on Colo. RPC 8.4(b).[65] For the People to prevail on that claim, Ms. Olson's testimony was not necessary, either to establish that Respondent committed a criminal act (since the People had proof of Respondent's conviction),[66] or to show that Respondent's criminal conduct adversely (or seriously adversely) reflected on his fitness to practice law.[67] Moreover, ABA *Standard* 5.12 (the presumptive standard for Respondent's criminal conduct) requires no showing of injury to Ms. Olson, the public, or the legal system, and therefore Ms. Olson's testimony would not have been critical to the People's case in terms of the appropriate sanction. Finally, the application of aggravating and mitigating factors concerning Respondent's criminal conviction, as described below, do not at all depend on Ms. Olson's testimony. As such, the outcome of the hearing on the People's initial disciplinary complaint likely would have been similar or the same if Ms. Olson did not appear. Under the circumstances of this case, then, Respondent's conduct caused potential interference—but not potentially significant interference—with the outcome of his disciplinary hearing.

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[63] *See* ABA *Annotated Standards* at xxi (defining potential injury as "harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct").

[64] For this reason we do not find applicable ABA *Standard* 6.31 (requiring proof of "significant or potentially significant interference with the outcome of the legal proceeding").

[65] *See* Colo. RPC 8.4(b) (requiring proof of a "criminal act that reflects adversely on the lawyer's . . . fitness as a lawyer").

[66] *See* C.R.C.P. 251.20(a) (providing that a certified copy of a judgment of conviction shall conclusively establish an attorney's conviction for disciplinary purposes and shall conclusively prove the commission of the crime).

[67] *See* Colo. RPC 8.4(b); ABA *Standard* 5.12 (requiring proof of criminal conduct that "seriously adversely reflects on the lawyer's fitness to practice"); *In re Hickox*, 57 P.3d at 405 (finding that a lawyer's guilty plea to disturbing the peace, assault, and domestic violence seriously adversely reflected on his fitness to practice).

Ms. Olson did suffer actual injury—both physical and emotional—as a result of Respondent's acts of domestic violence. Respondent pushed her off of the bed, used force against her while she was curled up on the floor, and then attempted to physically remove her from their bedroom, contrary to her express wishes. By displacing Ms. Olson from her bedroom, Respondent caused her emotional harm. Using force to control a person is violative and disempowering. Ms. Olson testified that she suffered pain as a result of Respondent's conduct, which was corroborated by Lopez's testimony. In addition, their children were potentially harmed, as they were at home that evening. Even if they did not witness the conduct, in all likelihood they heard the fight and knew that the police were coming to their home in the middle of the night.

Ms. Olson's and Sawhill's testimony also supports the conclusion that Ms. Olson suffered emotional distress due to the pressure Respondent placed on her not to testify.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction for Respondent's witness tampering is ABA *Standard* 6.32, which calls for suspension when a lawyer engages in communication with an individual in the legal system, knowing that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.[68] ABA *Standard* 5.12 applies to Respondent's criminal conviction, given the nature of his conduct, the proven mental state, and the inescapable conclusion that his conduct seriously adversely reflects on his fitness to practice.[69] This standard provides for suspension when a lawyer knowingly engages in criminal conduct that does not contain the elements listed in ABA *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice law.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating factors are considerations that may justify an increase in the presumptive discipline to be imposed, while mitigating factors may warrant a reduction in the severity of the sanction.[70] The Hearing Board considers evidence of the following

[68] Although the People urge us to apply ABA *Standard* 6.31, we find instead that ABA *Standard* 6.32 is applicable here. The People have not proved by clear and convincing evidence that Respondent's conduct caused significant or potentially significant interference with the outcome of Respondent's disciplinary hearing, as explained in our analysis of injury above. *See In re Roose*, 69 P.3d at 47 (ruling that a hearing board should not have identified as the presumptive standard ABA *Standard* 6.21, an element of which is intent to obtain a benefit for the lawyer or another, when the hearing board did not find such intent to be present, even though all of the remaining elements were present).

[69] *See* ABA *Standard* 5.12 ann. at 254 ("Lawyers who commit acts of domestic violence generally face suspension under Standard 5.12, with most courts focusing on the conduct versus whether the lawyer's violent acts resulted in a criminal conviction or, if convicted, whether for a misdemeanor or a felony."); *In re Hickox*, 57 P.3d at 405 (finding that a lawyer's guilty plea to disturbing the peace, assault, and domestic violence seriously adversely reflected on his fitness to practice).

[70] *See* ABA *Standards* 9.21 & 9.31.

aggravating and mitigating circumstances in deciding the appropriate sanction. As explained below, we apply six aggravating factors and five mitigating factors.

Dishonest or Selfish Motive – 9.22(b): Respondent acted with self-interest when he committed domestic violence.[71] He also acted selfishly when he encouraged Ms. Olson to make herself unavailable to testify or to soften her testimony. We find that Respondent's actions are likely explained, in part, by his volatile emotional state during his hotly contested divorce and his concern that he would be unable to financially support his children if suspended. Nevertheless, we find sufficient evidence of a selfish motive to apply this factor in aggravation.

Pattern of Misconduct – 9.22(c): We conclude that during September 2015 Respondent attempted to dissuade Ms. Olson from testifying at his disciplinary hearing. Because he did so in just two proven instances and his actions were undertaken to achieve the same result, however, the Hearing Board does not weigh this factor in aggravation.[72]

Multiple Offenses – 9.22(d): As Respondent engaged in only two distinct types of misconduct in this case, we choose to apply little weight to this factor in aggravation.

Submission of False Evidence, False Statements, or Other Deceptive Practices During the Disciplinary Process – 9.22(f): The People request application of this factor in light of Respondent's intentional witness tampering during the disciplinary hearing. Because the act in question forms the basis of the People's claims, however, we choose not to apply this factor in aggravation.[73]

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The People urge us to apply this aggravator because Respondent maintains he did nothing that reflects adversely on his fitness as a lawyer. We find that Respondent has taken responsibility for the conduct leading to his criminal conviction, even though he avers it was not a violation of Colo. RPC 8.4(b), and thus we do not apply this aggravating factor to Respondent's criminal conviction.[74] However, Respondent has asserted that Ms. Olson fabricated her claims of witness tampering, an assertion we find disingenuous, and thus we choose to apply this factor in aggravation with respect to his witness tampering.

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[71] *See State v. Zurmiller*, 544 N.W.2d 139, 142 (N.D. 1996) (Levine, J., concurring) (noting that domestic violence is a means of exercising control over a partner).

[72] *In re Roose*, 69 P.3d at 49 (apparently giving no weight to the aggravating factors of a pattern of misconduct or multiple offenses where an attorney's misconduct "actually involved only two separate acts, arising from the same lack of understanding, and the same misguided perception of zealous advocacy, in the same case").

[73] *In re Whitt*, 72 P.3d 173, 180 (Wash. 2003) (finding that submission of false evidence could not be an aggravating factor where the act was also the factual basis for the count of misconduct).

[74] *In re Marshall*, 217 P.3d 291, 307 (Wash. 2009) (declining to apply this aggravator, stating that "[a]lthough [the respondent] has shown no penitence for his actions, we do not penalize him for making arguments in his defense"); *see* ABA *Standard* 9.2 ann. at 434-36.

Vulnerability of Victim – 9.22(h): We apply this factor in aggravation. Ms. Olson was vulnerable because she was married to Respondent, who used the privacy of their marriage to harm her late at night in their family home when it was unlikely that anyone would come to her aid.[75]

Substantial Experience in the Practice of Law – 9.22(i): Respondent has practiced law for nearly ten years.[76] His efforts to persuade Ms. Olson not to testify reflect poorly on a long-standing practitioner.

Illegal Conduct – 9.22(k): That Respondent's domestic violence was a criminal offense is without question an aggravating factor here. Likewise, his attempts to prevent Ms. Olson from testifying at his disciplinary hearing were illegal.[77] But because Respondent's criminal conduct forms the basis of the People's charges, we give this factor little weight in aggravation.

Absence of Prior Disciplinary Record – 9.32(a): We consider in mitigation that Respondent has not been disciplined in a decade of practice.

Personal or Emotional Problems – 9.32(c): We heard credible testimony from both Respondent and Ms. Olson that at the time of Respondent's conduct the couple was struggling with a contentious divorce, which escalated as a result of Respondent's alleged infidelity and subsequent arrest and conviction. Communication between Ms. Olson and Respondent during September 2015 was troublesome at best, and they frequently accused each other of violating their parenting plan. As Respondent described, their relationship was particularly toxic during this period. We believe that Respondent was emotionally overwrought and that his demeanor changed when he interacted with Ms. Olson and her family. During his divorce, he was clearly not the same person as his character witnesses, as described below, attest. This helps to explain his decision to engage in the misconduct at issue. We thus weigh this factor heavily in mitigation.

Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings – 9.32(e): Respondent argues for application of this mitigating factor because he waived his doctor-patient privilege and was open and honest with the People during their investigation. Because we find that he engaged in witness tampering during his disciplinary proceeding, however, we decline to find him cooperative and thus do not apply this factor in mitigation.

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[75] *See Brailsford*, 933 P.2d at 595 (finding error because a hearing board did not apply ABA *Standard* 9.22(h) when a lawyer "used the privacy associated with the marital relationship to assault the victim at a time (late at night) and in a place (the family home) when it was unlikely that he would be interrupted by anyone coming to the aid of the victim").

[76] *See People v. Rolfe*, 962 P.2d 981, 983 (Colo. 1998) (finding that ten years in practice qualifies as "substantial experience in the practice of law").

[77] Respondent need not be charged with a violation of the criminal law before we can apply this factor in aggravation. *See In re Depew*, 237 P.3d 24, 35 (Kan. 2010) (approving application of ABA *Standard* 9.22(k), even though the respondent was not charged with or convicted of conduct considered illegal).

Character or Reputation – 9.32(g): Respondent offered testimony from five character witnesses. We first heard testimony from Respondent's treating therapist, Dr. Randy Braley, who opined that Respondent had taken responsibility for the incident on June 18, 2014, and had not minimized the event. Dr. Braley has no concerns about Respondent's fitness to practice law. Dr. Braley acknowledged that he has no independent knowledge about the events of September 9 or 25, 2015, other than what Respondent has told him.

Attorney Nathan Rand also testified on Respondent's behalf. Rand first met Respondent ten years ago. He stated that Respondent shared with him the details of Respondent's arrest and subsequent disciplinary proceeding. He believes that Respondent is honest and acts with integrity and candor. He has observed Respondent's passion for education law and is aware of Respondent's highly esteemed reputation within that legal community. He thinks that Respondent is a "straight shooter" who does not hide things.

Respondent elicited testimony from Steve Fast, the executive director of CSDSIP. Fast has been Respondent's supervisor at CSDSIP for the past three years. He recruited Respondent for his current position because CSDSIP needed an attorney who was well-versed in school law, and Respondent's name came up repeatedly. According to Fast, Respondent voluntarily disclosed his arrest the evening after it occurred. Fast was shocked, but Respondent explained his arrest in great detail, including that he had pushed Ms. Olson out of the room, scooped her up, and carried her toward the door. Fast was not surprised by Respondent's honesty. Fast also testified that an anonymous letter was sent to him at work containing serious allegations against Respondent. Fast's administrative assistant gave the letter directly to Respondent, but Respondent disclosed the letter to Fast. Again, Fast was not surprised by Respondent's candor. In the years Fast has known Respondent, Respondent has never taken a short cut, engaged in unethical conduct, or advised illegal conduct. Fast has never received any complaints about Respondent's ethics from CSDSIP's clients; he has always received high praise.

Terri Sahli, one of Respondent's clients, testified as to his character and reputation. Sahli is the director of risk management with Denver Public Schools ("DPS")—CSDSIP's largest client. Her impression of Respondent is that he engages in open and honest dialogue. She said that Respondent is well regarded within the school law community and has been instrumental in advocating on behalf of many kids in DPS. Sahli testified that Respondent has been open with her about his contentious divorce, and she was shocked to learn about the allegations against him. His revelation to her, she said, speaks to his honesty and integrity. She has never witnessed any outburst from Respondent, even when the two of them have engaged in heated conversations.

Kathleen Sullivan, chief counsel for CSDSIP, testified that she first met Respondent in 2007 and has regularly interacted with him since on client matters and issues concerning legislation, school safety, religious discrimination, and student restraint. Sullivan finds Respondent to be a vital contributor to the school law community and has seen him provide direct, thoughtful, client-focused advice and input. Sullivan opined that Respondent has a

unique ability to provide practical advice to schools with constantly shifting legal issues, and that their clients have benefitted from his advice. According to Sullivan, Respondent has been open and forthcoming about the details surrounding his divorce and shared with her that he was arrested in 2014. She has not observed any effect that this experience has had on his practice of law.

We give some credit to Rand's testimony about Respondent's character, but because he is Respondent's friend, we choose to give more weight to the testimony of his professional colleagues. We find that Fast, Sahli, and Sullivan all provided highly credible evidence of Respondent's character and reputation within the legal community, which convinces us to heavily weigh this factor as regards to his witness tampering offenses. The fact that Respondent has a good reputation within the legal community does not mitigate his criminal conviction, however.[78]

Imposition of Other Penalties or Sanctions – 9.32(k): Respondent spent one night in jail and followed probationary conditions in his criminal case. We consider those penalties as mitigation in this matter.

Remorse – 9.32(l): Respondent argues that we should consider his remorse as a mitigating factor. Both he and Dr. Braley testified that he has taken responsibility for his actions the evening of June 18, 2014. Respondent stated that he regrets putting his hands on Ms. Olson and that he never intended to harm her. We found that statement credible and we give him credit in mitigation for his remorse as to his domestic violence.

Analysis Under ABA *Standards* and Case Law

The Hearing Board is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[79] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[80] Though prior cases are helpful by way of analogy, the Hearing Board is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

Here, the People ask the Hearing Board to impose disbarment. Respondent argues that the appropriate level of discipline is private admonition because he admits only his act of domestic violence and argues that Ms. Olson fabricated her allegations of witness tampering. He distinguishes his conduct on the evening of June 18, 2014, from the conduct

[78] *Cf. Brailsford*, 933 P.2d at 596 (stating, in a sexual assault case, that "the fact that the respondent at one time enjoyed a good reputation is of no great importance. Crimes of sexual assault commonly occur in secret and remain unknown to the public until the victim complains").
[79] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *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).
[80] *In re Attorney F.*, 285 P.3d at 327 (quoting *People v. Rosen,* 198 P.3d 116, 121 (Colo. 2008)).

described in *People v. Hickox*,[81] the seminal Colorado case on domestic violence in attorney disciplinary matters, averring that he should be privately admonished because he did not physically injure Ms. Olson.

We begin our analysis with the presumptive sanction of suspension. The ABA *Standards* provide little direction as to the appropriate length of a suspension, so we rely in significant measure on case law involving domestic violence and witness tampering for guidance.

In *Hickox,* the Colorado Supreme Court held that the length of a suspension in a case involving violence depends on the seriousness of the conduct and the nature of the aggravation and mitigation.[82] In rejecting the hearing board's imposition of a private admonition, the Colorado Supreme Court considered two aggravating factors and three mitigating factors as well as the comparatively moderate level of violence at issue, ultimately determining that the lawyer should serve a suspension of six months.[83] In several other pre-1999 cases, the Colorado Supreme Court has approved served suspensions for domestic violence.[84]

Although the Hearing Board could find no analogous cases in Colorado, we note that other jurisdictions have taken a dim view of witness tampering, imposing sanctions ranging from lengthy served suspensions to disbarment.[85] In imposing a one-year suspension on an attorney who urged witnesses to testify under oath to matters that he knew the witnesses

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[81] 57 P.3d 403.
[82] *Id.* at 405.
[83] *Id*. at 405-08.
[84] *See Musick*, 960 P.2d at 90 (taking into account three aggravators and three mitigators, one of which carried relatively little weight, the Colorado Supreme Court suspended the lawyer for one year and one day for physically assaulting his girlfriend on three separate occasions, causing her pain but no serious injury); *People v. Reaves*, 943 P.2d 460, 461-62 (Colo. 1997) (approving the parties' stipulation to a six-month suspension based on consideration of one aggravating factor and at least four mitigators where the attorney pleaded guilty to a petty offense of disorderly conduct after throwing a drink at his wife, grabbing her, and engaging in another "pushing and shoving match" and later was convicted of driving while ability impaired); *People v. Shipman*, 943 P.2d 458, 459-60 (Colo. 1997) (applying two aggravators and six mitigators, the Colorado Supreme Court approved a stipulation to a six-month suspension where the attorney pleaded guilty to driving while ability impaired and also to assault and battery upon his wife).
[85] *See In re Blair*, 40 A.3d 883, 883 (D.C. 2012) (imposing automatic disbarment for an attorney's felony conviction of witness tampering); *In re Sniadecki*, 924 N.E. 2d 109, 120 (Ind. 2010) (disbarring an attorney who engaged in deceitful and fraudulent misconduct, including attempting to bribe a witness in a disciplinary proceeding); *In re Walsh*, 182 P.3d 1218, 1230 (Kan. 2008) (indefinitely suspending an attorney who negotiated a settlement of a dispute against him with the condition that the party agree not to testify voluntarily against him in disciplinary proceedings); *In re Conway*, 526 A.2d 658, 665-66 (N.J. 1987) (disbarring an attorney who participated in a conspiracy to secure the dismissal of a criminal prosecution by bribing a witness); *In re Kazdin*, 194 A.D.2d 13, 14 (N.Y.S. 1993) (suspending an attorney for one year for pleading guilty to one count each of tax evasion and witness tampering, both felonies); *In re Gaines,* 360 S.E.2d 313, 315 (S.C. 1987) (indefinitely suspending an attorney who, along with his employee, offered a witness money to drop criminal charges against his client); *In re Stroh*, 644 P.2d 1161, 1162-64 (Wash. 1982) (disbarring an attorney who was convicted of felony witness tampering).

did not believe to be true, the Supreme Court of Florida stated that the attorney "committed a serious violation of his responsibilities as a member of the Florida Bar."[86] The court noted that had the attorney been convicted in a state court of tampering with a witness, he would have been subject to a one-year term of imprisonment; the court used the Florida's witness tampering statute as a guideline to impose a one-year suspension.[87] The Supreme Court of Washington, in *In re Stroh,* commented that this conduct "strikes at the very core of the judicial system," cautioning that a "witness tampered with by an attorney becomes much more destructive to the search for truth."[88]

Next, we consider how aggravators and mitigators affect the length of the suspension. Our task in considering mitigators is to "gauge the level of danger that an attorney poses to the public."[89] In assessing whether a lawyer presents a risk of future harm to the public, courts often consider whether the misconduct at issue was an aberration.[90] Evidence of personal stressors at the time of misconduct or evidence that the lawyer's conduct was atypical when viewed in the context of his or her record of practice can help to establish that misconduct is unlikely to reoccur and that a lesser sanction may be appropriate.[91]

This principle is elucidated in a New Jersey decision, *In re Bock*.[92] There, a lawyer who also was a part-time municipal judge carried out an elaborate scheme to stage his own death with his paramour's assistance, leaving on an island false evidence designed to give the impression that he had drowned.[93] Despite knowing that an official search for him was underway, he concealed his whereabouts by living in another state under an assumed name for five weeks until the police located him.[94] During that period, he abandoned his court office, law partner, associate, and clients, and he diverted public funds and the police from legitimate public safety measures.[95] In mitigation, the New Jersey Supreme Court

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[86] *Fla. Bar v. Lopez*, 406 So.2d 1100, 1102 (Fla. 1981).

[87] *Id*. We note that in Colorado, the presumptive sentencing range for witness tampering—a class four felony—would be two to four years in length. *See* C.R.S. § 18-1.3-401(1)(a)(V)(A). We recognize, however, that the ABA *Standards*—not criminal penalties—guide the imposition of disciplinary sanctions in Colorado.

[88] 644 P.2d at 1164-65.

[89] *In re Cleland*, 2 P.3d 700, 705 (Colo. 2000) ("The reason we consider mitigating factors at all is so we may gauge the level of danger that an attorney poses to the public and, ideally, to arrive at a disciplinary sanction that adequately balances the seriousness of the danger against the gravity of the misconduct.").

[90] *See, e.g., People v. Eastepp*, 884 P.2d 305, 308 (Colo. 1994) (finding that a lawyer's violation of felony theft and aggravated motor vehicle theft statutes represented "an aberration in the respondent's otherwise good conduct of his business responsibilities," and considering that factor in ruling that a three-month suspension was appropriate, rather than the longer period of suspension that normally would be warranted); *In re Giordano*, 587 A.2d 1245, 1248 (N.J. 1991) (determining that where a lawyer arranged to buy an illegal driver's license for a client, the misconduct appeared to be aberrational, rather than reflecting a "flaw running so deep that he can never again be permitted to practice law").

[91] *People v. Kotarek*, 941 P.2d 925, 926 (Colo. 1997); *People v. Fry*, 875 P.2d 222, 224 (Colo. 1994).

[92] 607 A.2d 1307, 1310 (N.J. 1992).

[93] *Id*. at 1308.

[94] *Id*.

[95] *Id*. at 1310.

"recognized that in some instances lawyers may fall victim to a desire to encourage a relationship with another and thus may engage in conduct that is aberrational and not likely to occur again."[96] The lawyer received a six-month suspension.[97]

A related vein of inquiry is whether the misconduct took place in the course of a client representation. Courts have deemed it particularly important to impose stringent sanctions for disciplinary violations that directly relate to client representation, because in such cases it is more likely that disciplinary violations will reoccur.[98] For example, in a case involving a lawyer who attempted to bribe police officers on behalf of his client, the Colorado Supreme Court refused to depart downward from a hearing board's recommended sanction of a three-year suspension, with one year served.[99] In so doing, the court emphasized that the lawyer's "conduct was directly related to his practice of law."[100] This principle has been widely applied in other jurisdictions.[101]

Here, although Respondent's act of domestic violence is comparable to the moderate level of violence inflicted in *Hickox*—and perhaps if viewed in isolation might have warranted a short served suspension—it is his acts of witness tampering that strike at the very core of the legal profession and impugn the integrity of the legal system as a whole. During the period of Respondent's misconduct, however, we find that he fell victim to the circumstances of his personal life, acting in furtherance of his own interests during the dissolution of his marriage, rather than while representing a client. Respondent's character witnesses attest that he is well-respected within the education law community and maintains an ethical reputation. His witness tampering appears to be atypical when viewed in the context of his character witnesses' testimony and his lack of prior discipline. So, we find that the chances are slim that he will engage in future interference with the legal system while serving clients. Outside of the circumstances of his contentious divorce, we do not believe Respondent would again deviate from his professional responsibilities and dissuade a witness from testifying truthfully.

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[96] *Id*. at 1309 (quotation omitted).
[97] *Id*. at 1311.
[98] *See In re Perez-Pena*, 168 P.3d 408, 415 (Wash. 2007).
[99] *In re Elinoff*, 22 P.3d 60, 64 (Colo. 2001).
[100] *Id*.; *see also People v. Buckley*, 848 P.2d 353, 354 (Colo. 1993) (indicating that whether lawyer misconduct was directly related to the practice of law is relevant to the imposition of sanctions); *People v. Ebbert*, 925 P.2d 274, 280 (Colo. 1996) (stating that whether misconduct was directly related to the practice of law is relevant to the determination of whether retroactive discipline is appropriate); *People v. Goldstein*, 887 P.2d 634, 644 (Colo. 1994) (same).
[101] *See, e.g., In re Scanio*, 919 A.2d 1137, 1144 (D.C. 2007) (taking into account that a lawyer's misconduct did not occur in the course of representing a client); *In re Kennedy*, 542 A.2d 1225, 1230 (D.C. 1988) ("dishonest actions committed outside of the representation of a client . . . need not necessarily be sanctioned to the same degree as similar acts committed in the course of representation"); *Fla. Bar v. Baker*, 810 So. 2d 876, 881 (Fla. 2002) (in a case involving a lawyer's forgery of legally significant documents on his own behalf, stating that "[a]lthough lawyers may be disciplined for conduct that is not related to the practice of law, this Court has recognized that misconduct not connected with the practice of law is to be evaluated differently and may warrant less severe sanctions than misconduct committed in the course of the practice of law").

We are guided by our collective sense that—measured broadly against disciplinary case law in this and other jurisdictions and in light of the apparent aberration present here—this is not a case that warrants the harshest of punishments, as the People request. Taking into account the seriousness of his misconduct, the personal animosity and emotional turmoil Respondent faced, the improbability that his misconduct will reoccur, and the aggravation and mitigation present, we find a thirty-month suspension appropriate here.

IV. CONCLUSION

Respondent committed the reprehensible acts of inflicting violence upon his wife and then attempting to persuade her not to testify truthfully or to avoid service of a subpoena. His actions threatened the truth-seeking function of our disciplinary system and harmed his family. Thus, he should answer for his misconduct by serving a substantial sanction. Because his witness tampering occurred while he was wrestling with a contentious and toxic divorce, rather than in the course of representing a client, and stands as an aberration when viewed in light of his otherwise good record and reputation within the legal community, we determine that a thirty-month suspension is the fitting sanction.

V. ORDER

The Hearing Board therefore **ORDERS:**

1. **DAVID L. OLSON II,** attorney registration number 37228, is **SUSPENDED FOR THIRTY MONTHS**. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[102]

2. Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.

3. Within fourteen days of issuance of the "Order and Notice of Suspension," 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 jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motion or application for stay pending appeal with the Hearing Board **on or before Monday, August 15, 2016.** Any response thereto **MUST** be filed within seven days.

5. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a statement of costs **on or before Monday, August 1, 2016**. Any response thereto **MUST** be filed within seven days.

[102] In general, an order and notice of sanction will issue thirty-five days after a decision is entered pursuant to C.R.C.P. 251.19(b) or (c). 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 25th DAY OF JULY, 2016.

Original signature on file
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original signature on file
THOMAS J. HERD
HEARING BOARD MEMBER

Original signature on file
DOUGLAS D. PIERSEL
HEARING BOARD MEMBER

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