***People v. Douglas Leo Romero*. 16PDJ057. July 23, 2019.**

On July 23, 2019, the Presiding Disciplinary Judge issued an order revoking Douglas Leo Romero's (attorney registration number 35464) three-year period of probation, vacating the stay on his seven-month suspension, and suspending him for seven months. The suspension takes effect August 27, 2019.

In December 2016, Romero was suspended from the practice of law for one year, with five months to be served and seven months to be stayed upon the successful completion of a three-year period of probation. Romero was reinstated, subject to probation, on October 1, 2017. The terms of probation included no further violations of the Colorado Rules of Professional Conduct.

After a hearing held under C.R.C.P. 251.7(e), the Presiding Disciplinary Judge determined that Romero violated the terms of his probation by acting in contravention of Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).

The case file is public per C.R.C.P. 251.31.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Petitioner: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DOUGLAS LEO ROMERO, #35464	Case Number: **16PDJ057**
ORDER REVOKING PROBATION UNDER C.R.C.P. 251.7(e)	

After serving a disciplinary suspension in 2017, Douglas Leo Romero ("Respondent") was placed on probation. Respondent violated several of the Rules of Professional Conduct during his probation, so his probation must be revoked.

I. PROCEDURAL HISTORY

In December 2016, the Presiding Disciplinary Judge ("the Court") approved a "Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct," suspending Respondent from the practice of law for one year, with five months to be served and seven months to be stayed upon the successful completion of a three-year period of probation. In the stipulation, Respondent agreed that he violated Colo. RPC 1.1 (competence); Colo. RPC 1.3 (diligence); Colo. RPC 1.6 (confidentiality of information); Colo. RPC 3.3(a)(1) (candor toward the tribunal); Colo. RPC 5.1 (responsibilities of a partner or supervisory lawyer); Colo. RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); Colo. RPC 8.4(d) (conduct prejudicial to the administration of justice); and C.R.C.P. 251.21(a) (reciprocal discipline). The suspension took effect February 1, 2017. As part of his probation, Respondent was required to complete ethics school and trust account school, abide by practice monitoring requirements, initiate fee arbitration with a former client, and, as relevant here, refrain from any further rule violations.

In June 2017, the Office of Attorney Regulation Counsel ("the People") notified the Court that they had received affidavits from Respondent in support of his request for reinstatement under C.R.C.P. 251.29(b). In the notice, the People disputed whether Respondent had timely satisfied the portions of the Court's order directing him to comply with C.R.C.P. 251.28 (winding up duties) and to pay costs. The Court thus held in abeyance Respondent's request for reinstatement. After considering Respondent's response and the

People's reply, the Court ordered the parties to endeavor to reach a negotiated resolution to the dispute.

In August 2017, the parties submitted a "Notice of Stipulation Regarding Reinstatement and Request to Vacate Hearing," indicating that they had agreed to a resolution: Respondent's license would be reinstated on October 1, 2017, when his three-year period of probation would begin. The Court approved the parties' stipulation and reinstated Respondent's license effective October 1, 2017.

On April 10, 2019, the People filed a "Motion for Order to Show Cause Pursuant to C.R.C.P. 251.7(e)" alleging that Respondent may have violated the terms of his probation by transgressing the Rules of Professional Conduct.[1] The Court issued a show cause order. After receiving the People's unopposed motion to set a hearing, the Court set a probation revocation hearing for June 12-13, 2019. Respondent filed his response to the show cause order on May 1, 2019.

At the June probation revocation hearing, Justin P. Moore appeared for the Office of Attorney Regulation Counsel ("the People"), and Respondent appeared with his counsel, Victoria E. Lovato.[2] The Court admitted stipulated exhibits S1-S17 and considered testimony from Respondent, Aaron Conrardy, Magistrate Melissa Annis, Judge Adam Espinosa, Maricela Mendoza, Amanda Cisneros, and James Sudler.

II. FINDINGS OF FACT

The People allege that in 2018 Respondent violated his probationary conditions by violating the Rules of Professional Conduct in three client representations. The Court makes findings of fact below regarding Respondent's law practice and other background information, each client representation, and Respondent's practice monitoring.[3]

Background

Respondent has been licensed to practice law in Colorado since 2004. He represents clients in civil, criminal, and immigration cases, including in Denver district and county courts. He estimates he has handled over 500 cases in Denver County Court alone.

Respondent owns a law firm called Colorado Christian Defense Counsel, where he employs associates, paralegals, and administrative staff. Though at one time he had a large

[1] The People do not allege that Respondent has violated any other conditions of his probation.

[2] Moore has represented the People in this matter since he filed the motion for order to show cause in April 2019. Earlier in the course of this case, Katrin Miller Rothgery and Sara Van Deusen represented the People. Lovato substituted for Respondent's previous counsel, Bennett S. Aisenberg and H. Paul Himes, Jr., on July 20, 2017.

[3] Where not otherwise indicated, facts are drawn from the testimony provided at the probation revocation hearing.

number of associates, in 2018 just three other attorneys worked for him, one of whom—Mark Scabavea—was not licensed in Colorado.[4]

Two members of Respondent's staff testified about his general practices. Maricela Mendoza, a paralegal, testified that Respondent takes deadlines very seriously and has "zero tolerance" for incorrect calendaring of hearings. According to Mendoza, the firm maintains a master calendar, and when court dates are set an email is sent to all members of the office. She said that the firm has arrangements with three outside counsel, including lawyers Don Martin and Christopher Skip, to help cover hearings when the firm's lawyers cannot be present.[5] Amanda Cisneros, Respondent's docket clerk, testified that if Respondent realizes he will be late to a court appearance he requires his staff to take every possible step to alert the court and to inform the client.

On April 10, 2018, Respondent had abdominal surgery, which had been scheduled six or eight weeks prior. He returned home from the hospital later that day, with a drain for his wound and on "pretty heavy" medication. Respondent worked on client matters after returning home, though he remained on medication and was "dragging." He insisted that he "needed to work." Respondent relapsed within several days and was directed to go to an emergency room if his condition worsened. He testified that it was not until after the surgery that he realized he had been "not [him]self" during the period before the surgery.

Another event during the relevant timeframe in 2018 was Respondent's representation of a client named Charles Jaramillo in a matter not directly at issue here. Jaramillo faced serious sexual offense charges in Douglas County. The Jaramillo family was friends with Respondent's parents, so the matter was "personal" to Respondent, and he prioritized it over other cases. In July 2018, a trial was set in that matter for November 13-16, 2018. The jury deliberated from November 16 through November 20.

Active Transport Matter

In 2018, Respondent represented Elet Valentine in a matter styled *Shelter Financial Services v. Active Transport Carrier* in Denver District Court. Valentine was a corporate officer of Active Transport. Active Transport had entered into a loan agreement with Shelter Financial for the purchase of a semi-tractor, which was security for the loan. Active Transport allegedly defaulted on payments. In December 2017, lawyer Aaron Conrardy filed a replevin action on Shelter Financial's behalf to recover the semi-tractor.

On February 22, 2018, the court issued an order directing a proposed case management order to be filed by April 10, 2018, and setting a case management conference for April 17.[6] This order is consistent with C.R.C.P. 16, which requires a proposed case management order to be filed a week before a case management conference. Conrardy

[4] Respondent testified that Scabavea worked on criminal cases, while the second attorney handled immigration matters. Respondent did not specify the third attorney's area of practice.
[5] Respondent testified that Martin is technically "of counsel" in the firm.
[6] Ex. S8.

testified that plaintiff's counsel typically circulates the first draft of proposed orders of this nature, the drafting is normally a joint effort, and the proposed orders are usually filed jointly.

Respondent entered his appearance in the Active Transport case in March 2018, after Valentine's previous counsel withdrew.[7] On April 5, Conrardy emailed Respondent a proposed case management order.[8] Respondent reviewed Conrardy's email and sent it to Scabavea, who emailed Conrardy on April 5, saying he was assisting with the matter and that Conrardy could direct questions to him.[9]

Although Conrardy tried to reach both Scabavea and Respondent, Conrardy said he did not hear back from either lawyer about the proposed order before it was due. Conrardy thus filed the proposed order without Respondent's participation. In the proposed order, Conrardy states:

> Disclaimer: Plaintiff's counsel emailed this proposed case management order to Defendant's counsel on April 5, 2018, then sent follow-up emails on April 9 and April 10. Defendant's counsel acknowledged receipt in an April 5 email. Plaintiff's counsel attempted to reach Defendant's counsel by telephone on April 9 and April 10. On April 9, the call did not go through. On April 10, the voicemail was full. Accordingly, Defendant's position with respect to this proposed case management order is unknown.[10]

Respondent testified that he was suffering from the medical issues that resulted in his April 10 surgery during the period when Conrardy was attempting to confer about the proposed order. Respondent did not, however, inform Conrardy of any medical limitations.

Even though Respondent performed work on the Active Transport case between his April 10 release from the hospital and the April 17 date of the case management conference,[11] he did not attend the April 17 conference. Although he had seen the order setting the hearing date, Respondent testified, he did not attend because his docket clerk failed to calendar the date. Respondent explained that he was more focused on deadlines associated with the pending summary judgment motion, which he incorrectly believed preceded the deadlines associated with the case management order.

Judge Edward Bronfin called Respondent from the courtroom on April 17 around 12:10 p.m. Conrardy remembers that Respondent answered the call and seemed surprised though coherent. For his part, Respondent admits he was physically and mentally able to

[7] Conrardy testified that Valentine hired three separate attorneys in the case in the space of less than a year. As such, he agreed that it was fair to characterize Valentine as a difficult client.
[8] Exs. S4 & S5.
[9] Ex. S4.
[10] Ex. S9. This text was in all capital letters. Ex. S9. It has been reformatted here to sentence case.
[11] Ex. S11.

work that day, although he still was on medication. Indeed, he attended a hearing in a separate matter that very morning.

Judge Bronfin began the call by stating that Valentine and Conrardy were both present for the hearing. Respondent responded:

> That's correct. And Your Honor, I just finished getting out of the hospital and this is my first day back, I was unaware. I just spoke to my law clerk about what had transpired. I was not aware of it, I had actually anticipated filing a motion to withdraw, I know that is not relevant here, but there have been many issues going on between my client and myself.[12]

Judge Bronfin commented that Respondent should have found another lawyer to cover the hearing if he could not attend for medical reasons.[13] Judge Bronfin also stated that he was "especially unhappy about the fact that Mr. Conrardy was unable to get [Respondent's] input for the case management order."[14] After noting Conrardy's representations about Respondent's failure to confer, Judge Bronfin asked if Respondent wanted to state anything else for the record.[15] Respondent made comments about the pending summary judgment motion and then stated in part, "It was only yesterday afternoon that I was released from the hospital and able to get a copy of the summary judgment motion in my hands."[16] Respondent further stated that he would like the chance to respond to the case management order if there were issues and he offered to pay Conrardy's attorney's fees for the hearing.[17]

At the probation revocation hearing, Respondent testified that his misrepresentation about having been released from the hospital the previous day was "unintentional" and he was "caught off-guard." He also characterized the statement as "not entirely inaccurate" because he might have needed to return to the hospital if he relapsed. Nevertheless, Respondent believed he had a duty to correct his statement based on advice he received from several other attorneys. About a week after the hearing, Respondent testified, he ordered a hearing transcript. He explained that he has regularly appeared before Judge Bronfin and did not want the judge to think "poorly" of him. Respondent said he directed Scabavea to find a "template" they could use for filing a correction with the court. Respondent believed his office did file such a correction and told the People he had done so, but after reviewing his files he could not find such a document. Nor does any correction appear in the court's records.

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[12] Ex. S6 at 000017; "Notice to the Court re: Transcript of April 17, 2018 Proceedings."
[13] Ex. S6 at 000018.
[14] Ex. S6 at 000018.
[15] Ex. S6 at 000019.
[16] Ex. S6 at 000020.
[17] Ex. S6 at 000020-21. Conrardy testified that Respondent ultimately did pay his attorney's fees for the case management conference, which totaled $420.00.

In December 2017, Respondent emailed Conrardy, saying that the People wanted a copy of the correction.[18] Conrardy responded that he did not see it in his file.[19] When Respondent inquired whether Conrardy remembered seeing it, Conrardy responded, "I think so, but I can't say for certain."[20] At the probation revocation hearing, Conrardy testified that he is not sure why he responded this way and that he does not actually remember seeing any correction. Had he received a correction, he said, he would have retained it in his files. Respondent also inquired of Judge Bronfin whether he remembered such a document, and Judge Bronfin responded that he could not recall either way.[21] Given the dearth of evidentiary support for Respondent's assertion that he filed—or even drafted—a correction, the Court finds that Respondent did not do so.

Returning to the matter of the case management order, Respondent ultimately filed a separate proposed case management order sometime after the initial due date. Conrardy testified that conferral took place about the proposed order after April 17 and that Judge Bronfin entered a case management order similar to the one Conrardy had proposed.

Cea-Flores Matter

Also in 2018, Respondent represented Jaime Cea-Flores in a DUI case in Denver County Court. Flores was facing a parallel proceeding before the Division of Motor Vehicles ("DMV").[22] In July 2018, Respondent filed a consolidated entry of appearance, waiver of arraignment, and request for discovery in the county court case.[23] An arraignment was set for July 24 but was continued to September 4 as a "plea and setting" hearing.[24] On that day, Martin appeared on Respondent's behalf and asked to continue the case.[25] No objection was made, so the request was granted.[26] The plea and setting hearing was continued to October 10.[27]

On October 10, Respondent appeared with Cea-Flores. Respondent requested another continuance to allow Cea-Flores time to consider a plea offer. Judge Adam Espinosa granted the request because there was no objection, but he warned he would grant no further continuances for the plea and setting hearing.[28] At the probation revocation hearing, Judge Espinosa explained that Cea-Flores's case had been pending for about four months and that county court cases are usually resolved within six months or perhaps a year. He testified that timely resolution of cases is important not only to the parties but also from a

[18] Ex. S14.
[19] Ex. S14.
[20] Ex. S14.
[21] Ex. S15.
[22] Respondent strategically elected to have the criminal proceeding trail the DMV proceeding.
[23] Ex. S16.
[24] Ex. S1.
[25] Ex. S1.
[26] Ex. S1.
[27] Ex. S1.
[28] Ex. S1.

judicial resources standpoint. Judge Espinosa noted that five judges in the county court together handle about 20,000 cases per year—a very high-volume docket—and continuances create additional complications later in the course of a proceeding.

Cea-Flores's plea and setting hearing was reset for November 20. The docket was to begin at 8:30 a.m. that day. Respondent did not appear. Nor did he file any motion or call the court,[29] even though Judge Espinosa's staff arrives at 7:30 a.m., and lawyers are permitted to call, fax, or email the court with issues before the docket begins, as Judge Espinosa testified. Respondent also failed to tell his client that no lawyer would appear on his behalf.

Respondent testified that he did not realize until the evening of November 19 that the Jaramillo trial would prevent him from attending Cea-Flores's hearing. Respondent said that he had been sure the Jaramillo jury, which began deliberating on November 16, would return a verdict earlier. The jury submitted a question to the court the afternoon of November 19, Respondent recalled, resulting in a court order directing counsel to remain close at hand. Respondent conceded that in complex matters such as the Jaramillo case, deliberations can sometimes last a week or longer.

Although Respondent's firm filed motions to continue five other hearings that Respondent could not attend due to the Jaramillo case, no such motion was filed in the Cea-Flores case. Respondent did contact Scabavea the morning of November 20 and directed him to "take care" of the Cea-Flores matter. Respondent said he assumed Scabavea would file a motion.[30] The Court is somewhat troubled by the apparent implication that Respondent was directing Scabavea—a nonlicensed attorney—to independently file a motion for Cea-Flores.

Cea-Flores and a Spanish interpreter appeared in court on November 20. When Respondent did not appear, Judge Espinosa called Respondent's firm in open court. Judge Espinosa reached the firm and was placed on hold. He remembers waiting for the duration of a song that was playing on the phone line. When the song concluded and Respondent had not come on the line, Judge Espinosa hung up. Judge Espinosa entered a not guilty plea and set the matter for trial. He testified that the entry of a not guilty plea is a significant event in a case because it triggers the speedy trial timeline and other deadlines.

After entry of the plea, Scabavea arrived at court and informed the court that Respondent could not attend. Because Scabavea was an unlicensed attorney, however, he could take no formal action on Cea-Flores's behalf. After the hearing had concluded on

[29] Ex. S1.

[30] When asked to state in retrospect what the best way to handle the situation would have been, Respondent said he should have called his client the evening of July 19, left a message for the court, directed Scabavea to file a motion, and directed his staff to travel to the courthouse to both "hold Mr. Cea-Flores's hand about what was going on" and to pay another attorney present at the courthouse a few hundred dollars to appear for Cea-Flores.

November 20, Respondent filed a motion to continue.[31] Judge Espinosa denied it because it was untimely filed.[32]

Judge Espinosa testified that Respondent regularly appears in Denver County Court and that Judge Espinosa had not previously experienced a problem of this nature with Respondent. Judge Espinosa said that three or four times during his four-year tenure he has had to call lawyers who did not arrive at court in time, but on those occasions the lawyers were elsewhere in the courthouse and were able to appear in short order.

Judge Espinosa said that another issue of concern regarding Respondent's representation in this case is that as of November 20, he had not picked up the discovery he requested in July. Respondent testified that he had received discovery from the DMV in Cea-Flores's parallel proceeding, and because the DMV discovery was more complete he did not need the discovery from the city attorney's office. Respondent admitted, however, that the DMV does not run criminal histories for lay witnesses, while the city attorney's office does obtain such histories.

Carhuamaca Matter

Respondent represented Erix Carhuamaca-Vilcahuaman[33] in Denver County Court on DUI charges in 2018. According to Respondent, Carhuamaca lacked sophistication and was particularly "nervous" about his proceeding. At a hearing on September 12, 2018, Carhuamaca did not appear because he was in immigration custody, but counsel did appear.[34] Magistrate Melissa Annis directed issuance of a personal-recognizance-bond-authorized warrant.[35] The warrant was canceled about three weeks later, though the bond remained in place. At an October 15 bond return date hearing, Carhuamaca appeared without counsel, so the hearing was continued to November 15. Respondent testified that neither he nor any other attorney in his office was available for the October hearing.

The November 15 hearing was both a bond return date and an arraignment, and Carhuamaca was required to appear.[36] Respondent was unavailable because he was busy with the Jaramillo matter. He testified that approximately a month before the hearing his office asked Martin to cover, but Martin was unavailable. Respondent's office then emailed Skip on November 12 to request coverage. Skip did not respond, but the office presumed nonetheless that he would attend the hearing. Mendoza and Cisneros both testified that

[31] Ex. S10.

[32] Ex. S10.

[33] Respondent's client appears to use "Carhuamaca" as his last name. *See* Ex. S7 at 000030.

[34] Ex. S3. The evidence does not establish whether Respondent appeared on September 12 or whether another attorney appeared on Respondent's behalf.

[35] Ex. S3.

[36] Ex. S3. Respondent testified that when courts set bond return hearings, they consult only with the defendant's bondsman, not the defendant's attorney, so attorneys rely on their clients to apprise them of these settings. Mendoza and Cisneros corroborated this testimony. This is beside the point here because Cisneros testified that Respondent's firm as well as Respondent himself knew about Carhuamaca's November 15 hearing.

Skip commonly does not respond promptly to emails of this nature; instead, he usually responds the day before or the morning of the hearing in question to confirm that he will cover the hearing. As such, Cisneros testified that she relied on Skip to attend Carhuamaca's hearing. She did not tell Respondent that she had confirmed coverage for the hearing.

On November 15, neither Respondent nor Skip nor any other lawyer appeared for Carhuamaca. Respondent did not file an appropriate motion, and his office did not call the court or alert Carhuamaca that counsel could not attend.

When Magistrate Annis opened the hearing, she was informed that Respondent was not in attendance, which she commented was "not okay."[37] She noted that the case had already been continued from the October date due to Respondent's failure to appear.[38] The court contacted Respondent's office[39] but was told that no licensed attorney would attend the hearing.

Ultimately, Scabavea did appear for Carhuamaca, but because he lacked a Colorado license Magistrate Annis treated his appearance as having "no effect." Since Carhuamaca did not have counsel, the hearing was continued, and Magistrate Annis set a hearing in the trial division.[40]

According to Magistrate Annis, attorneys on occasion do not timely appear at hearings, but she cannot think of any other instance in her three years as a magistrate when the court called an attorney's office and was told that no attorney would be coming at all.

Respondent's failure to appear took up some time on the docket in what Magistrate Annis characterized as one of the busiest courtrooms in Denver County Court. She deemed Respondent's failure to appear "very significant" because the matter had already been continued once due to counsel's nonappearance. She also found the nonappearance significant because the defendant was on bond. In addition, Respondent's absence resulted in a thirty-day continuance of the case. In Magistrate Annis's view, case delays are significant because they affect the parties' respective abilities to prosecute and defend matters.

Respondent testified that he obtained a favorable result for Carhuamaca and that Carhuamaca is happy with his representation.

Practice Monitoring

As noted above, Respondent's disciplinary probation took effect October 1, 2017. James Sudler, who served as counsel for the People for more than two decades, was selected as Respondent's practice monitor. Sudler testified that before formally assuming his practice monitoring role, he and Respondent met four to six times. Respondent and

[37] Ex. S7 at 000030.
[38] Ex. S7 at 000030.
[39] Ex. S7 at 000031-32.
[40] Ex. S3.

Sudler both agreed that they have developed a mentoring relationship in addition to the formal practice monitoring relationship. They have lunched together roughly every two weeks, discussing personal matters, issues in the legal community, and matters arising in Respondent's law practice.

Sudler testified that when the practice monitoring period began he initially conducted an audit and directed Respondent to perform a self-assessment. For the first six months of the monitoring, Sudler and Respondent met every month. For the next six-month period the men met every two months; quarterly meetings were required thereafter. As part of the monitoring, Sudler has reviewed randomly selected case files from Respondent's office.

Sudler characterized Respondent as receptive to his feedback and "very" serious about complying with the terms of his probation. Sudler noted that Respondent has never missed a practice monitoring meeting and that Respondent's staff is responsive. Sudler said Respondent implemented changes that he recommended as a result of his case file reviews, such as ensuring that client files contain fee agreements.

Sudler noted that at the outset of the monitoring Respondent employed many lawyers, which Sudler believed posed some supervisory difficulties. The number of lawyers on staff has since shrunk to a level that Sudler deems more manageable. Sudler believes Respondent's caseload is still high. Although Sudler has found Respondent to be familiar with the status of his cases, Sudler thinks it would be difficult for any lawyer to remain current with such a large caseload. He has discussed this concern with Respondent from time to time since October 2017.

Sudler does not remember discussing with Respondent any of the three client matters addressed above, although he said it is possible that Respondent raised one or more of them informally. Respondent, meanwhile, believes he did informally discuss these cases with Sudler.

As to the limits of the practice monitoring role, Sudler observed that monitoring an attorney's judgment is difficult, and that he cannot monitor Respondent's day-to-day decisionmaking. He also noted that he has only been tasked with reviewing a small fraction of Respondent's overall caseload.

Sudler intends to continue serving as Respondent's mentor even if Respondent's probation is revoked. He said he will be available to Respondent going forward to answer any questions about his practice, including judgment calls Respondent may need to make.

III. LEGAL STANDARDS AND ANALYSIS

C.R.C.P. 251.7(e) permits the People, should they receive information indicating that a lawyer may have violated probationary conditions, to move for an order requiring the lawyer to show cause why her or his stayed suspension should not be activated. If either party so

requests, the Court must hold a hearing on the motion.[41] At such a hearing, the People have the burden of establishing probationary violations by a preponderance of the evidence.[42] The Court must decide whether to revoke the lawyer's probation after the hearing ends.[43]

The People appear to allege that in the Active Transport case Respondent violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).[44] The People allege that Respondent violated Colo. RPC 1.3 and 8.4(d) in both the Cea-Flores and the Carhuamaca cases. The Court analyzes each matter in turn.

Active Transport Matter

The People allege that Respondent violated the Rules of Professional Conduct in the Active Transport case on three separate bases. The People's first claim concerns Respondent's failure to participate in drafting the proposed case management order. As the Court understands it, the People argue that Respondent violated Colo. RPC 1.3, 3.4(c), and 8.4(d) by acting without reasonable diligence, disregarding an obligation under the rules of the tribunal, and prejudicing the administration of justice.

The evidence shows that Conrardy made reasonable efforts to secure Respondent's participation in drafting the proposed order but Respondent did not respond, even though he clearly received Conrardy's initial email, at minimum. Although the duty to participate in the drafting was not spelled out explicitly in the court's February 2018 order, Judge Bronfin's commentary at the April 17 hearing makes clear that he viewed Respondent's failure to communicate with Conrardy as a breach of Respondent's duties. C.R.C.P. 16(b)(3) also states that counsel should confer with each other, no less than fourteen days after the case is at issue, about issues including the proposed case management order.[45]

The Court agrees with the People that Respondent acted without the requisite diligence and disregarded obligations under the rules of a tribunal when he failed to respond to Conrardy's efforts to obtain his input. To disregard opposing counsel's attempt to discuss a proposed order that the parties must confer about is neither diligent nor compliant with

[41] C.R.C.P. 251.7(e).
[42] *Id.*
[43] *Id.*
[44] In their motion for order to show cause, the People do not specify which rules they believe to be implicated by each client matter; rather, they globally assert that Respondent violated the rules set forth above. The Court analyzes the possible rule violations that seem most pertinent to each client matter, informed in large measure by the People's argument at the hearing.
[45] C.R.C.P. 16(b)(2) provides that plaintiff's counsel is responsible for preparing and submitting proposed case management orders.

applicable requirements and standards of practice. The Court cannot find, however, that Respondent's nonparticipation meaningfully prejudiced the administration of justice. Although Respondent caused some delay, the potential and actual effect of Respondent's actions on the proceeding appears to have been relatively minimal.[46]

The second set of claims regarding the Active Transport matter concerns Respondent's statements at the April 17 hearing. The People appear to argue that Respondent violated both Colo. RPC 3.3(a)(1) and 8.4(c) in his representations to the court. According to the People, Respondent made two distinct types of misrepresentations: that he was unaware of the hearing and that he had just been released from the hospital. As to the first issue, although the evidence shows that Conrardy emailed Respondent about the hearing date and that Respondent *should have* been aware of the date, the Court cannot find that Respondent was actually aware of the date and chose to skip the hearing. It is possible, particularly given Respondent's health status, that he relied on his staff to note the hearing date or that he knew the date but forgot it. Thus, the Court does not find a misrepresentation on that score.

But the evidence makes plain that Respondent misrepresented his release date from the hospital, which was seven days prior. His statement that it was "only yesterday afternoon that [he] was released from the hospital" is patently false—and by a significant order of magnitude. The Court has no doubt that Respondent knew this statement was not true. The evidence shows that Respondent, though still recovering from his surgery and still on pain medication, was coherent and understood how long he had been out of the hospital.

Further, the Court deems Respondent's misrepresentation material. The misrepresentation was made in the context of his failure to appear at a hearing and appears to have been calculated to prevent Judge Bronfin from viewing him in a negative light. There are several possible reasons Respondent might have wanted to do so, such as avoiding negative consequences (like sanctions) for failing to confer and failing to appear, or perhaps maintaining good standing with the judge to benefit his representation of other clients. Another possibility is that Respondent's misstatement was calculated to prevent his client from believing that he committed misconduct, perhaps because he was concerned she might file a grievance. Indeed, Respondent clearly viewed Valentine as a difficult client. In either event, a statement eliciting sympathy based on Respondent's ostensible release from the hospital a mere day before could well have convinced the judge or client not to take action adverse to him. Though the Court cannot deduce Respondent's actual motivations, the Court deems his misrepresentation both knowing and material and thus finds a violation of Colo. RPC 3.3(a)(1) and 8.4(c).

Third, the People appear to view Respondent's failure to attend the April 17 hearing in person as a violation of Colo. RPC 1.3 and 8.4(d). Relatively little evidence was presented

[46] *See In re Mason*, 736 A.2d 1019, 1023 (D.C. 1999) (stating that in order to find a rule violation, the conduct must "at least potentially impact upon the process to a serious and adverse degree").

at the probation revocation hearing regarding the circumstances of Respondent's failure to appear. The Court is concerned that Respondent or his firm did not properly calendar the date. Ultimately, however, Respondent did participate in the hearing when Judge Bronfin called him. In addition, the more meaningful breach of duties as to the case management order appears to be Respondent's failure to cooperate with Conrardy in the first instance. The Court thus does not find that Respondent violated Colo. RPC 1.3 and 8.4(d) by failing to attend the April 17 hearing in person.

Cea-Flores Matter

The People allege that Respondent violated Colo. RPC 1.3 and 8.4(d) in the Cea-Flores case by missing the November 20 plea and setting hearing and also by neglecting to pick up the discovery he had requested.

Although Respondent said he expected the Jaramillo jury deliberations would wrap up before November 20, he admitted that deliberations can be lengthy in complex cases such as the Jaramillo case. Respondent also testified that he directed Scabavea the morning of November 20 to "take care" of the Cea-Flores matter. That direction, however, was apparently too late or too vague for Scabavea to timely file an appropriate motion. And in any event, Judge Espinosa had already advised Respondent that no further continuances would be granted. Respondent should have ensured that a licensed lawyer familiar with the case would appear for Cea-Flores if Respondent could not, or he should have appeared himself and taken other measures to cover the Jaramillo matter.

Respondent's failure to appear at Cea-Flores's hearing wasted the court's time, as well as the Spanish interpreter's time. Although the amount of time lost might not be significant in a court with a lighter docket, Judge Espinosa testified that his docket was incredibly busy, such that Respondent's failure to appear affected the court's functioning to a meaningful degree. Respondent's nonappearance stood out to Judge Espinosa as a highly unusual event, out of keeping with the normal standards of conduct for lawyers in Denver County Court. Although this Court recognizes that lawyers from time to time fail to timely appear in various tribunals, the Court gives significant weight to Judge Espinosa's testimony that in his four years as a county court judge he has never experienced an episode such as this, where the lawyer not only failed to appear but could not be reached elsewhere in the courthouse. The Court thus finds that Respondent prejudiced the administration of justice in violation of Colo. RPC 8.4(d).

The Court also views Respondent's failure to appear or to secure alternate coverage for Cea-Flores as a breach of his client-centered duty of providing diligent representation. The taking of a plea and the setting of a trial date are notable events in a criminal proceeding, and Cea-Flores was entitled to have counsel present on his behalf. As such, the Court finds that Respondent acted without the requisite diligence in contravention of Colo. RPC 1.3.

Last, Respondent's failure to collect the discovery he requested in the Cea-Flores case is a matter of some concern. The evidence shows that at least one item of discovery would not have been available in the file he picked up from the DMV and would only have been available in the city attorney's file. However, the Court lacks information about the details of the Cea-Flores case and what type of discovery would be most relevant. The Court concludes there is insufficient evidence to find that Respondent's actions in this regard reflected a meaningful lack of diligence amounting to a rule violation.

Carhuamaca Matter

Similar to the Cea-Flores matter, the People claim that Respondent violated Colo. RPC 1.3 and 8.4(d) by failing to attend Carhuamaca's hearing on November 15.

Although the Court heard testimony that counsel is not always informed of the setting of bond return dates, the evidence is clear that Respondent's office was aware of Carhuamaca's hearing on November 15. The office initially took appropriate action by asking Martin to cover. When Martin responded that he was unavailable, however, Respondent's firm improperly relied on an incorrect assumption that Skip would attend, without confirming Skip's plans. Respondent's staff testified that it was not uncommon to ask Skip to cover hearings and not hear back until the day before or the morning of the hearing in question. The firm's reliance on this type of assumption—both in Carhuamaca's matter and apparently as a broader pattern—reflects a failure on Respondent's part to train his staff. A lawyer acts without reasonable diligence if the lawyer fails to obtain confirmation that a client's hearing will be covered. The lack of diligence was compounded here by the office's failure inform the client that no attorney would attend the hearing, particularly given that Respondent recognized Carhuamaca was particularly anxious about the proceeding. Respondent thus violated Colo. RPC 1.3.

Further, much as in the Cea-Flores case, Respondent's failure to appear prejudiced the administration of justice. Because no attorney appeared, the hearing was continued—and it had already been continued once due to counsel's nonappearance. Magistrate Annis said that she has never before had been told, following a lawyer's failure to appear, that no lawyer from the firm would attend at all. She testified that Respondent's nonappearance was "very significant" because Carhuamaca was on bond. In addition, Respondent's failure to appear took up some time on the docket on November 15 in a very busy courtroom and resulted in a thirty-day continuance of the case. Relying on Magistrate Annis's testimony about how unusual Respondent's conduct was in her experience, the Court deems Respondent's actions prejudicial to the administration of justice in violation of Colo. RPC 8.4(d).

Legal Ruling

As set forth above, the Court finds by a preponderance of the evidence that Respondent has violated several Rules of Professional Conduct spanning three client representations. While not all of those rule violations are of equal magnitude, the Court is

very troubled by the sheer number of violations here. The Court is also particularly dismayed by Respondent's blatant misrepresentation to Judge Bronfin in the Active Transport matter.

In the disciplinary case that led to Respondent's probation, he violated several of the rules at issue here—Colo. RPC 1.3, 3.3(a)(1), 8.4(c), and 8.4(d). The underlying disciplinary case also involved a violation of Colo. RPC 5.1 (responsibilities of a partner or supervisory lawyer), and although that rule was not charged in the probation revocation matter, Respondent's staff's practices in the Carhuamaca case strongly suggest that Respondent is not adequately fulfilling his supervisory duties. Noting the coverage failures in this case as well as Respondent's testimony that he returned to his practice immediately after surgery because he "needed to work," the Court is concerned that Respondent does not have the resources in place to handle unexpected circumstances in a manner consistent with his duties under the Rules of Professional Conduct.

The Court appreciates Respondent's apparently genuine and diligent efforts to learn from Sudler's guidance, both within the formal practice monitoring framework and in their informal mentoring relationship. The Court recognizes that Respondent has made significant strides through practice monitoring and that he is complying with the monitoring requirements, which not all lawyers subject to such a requirement do.

Despite the guidance available to him through practice monitoring, however, Respondent has committed a number of rule violations. The practice monitoring, then, has been insufficient to safeguard the public. The misconduct found here demonstrates that two of the initial eligibility requirements for probation—that the lawyer is unlikely to harm the public and is able to perform legal services without causing the profession to fall into disrepute—are no longer satisfied.[47]

In sum, the pattern of misconduct here and the seriousness of Respondent's misrepresentations to a tribunal convince the Court that Respondent's probation must be revoked.

IV. ORDER

The Court **REVOKES** Respondent's probation, **VACATES** the stay on Respondent's seven-month suspension, and **SUSPENDS** Respondent from the practice of law for **SEVEN MONTHS**, **EFFECTIVE August 27, 2019**.

On that date, the Court will issue an "Order and Notice of Suspension." Within fourteen days thereafter, Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring a lawyer to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and of other jurisdictions where the lawyer is licensed. Should Respondent wish to resume the practice of law, he will be required to submit to the People,

[47] *See* C.R.C.P. 251.7(a).

within twenty-eight days prior to the end of his suspension, an affidavit complying with C.R.C.P. 251.29(b).

DATED THIS 23rd DAY OF JULY, 2019.

[Original signature on file]

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Copies to:

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