***People v. Youras Ziankovich*. 19PDJ068. August 3, 2020.**

The Presiding Disciplinary Judge suspended Youras Ziankovich (New York attorney registration number 5196324) from the practice of law in Colorado for thirty months, effective September 9, 2020.

Ziankovich transgressed many Rules of Professional Conduct while representing a husband and wife in immigration proceedings before the federal court in Colorado. He failed to notify his clients of his previous suspension from the practice of law, which took effect during the representation. He rescheduled a second interview with USCIS multiple times, and on at least one occasion without the consent or knowledge of his clients. He also failed to timely renew his client's work authorization permit, letting it expire. Finally, Ziankovich failed to return unearned funds upon termination, and he charged unreasonable and nonrefundable fees.

Through this conduct, Ziankovich violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(5) (a lawyer shall consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the rules); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(a) (a lawyer shall not charge an unreasonable fee or an unreasonable amount for expenses); Colo. RPC 1.5(g) (a lawyer shall not charge nonrefundable fees or retainers); and 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:** YOURAS ZIANKOVICH	Case Number: **19PDJ068**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Youras Ziankovich ("Respondent"), a New York-licensed lawyer practicing immigration law in Colorado, knowingly failed to diligently pursue his clients' matter, to keep his clients reasonably informed about the status of their case, to return unearned funds, and to notify his clients of his suspension from the practice of law that took effect during the representation. Respondent's misconduct warrants a suspension of thirty months.

I. PROCEDURAL HISTORY

On October 7, 2019, Bryon M. Large of the Office of Attorney Regulation Counsel ("the People") filed a complaint with Presiding Disciplinary Judge William R. Lucero ("the Court"), alleging that Respondent violated Colo. RPC 1.3 (Claim I), Colo. RPC 1.4(a)(5) (Claim II), Colo. RPC 1.4(b) (Claim III), Colo. RPC 1.5(a) (Claim IV), Colo. RPC 1.5(g) (Claim V), and Colo. RPC 3.4(c) (Claim VI).

Respondent did not file an answer, which was due on October 28, 2019. Instead, on November 1, 2019, he filed "Respondent's Notice of Filing Notice of Removal," reporting that he had removed this case to the United States District Court for the District of Colorado ("federal court") under 28 U.S.C. §§ 1331, 1332, 1441, and 1446.

The People filed their first motion for default on November 25, 2019, asserting that notwithstanding Respondent's attempts to remove the case to federal court, this Court still had jurisdiction over the proceedings. Respondent registered his opposition in response, moved to strike the default motion, and sought sanctions. The federal court remanded the case to this Court on December 19, 2019.[1]

[1] The federal court remanded the case for two main reasons: first, because Colorado disciplinary proceedings are not strictly civil actions, as 28 U.S.C. § 1441 requires for removal; and second, because the federal court lacked subject matter jurisdiction. *See* "Order of Remand" entered in case number 19-cv-03087-RM.

On December 20, 2019, the Court issued an order denying the People's first motion for default, denying Respondent's request for sanctions, directing Respondent to file an answer on or before January 10, 2020, and granting the People leave to renew their motion for default if Respondent failed to timely answer. The Court deemed both parties' arguments about the federal removal action moot.

On January 9, 2020, Respondent filed a motion to dismiss on jurisdictional grounds.[2] The Court denied his motion in February 2020 and directed Respondent to file an answer no later than March 3, 2020. When Respondent failed to answer yet again, the People filed their second motion for default. On March 30, 2020, the Court granted the People's motion and entered default under C.R.C.P. 251.15(b), deeming all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.[3] The Court directed the People to set the matter for a sanctions hearing.[4]

On June 24, 2020, the People timely submitted their prehearing materials, including a hearing brief, witness list, and exhibit list. Respondent did not file any prehearing materials with the Court. Nor did he otherwise contact the Court or the People.

On July 1, 2020, the Court held a remote sanctions hearing via the Zoom videoconferencing platform under C.R.C.P. 251.18. Large represented the People; Respondent did not appear. The Court considered the People's exhibits 4 and 5 as well as the testimony of the complaining witness, lawyer Jennifer Howard.

II. FACTUAL FINDINGS AND RULE VIOLATIONS

Facts and Rule Violations Established on Default

Respondent was admitted to practice law in New York in 2014 under New York registration number 5196324. He is not admitted in Colorado. But he maintains an office with a registered business address in Aurora, Colorado, where he provides and offers to provide immigration law services in Colorado. He is thus subject to the Court's jurisdiction in this disciplinary proceeding.

Respondent was hired by A.H. for help in changing his immigration status after A.H. married K.B., a United States citizen. A.H. and K.B. met with Respondent in May 2017 at his Aurora office, where they signed a fee agreement.

Respondent's fee agreement listed a Colorado address on the letterhead, with a firm name of Rocky Mountains Lawyers, Inc. Under the agreement, Respondent was to "prepare and file for an adjustment of status based on marriage with the US citizen" for A.H. in

[2] Respondent has not participated in this case since he filed his motion to dismiss.
[3] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).
[4] On June 3, 2020, the Court issued a "Notice of Remote Hearing" and accompanying instructions for conducting the remote hearing over the Zoom videoconferencing platform due to the ongoing COVID-19 health crisis.

exchange for a flat fee of $1,500.00.[5] An early termination clause called for recalculation of fees at $250.00 per hour "plus the engagement fee in the amount of $1,000.00, which is owned by the Law Office at the time of retainer execution as a payment for Law Office availability to serve for the Client's benefit."[6] A general provision clause in the fee agreement contained the language, "This Agreement is governed by the law of the State of Colorado. The conduct of Law Office and the attorneys thereof is governed by the Colorado Rules of Professional Conduct promulgated by the Colorado State Bar."[7]

In May 2017 Respondent filed A.H.'s application packet with United States Citizenship and Immigration Services ("USCIS"). Respondent listed his Colorado address on the corresponding entry of appearance form. With Respondent present, USCIS interviewed A.H. and K.B. in Colorado in July 2018. The following month, A.H.'s employment authorization expired, but Respondent failed to seek renewal of the authorization on A.H.'s behalf.

On October 31, 2018, in case number 17PDJ037, Respondent was suspended from the practice of law in Colorado for one year and one day, with three months to be served and the remainder to be stayed upon successful completion of probation. Respondent failed to notify A.H. and K.B. of his suspension. Because Respondent has not filed an affidavit requesting termination of his suspension, he has not cured his licensure status in Colorado.

Thereafter, on November 20, 2018, USCIS issued a notice for A.H.'s second interview, which was scheduled to take place on December 14, 2018. One week before the interview, Respondent's office sent K.B. an email notifying her of the interview and advising her that because Respondent had a calendar conflict, he would not be able to attend. K.B. authorized Respondent to reschedule the interview. Respondent sent USCIS a request to reschedule, noting that "both attorney and Applicant are not able to attend the scheduled interview."[8] A.H. was available for the interview date.

On January 28, 2019, USCIS reissued the notice for A.H.'s second interview, which was rescheduled to take place on February 19, 2019. On February 5, 2019, Respondent sent USCIS another reschedule request, citing Respondent's own foreign travel; he requested an new interview date in late February 2019, because he would already be in Colorado for a hearing at the Denver Immigration Court during that time. Respondent did not advise A.H. or K.B. about the interview or his need to reschedule it. On February 12, 2019, K.B. emailed Respondent's office, noting that she had just received the interview notice for February 19 and expressing concern that she had not heard from Respondent. USCIS rescheduled the second interview to take place on April 11, 2019.

On March 21, 2019, the Board of Immigration Appeals immediately suspended Respondent from the practice of immigration law. This immediate suspension order

[5] Compl. ¶ 16.
[6] Compl. ¶ 17.
[7] Compl. ¶ 18.
[8] Compl. ¶ 33.

precluded Respondent from practicing before the Immigration Courts and the Department of Homeland Security, including USCIS. To date, Respondent remains suspended before those agencies.

Respondent's office then advised A.H. and K.B. that Respondent would be unavailable to attend the interview on April 11 due to a court hearing he had to attend in California. The advisement also stated, "About disciplinary action. Please be advised that [Respondent] has never had a Colorado license, so he is not able to lose it. He has a license in the state of New York, which is valid and has never been suspended or revoked."[9] K.B. and A.H. were not given sufficient written notice of Respondent's suspension as required under C.R.C.P. 251.28, and K.B. learned of Respondent's suspension only by conducting internet searches after she became suspicious about the repeated rescheduling of the second interview.

K.B. emailed Respondent's office on April 1, 2019, stating that she and A.H. had hired new counsel, explaining that she did not believe that Respondent was eligible to practice law, and noting that she planned to contact the Colorado Supreme Court. K.B. also demanded a refund of her $1,500.00 retainer. Respondent replied on the same day refusing to return any money and declaring, "Colorado has no jurisdiction over me."[10]

Through the conduct described above, Respondent violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness when representing a client); Colo. RPC 1.4(a)(5) (a lawyer shall consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the rules); Colo. RPC 1.4(b) (a lawyer shall explain a matter so as to permit the client to make informed decisions regarding the representation); Colo. RPC 1.5(a) (a lawyer shall not charge an unreasonable fee or an unreasonable amount for expenses); Colo. RPC 1.5(g) (a lawyer shall not charge nonrefundable fees or retainers); and Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal).

Facts Established at the Sanctions Hearing[11]

At the sanctions hearing on July 1, 2020, Jennifer Howard testified about her ongoing representation of K.B. and A.H. following the couple's termination of their attorney-client relationship with Respondent; the couple is still seeking to adjust A.H.'s immigration status based on his marriage to K.B. so that he can become a permanent resident of the United States.

Howard stated that after Respondent had filed the initial application on A.H.'s behalf and attended the first interview with the couple, the interviewing officer requested to hold a second interview. Howard opined that although USCIS does not always require a second

[9] Compl. ¶ 50.
[10] Compl. ¶ 58.
[11] Factual findings are drawn from testimony at the disciplinary hearing where not otherwise indicated.

interview, such a request is not unheard of in these types of cases. She testified that local immigration lawyers regularly appear for each other at interviews, including for solo practitioners who are not affiliated with a firm. She also noted that A.H. and K.B. could have attended the second interview without counsel. Howard averred that A.H.'s case is still pending, though his second interview has since been completed with her firm's assistance. Howard stated that the repeated rescheduling of the second interview "definitely contributed to the delay" in A.H.'s case.

Howard described the renewal process for A.H.'s work permit, noting that her firm submitted A.H.'s renewal application within a few weeks of beginning to represent the couple. She testified that renewing a client's work permit is a standard component of representation in similar immigration cases and that the renewal is without cost to file if the application for permanent residency is already pending. She added that her firm's policy is to file applications for renewal as far in advance as possible—and critically, *before* the work authorization expires—because the process can take as long as seven months to complete, and her firm does not want its clients "to ever be in a situation where they lose work authorization." Howard explained that filing for renewal before the work permit expires also gives the applicant an extension of time on the expiring permit. She observed that Respondent's failure to renew A.H.'s work permit could have resulted in A.H.'s loss of his job and his job-related benefits, such as retirement credit, accrued time off, or health insurance.

Howard also testified that Respondent sued her, Large, and K.B. in their personal capacities in New York state court; she believes that Respondent brought the lawsuit to retaliate against her for requesting that the People investigate him.[12] She submitted the request for investigation because A.H. and K.B. were very upset after discovering that Respondent was not authorized to practice law in Colorado yet still purported to represent them. Howard recalled that initially the couple had willingly participated in the investigation, meeting in person with her and the People.

Howard stated that K.B. and A.H. refused to testify at the sanctions hearing because they feared further retaliation by Respondent. She also noted that they were "worn out" and felt personally attacked, as defending against Respondent's New York lawsuit was an extremely stressful and overwhelming experience for them. Howard testified that she also felt personally attacked by Respondent. She, too, found defending against Respondent's lawsuit to be stressful and time consuming, which negatively impacted both her professional and personal life for the better part of a year. According to Howard, she continues to worry that Respondent may bring a similar action in another jurisdiction in the future.

[12] *See* Ex. 5. The New York Supreme Court recently dismissed Respondent's lawsuit as frivolous and lacking any legal or factual basis. Ex. 5 at bates 000049. Howard testified that the New York court also ordered sanctions against Respondent but that the parties declined to pursue those sanctions in exchange for Respondent's agreement not to appeal the order.

Howard testified that Respondent caused K.B. and A.H. actual injury by delaying A.H.'s immigration case, by forcing them to incur additional costs to hire Howard's firm as replacement counsel, and by bringing the civil lawsuit. Howard personally felt that Respondent's lawsuit caused "irreparable damage" to K.B. and A.H.'s view of the legal profession and the judicial system. According to Howard, the couple has expressed an emphatic wish not to deal with the legal system or lawyers "ever again." Howard opined that if K.B. and A.H. ever need to retain another lawyer in the future, they will be extremely reluctant to lodge a disciplinary grievance for fear of similar retaliation.

Howard also testified that Respondent's misconduct caused the couple potential injury. Respondent's repeated rescheduling of the second interview could redound to A.H.'s detriment, she said, as USCIS might view Respondent's many rescheduling requests as a delay tactic. Further, Howard stated, Respondent's failure to timely renew A.H.'s work authorization permit potentially harmed A.H., as it could have resulted in A.H. either working illegally or losing his job. Howard emphasized the collateral harms flowing from both scenarios.

Howard ended her testimony by opining that Respondent "maliciously went after clients," as well as herself and the People, "when there was no basis for it." She observed that many of the facts that Respondent alleged in the New York civil complaint were untrue or greatly exaggerated, and she concluded, "this guy does not need to be a lawyer anymore."

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[13] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[14] When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

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

Duty: Respondent violated several fundamental duties he owes as a lawyer, including his duty to diligently pursue his clients' matter, his duty to keep his clients reasonably informed about the status of their case, his duty to comply with his clients' reasonable requests for information, and his duty to promptly return unearned fees upon termination.

[13] Found in ABA Annotated Standards for Imposing Lawyer Sanctions (2d ed. 2019).
[14] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

Mental State: By entering default, the Court deemed established the allegations in the complaint, including the allegations that Respondent acted knowingly for all claims.[15]

Injury: Respondent caused K.B. and A.H. actual harm by failing to diligently pursue their immigration matter, causing unnecessary delay. Respondent caused Howard and K.B. actual harm by bringing a retaliatory and frivolous lawsuit against them. He also undermined the public's confidence in the integrity of the legal profession, as he failed to adhere to fundamental ethical duties required of lawyers.

By repeatedly rescheduling the second interview, Respondent caused his clients potential harm, as USCIS might view those requests as reflecting negatively on A.H. Respondent also caused A.H. potential harm by failing to timely file for renewal of A.H.'s work permit.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

Because the Court's entry of default established that Respondent violated six different rules, multiple ABA *Standards* could apply here.

ABA *Standard* 4.42(a) provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes the client injury or potential injury. Likewise, ABA *Standard* 6.22 provides that suspension is generally appropriate when a lawyer knows that she or he is violating a court order or rule and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. Suspension is also the presumptive sanction under ABA *Standard* 7.2, which applies when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Additionally, ABA *Standard* 8.1(a) provides that disbarment is generally appropriate when a lawyer intentionally or knowingly violates the terms of a prior disciplinary order, causing injury to the client, the public, the legal system, or the profession. And ABA *Standard* 8.1(b) calls for disbarment when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

In cases involving multiple types of lawyer misconduct and ABA *Standards*, the ultimate sanction should generally be at least consistent with, and possibly greater than, the

[15] The People pleaded that Respondent acted knowingly: in his failure to diligently pursue A.H.'s immigration matter (Claim I – Colo. RPC 1.3); when he failed to communicate with A.H. and K.B. (Claim II – Colo. RPC 1.4(a)(5) and Claim III – Colo. RPC 1.4(b)); when he failed to fulfill the terms of his engagement retainer agreement (Claim IV – Colo. RPC 1.15(a)); when he charged a nonrefundable fee (Claim V – Colo. RPC 1.5(g)); and when he failed to comply with C.R.C.P. 251.28 (Claim VI – Colo. RPC 3.4(c)).

sanction for the most serious disciplinary violation.[16] The People, however, have requested a lengthy suspension—not disbarment—here, and the Court will defer in this instance to the People's recommendation. The Court thus begins its analysis with a presumptive sanction of suspension.

ABA *Standard* 9.0 – Aggravating and Mitigating Factors

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction, while mitigating circumstances may warrant a reduction in the severity of the sanction.[17] Eight aggravating factors are present here, and three are given significant weight.[18] The Court knows of no mitigating factors that should apply.

Prior Disciplinary Offenses – 9.22(a): Respondent was previously suspended for one year and one day, three months to be served and the remainder to be stayed upon the successful completion of a two-year period of probation, with conditions. The discipline was premised on Respondent's conduct while representing a couple in an immigration-matter; he charged a fee that was disproportionate to the work he completed, double-billed his clients, improperly treated advance fees as nonrefundable, failed to safeguard his clients' funds, and misrepresented to his client the date a naturalization application was mailed.[19] Respondent's suspension took effect October 31, 2018. He has not sought to terminate his suspension or cure the status of his license based on that Colorado discipline.[20]

Although Respondent began representing A.H. and K.B. in 2017, before the suspension in his prior case took effect, his refusal to return any portion of the unreasonable and nonrefundable fee this case occurred after discipline was imposed and violated Colo. RPC 1.5(a) and Colo. RPC 1.5(g)—conduct for which he was disciplined in his prior case. The Court considers those two offenses as prior discipline and weighs this aggravating factor heavily.[21]

Dishonest or Selfish Motive – 9.22(b): Respondent failed to return any portion of his flat fee upon termination, even though he did not complete the work for which he was hired. The Court weighs this factor in aggravation.

Pattern of Misconduct – 9.22(c): Respondent's misconduct in this matter is similar to the misconduct in his prior disciplinary case, demonstrating a recent pattern of misconduct

[16] ABA *Standards* Preface at xx.
[17] *See* ABA *Standards* 9.21 and 9.31.
[18] ABA *Standards* 9.22(a), (b), (c), (d), (e), (g), (h), and (j).
[19] In case number 17PDJ037, Respondent was found to have violated Colo. RPC 1.5(a), Colo. RPC 1.5(f), Colo. RPC 1.5(g), Colo. RPC 1.15A(a), Colo. RPC 1.16(d), and Colo. RPC 8.4(c).
[20] *See* C.R.C.P. 251.29(b)-(c).
[21] *See People v. Honaker*, 863 P.2d 337, 340 (Colo. 1993) (misconduct that occurred contemporaneously with the misconduct from an earlier disciplinary proceedings—and before an entry of discipline—is treated as a pattern of misconduct, while misconduct that occurred after discipline was imposed is weighed as prior discipline).

in his practice. Additionally, Respondent repeatedly engaged in a pattern of behavior here by rescheduling A.H.'s second interview without sufficiently communicating with his clients. The Court gives this factor average weight in aggravation.

Multiple Offenses – 9.22(d): Respondent violated six different Colorado Rules of Professional Conduct; this aggravating factor also warrants average weight.

Bad Faith Obstruction of the Disciplinary Proceedings – 9.22(e): As the People note, in addition to unsuccessfully attempting to remove this proceeding to federal court, Respondent failed to participate in this process after filing a motion to dismiss. He never filed an answer after the Court denied his motion to dismiss, nor did he respond to the People's motion for default. And he failed to appear at the sanctions hearing.

But it is Respondent's filling of a frivolous and retaliatory lawsuit against the complaining witness, his former client, and the lawyer representing the People in this matter that warrants significant weight in aggravation. Fearing further retaliation by Respondent, his former clients refused to testify at the sanctions hearing. A bedrock principal of our disciplinary process is that individuals submitting grievances and requests for investigation should not fear retaliatory conduct, and the Court does not take such menacing litigation tactics lightly.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): Respondent's failure to participate in this process and to make restitution to his clients for his unreasonable fees demonstrates his refusal to acknowledge the wrongful nature of his conduct. That Respondent has lodged repeated challenges to this Court's jurisdiction adds to the Court's conviction that he is unwilling to recognize his errant conduct.[22] The Court accords this factor average weight in aggravation.

Vulnerability of Victim – 9.22(h): Respondent's client A.H. is an immigrant who depended on Respondent to represent him before federal immigration authorities. Respondent's actions and inactions delayed A.H.'s proceedings and jeopardized his status, including potential loss of employment for failing to timely renew his work permit. The Court assigns this factor significant aggravating weight.

Indifference to Making Restitution – 9.22(j): Respondent has not made any restitution to his former clients, even though he did not complete the work for which he was retained. The Court gives this factor moderate weight in aggravation.

[22] *See* Ex. 5.

Analysis Under ABA *Standards* and Colorado Case Law

The Court recognizes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[23] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[24] Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

Here, the People request a lengthy suspension. Respondent has not participated and thus has not advocated for any alternative sanction. As discussed above, the Court begins with a presumptive sanction of suspension. There is applicable case law to support both suspension and disbarment as the appropriate sanction, notwithstanding the unique facts of this case.

A lawyer was suspended for one year and one day in *People v. Rishel* where, as with Respondent, a lawyer defaulted in a disciplinary proceeding by failing to appear; in two matters, the lawyer failed to keep his clients reasonably informed about the status of their cases, to promptly return client funds upon request, and to take reasonable steps to protect his clients' interests upon termination.[25] Default was similarly entered in *People v. Odom*, where a lawyer was suspended for three years for failing to inform his client about the status of the case, to fulfill contractual duties, and to refund unearned fees upon termination.[26] In *Odom*, the lawyer also abandoned his clients while their matters were pending before courts, conduct which differs from Respondent's. Both *Rishel* and *Odom* involve violations of multiple Rules of Professional Conduct, just as Respondent faces here.

In contrast, disbarment was ordered in *People v. Zimmerman*, where a lawyer accepted a new client after the lawyer was suspended in a disciplinary case and in violation of the suspension order; the lawyer also failed to notify his clients, the other parties, and the courts of his suspension.[27] Although *Zimmerman* resulted in disbarment based on some of the same transgressions for which Respondent is responsible, a critical distinction exists between the two matters: whereas the lawyer in *Zimmerman* took on new clients after the previous order of suspension had been entered,[28] Respondent did not. Rather, Respondent had represented K.B. and A.H. for more than a year before he was suspended. And the gravamen of Respondent's rule-violating conduct in this case is failing to notify his clients of his suspension, rather than actively practicing law in violation of the suspension order itself.

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[23] *See In re Attorney F.*, 2012 CO 57, ¶ 20; *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).
[24] *In re Attorney F.*, ¶ 20 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).
[25] 956 P.2d 542, 543-44 (Colo. 1998).
[26] 914 P.2d 342, 344-45 (Colo. 1996).
[27] 960 P.2d 85, 87-88 (Colo. 1998).
[28] *Id.*

The Court also considers *People v. Valley* and *People v. Swan*.[29] Though Respondent failed to notify his clients about his suspension and made misrepresentations to them, as did the lawyers in *Valley* and *Swan*, these cases are similarly distinguishable, as Respondent did not abandon his clients or his law practice. These cases signal that suspension is somewhat more appropriate than disbarment in this case.

Certainly disbarment would not be unfathomable given Respondent's conduct, the arguable applicability of certain ABA *Standards* calling for a presumptive sanction of disbarment, and the number of aggravating factors. Indeed, eight factors in aggravation apply here—three that carry significant weight—and none in mitigation. The Court is also mindful that Respondent was recently suspended for similar conduct, and it is troubled by Respondent's disregard for this Court's jurisdiction and this disciplinary proceeding.[30] Nevertheless, the Court concludes that a lengthy suspension—particularly given the many aggravating factors, which support a considerable increase in the presumptive sanction—best balances the interests of justice with the People's requested sanction and comparable case law. The Court thus determines that the appropriate sanction is a thirty-month served suspension.

IV. CONCLUSION

Respondent transgressed six Colorado Rules of Professional Conduct while representing a husband and wife in their immigration matter. He failed to provide his clients with diligent representation, to advise his clients that he was suspended from the practice of law in Colorado, to keep his clients informed about their case, and to respond to their reasonable requests for information. Further, he was unavailable to fulfill the terms of his engagement agreement, and he treated his retainer fee as nonrefundable by refusing to return any portion of the advance retainer when the representation ended. Finally, Respondent knowingly disobeyed an obligation under the rules of a tribunal and a prior disciplinary order by failing to notify his clients in writing by certified mail of his suspension and his consequent inability to act as their lawyer after his suspension took effect. Through these actions, his clients were actually and potentially harmed. The Court concludes that Respondent should be suspended from the practice of law in Colorado for thirty months.

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[29] *People v. Valley*, 960 P.2d 141, 143-44 (Colo. 1998) (disbarring a lawyer who abandoned her law practice, disregarded court orders, and made misrepresentations to her clients, considering aggravating circumstances); *People v. Swan*, 938 P.2d 1164, 1165-66 (Colo. 1997) (disbarring a lawyer who failed to notify his client about his suspension, and who later effectively abandoned the client); *cf. In re Gryzbeck*, 567 N.W. 2d 259, 263-64 (Minn. 1997) (disbarment was warranted where a lawyer failed to perform work in several client matters, to return client property, to communicate with his clients, to notify his clients of his suspension, and to cooperate in his disciplinary investigation , in addition to misappropriating client funds).

[30] *See Odom*, 914 P.2d at 344 ("Given the seriousness of the respondent's neglect, his abandonment of his clients, and given his apparent 'complete indifference to, and disregard of' these disciplinary proceedings, [] it is problematic whether a long period of suspension is sufficient." (quoting *People v. Crimaldi*, 804 P.2d 863, 865 (Colo. 1991)); *see also* Ex. 5.

V. ORDER

The Court therefore **ORDERS**:

1. **YOURAS ZIANKOVICH**, New York attorney registration number 5196324, will be **SUSPENDED FROM PRACTICING LAW IN THE STATE OF COLORADO FOR THIRTY MONTHS**. The suspension **SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[31]

2. To the extent applicable, 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. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Suspension," an affidavit complying with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, *inter alia*, to notification of clients and other jurisdictions where the attorney is licensed.

4. The parties **MUST** file any posthearing motions **on or before Monday, August 17, 2020**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Monday, August 24, 2020**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Monday, August 17, 2020**. Any response thereto **MUST** be filed within seven days.

7. The People **SHALL** submit a statement addressing whether an award of restitution is appropriate, and if so, in what amount. The People **SHALL** submit the statement, along with any supporting documentation, **on or before Monday, August 17, 2020.** Any response thereto **MUST** be filed within seven days.

DATED THIS 3rd DAY OF AUGUST, 2020.

[original signature on file]

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WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[31] 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) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

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