***People v. Alan David Rosenfeld*. 18PDJ023. November 23, 2018.**

A hearing board suspended Alan David Rosenfeld (attorney registration number 30317) for one year and one day, with three months to be served and the remainder to be stayed upon successful completion of a three-year period of probation, with conditions. The Colorado Supreme Court affirmed the hearing board's decision on July 10, 2019, and Rosenfeld's suspension took effect on August 5, 2019.

Rosenfeld did not pay any court-ordered child support between June 2016 and December 2016. Between January 2017 and April 2017, he paid only half of the monthly ordered amount of child support. Yet he failed to seek reconsideration of the child support order or to ask for a modification of the amount awarded. By failing to obey his court-mandated child support obligations, Rosenfeld breached Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal).

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:** ALAN DAVID ROSENFELD	Case Number: **18PDJ023**

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

Alan David Rosenfeld ("Respondent") did not pay any court-ordered child support between June 2016 and December 2016. Between January 2017 and April 2017, he paid only half of the monthly ordered amount of child support. Yet he failed to seek reconsideration of the child support order or to ask for a modification of the amount awarded. Because he did not obey his court-mandated child support obligations, Respondent breached Colo. RPC 3.4(c). This conduct warrants suspension for one year and one day, with three months to be served and the remainder to be stayed upon successful completion of a three-year period of probation, with conditions.

I. PROCEDURAL HISTORY

Sara C. Van Deusen, Office of Attorney Regulation Counsel ("the People"), filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the PDJ") on April 25, 2018, alleging that Respondent violated Colo. RPC 3.4(c), which provides that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists. The People claim that Respondent violated this rule by failing to fully honor his child support obligations for an eleven-month period.

Respondent answered the complaint on May 16, 2018, denying that he committed misconduct. In the request for additional relief incorporated into his answer, he asserted that this disciplinary case is in violation of an automatic stay issued on August 3, 2017, by the United States Bankruptcy Court. He claimed that the stay applies to any actions included in his Chapter 13 bankruptcy petition. Respondent asked the PDJ to stay the disciplinary proceeding and sought appointment of a special prosecutor to determine whether charges

should be filed against the People for violating Colo. RPC 3.4(c) and the bankruptcy stay. The PDJ denied Respondent's requests for relief on June 1, 2018. The PDJ first noted that Respondent had neither provided any documentary support regarding the bankruptcy proceeding nor cited any applicable legal authority. But apart from those issues, the PDJ found as a matter of law that a bankruptcy stay would not apply to this disciplinary case under 11 U.S.C. § 362(b)(4).[1]

On September 27, 2018, a Hearing Board comprising the PDJ, lawyer Mark W. Earnhart, and lay member Alires J. Almon held a hearing under C.R.C.P. 251.28. Geanne R. Moroye represented the People,[2] and Respondent appeared pro se. The Hearing Board considered testimony from Respondent and the People's exhibits 1-2.[3]

Soon after the close of the hearing, Respondent filed with the United States Bankruptcy Court an ex parte motion for a temporary restraining order and a preliminary injunction pending ruling on a complaint he had earlier filed against the People and the PDJ.[4] On October 5, 2018, the bankruptcy court held a consolidated hearing on Respondent's request for a temporary restraining order and for a preliminary injunction; Respondent asked the bankruptcy court to declare that the automatic stay under 11 U.S.C. § 362(a) applies to this disciplinary matter and to prevent the People from seeking or the PDJ from issuing any sanctions against him. After hearing argument, the bankruptcy court denied Respondent's motion for a temporary restraining order and preliminary injunction in a ruling from the bench. At the parties' suggestion, the bankruptcy court suspended all deadlines in the proceeding until thirty days after issuance of this opinion.

II. FACTS AND RULE VIOLATIONS[5]

Respondent was admitted to practice law in Vermont in the early 1980s. Later, in 1998, he took the oath of admission and was admitted to practice law in Colorado under attorney registration number 30317. He is thus subject to the Hearing Board's jurisdiction in this disciplinary proceeding.[6]

---

[1] The PDJ observed that although 11 U.S.C. § 362(a) operates to stay various types of legal actions against a debtor, section 362(b)(4) makes an exception for proceedings by a governmental unit to enforce a police or regulatory power. In support, the PDJ cited *In re Wade*, 948 F.2d 1122, 1124-25 (9th Cir. 1991) (remarking that this is a "straightforward question of law"); *see also Marshall v. Washington*, 2010 WL 11530890, at *3 (W.D. Wash. July 8, 2010); *In re Friedman & Shapiro, P.C.*, 185 B.R. 143, 145 (S.D.N.Y. 1995); *In re Hanson*, 71 B.R. 193, 194 (Bankr. E.D. Wis. 1987).

[2] Van Deusen withdrew from representing the People, and Moroye entered her appearance as substitute counsel on June 26, 2018.

[3] The PDJ sua sponte **SUPPRESSES** exhibits 1 and 2, because both exhibits mention Respondent's minor daughter by name.

[4] The PDJ was never served with any pleading or notice.

[5] Where not otherwise noted, these facts are drawn from Respondent's testimony.

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

Respondent got his start as a lawyer in the early 1980s after graduating from the State University of New York law school. He moved to Vermont, first working in the legal aid program there and then hanging his own shingle in a solo practice. Over time, he began to specialize in representing victims of domestic violence, adult survivors of childhood sexual abuse, and mothers of sexually abused kids. According to Respondent, although he achieved professional renown as a leading authority in this field, he never tried to "monetize" his practice. In fact, he testified that his "history as a lawyer" has not been "remunerative," because making money was never his priority; rather, his goal was "how to do more or better, not how to earn more." He lived cheaply and juggled bills to make ends meet, he said.

In the early 1990s, Respondent testified, he decided to slow down and start a family. He married his now ex-wife; his eldest son was born in 1996. He then took a year's sabbatical to be his son's main caregiver. His daughter was born several years later. Thereafter, his wife was the primary wage earner in the marriage. Though he continued to do work for clients, he directed much of his time and attention to parenting. He noted that he felt very "tied" emotionally to both of his kids.

In autumn 2009 Respondent's ex-wife moved out of their marital home. Later, she filed for divorce, which was finalized around 2011. According to Respondent, he made many compromises in the course of those proceedings, including a stipulation that he and his ex-wife each should be imputed annual income of $50,000.00. But in actual fact, he said, his ex-wife earned more than double that amount at the time, whereas he was making $30,000.00-40,000.00 annually. No child support was awarded to either party and parenting time was split fifty/fifty, though Respondent testified that his son and daughter lived exclusively with him for two-and-a-half years, during which time he was essentially "a sole parent."[7]

At some point Respondent's daughter began to struggle psychologically.[8] In early 2016 she moved in with her mother, who sought reallocation of parenting time and child support, among other things.[9] During a two-day hearing in Boulder County District Court in spring 2016, the parties were given an equal allotment of time to present their respective positions and requests. As Respondent recounted, he chose to elicit testimony and introduce evidence focusing on his daughter's mental health needs, while addressing his parenting time as a secondary matter. He noted, "I didn't want to fight about money." In fact, he said, he ran out of time to address questions of child support, though his financial data was available to the family court. When the judge asked him whether there was any reason not to continue to impute annual income to him of $50,000.00, he felt that he "had to acknowledge as a matter of law . . . that it was legally reasonable for [the judge] to

[7] Respondent's testimony was rarely rooted in specific timeframes, so the Hearing Board is unable to construct a precise chronology of all of the events leading up to the June 2016 court order.
[8] Out of respect for her privacy, we refrain from elaborating further.
[9] Because Respondent's son had by then reached the age of majority, child support for his upkeep was not at issue.

continue to impute $5,000.00 a month to me." He reasoned, "I had stipulated to it so I had to live by it."

After the hearing, the Boulder County District Court issued an order in June 2016 addressing several matters, one of which was child support. The court ruled that, due to changed financial circumstances and parenting time schedules—Respondent's ex-wife was awarded the bulk of parenting time for their daughter during the school year—Respondent should pay $800.06 per month in child support.[10] He was ordered to pay this sum every month to the Family Support Registry, beginning June 15, 2016.[11] According to Respondent, the court arrived at the figure by imputing to him monthly income of $5,000.00, or $60,000.00 per year.

Despite the court's order, Respondent made no child support payments for the next seven months—from June through December 2016. Then, from January through August 2017, Respondent sent monthly payments of $400.00 directly to his ex-wife (rather than to the Family Support Registry). Respondent explained that he did not fully comply with the child support order because he simply did not have the funds available to do so. His income in 2016 was exceptionally meager, he recalled, and he incurred additional expenses that summer, when his daughter lived with him for eight weeks. He was also spending additional cash out of pocket for his own therapy so he could cope during that time. Respondent described this period as "devastating": his daughter's struggles and his worry for her gnawed at him, and he did not feel as though he could ethically take on new clients. But he also said that he did everything he could to earn money, including begging other lawyers for work and "cannibalizing" his accounts receivable by offering clients significant reductions in their bills in exchange for immediate cash payment. When he began earning enough money in early 2017 to contribute to his daughter's upkeep, he sent what he could in support—$400.00 per month. He did not explain why he chose to circumvent the Family Support Registry and instead made payments directly to his ex-wife.

In July 2016, Respondent appealed the family court's ruling,[12] but he did not seek reconsideration of the child support order. Nor did he immediately request that the family court modify the amount his ex-wife had been awarded in child support. He declined to seek modification because he was certain, he said, that such a motion—following immediately on the heels of the court proceeding—would have been denied out of hand as frivolous and that he would have faced sanctions as a result. Respondent also insisted at the disciplinary hearing that "the judge probably would have imputed the same $5,000.00 a month income to me no matter how much testimony I gave that I didn't really earn it." He defended this belief because he could not point to any changed circumstances worthy of modification and because the imputation was not unreasonable as a matter of law.

[10] Ex. 1.

[11] Ex. 1.

[12] Respondent reported that the appeal was dismissed around spring 2017 for failure to pay for transcript preparation.

On May 8, 2017, Respondent moved to modify his child support payments, which he felt comfortable doing after he had on hand his tax returns for 2016 to show his income for that year. He explained, "I could not file the motion to modify sooner than I did, until I filed taxes, until there had been a period of time showing what my real income was." In September of that year, the parties agreed during mediation to reduce Respondent's child support obligation to $400.00 per month, retroactive to May 2017.[13] Under the agreement, Respondent was imputed $2,200.00 in monthly income.[14] The family court approved the parties' agreement and incorporated it into an order on October 17, 2017, thereby resolving Respondent's motion to modify.[15] Respondent was thus out of compliance with his child support obligations from June 2016 through April 2017.

The parties' resolution did not address child support arrearages that Respondent had amassed as a result of his failure to pay the full measure of child support.[16] In August 2017, Respondent filed a Chapter 13 bankruptcy petition. The child support arrearages from June 2016 through April 2017 were included in the bankruptcy repayment plan, under which Respondent must make fifty-one escalating monthly payments to the trustee.[17] Each month, the trustee must pay to Respondent's ex-wife a portion of the child support arrearages. According to Respondent, his arrearages should be fully paid off when his bankruptcy is discharged.

The Hearing Board finds that by failing to pay any court-ordered child support between June and December 2016 and by paying only half the ordered amount between January and April 2017, Respondent violated Colo. RPC 3.4(c), which forbids lawyers from knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists. Respondent knew that the court had ordered him to pay child support; he knew the court order was valid; and he did not openly challenge the validity of the order until May 2017, when he filed his modification request.[18]

Respondent argues that he need not have contested the child support order with the family court, advancing the argument that the family court was not the appropriate forum in which to challenge his child support obligation. But we read the rule as requiring Respondent to prove that he refused to comply with the child support order in good faith

[13] Ex. 2.
[14] Ex. 2.
[15] Ex. 2.
[16] The Hearing Board estimates that Respondent's arrearages total around $7,200.00.
[17] Respondent disclaimed knowledge about how much he pays the bankruptcy trustee each month and the number of payments he is scheduled to make under the bankruptcy plan. The People suggested on direct examination that Respondent's bankruptcy repayment plan calls for him to make fifty-one escalating payments beginning September 2, 2017. Because he did not dispute the assertion, we accept those representations here.
[18] *See People v. Hanks*, 967 P.2d 144, 145 (Colo. 1998) (finding that the respondent violated Colo. RPC 3.4(c) when he did not comply with court-ordered child support obligations).

and based on an open noncompliance in order to test the order's validity.[19] He did not do so. He conceded, in fact, that he did not openly challenge the court's order by moving for reconsideration or otherwise seeking relief from its application through a motion to modify at any time before May 2017. And we reject as a canard his professed fear that a motion to modify filed in 2016 would certainly have been met with a denial and sanctions: this strikes us as nothing more than an illogical, after-the-fact justification for his failure to timely seek relief from the court's order.

Respondent also raises the equitable defense of impossibility to defeat the People's charge. He claims that the Hearing Board can determine whether it was financially impossible for him to make child support payments, based on whether the People have met a clear and convincing standard of showing that he was, in fact, able to comply. And while he acknowledges that the family court order was valid, he argues that he was under no obligation to comply with it because he did not have sufficient income to make the ordered payments.

This argument does not sway us. First, the Hearing Board harbors significant doubt that impossibility is available as a defense when lawyers fail to pay child support obligations in violation of Colo. RPC 3.4(c). That rule applies when a lawyer disobeys a court-imposed obligation knowingly, or when the lawyer has "actual knowledge of the fact in question."[20] A "willful" state of mind—i.e., one that requires an intentional decision not to obey an order with which the lawyer had the ability to comply—is not required under the rule. As such, a fair interpretation of this rule, read in conjunction with C.R.C.P. 251.8.5(b)(3)—which forecloses in proceedings for immediate suspension for failure to pay child support the introduction of evidence about the appropriateness of underlying child support orders or the ability of the lawyer to comply with the order—is that lawyers are not permitted to relitigate the merits of the underlying child support case, including the lawyer's inability to comply, before this tribunal.

But even if Respondent's equitable theory of impossibility does provide him a valid defense, he bears the burden of demonstrating that the defense should apply.[21] The rule

---

[19] 2 Geoffrey C. Hazard Jr., W. William Hodes, & Peter R. Jarvis, *The Law of Lawyering* § 33.11 at 33-25 (4th ed. 2015); *see Chapman v. Pac. Tel. & Tel.* Co., 613 F.2d 193, 197 (9th Cir. 1979) ("An attorney who believes a court order is erroneous is not relieved of the duty to obey it. The proper course of action, unless and until the order is invalidated by an appellate court, is to comply and cite the order as reversible error should an adverse judgment result."); *In re Ford,* 128 P.3d 178, 181 (Alaska 2006) (finding that the proper course of action for an attorney who believed a court's order was invalid was to openly inform the court that he could not comply with the order, challenge the order, and take steps to preserve the status quo during that challenge); *Gilbert v. Utah State Bar*, 379 P.3d 1247, 1256 (Utah 2016) (remarking that the rule stands, "at a minimum, for the proposition that an attorney must either obey a court order or alert the court that he or she intends to not comply with the order").

[20] Colo. RPC 1.0(f).

[21] *See W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1057 (Colo. 1992) (requiring a defendant asserting a defense to bear the burden of proving that defense). Sister jurisdictions likewise shift the burden of proving defenses to respondents in disciplinary proceedings, though the quantum of proof varies between states. *See In re*

requires, of course, proof that Respondent was in fact unable to comply with the court's child support order. Under any standard, Respondent has utterly failed to make this showing. He offered no evidence or testimony, save for his own, about his financial circumstances before, during, or after the June 2016 hearing. Because Respondent provided us no corroborating evidence as to the element of impossibility, we cannot as a factual matter credit his defense that he never had the ability to comply with his court-mandated child support obligations.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[22] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[23] When imposing a sanction after a finding of lawyer misconduct, a hearing board must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: Lawyers are officers of the court and must obey all court orders, just as members of the public are bound to do. By failing to pay court-ordered child support for seven months and by reducing his payments for another four, Respondent operated outside the bounds of the law, flouted his obligations under the rules of a tribunal, and violated his duty to the legal system he has pledged to uphold.

Mental State: The People have proved every element of their Colo. RPC 3.4(c) claim, which expressly requires proof of a knowing mental state. We find that Respondent knew he was under court order to pay child support yet failed to do so.[24]

Injury: The People presented no evidence to support a finding that Respondent's failure to fully pay his court-ordered child support resulted in any actual injury to third parties. But the Hearing Board does find that Respondent's conduct potentially could have harmed his daughter and ex-wife and that, ipso facto, it resulted in some actual injury to the

---

Crumpacker, 383 N.E.2d 36, 38 (Ind. 1978) (noting that a lawyer in a disciplinary proceeding "totally failed in his proof in support of his third defense"); *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Mulford*, 625 N.W.2d 672, 680 (Iowa 2001) ("To establish the affirmative defense of laches, the respondent must prove prejudice by clear and convincing evidence."); *Attorney Grievance Comm'n v. Hekyong Pak*, 929 A.2d 546, 563 (Md. 2007) ("a respondent who provides an affirmative defense has the burden of proof by a preponderance of evidence"); *State Bar of Tex. v. Dolenz*, 3 S.W.3d 260, 268 (Tex. App. 1999) (noting the respondent had the burden to plead and prove an affirmative defense to professional misconduct).

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

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

[24] For sanctions purposes, knowledge is defined as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA *Standards* § IV, Definitions.

legal system. As a lawyer, Respondent is required to abide by legal rules and court orders to promote the administration of justice, yet he disregarded the court order while simultaneously declining to challenge it. When Respondent simply ignored his court-mandated responsibilities rather than seek relief from the family court order through the legal process, it reflected poorly upon him and all lawyers.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Suspension is the presumptive sanction for Respondent's misconduct in this case, as set forth in ABA *Standard* 6.22, which governs a lawyer's knowing violation of a court order or rule that results in injury or potential injury to a party or interference or potential interference with a legal proceeding.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations that may justify an increase in the degree of the sanction to be imposed, while mitigating factors may warrant a reduction in the severity of the sanction.[25] As explained below, the Hearing Board applies four factors in aggravation, one of which is entitled to substantial weight. We also assign mitigating credit to two factors, one of which merits ample weight.

Aggravating Factors

Prior Disciplinary Offense – 9.22(a): Respondent has twice been disciplined for disobeying court orders. In 2007, Respondent was suspended by a hearing board for six months, all stayed upon the successful completion of a one-year period of probation. In that case, Respondent failed to act with reasonable diligence and promptness in representing a client, failed to keep his client reasonably informed about the status of a matter, failed to withdraw from the representation of a client when that representation could result in a violation of the Rules of Professional Conduct, and failed to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party. Most salient, though, he knowingly violated Colo. RPC 3.4(c) when he declined to pay court-ordered costs that the opposing party incurred in obtaining a default judgment against his clients.

Even more troubling, Respondent's 2007 discipline was preceded by two other instances of misconduct, though we focus here only on one.[26] In 1991, Respondent was suspended for six months because he advised a client that a court likely would not be troubled if she failed to follow the court's order regarding custody. Notably, one of the hearing board members was disturbed by Respondent's apparent lack of concern about

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

[26] Respondent was also publicly censured in 1988 by the Supreme Court of Vermont for misleading opposing counsel in a divorce case so that his client could maintain physical custody of a child. Because this discipline was so remote in time and predicated on conduct not akin to that at issue here, we choose not to consider Respondent's 1988 public censure in applying the prior discipline aggravator.

court orders.[27] Given that we see threads of Respondent's recalcitrance toward court directives woven throughout these three episodes, we weigh this factor heavily in aggravation.

Dishonest or Selfish Motive – 9.22(b): We adjudge Respondent a caring father who is deeply invested in the emotional well-being of his daughter. We also take him at his word: that "money is not the biggest of [his] concerns." But Respondent appears to have allowed his personal orientation toward money to blot out what he surely knew was his obligation to comply with the court order. Even though *he* never took matters of money seriously, the child support order was no less valid than (and carried just as much binding force as) any other directive the court issued in June 2016. We consider myopic—and thus selfish—Respondent's failure to respect his court-ordered financial responsibilities, but we apply only limited aggravating weight here, given his obvious solicitude for his daughter.[28]

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): Throughout this proceeding Respondent has refused to acknowledge that he was obligated either to pay child support or to challenge the child support order. To do neither is untenable, but Respondent has constantly defended his position as legally acceptable. Because it is not, we find his conduct is aggravated to a small extent by his refusal to acknowledge his responsibility in this matter.

Substantial Experience in the Practice of Law – 9.22(i): Respondent has practiced law since the early 1980s and had been licensed in Colorado for nearly twenty years at the time of his misconduct. Respondent chose to operate out of compliance with his child support order rather than to seek relief from the court's mandate, as we would expect of an experienced practitioner, so we give this factor average weight.

Mitigating Factors

Personal or Emotional Problems – 9.32(c): Respondent very credibly described how emotionally overwhelmed he was during the time period surrounding his misconduct. His marriage had dissolved, he mourned the absence of his daughter, who had moved out of the house, and, in her absence, he worried about her emotional and mental health. We find that these concerns significantly mitigate Respondent's misconduct.

Remoteness in Time of Prior Discipline – 9.32(m): Because the two instances of prior discipline we consider here date from 1991 and 2007, we accord this factor average credit in mitigation.

[27] We rely on the 2007 opinion's discussion of these prior instances of misconduct in our remarks here.
[28] *See In re Green*, 982 P.2d 838, 839 (Colo. 1999) (applying the aggravating factor of selfish motive based on the lawyer's failure to resolve his child support debt).

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.[29] We are mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[30] 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.

Under ABA *Standard* 6.22, the presumptive sanction for Respondent's misconduct is suspension. More recent Colorado Supreme Court case law also supports imposing a period of suspension for failure to pay child support.

In *In re Green,* an attorney knowingly failed over the course of five years to pay more than $11,000.00 in court-mandated child support and neglected to file his attorney registration statement.[31] Green, who had no prior discipline during the short period of time he had been licensed in Colorado, had earlier appealed the child support orders, but his appeal was rejected on the grounds that "much of [Green's] inability to meet his support obligations stems from his own decisions and unwillingness to obtain work that is commensurate with his true potential earning capacity."[32] The Colorado Supreme Court suspended Green for one year and one day but held that, were Green to demonstrate within the period of suspension that he had paid his past-due child support or negotiated a payment plan approved by the appropriate court, he could be reinstated and placed on a three-year period of probation.[33]

In *People v. Hanks*, a lawyer who willfully failed to pay child support was suspended for one year and one day.[34] There, Hanks had been ordered to pay $20,000.00 in past-due child support and $1,500.00 per month for his three children.[35] Although Hanks paid some money toward child support, he made little or no financial contribution to the child support registry over a three-year period; at the time of the disciplinary hearing, he was $55,282.62 in arrears and a finding of contempt against him had not been dismissed.[36] The lawyer had no history of other discipline.[37] And in *People v. Jaramillo*, an attorney with no prior discipline amassed child support arrearages of $11,296.77 over several years, making only a few

---

[29] *See In re Attorney F.*, 2012 CO 57, ¶¶ 19-21 (citations omitted); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).
[30] *Attorney F.*, 2012 CO 57, ¶¶ 19-21 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[31] *In re Green*, 982 P.2d at 838.
[32] *Id.* (quotation omitted).
[33] *Id.* at 839.
[34] 967 P.2d at 145.
[35] *Id.*
[36] *Id.* at 145-46.
[37] *Id.* at 146.

payments to reduce that amount.[38] His driver's license was suspended as a result.[39] Jaramillo was then involved in a car accident, and he was charged with driving with a suspended license, driving without insurance, and leaving the scene of an accident.[40] In his disciplinary case, his law license was suspended for one year and one day for violating state laws and for failing to pay court-ordered child support.[41]

Based on the presumptive sanction and this case law, we conclude that at least a short period of served suspension is warranted: Respondent was out of compliance with child support orders for eleven months, he still owes arrearages, the aggravating factors outweigh the mitigating factors in weight and number, and Respondent's prior disciplinary history gives us significant pause about his commitment to honoring court orders he considers unimportant, irrelevant, or unjust. On the other hand, we believe that Respondent has the best interests of his daughter in mind and that he made some good faith efforts in winter and spring 2017 to pay what he could in child support. Further, since May 2017 he has satisfied his court-ordered monthly support obligations. As did the court in *Green*, we seek a "practical and meaningful way" to motivate Respondent "to make a good-faith effort to satisfy" his arrearages in a timely manner.[42] As such, we find that *Green* is the best starting point for crafting a fitting sanction.

Tracking the sanction imposed in *Green* as best we can here while deferring to the bankruptcy court's structured repayment plan, we suspend Respondent for one year and one day, with three months to be served and the remainder to be stayed upon the successful completion of a three-year period of probation, contingent on his continued compliance with two conditions. First, Respondent must not violate any of the Rules of Professional Conduct during the period of his probation, including Colo. RPC 3.4(c). Second,

---

[38] 35 P.3d 136, 138-39 (Colo. 1999).
[39] *Id.* at 138.
[40] *Id*.
[41] *Id.* at 138-39. We contrast these cases with two older cases imposing public censure. In *People v. Primavera*, 904 P.2d 883, 884 (Colo. 1995), a lawyer had been held in contempt for failing to pay approximately $3,000.00 in child support over a four-month period. Per the court's contempt order, however, Primavera timely paid the arrearage in full prior to the disciplinary hearing, he ultimately paid attorney's fees, and the contempt citation was dismissed. *Id.* In the second case, *People v. Cantrell*, the Colorado Supreme Court accepted a recommendation of public censure when an attorney negligently handled client funds and failed to pay his child support. 900 P.2d 126, 127 (Colo. 1995). Cantrell had been held in contempt when a court concluded that he willfully failed to comply with child support orders, but the contempt citation was ultimately dismissed. *Id.* at 127-28. At the time of the disciplinary hearing, Cantrell was in compliance with his child support obligations. *Id.* at 128. Still, some members of the *Cantrell* court would have imposed suspension. *Id.* The Hearing Board finds these two cases less factually similar to Respondent's situation than the other cases discussed above because, unlike the lawyers in *Primavera* and *Cantrell*, Respondent is still in arrears. Further, these cases, which date from 1995, merit less weight under *Attorney F.*, 2012 CO 57 ¶ 20. Indeed, the disparity in outcomes between *Primavera* and *Cantrell*—in which the attorneys, both of whom had prior disciplinary records, were publicly censured—and the outcomes in the later-decided cases of *Green, Hanks,* and *Jaramillo*—in which none of the attorneys had prior disciplinary records yet were suspended for one year and one day—suggests to us that the Colorado Supreme Court has chosen to move away from public censure as an appropriate sanction for failure to pay child support.
[42] 982 P.2d at 839.

Respondent must either (1) remain in compliance with all terms of his bankruptcy plan or (2) if he defaults on his bankruptcy plan, enter into a payment plan approved by the Boulder County District Court within three months of his default, and thereafter comply with that plan until all child support arrearages are paid.

IV. CONCLUSION

Lawyers, as officers of the court, are expected both in their professional endeavors and their personal affairs to obey court orders or, if they cannot, to timely challenge those orders. But Respondent did neither when he was faced with a child support order that he did not believe he could obey. Respondent's breach of Colo. RPC 3.4(c) warrants suspension for one year and one day, with three months to be served and the remainder to be stayed upon successful completion of a three-year period of probation, during which Respondent must either remain in compliance with all terms of his bankruptcy plan or, if he defaults on his bankruptcy plan, enter into and comply with a court-approved payment plan.

V. ORDER

The Hearing Board therefore **ORDERS:**

1. **ALAN DAVID ROSENFELD**, attorney registration number **30317**, will be **SUSPENDED FOR ONE YEAR AND ONE DAY**, with **THREE MONTHS** to be served and the remainder to be stayed upon the successful completion of a **THREE-YEAR** period of probation, with the conditions identified in paragraph 8 below. The suspension will take effect upon issuance of an "Order and Notice of Suspension."[43]

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

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

4. The parties **MUST** file any posthearing motion **on or before Friday, December 7, 2018**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Friday, December 14, 2018**. Any response thereto **MUST** be filed within seven days.

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

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** submit a statement of costs **on or before Friday, December 7, 2018**. Any response thereto **MUST** be filed within seven days.

7. Should Respondent wish to resume practicing law, he will be required to submit to the People, no more than twenty-eight days before the expiration of the served portion of his suspension, an affidavit complying with C.R.C.P. 2151.29(b).

8. If Respondent's Colorado law license is reinstated, he **MUST** successfully complete a **THREE-YEAR PERIOD OF PROBATION** subject to the following conditions:

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

    b. He will either (i) remain in compliance with all terms of his bankruptcy plan or (ii) if he defaults on his bankruptcy plan, enter into a payment plan approved by the Boulder County District Court within three months of his default, and thereafter comply with that plan until all child support arrearages are paid.

DATED THIS 23rd DAY OF NOVEMBER, 2018.

Original Signature on File

_____

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

Original Signature on File

_____

ALIRES J. ALMON
HEARING BOARD MEMBER

Original Signature on File

_____

MARK W. EARNHART
HEARING BOARD MEMBER

Copies to:

Geanne R. Moroye Office of Attorney Regulation Counsel	Via Email g.moroye@csc.state.co.us
Alan D. Rosenfeld Respondent	Via Email adrchildlaw@hotmail.com
Alires J. Almon Mark Earnhart Hearing Board Members	Via Email Via Email
Cheryl Stevens Colorado Supreme Court	Via Hand Delivery