***People v. Matthew S. Park.* 19PDJ057. September 4, 2020.**

A hearing board suspended Matthew S. Park (attorney registration number 31715) for one year and one day, with three months served and the remainder stayed upon the successful completion of a two-year period of probation, with conditions. The suspension took effect on October 27, 2020.

Park was administratively suspended from the practice of law in 2015. During his administrative suspension, he accepted a personal injury matter for a client. Park settled the client's matter in January 2019, depositing the settlement funds directly into his operating account. In doing so, he commingled his personal funds with those of his client and of third-party lien holders.

Through this conduct, Park violated Colo. RPC 1.15A(a) (a lawyer shall hold property of clients or third persons separate from the lawyer's own property); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); and Colo. RPC 5.5(a)(1) (a lawyer shall not practice law in Colorado without a valid license or other authorization).

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:** MATTHEW S. PARK, #31715	Case Number: **19PDJ057**

OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)

Matthew S. Park ("Respondent") represented a client in a personal injury matter while he was administratively suspended from the practice of law, violating Colo. RPC 3.4(c) and Colo. RPC 5.5(a)(1). After the client's case settled, Respondent deposited settlement funds directly into his operating account, commingling his funds with those of his client and third-party lien holders in violation of Colo. RPC 1.15A(a). Respondent's misconduct warrants a one-year-and-one-day suspension, with three months served and the remainder stayed upon the successful completion of a two-year period of probation, with conditions.

I. PROCEDURAL HISTORY

On August 2, 2019, Bryon M. Large, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ"), alleging that Respondent had violated Colo. RPC 1.15A(a), Colo. RPC 3.4(c), and Colo. RPC 5.5(a)(1). Respondent answered the complaint on August 22, 2019.

A remote hearing was held in this matter on July 15, 2020, through the Zoom videoconferencing platform.[1] The PDJ presided over the hearing; he was joined on the Hearing Board by lawyers Bradley D. Laue and Sisto J. Mazza. Large represented the People,[2] and Respondent appeared pro se. The Hearing Board considered stipulated exhibits S1-S23 and Respondent's exhibits A-C. The Hearing Board heard testimony from Respondent.

[1] The hearing originally set for December 5, 2019, was continued three times at the parties' requests. The PDJ issued a notice of remote hearing and accompanying instructions on June 5, 2020.

[2] Large has since withdrawn as counsel for the People, and Gregory G. Sapakoff has entered his appearance.

II. FACTUAL FINDINGS AND ANALYSIS

Respondent was admitted to practice law in Colorado on May 11, 2000, under attorney registration number 31715. He is thus subject to the jurisdiction of the Colorado Supreme Court and the Hearing Board in this disciplinary proceeding.[3]

Stipulated Facts[4]

Respondent was administratively suspended from the practice of law in Colorado on May 1, 2015. He was reinstated from that suspension on January 31, 2019. During the investigation of this case, Respondent affirmed that he had completed 45.5 hours of Colorado's continuing legal education ("CLE") credits between November 30 and December 6, 2015.

During his administrative suspension, Respondent accepted two personal injury cases for a client, E.G. Respondent and E.G. executed a contingent fee agreement on March 14, 2016. Respondent settled E.G.'s matter in January 2019 for a total of $42,300.00. Respondent deposited two settlement checks into his operating account and retained $12,000.00 as earned attorney's fees.

Respondent learned before January 2019 that his license to practice law was administratively suspended. Respondent reported not knowing that his license had been suspended. He also reported not being able to access Colorado's online e-filing system in E.G.'s matter.

Findings of Fact[5]

From 2000 to 2006, Respondent maintained his own law firm, practicing law in Colorado and Maryland in the areas of immigration, corporate, personal injury, family, and bankruptcy law. In summer 2006, Respondent was a passenger in a fatal car accident. He spent six months in the hospital and endured around thirty surgeries, including a leg amputation. He suffers from permanent injuries as well as symptoms akin to posttraumatic stress disorder.

In June 2012, Respondent's Maryland residence was foreclosed upon, so he moved to a residence at Pinewood Drive in Aurora, Colorado. Around Thanksgiving that same year, he moved to another residence at Norfolk Way in Aurora, Colorado. Respondent did not update his attorney registration information.

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

[4] The parties submitted their statement of stipulated facts on November 21, 2019.

[5] These findings, which we conclude have been established by clear and convincing evidence, are drawn from testimony at the disciplinary hearing where not otherwise indicated.

Respondent's Administrative Suspensions

Respondent acknowledged at the disciplinary hearing that he was suspended from the practice of law in Colorado on May 1, 2013, for failure to timely pay his attorney registration fees. He added, however, that he had not been aware of his suspension at the time because notice of the suspension had been sent to him at his registered business address in Maryland.[6]

On June 28, 2013, Respondent was issued another order of administrative suspension, this time on the basis of his failure to comply with Colorado's CLE requirements.

On April 24, 2014, Respondent paid all outstanding attorney registration fees. Notice of his compliance with his registration fees obligation was sent to him on April 24, 2014, at his Pinewood Drive address in Aurora.[7] This notice stated, "The suspension of [Respondent] pursuant to C.R.C.P. 260.6 regarding CLE remains in effect until compliance with this rule."[8] As a result, Respondent remained administratively suspended based on his continued failure to comply with CLE requirements.

On May 1, 2015, Respondent was again administratively suspended for failing to timely pay his 2015 attorney registration fees. On the same date, notice was mailed to Respondent's Pinewood Drive address.[9] Respondent was not reinstated from this suspension until January 31, 2019.

Respondent testified that he never received the notices sent in April 2014 or May 2015, though he did not dispute that they were sent to him. At the disciplinary hearing, he pointed to his driver's license, which was issued in 2015,[10] and a collection notice from November 2015[11] as proof that his correct physical address was readily available in the public record in 2015.

E.G. Matter

In 2016, while administratively suspended, Respondent agreed to represent E.G. in two personal injury matters, taking over the representation from lawyer Daniel Rosen.[12] On

[6] Ex. S16.
[7] Ex. S17.
[8] Ex. S17.
[9] Ex. S18.
[10] Ex. A.
[11] Ex. C.
[12] Rosen ultimately filed an attorney's lien and was paid from the settlement proceeds that Respondent obtained in E.G.'s matter.

March 14, 2016, Respondent and E.G. entered into a formal contingent fee agreement.[13] Respondent then engaged in settlement negotiations over the following two years.[14]

Despite ongoing settlement negotiations, E.G. insisted that Respondent file a complaint in November 2018.[15] Respondent was unable to submit E.G.'s complaint through the Colorado e-filing system, however. According to Respondent, he was unfamiliar with the e-filing process because it was different from the system he had used when he ran his own firm more than a decade before. It was not immediately clear to him, he said, why he could not e-file the complaint.

Respondent said that he contacted the Colorado Supreme Court when he could not access the e-filing system. He recalled that a staff member told him that he had not fulfilled his CLE requirements and that he owed past registration dues. It was then, Respondent stated, that he became aware that his license was inactive, but he insisted that he was not expressly informed that his license was administratively suspended. He was surprised by the clerk's information, he said, but he felt that his best course of action was to complete the mandatory CLEs and "update" his license.

Because E.G. demanded that the complaint be filed immediately and threatened to terminate the representation if it was not, Respondent prepared a version of the complaint that E.G. could file pro se.[16] Neither he nor his client filed the complaint, however, and E.G. terminated his representation in November 2018. Thereafter, E.G. consulted with other lawyers but ultimately chose to rehire Respondent in December 2018 to renegotiate the terms of the settlement. Respondent was able to settle E.G.'s matter and received settlement checks for $25,000.00 and $17,300.00 on January 9 and 10, 2019, respectively.[17]

Initially, E.G. wanted to deposit the checks into her own account, Respondent said, but her bank refused to accept them. So, Respondent agreed to deposit the checks into his trust account. According to Respondent, he soon learned that his Wells Fargo trust account had been closed without his knowledge due to inactivity.[18] Respondent remembered inquiring about setting up a new trust account but was told that the only bank branch employee who handled trust accounts was on vacation for several weeks. He also conceded, however, that it did not occur to him to contact a different branch for assistance, in part because he was confined to a wheelchair so his mobility was quite limited.

[13] Ex. S2.
[14] Exs. S6-S9.
[15] Ex. S4.
[16] *See* Ex. S5.
[17] Exs. S10-S11.
[18] *See* Ex. B (bank statement from 2009 showing that Respondent's Wells Fargo trust account balance was $0.00).

Respondent testified that his only remaining option was to deposit the settlement checks into his operating account. He acknowledged that he held $78.50 of his own funds in his operating account on January 3, 2019, and that the account's balance was $42,378.50 on January 17, 2019.[19] He also said that before he deposited the settlement checks into his operating account, he wrote disbursement checks to E.G., to treatment providers in satisfaction of medical liens, and to Rosen for his attorney's lien.[20] Respondent contends that because he had written and delivered these disbursement checks *before* the settlement checks had cleared in his account, he prevented any commingling between his own property and that of his client and others. He realized that because he issued the checks to third parties before the settlement checks had cleared his account, he risked liability for issuing bad checks (which he erroneously termed conversion). Respondent retained $12,000.00 from the settlement proceeds as his attorney's fees.

Respondent emphasized that E.G. was happy with the outcome of her case and did not complain about his representation to the People. After the representation concluded, Respondent sought reinstatement from his administrative suspension. He was reinstated on January 31, 2019,[21] though he could not recall at the hearing whether he received his notice of reinstatement.

Rule Violations

Colo. RPC 1.15A(a)

Colo. RPC 1.15A(a) provides that a lawyer "shall hold property of clients or third persons . . . separate from the lawyer's own property." The People claim that Respondent violated this rule by depositing the settlement checks directly into his operating account, commingling his client's and third parties' money with his own. The People point to Respondent's operating account bank statement for January 2019, highlighting the differential in balance between the start of the month and later, after Respondent had deposited the two settlement checks.

Respondent counters that he did not commingle funds because he wrote disbursement checks to E.G. and to the third parties before the settlement proceeds cleared his account. In that sense, Respondent suggests, he did not *commingle* funds, as the People allege, but instead *converted* client funds. Through these actions, he maintains, he made himself liable for those funds if the checks did not clear his account, so the People's commingling allegation is misplaced.

We find that Respondent did not deposit the settlement checks into his trust account. He instead deposited the two settlement checks directly into his operating

[19] Ex. S12.
[20] *See* Exs. S3, S13-S15.
[21] Ex. S21.

account, which contained $78.50 of his own funds, bringing the balance of this account to $42,378.50. Thus, the People have proved by clear and convincing evidence that Respondent commingled client and third-party funds with his own money in violation of Colo. RPC 1.15A(a). Respondent's attempt to dismiss this claim by relying on the minutiae of banking processes—stressing that he wrote the disbursement checks before the settlement funds cleared—is not persuasive, as the timing does not negate the fact that Respondent placed the settlement proceeds in the same account in which he held his own funds.[22]

Colo. RPC 3.4(c) and Colo. RPC 5.5(a)(1)

Colo. RPC 3.4(c) forbids lawyers from knowingly disobeying an obligation under the rules of a tribunal, while Colo. RPC 5.5(a)(1) prohibits lawyers from practicing law in Colorado without a valid license or other authorization issued by the Colorado Supreme Court.

The People allege that Respondent contravened these rules because he knew that he was administratively suspended yet he knowingly engaged in the practice of law without a valid license. They contend he knew no later than November 2018 that his license had been administratively suspended when he discovered that he could not file E.G.'s complaint through the Colorado e-filing system; that failure, they claim, alerted him to the fact that he was not permitted to practice law in Colorado.[23] The People emphasize that even after he made this discovery, he resumed E.G.'s representation in December 2018, settled the case, and handled client funds, thereby knowingly engaging in further unauthorized practice of law.

Respondent contends that he did not know he was administratively suspended from the practice of law when he represented E.G. because he never received the notices of his administrative suspensions in April 2014 and May 2015. He also asserts that he fulfilled his CLE requirements and therefore should not have remained suspended for failing to complete his CLE credits. Thus, he concludes, he did not knowingly disobey an obligation under a tribunal.

We begin by finding that the People have presented clear and convincing evidence that Respondent was administratively suspended from the practice of law from May 1, 2013, until January 31, 2019.[24] The People have also presented uncontested evidence that notices of Respondent's administrative suspension orders were mailed to him at his Pinewood Drive home address in April 2014 and May 2015.[25]

[22] Because Respondent's testimony suggests that he misunderstands the concept of conversion, and because conversion of client funds is considered misconduct significantly more grave than commingling of client funds, we decline to address or adopt Respondent's argument in the alternative.
[23] The People also argue that Respondent should have—and may have—known far earlier than November 2018 of his administrative suspension.
[24] *See* Exs. S16-S17, S21.
[25] *See* Exs. S16-S17, S21.

Respondent maintains that he was not living at this address when the notices were mailed and therefore did not receive them. But whether we accept this assertion is immaterial, as Respondent was obligated under the rules to timely update his registered address with the lawyer regulation system.[26] His failure to do so does not excuse his misconduct, nor does it shift the burden to regulatory authorities to locate his correct address through the public record.

Somewhat relatedly, Respondent argues that he did not knowingly disobey an order of a tribunal because he never received the notices of his administrative suspensions in 2014 and 2015. As a Colorado lawyer, Respondent is presumed to know of his obligations to update his contact information,[27] to timely pay his attorney registration fees on an annual basis,[28] and to periodically complete CLE course requirements.[29] Likewise, he is presumed to know that failing to meet his registration and CLE requirements could result in being administratively suspended from the practice of law.[30] Finally, Respondent is presumed to know that engaging in the practice of law while his license was administratively suspended violated the Rules of Professional Conduct.[31]

The Hearing Board thus finds that as a licensed Colorado lawyer, Respondent should have known, beginning in 2014, that his licensure status was compromised and that he was not permitted to practice law. Nevertheless, Respondent testified that he lacked actual knowledge of his administrative suspensions, and the People failed to present competent evidence demonstrating otherwise. Thus, although we harbor doubts about the sincerity of Respondent's testimony that he did not in fact know his license was suspended during the two years he represented E.G., we cannot point to clear and convincing evidence that he had actual knowledge of his suspension when he accepted E.G.'s matter in 2016.[32]

Given the totality of the circumstances, however, we can find by clear and convincing evidence that Respondent knew his law license had been administratively suspended in November 2018, when his attempts to e-file E.G.'s complaint were rejected. Soon after, he learned from a Colorado Supreme Court employee that his attorney registration fees were past due and that his CLE requirements were deficient. These facts put him on notice of a

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[26] *See* C.R.C.P. 227(2)(b) ("Every attorney shall file a supplemental statement of change in the information previously submitted, including home and business addresses, within 28 days of such a change.").
[27] *See* C.R.C.P. 227(2)(b).
[28] C.R.C.P. 227(1)(a) ("On or before February 28 of each year, every attorney admitted to practice in Colorado . . . shall annually file a registration statement and pay a fee as set by the Colorado Supreme Court.").
[29] C.R.C.P. 250.2(1) ("Every registered lawyer . . . must complete 45 credit hours of continuing legal education during each applicable CLE compliance period as provided in these rules.").
[30] *See* C.R.C.P. 227(4)(a) ("An attorney shall be summarily suspended if the attorney . . . fails to pay the [annual registration] fee. . . ."); C.R.C.P. 250.2(1) ("Failure to comply with these [CLE] requirements in a timely manner as set forth in these rules may subject the registered lawyer . . . to a fee, a penalty, and/or administrative suspension.").
[31] *See, e.g.*, Colo. RPC 5.5(a)(1).
[32] Knowing "denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances." Colo. RPC 1.0(f).

problem with his law license. Additionally, he understood that his license was inactive at that time and that he would have to pay his registration fees and complete CLE credits to update his license. Further, he stipulated that he learned prior to January 2019 that his law license had been suspended. Despite this, he finalized E.G.'s settlement and distributed settlement proceeds before taking any action to reinstate his license. Thus, we find that even though Respondent had actual knowledge of his suspended license in November 2018, he continued to work on E.G.'s case through January 2019.

We reject Respondent's assertion that he had completed sufficient CLE credits and relied upon his submission of those credits to keep his license in good standing. Respondent alone was responsible for ensuring that his affairs were in order, and many tools were at his disposal to do so.[33] We refuse to endorse Respondent's head-in-the-sand approach to his law license, as deliberate blindness cannot excuse a lawyer from complying with professional obligations under the Colorado Rules of Professional Conduct.

Accordingly, we conclude that Respondent knowingly disobeyed his administrative order of suspension in violation of Colo. RPC 3.4(c) by representing E.G. in her personal injury matter, conducting settlement negotiations on her behalf, and receiving and disbursing the final settlement funds. We also determine that Respondent engaged in the practice of law in Colorado while his law license was administratively suspended, violating Colo. RPC 5.5(a)(1).

III. SANCTIONS

The ABA *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[34] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[35] 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 misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: Respondent violated his duty to safeguard his client's and third parties' property as well as his duty to the profession and legal system, including his duty to follow court rules and to obey rules governing the practice of law.

Mental State: We do not fully credit Respondent's assertion that he was justifiably unaware of the status of his law license throughout the duration of E.G.'s matter. Instead, we find that Respondent acted knowingly when he practiced law from November 2018 to

[33] For instance, https://cletrack.com and https://coloradosupremecourt.com/Search/AttSearch.asp.
[34] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2d ed. 2019).
[35] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

January 2019 in violation of his administrative suspension order. We also find that Respondent knowingly commingled client funds with his own.

Injury: Respondent caused his client and third parties potential harm by failing to hold their settlement funds in a trust account, commingling those funds with his own and potentially exposing the funds to his personal creditors.[36] Respondent also caused the legal profession potential injury when he engaged in the unauthorized practice of law, which could undermine public perception of the profession.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction for Respondent's three rule violations are set by ABA *Standard* 4.12, which provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client, and by ABA *Standard* 7.2, which calls for suspension when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, thereby causing injury or potential injury to a client, the public, or the legal system. We therefore proceed in our analysis with the presumptive sanction of suspension.

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.[37] As discussed below, the Hearing Board applies three factors in aggravation and two factors in mitigation. We evaluate the following factors proposed by the parties.

Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): Respondent was suspended in 2003 for a period of ninety days, all stayed upon successful completion of a two-year period of probation, for violations of Colo. RPC 1.15(g) and Colo. RPC 5.5(b). In that matter, Respondent permitted two nonlawyers in his office to draft and deliver documents concerning the sale of a business without his review or oversight. Respondent also failed to keep adequate records concerning his trust account and commingled client funds with his own. Although prior disciplinary offenses for the same or similar conduct are usually weighed heavily, the

[36] Because Respondent testified that his house had been in foreclosure in 2012 and that he received at least one notice from a creditor in 2015, we view Respondent's act of commingling to create a reasonably foreseeable risk that his client's and third parties' funds could have been subject to the claims of his creditors. *See People v. Shidler*, 901 P.2d 477, 479 (Colo. 1995) ("Commingling is dangerous to the client and a serious disciplinary offense because it can subject client funds to the claims of the lawyer's creditors.").

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

remoteness in time of Respondent's prior offense somewhat diminishes the aggravation here,[38] so we apply this factor with average weight.

Dishonest or Selfish Motive – 9.22(b): The People argue that Respondent retained $12,000.00 in attorney's fees for settling his client's matter while he was administratively suspended from the practice of law, warranting application of dishonest or selfish motive in aggravation. Although it is true that Respondent retained attorney's fees, no evidence or argument was presented to suggest that he had not earned those fees or that he acted with a motive to take more than what had been agreed upon. Rather, the disbursement statement shows that he provided a discount to his client from the full contingency fee earned per the fee agreement.[39] We do not find that the People proved Respondent acted selfishly, and we decline to apply this factor in aggravation.

Multiple Offenses – 9.22(d): The People request that we consider in aggravation Respondent's multiple rule violations. Because the offenses stem from one client matter, and because the second and third claims are premised on the same act, we apply this factor but only with modest weight.[40]

Substantial Experience in the Practice of Law – 9.22(i): Respondent held a Colorado law license since 2000. We consider this a factor in aggravation.

Mitigating Factors

Cooperative Attitude Toward Proceedings – 9.32(e): The People represent that Respondent has been cooperative in these proceedings. We apply this factor in mitigation.

Remoteness of prior offenses – 9.32(m): Respondent's prior disciplinary offense occurred more than fifteen years ago. We consider this as a mitigating factor.

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.[41] We are mindful that "individual circumstances make extremely problematic any meaningful

[38] *See* ABA *Standard* 9.32(m).
[39] Ex. S3.
[40] *See In re Roose*, 69 P.3d at 49 (declining to apply weight to the aggravating factors of a pattern of misconduct or multiple offenses where a lawyer'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").
[41] *See In re Attorney F.*, 2012 CO 57, ¶ 19; *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).

comparison of discipline ultimately imposed in different cases."[42] Though prior cases are helpful by way of analogy, hearing boards must determine the appropriate sanction for a lawyer's misconduct on a case-by-case basis.[43]

We first look at analogous cases in which lawyers commingled client funds in violation of Colo. RPC 1.15A(a). In *People v. Zimmermann*, a lawyer was suspended for one year and one day for mismanaging his trust account and commingling funds over a period of more than three years.[44] Similarly, in *People v. Calvery*, a lawyer was suspended for one year and one day for commingling his own funds with client funds over a three-year period; the lawyer's five prior instances of discipline affected the sanctions analysis in that case.[45] The Colorado Supreme Court imposed a more severe sanction in *People v. Johnson*, suspending a lawyer for eighteen months where the lawyer practiced law while administratively suspended and commingled client funds, among other rule violations.[46] In contrast, in *People v. Shidler*, a lawyer who commingled personal and client funds received only a public censure where five mitigating factors and no aggravators applied.[47]

Respondent's conduct here was isolated to one client matter. It was neither ongoing nor repeated as in *Zimmerman* and *Calvery*. Standing alone, the limited nature of Respondent's conduct in commingling client funds would call for a lesser sanction than what was imposed in those cases.[48] But because the aggravators weigh slightly more heavily here than in *Shidler*, discipline greater than a public censure is warranted.

Respondent transgressed two additional rules that we must also consider. Although we are troubled by Respondent's purported lack of knowledge for more than five years that he was administratively suspended, we do not find his conduct to be as flagrantly defiant of a court order as to warrant disbarment. This is because Respondent engaged in the unauthorized practice law of law while he was *administratively* suspended rather than while under suspension for a disciplinary offense.[49] While moderate suspensions for violations of

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[42] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[43] *Id.* ¶ 15.
[44] 922 P.2d 325, 328 (Colo. 1996).
[45] 721 P.2d 1189, 1190-91 (Colo. 1986).
[46] 946 P.2d 469, 471-72 (Colo. 1997).
[47] 901 P.2d at 478 (noting that "[i]f it were not for certain mitigating factors, a suspension would be in order.").
[48] *See People v. Hickox*, 889 P.2d 47, 49 (Colo. 1995) (finding that public censure is appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury).
[49] *Compare People v. Wilson*, 832 P.2d 943, 945 (Colo. 1992) (holding that disbarment is appropriate where a lawyer practiced law while subject to a disciplinary suspension without winding up his practice or protecting his clients' interests) *with People v. Rivers*, 933 P.2d 6, 8 (Colo. 1997) (suspending a lawyer for one year and one day for violating an administrative suspension order and engaging in several instances of other misconduct, including failing to refund unearned fees, failing to communicate, and failing to disclose a potential conflict of interest).

administrative suspension orders have been ordered,[50] lesser sanctions have also been imposed where mitigating circumstances predominate.[51]

Here, we have determined that Respondent had actual knowledge of his administrative suspension for around two months, and that he knew he was engaging in the unauthorized practice of law only during that period. Even though he jeopardized the integrity of the legal process through this conduct, he did not actually harm E.G. or third parties. We also consider the isolated nature of the misconduct, including that his actions were limited to one client matter. Although Respondent mishandled the settlement funds by placing them in his operating account, he credibly testified that he did not intend to keep unearned fees, and he promptly distributed the settlement proceeds.

Finally, Respondent's cooperative attitude during the disciplinary proceeding, coupled with the People's recommendation of a more lenient sanction, leads us to conclude that he is a worthy candidate for probation with oversight by a financial monitor, as opposed to a longer period of suspension. Rehabilitation, when possible while sufficiently protecting the public, is an important purpose of disciplinary sanctions[52] and one that we are inclined to prioritize here given the facts of this case.

Considering the scope of Respondent's conduct, the presumptive sanction of suspension, the balance of aggravating and mitigating factors, Respondent's cooperative attitude, and guiding case law, we conclude that the appropriate sanction is a suspension of one year and one day, with three months served and the remainder stayed upon a two-year period of probation with the conditions of formal financial monitoring on a quarterly basis and attendance at the People's ethics and trust account schools.[53]

IV. CONCLUSION

Respondent contravened three Colorado Rules of Professional Conduct by representing a client while he was administratively suspended from the practice of law and by failing to hold settlement proceeds in a trust account. The appropriate sanction for this

[50] *See Rivers*, 933 P.2d 6 at 8; *People v. Clark,* 900 P.2d 129, 130 (Colo. 1995) (suspending a lawyer for one year and one day for practicing law while administratively suspended and engaging in other misconduct, where no actual harm to clients was shown).

[51] *See People v. Dover*, 944 P.2d 80, 82 (Colo. 1997) (publicly censuring a lawyer for violation of an administrative suspension order in light of mitigating circumstances).

[52] *See* ABA *Standards* at 10-11; *see also In re Scholl*, 25 P.3d 710, 712 (Ariz. 2001) ("[W]e view discipline as assisting, if possible, in the rehabilitation of an errant lawyer."); *Fla. Bar v. Ross*, 140 So.3d 518, 523 (Fla. 2014) ("[D]iscipline must protect the public from unethical conduct, must be fair to a respondent, yet sufficient to sanction the misconduct and encourage reformation and rehabilitation. . . ."); *In re Harris*, 868 A.2d 1011, 1020 (N.J. 2005) ("Another goal of the process is to spur a disciplined attorney, who is redeemable, to comply with the high standards that our profession demands.").

[53] Although we do not require it as a condition of probation, we encourage Respondent to seek out a formal mentoring relationship through a program such as the Colorado Attorney Mentoring Program.

misconduct is a one-year-and-one-day suspension, three months to be served and the remainder to be stayed upon the successful completion of a two-year period of probation, with conditions.

V. ORDER

The Hearing Board therefore **ORDERS**:

1. **MATTHEW S. PARK**, attorney registration number **31715**, will be **SUSPENDED** from the practice of law for **ONE YEAR AND ONE DAY,** WITH **THREE MONTHS TO BE SERVED AND THE REMAINDER TO BE STAYED** upon the successful completion of a **TWO-YEAR** period of **PROBATION**, with the conditions identified in paragraph 2 below. The suspension will take effect upon issuance of an "Order and Notice of Suspension."[54]

2. Respondent **SHALL** successfully complete a **TWO-YEAR PERIOD OF PROBATION** subject to the following conditions:

    a. He will commit no further violations of the Colorado Rules of Professional Conduct;

    b. He will attend at his own expense the ethics and trust account schools offered by the People no later than six months after his probation begins;

    c. During any period of probation when Respondent is practicing law in Colorado, he must meet quarterly with a financial monitor, selected by the People in conjunction with Respondent.[55] The monitor will review Respondent's financial accounts and his overall practice for compliance with the Colorado Rules of Professional Conduct, including trust account rules. The monitoring will be designed to verify that Respondent implements and consistently uses financial and trust account management practices to minimize the possibility that his misconduct will reoccur as well as to verify that he implements and consistently uses effective systems to ensure his compliance with all Colorado Rules of Professional Conduct. Each meeting must include a review of Respondent's firm's financial accounts. Respondent and the People must jointly select the monitor and develop a monitoring plan. No later than the effective date of the probation, Respondent must provide a copy of this opinion to the monitor and execute an authorization for release, allowing the monitor to notify the People if Respondent fails to fully

[54] In general, an order and notice of suspension 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.

[55] The meetings may be held remotely if Respondent or the financial monitor has concerns about meeting, given the COVID-19 health crisis.

participate in the required monitoring. The monitor must notify the People if Respondent fails to fully participate in the required monitoring. The monitor must submit quarterly reports to the People. Respondent is responsible for bearing all costs of complying with this condition of probation.

3. If, during the period of probation, the People receive information that any condition may have been violated, the People may file a motion with the PDJ specifying the alleged violation and seeking an order that requires Respondent to show cause why the stay should not be lifted and the sanction activated for violation of the condition. The filing of such a motion will toll any period of suspension and probation until final action. Any hearing will be held under C.R.C.P. 251.7(e).

4. No more than twenty-eight days and no less than fourteen days before the expiration of the period of probation, Respondent **SHALL** file an affidavit with the People stating whether he has complied with all terms of probation and shall file with the PDJ notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. On receipt of this notice and absent objection from the People, the PDJ will issue an order showing that the probation was successfully completed. The order will become effective upon the expiration of the period of probation.

5. The parties **MUST** file any posthearing motion **on or before Friday, September 18, 2020**. Any response thereto **MUST** be filed within seven days.

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

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

DATED THIS 4th DAY OF SEPTEMBER, 2020.

Original Signature on File

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

/s/ Bradley D. Laue

BRADLEY D. LAUE
HEARING BOARD MEMBER

/s/ Sisto J. Mazza

SISTO J. MAZZA
HEARING BOARD MEMBER

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