People v. Rogers. 10PDJ024. October 13, 2010. Attorney Regulation.
Following a Sanctions Hearing, the Presiding Disciplinary Judge disbarred Duane G. Rogers (Attorney Registration No. 26237) from the practice of law, effective November 13, 2010. Respondent sexually assaulted his minor stepdaughter, failed to appear for trial on those charges, and continues to elude law enforcement authorities. He also failed to present mitigating evidence or otherwise participate in these proceedings. His misconduct admitted by default constituted grounds for the imposition of discipline pursuant to C.R.C.P. 251.5, and violated Colo. RPC 3.4(c), 8.1(b), 8.4(b), and 8.4(d).

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DUANE G. ROGERS	Case Number: **10PDJ024**

DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(c)

On September 30, 2010, the Presiding Disciplinary Judge ("the Court") held a Sanctions Hearing pursuant to C.R.C.P. 251.15(b). Margaret B. Funk appeared on behalf of the Office of Attorney Regulation Counsel ("the People"). Duane G. Rogers ("Respondent") did not appear, nor did counsel appear on his behalf. The Court now issues the following "Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(c)."

I. ISSUE AND SANCTION

Disbarment is the presumed sanction for a lawyer who sexually assaults a child. The order of default in this matter, by deeming all facts set forth in the complaint admitted, established by clear and convincing evidence the People's allegations that Respondent sexually assaulted his minor stepdaughter, failed to appear for trial on those charges, and continues to elude law enforcement authorities. The Court must determine the appropriate sanction for Respondent.

Respondent has not participated in the disciplinary proceedings brought against him, and the Court is aware of no factors mitigating Respondent's conduct. After considering the nature of Respondent's misconduct and its consequences, the aggravating factors, and the lack of countervailing mitigating factors, the Court finds the appropriate sanction for Respondent's misconduct is disbarment.

II. PROCEDURAL HISTORY

On February 8, 2010, Respondent was immediately suspended from the practice of law in Colorado pursuant to C.R.C.P. 251.8. On March 2, 2010, the People filed a complaint alleging that Respondent violated several Rules of Professional Conduct. Respondent failed to answer the complaint, and the Court granted a motion for default on May 25, 2010. Upon the entry of default, the Court must deem all facts set forth in the complaint admitted pursuant to C.R.C.P. 251.15(b). In addition, upon the entry of default all rule violations are deemed to have been established by clear and convincing evidence.[1]

III. ESTABLISHED FACTS AND RULE VIOLATIONS

The Court hereby adopts and incorporates by reference the factual background of this case fully detailed in the admitted complaint.[2] Respondent took and subscribed the Oath of Admission and gained admission to the Bar of the Colorado Supreme Court on October 23, 1995. He is registered upon the official records, Attorney Registration No. 26237, and is therefore subject to the jurisdiction of the Court pursuant to C.R.C.P. 251.1.

Respondent was arrested on August 19, 2008, on allegations that he sexually assaulted his stepdaughter, who was less than fifteen years of age at the time of the alleged contact. The alleged sexual assaults—which the Court must deem to have been admitted—took place between January 1, 2003, and March 13, 2006. On August 22, 2008, Respondent was charged with a third degree felony of sexual assault on a child – pattern or abuse; a third degree felony of sexual assault on a child by one in a position of trust; a fourth degree felony of sexual assault on a child by one in a position of trust; and a fourth degree felony of sexual assault on a child. An additional third degree felony count of sexual assault on a child by one in a position of trust, pattern of abuse, was subsequently filed.

On September 9, 2008, Respondent posted a bail bond and executed a written advisement that by his posting he was agreeing to appear at all future court dates. On January 16, 2009, Respondent appeared in court with his attorney and a jury trial was set to commence on June 22, 2009. On May 22, 2009, Respondent appeared at court again, at which time his trial was re-set to September 28, 2009.

On the first day of the scheduled trial, September 28, 2009, Respondent failed to appear. The court then revoked Respondent's bail bond and issued a bench warrant for his arrest. Respondent still has not surrendered to law enforcement authorities.

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[1] *See People v. Richards*, 748 P.2d 341, 346 (Colo. 1987); C.R.C.P. 251.15(b).
[2] *See* the People's complaint for further detailed findings of fact.

As set forth in the complaint, Respondent violated several Rules of Professional Conduct in the course of the events described above. First, by failing to appear at his trial as required by court orders and by failing to turn himself in after issuance of an arrest warrant, Respondent knowingly disobeyed an obligation under the rules of a tribunal in violation of Colo. RPC 3.4(c). Second, by violating his bail bond conditions, Respondent violated C.R.S. § 18-8-212, and by extension violated Colo. RPC 8.4(b), which 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 a lawyer in other respects. Also by failing to abide by court orders and his bond conditions, and by evading law enforcement authorities, Respondent violated Colo. RPC 8.4(d), which prohibits lawyers from engaging in conduct prejudicial to the administration of justice. Next, by failing to respond to repeated requests for information from the People, Respondent violated C.R.C.P. 251.5(d), Colo. RPC 3.4(c), and Colo. RPC 8.1(b). Finally, by engaging in a pattern of sexual contact with a child, Respondent violated Colo. RPC 8.4(b) and C.R.C.P. 251.5(b).

IV. SANCTIONS

The ABA *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*") and Colorado Supreme Court case law are the guiding authorities for selecting and imposing sanctions for lawyer misconduct.[3] In selecting a sanction after a finding of lawyer misconduct, the Court must consider the duty violated; the lawyer's mental state; the actual or potential injury caused by the lawyer's misconduct; and the existence of aggravating and mitigating evidence pursuant to ABA *Standard* 3.0.

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

Duty: Respondent violated a duty to the public and the legal system by failing to maintain his personal integrity and by failing to comply with state laws and the orders of the trial court.[4]

Mental State: The order of default, which deems the allegations set forth in the complaint to have been admitted, establishes that Respondent knowingly failed to appear for his trial, knowingly violated the conditions of his bail bond, and knowingly failed to surrender to law enforcement authorities.

Injury: Respondent's criminal conduct undoubtedly caused extremely serious injury to the victim. In addition, as the Colorado Supreme Court has noted, sexual assault on a child by a lawyer reflects poorly on the legal

[3] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).
[4] *See* ABA *Standards* 5.0 & 6.0.

profession as a whole.[5] Finally, by violating the trial court's order to appear for trial, Respondent caused injury to the judicial system by interfering with and delaying criminal proceedings.

ABA *Standard* 3.0 – Aggravating & Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of discipline to be imposed.[6] Mitigating circumstances include any considerations or factors that may justify a reduction in the degree of discipline to be imposed.[7] In this case, Respondent has not participated in the disciplinary proceedings, and the Court is unaware of any mitigating circumstances. The Court considered evidence of the following aggravating circumstances in deciding the appropriate sanction.

Dishonest and Selfish Motive – 9.22(b): By actively evading the criminal proceeding and law enforcement authorities, Respondent has selfishly attempted to serve his own interests.

Multiple Offenses – 9.22(d): Respondent committed multiple rule violations, as well as violations of Colorado state laws.

Vulnerability of the Victim – 9.22(h): As a minor, Respondent's stepdaughter was highly vulnerable.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the bar in 1995, and therefore has extensive experience in practicing law.

Illegal Conduct – 9.22(k): The order of default, by deeming all facts set forth in the complaint admitted, established that Respondent committed multiple felonies.

Analysis under ABA *Standards* and Colorado Case Law

As noted above, the order of default established that Respondent violated Colo. RPC 3.4(c), 8.4(b), 8.4(d), and 8.1(b). Respondent's failure to abide by court orders and his bond conditions violated Colo. RPC 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal, and Colo. RPC 8.4(d), which prohibits conduct prejudicial to the administration of justice. With respect to both of these rule violations, ABA *Standard* 6.22 provides that suspension is appropriate where a lawyer has knowingly violated a court order and causes interference or potential interference with a legal

[5] *People v. Grenemyer,* 745 P.2d 1027, 1030 (Colo. 1987).
[6] *See* ABA *Standard* 9.21.
[7] *See* ABA *Standard* 9.31.

proceeding.[8] In relation specifically to Respondent's violation of Colo. RPC 8.4(b) and C.R.S. § 18-8-212 by failure to comply with his bond conditions, ABA *Standard* 5.12 provides that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct where such conduct seriously adversely reflects on the lawyer's fitness to practice law.[9] ABA *Standard* 5.12 also applies to the criminal assaults underlying this proceeding.[10]

The ABA *Standards* further provide that, in cases involving multiple charges of misconduct, "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct."[11]

The Colorado Supreme Court has previously disbarred attorneys in at least four cases for sexually assaulting minors.[12] In fact, the court has held that disbarment is the "presumed sanction" for a respondent who has engaged in a sex act with a child.[13] As the Colorado Supreme Court has explained, such actions are "in total disregard of the fundamental elements of moral standards that the public has a right to expect of a lawyer."[14] Neither an

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[8] ABA *Standard* 6.21 provides that disbarment is appropriate where a lawyer has knowingly violated a court order with intent to benefit the lawyer and causes serious interference or potentially serious interference with a legal proceeding. We decline to apply this standard here because the People have not established Respondent had "the conscious objective or purpose to accomplish a particular result" through his misconduct. *See* ABA *Standards* § III at 9.

[9] Only specified forms of criminal conduct subject a lawyer to the presumption of disbarment under ABA *Standard* 5.11. One of the forms of criminal conduct is intentional interference with the administration of justice. The complaint in this matter does not allege intentional conduct and we have no other basis on which to determine that Respondent possessed that state of mind. *See* ABA *Standards* § III at 9.

[10] In addition, Respondent's failure to respond to the People's requests for information implicates ABA *Standard* 6.2. The commentary to ABA *Standard* 6.23 states: "Courts also impose reprimands when lawyers neglect to respond to orders of the disciplinary agency. For example, in *In re Minor*, 658 P.2d 781 (Alaska 1983), the court imposed a public censure . . . on a lawyer who, because of poor office procedures, neglected to respond to a letter from the Alaska Bar Association." In this case, because Respondent's conduct was knowing, rather than a matter of neglect or negligence, suspension arguably is the appropriate sanction under ABA *Standard* 6.22, which applies when a lawyer's knowing violation of a rule interferes with a legal proceeding.

[11] *See* ABA *Standards* § II at 7.

[12] *People v. Espe*, 967 P.2d 159 (Colo. 1998) (disbarring attorney who pled guilty to one count of sexual assault on a child); *People v. Schwartz*, 890 P.2d 82 (Colo. 1995) (disbarring attorney who pled guilty to three counts of sexual assault on a child and three counts of aggravated incest); *People v. Dawson*, 894 P.2d 756 (Colo. 1995) (disbarring attorney who was found guilty of attempted sexual assault upon a seventeen-year-old clerk in his office and who admitted to initiating sexual contact and intrusion on a client); *Grenemyer*, 745 P.2d 1027 (disbarring attorney who had been convicted of two counts of sexual assault on a child).

[13] *People v. Gritchen*, 908 P.2d 70, 72 (Colo. 1995) (imposing two-year suspension on attorney who entered *Alford* plea to charges of soliciting for child prostitution and pled guilty to soliciting for prosecution, but who had not in fact engaged in sexual acts with a minor).

[14] *Grenemyer*, 745 P.2d at 1030.

actual conviction for sexual assault nor the explicit admission of such misconduct by a respondent is required for the Court to sanction a respondent for such acts.[15]

Here, we find that the ABA *Standards* and the applicable case law, taken together, support disbarment. Although none of the applicable ABA *Standards* standing alone establishes disbarment as the presumptive sanction, this is an instance in which the multiple charges support a sanction that is "greater than the sanction for the most serious misconduct."[16] Moreover, Colorado case law squarely supports the imposition of disbarment where a lawyer has been determined to have committed a sexual assault on a child.[17] Finally, the multiple aggravating factors at play here and the absence of mitigating factors support the imposition of disbarment.

V. CONCLUSION

The underlying criminal charges that Respondent faces are very serious, while Respondent's failure to appear for either his trial or these disciplinary proceedings is quite troubling. Respondent's extreme indifference to the well-being of the victim and to the judicial process indicate that Respondent is not fit to practice law. Accordingly, the Court determines that disbarment is the appropriate sanction for Respondent.

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[15] *See People v. Pierson*, 917 P.2d 275, 275 (Colo. 1996) (where a default has been entered, the allegations of fact contained in the complaint are deemed admitted); *Gritchen*, 908 P.2d at 71, n.1 (concluding for purposes of disciplinary hearing that attorney who entered *Alford* plea to soliciting for child prostitution had in fact committed the acts necessary to constitute that crime); *People v. Chappell*, 927 P.2d 829, 830-31 (Colo. 1996) (disbarring attorney who aided a client in violating a custody order, and noting that the fact the attorney had not been charged or convicted of any offense was "not important for disciplinary purposes"); *People v. Morley*, 725 P.2d 510, 514 (Colo. 1986) ("Disciplinary proceedings are *sui generis* in nature, and conviction of a criminal offense is not a condition precedent to the institution of such proceedings nor does an acquittal constitute a bar to such proceedings. While a lawyer is entitled to procedural due process in such a proceeding, there is no requirement that he be afforded the same constitutional safeguards applicable to a criminal trial.") (citations omitted).

[16] *See* ABA *Standards* § II at 7.

[17] The People argue that under Colorado case law, disbarment is the appropriate sanction for an attorney's failure to appear for his or her own trial on criminal charges. The People cite a case in which the Colorado Supreme Court disbarred an attorney for the class 3 felony of aiding the escape of a client who had pled guilty to child abuse. *People v. Bullock*, 882 P.2d 1390, 1391-92 (Colo. 1994). We find that cases concerning the lawyer's own flight from the law—rather than cases in which the lawyer assists a client in fleeing the law—provide the most appropriate basis for comparison. For instance, in *People v. Myers*, 969 P.2d 701, 701-02 (Colo. 1998), the Colorado Supreme Court suspended for a year and a day a lawyer who failed to appear at court on charges of driving under the influence of alcohol and for whom a bench warrant was issued. *See also People v. Groland*, 908 P.2d 75, 76 (Colo. 1995) (suspending for a year and a day a lawyer who failed to comply with bail bond conditions in violation of C.R.S. § 18-8-212(2), and who also violated probation conditions and committed acts of domestic violence).

VI. ORDER

The Court therefore **ORDERS**:

1. Duane G. Rogers, Attorney Registration No. 26237, is hereby **DISBARRED**. The disbarment **SHALL** become effective thirty-one days from the date of this order upon the issuance of an "Order and Notice of Disbarment" by the PDJ and in the absence of a stay pending appeal pursuant to C.R.C.P. 251.27(h).

2. Respondent **SHALL** file any post-hearing motion or application for stay pending appeal with the PDJ **on or before November 1, 2010**. No extensions of time will be granted.

3. Respondent **SHALL** pay the costs of these proceedings. The People shall submit a "Statement of Costs" within fifteen (15) days of the date of this order. Respondent shall have ten (10) days within which to respond.

DATED THIS 13th DAY OF OCTOBER, 2010.

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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