

|   |                                       |
|---|---------------------------------------|
| <p style="text-align: center;">SUPREME COURT, STATE OF COLORADO<br/>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE<br/>THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE<br/>1300 BROADWAY, SUITE 250<br/>DENVER, CO 80203</p> |                                       |
| <p><b>Complainant:</b><br/>THE PEOPLE OF THE STATE OF COLORADO</p> <p><b>Respondent:</b><br/>DAVID JOSEPH MARTIN, #13059</p>  | <p>Case Number:<br/><b>25PDJ5</b></p> |
| <p style="text-align: center;"><b>OPINION IMPOSING RECIPROCAL DISCIPLINE UNDER C.R.C.P. 242.21</b></p>  |                                       |

### SUMMARY

In this reciprocal discipline case brought under C.R.C.P. 242.21, the Presiding Disciplinary Judge ("the Court") granted a motion for judgment on the pleadings and concluded that it should impose reciprocal discipline on David Joseph Martin ("Respondent") based on sanctions imposed on him in Arizona. The Court found that the Colorado discipline most similar to Respondent's Arizona sanctions is a six-month served suspension that carries the requirement that Respondent comply with the conditions of his probation in the Arizona matter. In making this finding, the Court denied Respondent's request to impose his Colorado discipline retroactively to the effective date of his discipline in Arizona.

### **I. BACKGROUND**

On January 21, 2025, Jody M. McGuirk of the Office of Attorney Regulation Counsel ("the People") filed a one-claim complaint in this reciprocal discipline case, alleging that Respondent engaged in conduct constituting grounds for the imposition of reciprocal discipline under C.R.C.P. 242.21(a) based on discipline imposed in Arizona. Respondent failed to timely answer the complaint, and the People moved for default judgment on March 28, 2025. On April 2, 2025, Respondent submitted his answer with a motion to file the answer out of time, which the Court granted. At a scheduling conference held on April 15, 2025, the Court set the case for a one-day hearing to take place on November 10, 2025.

The People filed a "Motion for Judgment on the Pleadings" on April 7, 2025; Respondent responded on April 28, 2025. At the Court's invitation, the People submitted a reply in support of their motion on May 12, 2025.

## II. LEGAL STANDARDS

C.R.C.P. 12(c) allows a party to seek judgment on the pleadings after the pleadings are closed but within such time as not to delay the trial. "Judgment on the pleadings is appropriate if, from the pleadings, the moving party is entitled to judgment as a matter of law."<sup>1</sup> In deciding such a motion, the Court "must construe the allegations of the pleadings strictly against the movant and must consider the allegations of the opposing party's pleadings as true."<sup>2</sup> A motion under C.R.C.P. 12(c) should be denied "unless the matter can be finally determined on the pleadings."<sup>3</sup>

C.R.C.P. 242.21 governs reciprocal discipline. A sister jurisdiction's final adjudication of misconduct conclusively establishes such misconduct in Colorado unless the disciplined lawyer proves by clear and convincing evidence one of the four possible defenses set forth in C.R.C.P. 242.21(a).<sup>4</sup> If the lawyer does not establish one of those defenses, the Court is called upon to impose the same discipline as the sister jurisdiction ordered. If the matter can be resolved on a dispositive motion, such as a motion filed under C.R.C.P. 12, the Court may, without a hearing or a hearing board, issue a decision imposing the same discipline as was imposed by the foreign jurisdiction.<sup>5</sup>

## III. FACTS ESTABLISHED ON THE PLEADINGS

The following facts are established in this matter. Respondent was admitted to practice law in Colorado under attorney registration number 13059 on July 13, 1983, and he is thus subject to the Court's jurisdiction.<sup>6</sup>

On March 4, 2024, the Presiding Disciplinary Judge of the State Bar of Arizona ("the Arizona PDJ") issued an order suspending Respondent from the practice of law in Arizona for a period of six months, effective May 7, 2024.<sup>7</sup> The Arizona PDJ also ordered that Respondent was to serve a two-year period of probation following his suspension, subject to the following conditions:

- Participating in the Arizona State Bar's Law Office Management Assistance Program;
- Completing six hours of continuing legal education that are approved by Arizona's bar counsel, addressing client representation and communication, disclosure and discovery rules, and law office organization;
- Paying \$5,871.08 to Summit Healthcare Regional Medical Center by March 4, 2024;

---

<sup>1</sup> *City & Cnty. of Denver v. Qwest Corp.*, 18 P.3d 748, 754 (Colo. 2001).

<sup>2</sup> *Abts v. Bd. of Educ.*, 622 P.2d 518, 521 (Colo. 1980).

<sup>3</sup> *Smith v. TCI Commc'ns, Inc.*, 981 P.2d 690, 695 (Colo. App. 1999).

<sup>4</sup> *In re Kennedy*, 2024 CO 21, ¶ 43.

<sup>5</sup> C.R.C.P. 242.21(b)(3)(B).

<sup>6</sup> Compl. at 1; Answer ¶ 1.

<sup>7</sup> Compl. ¶ 1; Answer ¶ 1.

- Providing required notices and affidavits under Rule 72 of the Rules of the Supreme Court of Arizona; and
- Paying \$1,200.00 for costs and expenses of the State Bar of Arizona within thirty days.<sup>8</sup>

The sanction was based on Respondent's misconduct as described in the "State Bar of Arizona's Motion for Summary Judgment" filed in the Arizona case on November 27, 2023, and in the "Order Granting Summary Judgment and Setting Aggravation/Mitigation Hearing" dated January 3, 2024.<sup>9</sup>

#### IV. ANALYSIS

In their motion for judgment on the pleadings, the People ask the Court to enter judgment in their favor on the sole claim and impose reciprocal discipline in the form of the same discipline as imposed in Arizona. They argue that a decision in their favor is appropriate because Respondent admits in his answer all material allegations in the complaint, that he does not challenge the imposition of reciprocal discipline under any of the exceptions or defenses listed in C.R.C.P. 242.21(a)(1) through (4), and that he asks that the Court impose the same discipline as imposed in Arizona. Finally, the People argue that the Court should not grant Respondent's request, as set forth in his answer, that his discipline be imposed retroactive to the effective date of his discipline in Arizona, as he does not set forth a legal or factual basis for that request.<sup>10</sup>

Respondent responds that he "agrees that reciprocal discipline in the form of the same discipline imposed by the State Bar of Arizona is authorized [under C.R.C.P. 242.21] and should enter . . . [but that] the issue of what 'same' means remains."<sup>11</sup> Noting that C.R.C.P. 242.21 does not prohibit the Court from ordering that the reciprocal discipline run concurrent with the original discipline, Respondent argues that the "the same discipline would necessarily mean that the term of the discipline would be concurrent with the discipline in the originating jurisdiction."<sup>12</sup> A different approach, Respondent contends, would substantially extend the period of his discipline and thus would not result in the imposition of the "same" discipline as that imposed in Arizona.<sup>13</sup>

In their reply, the People dispute Respondent's interpretation of Colorado's reciprocal discipline rule. While the rule does not expressly forbid the Court from ordering that reciprocal

---

<sup>8</sup> Compl. ¶ 1, Ex. 1; Answer ¶ 1.

<sup>9</sup> Compl. ¶ 3, Ex. 2; Answer ¶ 1. As described in those records, Respondent's Arizona discipline was premised on his misconduct in a client matter, wherein he violated nine Arizona Rules of Professional Conduct.

<sup>10</sup> The People also oppose Respondent's second request: that the parties bear their own costs for this case. Because Respondent rescinds that request in his response to the People's motion, however, the Court deems the issue moot.

<sup>11</sup> Resp. at 1-2.

<sup>12</sup> Resp. at 2.

<sup>13</sup> Resp. at 3.

discipline take effect retroactively, say the People, neither does it expressly authorize the relief Respondent seeks. They contend that reciprocal discipline in Colorado generally takes effect on or after the date the order of discipline is issued. Cases diverging from that precedent, they argue, involve circumstances not present in this case. Nor does Respondent cite factors that courts in other jurisdictions have considered when ordering the retroactive imposition of reciprocal discipline in those states, the People argue.

As an initial matter, the Court finds that the parties' pleadings establish that reciprocal discipline should be imposed in this case. Attached to the People's complaint as exhibit 1 is the Arizona PDJ's final judgment and order dated March 4, 2024, which suspended Respondent from the practice of law in Arizona for six months and imposed a two-year period of probation, with conditions. The final judgment and order conclusively establishes that Respondent engaged in misconduct. In addition, the People do not seek substantially different discipline, and Respondent does not challenge the imposition of reciprocal discipline under the defenses listed in C.R.C.P. 242.21(a)(1) through (4). As such, the same discipline imposed in Arizona should also be imposed in Colorado.

The Court next considers the question Respondent's submissions pose: what constitutes the "same" discipline? Whereas Arizona imposed both a fully served six-month suspension and a period of probation, Colorado disciplinary rules do not allow the Court to mirror that discipline perfectly, as probation in Colorado can be imposed only when some portion of a suspension is stayed.<sup>14</sup> Despite this minor discrepancy, the Court finds that the analogous sanction here is a six-month suspension, coupled with the requirement that Respondent comply with the Arizona conditions of probation.<sup>15</sup>

Turning to the crux of this dispute, the Court considers whether Respondent's suspension should be made retroactive to the effective date of his suspension in Arizona. Respondent argues, in essence, that Colorado's reciprocal discipline should be coterminous with his original Arizona discipline. But nothing in C.R.C.P. 242.21 supports Respondent's contention that the rule precludes a period of suspension from taking effect after entry of a final reciprocal discipline decision in Colorado, whether that final decision enters before or after he has served the Arizona suspension. The Court also disagrees with Respondent's interpretation of C.R.C.P. 242.21(b)(6). He argues that subsection, which prohibits imposing reciprocal discipline during a period when the original discipline has been stayed pending appeal, "suggests a requirement" that the two sanctions run concurrently with each other.<sup>16</sup> But that provision is not intended to guarantee concurrent periods of discipline in different jurisdictions; instead, it safeguards due process and judicial economy by ensuring that Colorado does not impose reciprocal discipline for misconduct that has not been

---

<sup>14</sup> See C.R.C.P. 242.10(b)(1); C.R.C.P. 242.18(a).

<sup>15</sup> See *People v. Smith*, 937 P.2d 724, 731 (Colo. 1997) (approving the fashioning of a sanction authorized by Colorado rules that "has an effect similar if not identical" to the sanctions imposed by the sister jurisdiction).

<sup>16</sup> Resp. at 3.

fully adjudicated in the other jurisdiction. In short, Respondent has not shown that C.R.C.P. 242.21 entitles him to the relief he seeks.

Because the rule governing reciprocal discipline provides no purchase for Respondent's argument, the Court consults case law concerning retroactive imposition of reciprocal discipline. Discipline is rarely imposed retroactively in Colorado, and only when certain factors—not applicable in this case—are met.<sup>17</sup> As a point of contrast, however, the Court observes that reciprocal discipline has been retroactively imposed in Colorado when doing so aligns with the purposes of reciprocal discipline. For instance, *In re McKee* was a lawyer's second reciprocal discipline case stemming from discipline imposed in Arizona, where the lawyer had been suspended in two separate matters.<sup>18</sup> The Colorado Supreme Court imposed reciprocal discipline in the form of a two-year suspension.<sup>19</sup> Because the lawyer's second suspension in Arizona retroactively began on the effective date of his first suspension in that state, the *McKee* court ordered that the lawyer's two-year suspension in Colorado likewise begin on the effective date of his first reciprocal sanction "to make the Colorado discipline as similar as possible to that imposed in Arizona . . . ."<sup>20</sup> And in *People v. Reade*, this Court approved a stipulation to reciprocal discipline in December 2017; there, the parties agreed to retroactively begin a three-year period of suspension on June 25, 2014, the date when the lawyer was temporarily suspended in Nevada.<sup>21</sup> In making the term of suspension retroactive, the parties took into account that the lawyer's Nevada suspension retroactively took effect on June 25, 2014; that more than three years elapsed between the lawyer's temporary suspension in Nevada and the final adjudication of his case in that state in November 2017; that the lawyer had also been under a period of immediate suspension in Colorado for the Nevada misconduct since September 2014; and that the lawyer had cooperated with disciplinary authorities in Nevada and in Colorado.<sup>22</sup>

In this case, however, Respondent does not offer a compelling reason for the Court to retroactively impose reciprocal discipline. Arizona did not impose its discipline retroactively. And Respondent does not allege that this proceeding was delayed such that the prospective imposition of his suspension would be unjust. Indeed, were the Court to grant Respondent's request, it would effectively relieve him from serving any portion of his reciprocal suspension.

---

<sup>17</sup> See, e.g., *People v. Goldstein*, 887 P.2d 634, 644 (Colo. 1994) (enumerating the factors that weigh for or against the imposition of retroactive discipline as "whether the conduct is part of a continuing pattern or whether there is only a single instance of misconduct; whether there is a significantly attenuated relationship between the misconduct and the practice of law; and whether the passage of time mitigates the severity of the discipline required") (quoting *People v. Abelman*, 804 P.2d 859, 862 (Colo. 1991)).

<sup>18</sup> 980 P.2d 506, 506 (Colo. 1999).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 507.

<sup>21</sup> Case number 17PDJ085 (Colo. O.P.D.J., Dec. 21, 2017) (case summary published in Westlaw under 2017WL7036286).

<sup>22</sup> *Id.*

Such a result would undermine the purposes of reciprocal discipline: that Colorado *impose* the same discipline as the lawyer did in the originating jurisdiction imposed.

In sum, Respondent has not put forth any compelling legal or factual reason why the Court should retroactively impose reciprocal discipline in this case. The Court thus **DENIES** Respondent's request that his period of suspension take effect retroactively.

## V. CONCLUSION

The Court concludes that the People are entitled to judgment on their claim as a matter of law and that the Court should impose reciprocal discipline. The Court also concludes that the appropriate reciprocal discipline is a six-month served suspension that carries the requirement that Respondent comply with the conditions of his probation in the Arizona matter. The Court further concludes that Respondent has not demonstrated that his Colorado discipline should be imposed retroactively to the effective date of his discipline in Arizona.

## VI. ORDER

Accordingly, the Court **GRANTS** the People's "Motion for Judgment on the Pleadings" and **ENTERS** judgment on Claim I of their complaint. The Court therefore **ORDERS**:

1. **DAVID JOSEPH MARTIN**, attorney registration number **13059**, is **SUSPENDED** from the practice of law in Colorado for a period of **SIX MONTHS**, with the requirement that he comply with the conditions of probation in his discipline imposed in Arizona. The suspension will take effect upon issuance of an "Order and Notice of Suspension."<sup>23</sup>
2. Respondent **MUST** timely comply with C.R.C.P. 242.32(b)-(e), concerning winding up of affairs, notice to current clients, duties owed in litigation matters, and notice to other jurisdictions where he is licensed or otherwise authorized to practice law.
3. Within fourteen days after issuance of the "Order and Notice of Suspension," Respondent **MUST** file an affidavit with the Court under C.R.C.P. 242.32(f), attesting to his compliance with C.R.C.P. 242.32. As provided in C.R.C.P. 242.41(b)(5), lists of pending matters, lists of clients, and copies of client notices under C.R.C.P. 242.32(f) must be marked as confidential attachments and filed as separate documents from the affidavit.

---

<sup>23</sup> In general, an order and notice of sanction will issue thirty-five days after a decision is entered under C.R.C.P. 242.31(b). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 242.34, C.R.C.P. 242.35, or other applicable rules.

4. Any posthearing motion **MUST** be filed **no later than June 6, 2025**. Any response thereto **MUST** be filed within seven days of the motion.
5. Any motion for stay pending appeal under C.R.C.P. 242.35 **MUST** be filed **on or before the date on which the notice of appeal is due**. Any response thereto **MUST** be filed within seven days.
6. Respondent **MUST** pay the administrative fee of \$224.00 and all costs of this proceeding. The People **MUST** submit a statement of costs **no later than June 6, 2025**. Any response challenging the reasonableness of those costs **MUST** be filed within seven days of the statement.
7. The Court **VACATES** the one-day hearing set for Monday, November 10, 2025, and **VACATES** the prehearing conference set for Monday, November 3, 2025, at 9:00 a.m.



DATED THIS 23<sup>rd</sup> DAY OF MAY, 2025.

  
\_\_\_\_\_  
BRYON M. LARGE  
PRESIDING DISCIPLINARY JUDGE