***People v. Thomas John Braham*. 15PDJ095, consolidated with 16PDJ034. January 23, 2017.**

A hearing board suspended Thomas John Braham (attorney registration number 41010) from the practice of law for one year and one day. The suspension took effect February 27, 2017. To be reinstated, Braham will bear the burden of proving by clear and convincing evidence that he has been rehabilitated, has complied with disciplinary orders and rules, and is fit to practice law. He also must undergo an independent medical examination before petitioning for reinstatement.

Braham mishandled his clients' bankruptcy case and electronically filed several documents that his clients had neither reviewed nor authorized to be filed. After his clients terminated his representation, Braham sent two emails to the bankruptcy trustee and others in which he disclosed confidential information that he had learned during the course of representation.

Through this conduct, Braham violated Colo. RPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); 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 1.6(a) (a lawyer shall not reveal information related to the representation of a client); Colo. RPC 3.3(a)(1) (a lawyer shall not knowing make a false statement of material fact or law to a tribunal); Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Colo. RPC 1.16(d) (a lawyer shall protect a client's interests upon termination of the representation, including by refunding unearned fees and any papers and property to which the client is entitled).

Please see the full opinion below.

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| SUPREME COURT, STATE OF COLORADO<br><br>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE<br>THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE<br>1300 BROADWAY, SUITE 250<br>DENVER, CO 80203 | |
| **Complainant:**<br>THE PEOPLE OF THE STATE OF COLORADO<br><br>**Respondent:**<br>THOMAS JOHN BRAHAM | Case Number:<br>**15PDJ095 (consolidated with 16PDJ034)** |
| **OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(b)** | |

Thomas John Braham ("Respondent") mishandled a bankruptcy case by failing to act diligently and by electronically filing documents that his clients had neither reviewed nor authorized. After his clients terminated his representation, Respondent sent two emails to the bankruptcy trustee and others in which he disclosed confidential information he had learned while representing his clients. Respondent's misconduct warrants suspension for one year and one day, with the condition that he undergo an independent medical examination ("IME") before seeking reinstatement of his law license.

## I. PROCEDURAL HISTORY

Jacob M. Vos, Office of Attorney Regulation Counsel ("the People"), filed a complaint in case number 15PDJ095 with Presiding Disciplinary Judge William R. Lucero ("the PDJ") on November 2, 2015. Respondent filed an answer to the People's complaint through his attorney, Gary D. Fielder, on December 11, 2015.

The PDJ held a scheduling conference on January 16, 2016, but continued the setting of the hearing because the People planned to file a second complaint against Respondent. Nine days later, the People requested that the PDJ order Respondent to undergo an IME based on Respondent's communications with the People, which raised concerns, in the People's view, about Respondent's mental health. The PDJ granted the People's request and ordered Respondent to submit to an IME. The parties agreed that Dr. David Stevens would conduct the IME.

On April 20, 2016, the People filed a second complaint, this time under case number 16PDJ034, alleging that Respondent had breached client confidences. The PDJ consolidated

the two cases that same day. The PDJ held a second scheduling conference on June 10, 2016, where the People represented that, based on Dr. Stevens's IME report, they did not wish to take any immediate action. Fielder then moved to withdraw as Respondent's counsel on July 19, 2016, and the PDJ granted his motion on August 12. Respondent elected to continue pro se.

During Fielder's representation, Respondent did not provide any discovery responses or documents to the People, who moved to compel Respondent to produce answers and documents responsive to their first set of discovery requests. The PDJ ordered Respondent to do so by October 17, 2016. On October 18, Respondent was transferred to disability inactive status in case number 16PDJ071 under C.R.C.P. 251.23(c), but this disciplinary case moved forward.

After receiving no discovery responses from Respondent, the People moved for sanctions on October 24, 2016. The PDJ held a prehearing conference on October 27, in part to address the People's motion. There, Respondent informed the PDJ that he had been hospitalized and had not received the People's motion to compel. He also stated that he "childish[ly]" declined to provide the People the discovery they requested because he felt they had not been forthcoming in giving him certain information relevant to his defense. The PDJ gave Respondent additional time to respond to the People's discovery requests and placed the People's motion for sanctions in abeyance until October 31. Respondent did not comply with that order, however, and the PDJ precluded him from introducing into evidence any documents that he had not previously provided to the People.

On November 10, 2016, the PDJ granted the People's motion *in limine*, barring Respondent from presenting any testimony at the hearing about his settlement negotiations with the People. Thereafter, Respondent filed no prehearing materials. On November 15, the PDJ precluded Respondent from calling witnesses at the hearing other than those he had identified on a preliminary witness list and barred him from submitting an untimely hearing brief or legal authority in advance of the hearing. Also in that order, the PDJ granted the People's request to treat their proposed stipulated exhibits as stipulated in light of Respondent's lack of cooperation.

On November 17 and 18, 2016, a Hearing Board comprising John B. Wasserman and Henry R. Reeve, both licensed lawyers, and the PDJ held a hearing under C.R.C.P. 251.18. Vos represented the People, and Respondent appeared pro se. The Hearing Board considered testimony from Nance Kelly, Paul Moss, Karen Bershenyi, Shawn Kelly, and Respondent. The

PDJ admitted stipulated exhibits S1-S17, the People's exhibits 8-9, 11-13, 15-17,[1] and 19, and Respondent's exhibits A-C.[2]

## II. FACTS AND RULE VIOLATIONS

Respondent took the oath of admission and was admitted as a licensed lawyer in the State of Colorado on June 9, 2009, under attorney registration number 41010. He is thus subject to the jurisdiction of the Hearing Board in this disciplinary proceeding.[3]

Respondent testified that he grew up in a suburb north of Chicago. He received a full scholarship as an undergraduate at the University of Colorado, where he graduated in 2003. He then attended the Cooley Law School. After passing the bar examination in Colorado in 2009, Respondent worked at the Colorado Supreme Court law library, where he met his wife. He then clerked for a judge in Adams County before working at a large bankruptcy firm in Denver, primarily representing Chapter 7 clients. Thereafter, he moved between a small boutique firm and a few larger bankruptcy firms before settling in as a solo bankruptcy practitioner. During his career, Respondent has filed over a thousand bankruptcy petitions for debtors.

### The Kellys' Bankruptcy Case

#### Factual Findings

Nance and Shawn Kelly, a married couple, live in Fort Collins with their two children. Ms. Kelly, an inactive California lawyer, is a legal technician in the Weld County child support division, and Mr. Kelly works as an independent contractor running underwater remote-operated vehicles for oil and gas and fiber-optic companies.[4] His job requires him to be outside the United States for several weeks at a time in areas where he is unreachable by phone.

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[1] There was discussion at the hearing about whether to suppress exhibit 17, Respondent's IME. The PDJ declines to do so now, however, as the IME is part of the public record in this case as it formed the bases of prehearing motions. Should Respondent wish to request that the PDJ suppress this exhibit, he may file a motion.

[2] Respondent's exhibits A-C are attachments to exhibits S6 and S15-16. Although Respondent was prohibited from introducing any exhibits at the hearing, the People did not object to the admissibility of these three exhibits. Respondent also disclosed the contents of exhibit S17 pages 000405-34 for the first time at the hearing. The People stipulated to this exhibit even though they had not seen it before. Respondent explained he likely found this packet of information in September 2015, when he searched his storage unit. *See* Ex. S15 at 000375 (indicating that Respondent "scoured" his storage unit and found "some files and such"). He did not explain, however, why he did not disclose this information to the People in September 2015.

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

[4] Ms. Kelly is not licensed to practice law in Colorado.

In November 2013, the Kellys considered filing for Chapter 13 bankruptcy to seek relief from a large tax debt that they were unable to pay.[5] That month, they sought general information about filing for bankruptcy from a legal website, and received a response from Respondent. Respondent emailed Ms. Kelly a packet of information along with a list of documents to collect, including paystubs for the past six months.[6]

Respondent met with the Kellys in March or April 2014 in Fort Collins.[7] Ms. Kelly explained to Respondent that she wanted to coordinate Mr. Kelly's travel schedule with the bankruptcy filing so he could attend the required meeting of creditors, which the court schedules soon after the initial filing. She said that they discussed submitting the petition the following month. Respondent instructed the Kellys to complete the packet he had sent them earlier and to pay him a $1,000.00 retainer.[8] Ms. Kelly understood that any additional attorney's fees would be paid through the bankruptcy plan.

Because Mr. Kelly was regularly out of the country, Ms. Kelly gathered all their financial information and communicated with Respondent. On April 16, 2014, Ms. Kelly texted Respondent—their primary means of communication—indicating that she was mailing him the packet of information, financial documents, and retainer check.[9] Ms. Kelly testified that she sent Respondent the completed worksheet and included copies of the couple's credit reports, monthly bills, and tax returns, as well as her paystubs, and a check for $1,000.00.[10] Ms. Kelly also told Respondent that Mr. Kelly would be home from early June through early July 2014.[11] Respondent responded that he would "file May 1st-May 10th to get a date when [Mr. Kelly would be] home for the hearing."[12] Ms. Kelly testified that it was important to file the petition soon because they were having difficulty paying their tax debt.

On April 24, 2014, Respondent informed Ms. Kelly that he had received the documents she mailed and would send her a draft petition to review by April 30.[13] Ms. Kelly texted Respondent on May 6 letting him know that she had not received a draft from him.[14]

The next day, Respondent responded, "Oh, I was going to come up to Fort Collins to meet you guys later this month and go through it together in person. I'll mail you a draft

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[5] Ms. Kelly testified that they wanted to file under Chapter 13 because their income was too high to file under Chapter 7.
[6] Ex. S6 (email string dated November 16-17, 2013); Ex. A.
[7] *See* Ex. S5 at 000124-28.
[8] *See* Ex S5 at 000126.
[9] Ex. S5 at 000128-29; Ex. S7 (retainer check).
[10] *See* Exs. S7 & Ex. S17 at 000408 (indicating that paystubs and tax returns were attached); Ex. S17 at 000441-000495 (attaching notes concerning income and expenses as well as copies of paystubs, bank statements, and monthly bills, including credit card statements, tax debt documentation, insurance invoices, student loan statements, and medical bills).
[11] Ex. S5 at 000129.
[12] Ex. S5 at 000130.
[13] Ex. S5 at 000131.
[14] Ex. S5 at 000132.

tomorrow first thing so you can have time to review it. Sorry about that."[15] Respondent did not send the draft, however, and instead texted Ms. Kelly again on May 19, 2014, asking her how to list Mr. Kelly's income on the petition.[16] He also requested a spreadsheet showing the last seven months of Mr. Kelly's income.[17] He again promised to mail her a "draft."[18] Ms. Kelly said she put Mr. Kelly's income into a spreadsheet and promptly mailed the document to Respondent.[19]

Around June 1, 2014, Respondent met with the Kellys in Fort Collins.[20] At that time, Ms. Kelly still had not received a draft petition. During the meeting, Ms. Kelly said, the Kellys discussed with Respondent pre-bankruptcy planning, such as purchasing a new car.[21] They agreed to file the petition in early August 2014. Ms. Kelly recalled feeling "stressed" during this time because they had stopped paying their credit card bills.

Ms. Kelly recalled meeting again with Respondent in mid-June 2014.[22] She said she does not remember much about this meeting other than agreeing that Respondent would file the petition on August 8. He still had not given her a draft petition to review, however.

Respondent testified that he met again with the Kellys in late July and most certainly reviewed the draft petition with them at this meeting. He insisted that he received their original signatures on the petition at this meeting and also obtained permission to file the petition with their electronic signatures. The Kellys, however, do not remember meeting with Respondent in July to review or sign the petition. In fact, they attested that they never signed any document that Respondent prepared and filed nor authorized him to sign on their behalves. Ms. Kelly texted Respondent on July 21, 2014, inquiring about whether they were ready to file the case in August and setting up a meeting to finalize paperwork.[23]

Ms. Kelly texted Respondent on August 8, 2014, asking him whether they were "on track" to file the petition that day.[24] She said she sent this message because she believed the petition would be filed that day. Respondent, on the other hand, testified that he did not think they had agreed to file the petition that day. He sent Ms. Kelly another text asking to meet in Fort Collins the following Tuesday—August 12—to finalize the Kellys' information before filing the petition.[25] Ms. Kelly agreed, although she said that she was getting very frustrated with the delay by that time.[26] Respondent assured her that he would file the

[15] Ex. S5 at 000133.
[16] Ex. S5 at 000134-35.
[17] Ex. S5 at 000135.
[18] Ex. S5 at 000135.
[19] As an independent contractor, Mr. Kelly did not receive formal paycheck stubs.
[20] *See* Ex. S5 at 000137-38.
[21] *See* Ex. S5 at 000137.
[22] *See* Ex. S5 at 000138 (setting up meeting on June 12, 2014).
[23] *See* Ex. S5 at 000138.
[24] Ex. S5 at 000139.
[25] Ex. S5 at 000140.
[26] Ex. S5 at 000141.

petition that Friday.[27] The two met on August 12, and Ms. Kelly recalled providing updated expense information, which Respondent entered into his computer. She did not review any draft petition at this meeting, she said, nor did she sign anything.

On August 15, Ms. Kelly again asked Respondent whether they were "on track" to file the petition that day.[28] As of that date, Ms. Kelly's wages were being garnished $1,000.00 each month to pay the Kellys' tax debt,[29] and she informed Respondent that her payroll department needed the bankruptcy documents to stop the garnishment.[30] Respondent told Ms. Kelly, "Oh, if it's the end of the next week then I'd prefer to file on Tuesday. I'll shoot you a draft today but I've got my guy scheduled to go over it tomorrow for lunch . . . . [This] Tuesday really helped me get started."[31] According to Ms. Kelly, by this time she had given Respondent all the information for the petition, so she insisted he file the petition that day.[32] Respondent did so,[33] and told her he could amend the plan the following Tuesday.[34]

The Chapter 13 petition and plan that Respondent filed on August 15, 2014, were nearly blank.[35] In fact, both the petition and plan listed the Kelly's current and year-to-date income as $0.00 and neglected to list any creditors.[36] Ms. Kelly testified that she was surprised to see the errors and omissions, as both she and her husband worked in 2014 and they had given Respondent their creditor information. Respondent attached the Kellys' electronic signatures to several sections of the petition and plan, even though the Kellys testified that they had not reviewed a draft, signed a hard copy of the petition, or authorized Respondent to use their electronic signatures.[37] The electronic signatures carried a penalty of perjury for failure to include true and correct information.[38]

Respondent, however, insisted that he reviewed with the Kellys the petition and plan before filing them and that the Kellys signed in "ink" a hard copy of the documents at the meeting in late July. He listed their income as $0.00 because he did not have all of their payroll information, and he knew he could supplement the numbers later. He was also adamant that he would never file a petition without a client's original signature. He testified that his general practice was to obtain original signatures from his clients and to review with them any drafts before submitting anything electronically to the court. He recalled returning to Ms. Kelly the original copies of the petition and plan with their original signatures at their

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[27] *See* Ex. S5 at 000143.
[28] Ex. S5 at 000144.
[29] *See* Ex. S5 at 000144.
[30] Ex. S5 at 000144. Ms. Kelly testified that Respondent was able to stop the garnishment.
[31] Ex. S5 at 000144.
[32] Ex. S5 at 000145.
[33] Ex. S1 (petition).
[34] Ex. S5 at 000145-46; Ex. S1 at 000005-000057.
[35] *See* Ex. S1 at 000005-40.
[36] *See* Ex. S1 at 000016-17, 000032, 000040-57; *see also* Ex. S1 at 000068-73 (trustee's objection to Chapter 13 plan).
[37] Ex. S1 at 000008, 000011-12, 000014, 000035-36, 000048.
[38] *See* Ex. S1 at 000014.

meeting on August 12—an assertion that the couple disputes. Respondent said that he made a mistake by not retaining their original signatures in his file as mandated by the local bankruptcy rules.[39]

The bankruptcy court scheduled the meeting of creditors for October 1.[40] The Kellys were required to file income tax returns no later than seven days prior to this meeting.[41] The Kellys sent Respondent their tax returns in April 2014, but he never filed them. Respondent acknowledged at the hearing that a bankruptcy petition is automatically dismissed if tax returns are not filed.

On August 20, 2014, the bankruptcy court issued a missing document notice, indicating that the petition was deficient because certain documents were missing: 1) employee income records or a statement that no employee income records exist and 2) a Chapter 13 statement of current monthly income.[42] Ms. Kelly testified that she never received this notice from the court or Respondent,[43] but by this time she had given Respondent a spreadsheet of Mr. Kelly's income and some of her 2014 paystubs. She testified that she was a salaried employee and that her payroll information had not changed since she had first given Respondent such information.

According to Ms. Kelly, she received an objection from the trustee to their Chapter 13 plan on August 27, 2014.[44] That same day, Respondent asked her for her paystubs from April 2014 forward.[45] Ms. Kelly immediately emailed these documents to Respondent.[46]

Respondent filed an updated Chapter 13 plan on September 6, 2014,[47] which he emailed to Ms. Kelly on September 9.[48] Ms. Kelly testified that this was the first document Respondent had ever asked her to review and that the document contained many errors.[49] For instance, the plan failed to list their monthly retirement contributions, student loan payments, car payments, or their daughter's medical expenses.[50] The plan also required the Kellys to pay the trustee $2,992.00 each month, but Ms. Kelly had sought a monthly payment closer to $1,400.00, based on the family's expenses. The plan bore the Kellys' electronic signatures.[51] According to Ms. Kelly, she did not and would not have signed a

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[39] *See* L.B.R. 5005-4 (requiring an electronic filer to maintain the debtor's original signatures in paper form for two years following the expiration of all time periods for appeals after entry of a final order terminating the case or proceeding).
[40] Ex. S1 at 000059.
[41] *See* Ex. S1 at 000060; Ex. S4 at 000120.
[42] Ex. S2.
[43] *See* Ex. S2 (indicating that the court electronically mailed the notice to Respondent on behalf of the Kellys).
[44] *See* Ex. S5 at 000148.
[45] Ex. S5 at 000148.
[46] Ex. S8 (attaching payroll stubs).
[47] Ex. S9 at 000173-200.
[48] *See* Ex. S9 at 000172.
[49] Ex. S9.
[50] Ex. S9 at 000172; Ex. S9.
[51] *See* Ex. S9 at 000180-81.

document with so many inaccuracies. When Ms. Kelly emailed Respondent pointing out the errors,[52] he told her to "just print it and cross out what we need to change and shoot it back" so he could make any changes.[53] Ms. Kelly recalled that by this time, she had already given Respondent all of the missing information and they had discussed her daughter's ongoing medical expenses.[54] Even so, the Kellys made extensive handwritten changes to the plan and emailed them to Respondent on September 12.[55]

A few hours before the meeting of creditors on October 1, Respondent filed with the court amended schedules, along with a second amended plan.[56] Ms. Kelly testified that she did not see these documents before Respondent filed them, even though he once again submitted them with the Kellys' electronic signatures.[57] These newly filed documents incorporated none of Ms. Kelly's proposed changes from September 12, however, and only contained a few handwritten changes Respondent made in the margins.[58] Respondent testified that he did amend the plan using some of the Kellys' changes, but he did not include every change because the drafting was an ongoing process. He also said he had authorization from the Kellys to use their electronic signatures, although he admitted he did not have their original signatures on a paper version of this document.

At the meeting of the creditors on October 1, 2014, Ms. Kelly was present but Mr. Kelly was overseas for work.[59] Ms. Kelly said she spoke with Respondent by phone a day or so before the meeting, but he did not tell her to bring anything with her, nor had she received any instructions from the trustee. The meeting was continued, to her surprise, because she had not brought her husband's driver's license and social security card to the meeting.[60] Respondent, meanwhile, testified that he was upset during the meeting because Ms. Kelly had not yet made her first payment under the plan, and he felt that she was unprepared, since he had told her what to bring. It was at this meeting, he said, that he began to suspect Ms. Kelly wanted to abandon the bankruptcy case.

After the meeting, Respondent gave Ms. Kelly a list of things to do and told her to send him copies of Mr. Kelly's driver's license and social security card, which she did on

[52] *See* Ex. S5 at 000152 (indicating that he received Ms. Kelly's email "with the new numbers").
[53] Ex. S10.
[54] *See, e.g.*, Ex. S5 at 000139 (discussing on August 1, 2014, Mr. Kelly's monthly contribution to his retirement plan, their car payment, and the costs of their daughter's braces).
[55] *See* Ex. S11 at 000203-21 (making changes to entries regarding student loans, rent, car payment, utilities, value of boat, future earnings, disposable income, safety deposit box, children's ages, retirement account, inactive bar dues, and other expenses).
[56] Ex. S1 at 000074-000106.
[57] *See* Ex. S1 at 000087, 000091.
[58] *Compare* Ex. S1 at 000074-000106 *with* Ex. S11 at 000203-29.
[59] Ex. S13 at 000258.
[60] Ex. S13 at 000258-63.

October 5.[61] Ms. Kelly testified that she also made her first monthly payment of $2,992.00 to the trustee that day, as required by the plan and as directed by Respondent.[62]

Meanwhile, on October 3, the Kellys' bankruptcy petition was dismissed because Respondent had not complied with the court's missing document notice to submit tax returns and other income records.[63] Respondent acknowledged that he had the Kellys' income information as of August 27 yet never filed this information. He explained that he was still gathering information from the Kellys and thought that he had until the end of the month to file additional documents.

Ms. Kelly testified that she first learned of the dismissal on October 7 when she received a text message from Respondent stating, "I'm so pissed. Your case got dismissed yesterday. I was holding the printed out paystubs to hand to the trustee and only waited to upload them after I got your IDs."[64] When Ms. Kelly asked Respondent why the case had been dismissed, Respondent replied, "Those last paystubs. So annoying."[65] He also told her that he would refile her case.[66] Ms. Kelly told Respondent that she was unhappy the case had been dismissed because she had given Respondent her tax and payroll information in April and August. At the hearing, Respondent blamed the dismissal in part on Ms. Kelly's delay in sending him her husband's identification; he said he asked her to send him that document by October 2 but she failed to do so until October 5.

When Respondent did not immediately refile their petition, Ms. Kelly informed him on October 10, 2014, that the Kellys had hired a new attorney.[67] Ms. Kelly testified that they filed a Chapter 7 bankruptcy petition in November 2014, through attorney Charles Parnell. That case remains pending. According to Ms. Kelly, Parnell advised her to request from Respondent a refund and the return of the Kellys' file. Respondent did not fully comply with this request. He testified that he had computer issues and lost his electronic files but returned what he could.

The People sent Respondent a request for investigation on December 9, 2014.[68] In that letter, the People asked Respondent for a copy of Kellys' file, including the written fee agreement, billing statements or an accounting, and all correspondence with Ms. Kelly.[69] In response, he sent the People the blank packet of information he initially sent Ms. Kelly in November 2013 and copies of emails he and Ms. Kelly exchanged in September and October

[61] Ex. 11; Ex. S14.
[62] *See* Ex. 11 (directing her to make the payment); Ex. S5 at 000155 (acknowledging that she made her first payment); Ex. S5 at 000158 (indicating she made the payment electronically); Ex. S5 at 000128 (informing her that her payment would be returned).
[63] Ex. S1 at 000107-09.
[64] Ex. S5 at 000155.
[65] Ex. S5 at 000158.
[66] Ex. S5 at 000157.
[67] Ex. S5 at 000159-60.
[68] Ex. 8.
[69] Ex. 8 at 000299.

2014. He did not provide a fee agreement or billing statements, although he indicated that his fee was $3,600.00 plus a $310.00 filing fee.[70] He also stated that he had located the Kellys' main file but had to go to Colorado Springs to retrieve it.[71] According to Ms. Kelly, she never got a copy of her file from Respondent.

On January 30, 2015, Respondent supplemented his earlier response.[72] He again averred that he was attempting to locate the remainder of the Kellys' file.[73] He maintained that the fee agreement was missing because Ms. Kelly withheld it or took it from his file.[74] He also stated that he had not provided any billing statements for his $3,600.00 fee or the $310.00 filing fee because he was "not seeking the other $2,900.00 that she owed him."[75]

On June 16, 2015, the People again asked Respondent for the Kellys' file.[76] This time Respondent replied that he had searched his storage unit in Colorado Springs but was unable to locate any new documents.[77] He indicated that he had consolidated two of his offices and that his laptop had crashed.[78] According to Karen Bershenyi, the People's investigator, Respondent never provided any additional documents. Respondent testified that by summer 2015 he was becoming very aggravated with the People's investigation, because he believed that they were hiding information from him and failing to investigate his case thoroughly.

The Hearing Board is tasked with determining whether Respondent gave the Kellys drafts of their petition and plan before he filed versions of these documents on August 12, September 6, and October 1; whether the Kellys signed any of these drafts; and whether Respondent had authorization to use their electronic signatures on these filings. Though we have carefully considered Respondent's position on all three matters, we do not find his account credible. His testimony was less than forthcoming and not substantiated by the evidence. Instead, the testimony and evidence before us largely support the Kellys' account.

For instance, the text messages sent between Ms. Kelly and Respondent do not support his testimony that they met in July 2014 to review and sign a draft petition and plan. To the contrary, Ms. Kelly texted Respondent many times that she had not received any drafts. She also contacted him on July 29, asking to set up a meeting to finalize the paperwork. We also do not find it likely that Respondent would have returned the Kellys' original signatures to them on August 12 because he was required by the rules to retain them in his file. Further, the documents Respondent filed on August 15 were nearly blank and contained many errors, and we credit Ms. Kelly's testimony that she would not have signed

[70] Ex. 9 at 000303.
[71] Ex. 9 at 000303.
[72] Ex. 12.
[73] Ex. 12 at 000362.
[74] Ex. 12 at 000362.
[75] Ex. 12 at 000362.
[76] Ex. 19 at 000401.
[77] Ex. 19 at 000399.
[78] Ex. 19 at 000399.

a blank plan, especially in light of the substantial efforts she undertook to gather the relevant financial information between April and August 2014. Moreover, the evidence demonstrates that Respondent did not send Ms. Kelly any draft for her review until September 9, and she returned that draft to Respondent with significant revisions. The Kellys expected Respondent to file an amended plan incorporating their changes, but the version he filed on October 1 lacked most of their revisions. Respondent admitted that he did not have their original signatures on the version of the plan that he then filed.

Accordingly, we conclude that Respondent did not meet with the Kellys before filing the initial petition and plan on August 15. We also conclude that he did not give them a draft of the amended plan he filed on September 6, nor did he obtain their signatures on this document prior to filing.

Rule Violations

In light of these factual findings, the Hearing Board concludes that the People have proved by clear and convincing evidence that Respondent violated Colo. RPC 1.3, which charges lawyers to act with reasonable diligence and promptness in representing a client. We reject Respondent's contentions that Ms. Kelly was responsible for the delays in her case or its ultimate dismissal. The exhibits and testimony all point to Respondent's lack of diligence as the cause of delay and dismissal. Ms. Kelly made every effort to expedite the filing of her case, including completing a detailed bankruptcy worksheet; providing Respondent the family's tax returns, monthly bill statements, credit reports, and some of her paystubs by April 24, 2014; and giving him their remaining income-related information by August 27. Whenever Respondent requested additional information from Ms. Kelly, she promptly complied. And in May 2014, Respondent failed to send the Kellys a draft petition to review or to file their case by early May.

Respondent did not then diligently work on the petition and plan between June and August 2014. In fact, he did not have the case ready to file by August 8 and again asked Ms. Kelly to postpone their filing because he needed additional time to finalize information. Ms. Kelly believed Respondent would file the case on August 15. Over the next few days, however, Respondent failed to contact Ms. Kelly, and she was forced to seek an update from him on August 15. Rightfully concerned about the delay in the case and the garnishment of her wages, Ms. Kelly insisted that Respondent file the petition and plan that day. He did, but he filed a nearly blank petition and plan. As a result of these deficient filings, the court issued a missing document notice. Respondent failed to give the Kellys a copy of this notice and neglected to file these documents with the court, even though he knew such inaction would lead to the petition's dismissal.

Respondent did not send the Kellys a draft plan to review until September 6, 2014, and this document contained substantial errors. Ms. Kelly corrected these errors, believing Respondent would make the edits and file an amended plan with the court. Instead, Respondent filed a second amended plan, which contained almost none of the Kellys' revisions. He could not satisfactorily explain why this was so. The Kellys' bankruptcy case

was dismissed and he did not refile the case. Accordingly, we find that Respondent violated Colo. RPC 1.3.

Likewise, we find that Respondent contravened Colo. RPC 1.4(b), which requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. The People allege that by failing to give the Kellys the court's notice of missing documents and to explain which documents Ms. Kelly should bring to the meeting of creditors, Respondent violated this rule. Respondent disagrees, arguing that he prepared Ms. Kelly over the phone for the meeting of creditors and instructed her to bring Mr. Kelly's identification.

We determine that Respondent never informed the Kellys about the missing document notice. Additionally, when Ms. Kelly learned the case had been dismissed, she was surprised and asked Respondent why this happened. He offered her no meaningful explanation and never told her that her case was dismissed because he had failed to comply with the missing document notice.

Based on the evidence before us, we also do not accept Respondent's theory that Ms. Kelly wanted to "tank" her bankruptcy case or that she came deliberately unprepared to the meeting of creditors. Instead, we find that Respondent did not explain to Ms. Kelly what to bring to the meeting. In addition, the transcript of the meeting of creditors undercuts Respondent's claim that he had advised her what to bring to the meeting. She was clearly surprised that she needed to bring additional documentation. Further, the text messages between Ms. Kelly and Respondent show that Ms. Kelly made reasonable efforts to give Respondent the information he needed so that he could file her case quickly. Given the delays in the case, we strongly doubt that she intentionally wanted to delay her case further. Thus, we conclude that the People have proved Respondent violated Colo. RPC 1.4(b) by clear and convincing evidence.

Turning to the People's Colo. RPC 3.4(a)(1) and 8.4(c) claims, we determine that when Respondent submitted the bankruptcy filings with the Kellys' electronic signatures on August 15, September 6, and October 1, 2014, he knowingly engaged in dishonest conduct and made misrepresentations to the court that the Kellys had reviewed and signed these documents under penalty of perjury, when they had not done so. The Kellys had not provided him with original signatures nor authorized his use of their signatures on these documents. Ms. Kelly testified credibly that she never would have signed a nearly blank petition or plan or a plan riddled with errors. Respondent admitted at the hearing that he did not have the Kellys' original signatures on the second amended plan filed on October 1. He knew Ms. Kelly wanted him to input her revisions into that version, yet he did not do so and filed the document with the Kellys' signatures anyway. Accordingly, we find that Respondent knowingly transgressed both Colo. RPC 3.3(a)(1), which precludes a lawyer from

knowingly making a false statement of material fact or law to a tribunal, and Colo. RPC 8.4(c), which proscribes dishonest conduct.[79]

The People's fifth claim is premised on Colo. RPC 8.4(d), a rule that enjoins a lawyer from engaging in conduct that prejudices the administration of justice. The People reason that by delaying the Kellys' bankruptcy case, Respondent unnecessarily multiplied their bankruptcy proceedings and wasted judicial resources. The Hearing Board cannot find that Respondent affected the bankruptcy process to a "serious and adverse degree" so as to violate Colo. RPC 8.4(d).[80] Although Respondent's conduct compelled the court to issue a missing document notice and necessitated a continuance of the meeting of creditors, he did not "impede[] or subvert[] the process of resolving disputes."[81] We therefore conclude that Respondent did not violate Colo. RPC 8.4(d).

Finally, the People allege a violation of Colo. RPC 1.16(d), which requires a lawyer upon termination of the representation to take steps to the extent reasonably practicable to protect the client's interest, such as surrendering papers and property to which the client is entitled. The complaint pleads that Respondent violated this rule because he failed to return the Kellys' file upon his termination. We find that the People have proved this claim by clear and convincing evidence. Ms. Kelly demanded that Respondent return her file in October 2014, but he did not do so. He also appeared at the disciplinary hearing with documents from the Kellys' file that had neither been returned to the Kellys nor disclosed to the People. Respondent's meager efforts do not qualify as reasonable under the circumstances and do not satisfy his obligations under Colo. RPC 1.16(d).

**Breach of Client Confidences**

On September 20, 2015, almost one year after the Kellys terminated Respondent, he sent an email to Paul Moss, a trial attorney with the office of the bankruptcy trustee who was handling the Kellys' Chapter 7 bankruptcy, as well as to Parnell, the Kellys, Bershenyi, and the People's attorneys Marie Nakagawa and Vos.[82] The email read, in part, as follows:

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[79] *Accord In re Uchendu*, 812 A.2d 933, 936 (D.C. 2002) (finding that an attorney who submitted false signatures and notarizations to the court made a false statement under RPC 3.3(a) and acted dishonestly under RPC 8.4(c)); *In re Rodriguez*, 306 P.3d 893, 879-80 (Wash. 2013) (finding violations of RPC 3.3(a)(1) and 8.4(c) when an attorney submitted documents to the Board of Immigration Appeals that the attorney knew to contain a false signature).

[80] *In re Mason*, 736 A.2d 1019, 1023 (D.C. 1999) (stating that in order to find a violation of RPC 8.4(d), the conduct must "at least potentially impact upon the process to a serious and adverse degree").

[81] *In re Friedman*, 23 P.3d 620, 628 (Alaska 2001) (stating that this rule "contemplates . . . conduct which frustrates the fair balance of interests or 'justice' essential to litigation or other proceedings," and finding that where a lawyer's "conduct affected or potentially affected his clients and the other plaintiffs . . . [b]ut it did not adversely affect litigation proceedings or a process fundamental to the administration of justice" there was no rule violation).

[82] Ex. S15.

Subject 14-25657-TBM Failure to list prior debts to counsel and possible bankruptcy fraud[83]

Dear Attorney Moss,

I have been am currently handling a frivolous bar complaint from Nance Kelly from a totally biased OARC. My research from mid October 2014 right after receiving Nancy Kelly's demand letter, would suggest a possible Whistleblower retaliation case here. I have tried to be fair to OARC, but they want to go the long way around.

She noticeably left me on the chapter 7 filing on 11/20/2014. Maybe it was an accident? Hum or maybe malicious. It was listed as unknown under Schedule B21 as "Potential malpractice claim against Thomas Braham." But not the other $3,000 that they owed me for a year of work and 5 visits with them. Quantum Meruit should cover that.

It came to my attention this evening that Nance Kelly did not drop out of law school in San Fran to tend to her sick children, she is actually an inactive California attorney. Wow. Wasn't there something about Texas in the petition? Weirdo.

. . . .

I found in 2013 that Samuelson at ARC assigned Lisa Frankel to investigate [REDACTED] even though Samuelson know that Lisa was married to a partner at Connelly Rosania and Lofdstedt. And even better Todd Schroader worked for Aronwitz & Mecklenburg. Please see my excited utterance email to myself at 12:21am the morning after he called. I have a habit of writing angry emails to myself and recently had a computer whiz help me recover some things from the old laptop! I'm not a tech guy. I also scoured my storage unit today and it's so organized now. Found some files and such.

. . . .

I was given a sweetheart diversion that I turned down because I think Nance Kelly is a liar, well besides lying about being an attorney, and I feel her interests are in conflict to her husband. It also seemed from that meeting with Marie and Karen that they were not being truthful and acting with full disclosure. Why would they help Nnace hide the bar complaint and the filing from me. How could this not be consider exculpatory to my defense?

. . . .

Is there a storm coming south from Greeley? It smells funky around here.

. . . .

I would like to formally request a Federal Investigation into this OARC and these debtors. My duty to the Court supersedes my duty to these former

[83] The Hearing Board has left in place the numerous typographical errors in this and the other emails written by Respondent that are reproduced in this opinion.

> clients. NOT ON MY WATCH!!! Remember in that Seinfeld? I'm sorry but after a year of no sleep, I am ecstatic!
>
> I feel so good right now. Yours for the revolution (of truth). And they say prayer doesn't work? Ha! I got married at Holy Ghost. I NEVER work on Sundays, but maybe this is the Lord's work. Alleluia! Alleluia! HE IS RISEN!!!!! I've been praying to Pope Francis! I cannot wait to give at the Red Mass on October 4th!! . . . .[84]

Respondent attached to this email information from the California bar about Ms. Kelly's inactive law license.[85] According to the Kellys, neither of them authorized Respondent to speak with Moss about their earlier case. Ms. Kelly testified that she told Respondent during the representation that they had lived in Texas and that she was an inactive lawyer.[86] She said she was surprised when she received this email because she had not heard from Respondent in over a year. Because of the odd nature of the email, Ms. Kelly said, she experienced a great deal of stress, worrying about what Respondent would do next.

Moss testified that he was assigned to the Kellys' case when Parnell filed their Chapter 7 petition but that the case was ultimately converted to a Chapter 13 matter. After Moss received this email, he replied that he would discuss Respondent's bankruptcy fraud allegations with his supervisor. Moss uncovered no fraud or malfeasance on the Kellys' part, however.

Respondent explained that he sent this "flip out" email because he had just learned of the Kellys' second bankruptcy filing.[87] He believed that the Kellys and the People had intentionally concealed this filing from him and that this information was relevant to and exculpatory in his disciplinary case. He also thought that Ms. Kelly was dishonest in her dealings with him and the People, and he became distrustful of the Kellys after they filed their grievance. For instance, he said he did some research and was "shocked" to discover that Ms. Kelly was an inactive California attorney rather than simply a law school graduate, as he said he believed. He explained that he was also upset that the Kellys did not list him as a creditor in their new filing, which prevented him from collecting additional attorney's fees from their first case. Further, he asserted that he was merely informing the trustee that he suspected the Kellys of fraud, which he was duty-bound to do under the bankruptcy rules, and was not revealing any confidential information.

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[84] Ex. S15.

[85] Ex. B.

[86] *See* Ex. S11 at 000214 (informing Respondent on September 12, 2014, that she lived in Texas until 2009); Ex. S11 at 000217 (informing Respondent on September 12, 2014, that she had to pay fees for her inactive bar dues).

[87] *But see* Ex. 13 at 000366-69 (showing that Respondent had learned as early as January 31, 2015, that the Kellys faced additional filing and attorney's fees for refiling their bankruptcy case).

On October 12, 2015, Respondent sent another email, this time only to Moss, which read in pertinent part:

> Here are the 341 transcripts on Nance & Shawn Kelly.
> . . . . Should you want to speak, then I am happy to come by your office. I would love a transcript of her deposition as well, and I am kind of shocked that Charles left me off. Or if I can just come by and read through it. I'm curious. It's actually a very peculiar case. I'm sorry that I am such an apparent hot head on this client but she is slippery.[88]

Attached to this email were the transcripts of the Kellys' meetings of creditors in October 2014 and January 2015 as well as an invoice documenting Respondent's payment for the two transcripts.[89] Respondent explained, without elaboration, that he attached these documents as proof that the Kellys did not file a complaint against him in good faith and that it was retaliatory.

The People charge Respondent with violating Colo. RPC 1.6(a), which bars a lawyer from revealing information related to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by an exception specified in the rule. According to the People, Respondent contravened this rule when he sent the September 2015 email revealing that Ms. Kelly had lived in Texas and was an inactive California lawyer, and when he sent the transcript of the October 2014 meeting of creditors in which he represented the Kellys—all information related to his representation of the Kellys.

Colo. RPC 1.6 applies not only to matters communicated to a lawyer in confidence by the client but to "all information relating to the representation" no matter the source.[90] The range of protected information is extremely broad, covering information the lawyer received from the client or other sources, and including information that is not itself protected but may lead to the discovery of protected information by a third party.[91] This rule contains no exception permitting the disclosure of previously disclosed or publicly available information.[92] The duty of confidentiality continues even after the lawyer-client relationship has terminated.[93]

The evidence shows that Respondent learned during the representation that the Kellys had lived in Texas and that Ms. Kelly paid inactive bar dues in California. Respondent

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[88] Ex. S16.
[89] *See* Ex. S16; Ex. C.
[90] Colo. RPC 1.6 cmt. 3.
[91] *Id*. at cmt. 4.
[92] ABA *Annotated Model Rules of Professional Conduct* at 109 (8th ed. 2015) (noting that the scope of information subject to Rule 1.6 is "extremely broad" and that "Rule 1.6 contains no exception permitting disclosure of information previously disclosed or publicly available").
[93] *Id*. at cmt. 18.

then provided Moss the transcript of the October 2014 meeting of creditors, when he represented the Kellys. The Kellys both testified that they did not authorize Respondent to discuss their case with Moss or to give him the transcript.[94] Respondent presented no evidence that the Kellys were committing fraud on the bankruptcy court other than his own suspicions, which appear to be unfounded. Likewise, Moss testified that he uncovered no proof that the Kellys engaged in fraud. Thus, we do not find that Respondent's breach of client confidences was warranted under Colo. RPC 1.6(b)(3), which permits a lawyer to disclose information relating to the representation of a client to prevent the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services. Accordingly, we determine that Respondent violated Colo. RPC 1.6(a).

**Respondent's Conduct During the People's Investigation and Results of His IME**

Although Respondent's conduct during the People's investigation and the results of his IME do not form the basis of a rule violation, we discuss these matters to offer relevant context for Respondent's misconduct and our sanctions analysis.

Responses to Request for Investigation

In response to the People's request for investigation sent on December 9, 2014,[95] Respondent accused Ms. Kelly of being "problematic" from the beginning, including having problems with "full disclosure and truthfulness," and characterized her as "quite a charming and friendly lady at times" who "turns vicious if you question her about her activities."[96] In that document, Respondent proceeded to question where the Kellys' money was actually "going," accusing Ms. Kelly of malfeasance and questioning her motives at the meeting of creditors.[97] Respondent stated that Ms. Kelly had a "vengeful streak" and only filed her grievance to "harass" him.[98] Further, he charged her with lying to the People and concealing relevant documents during the investigation.[99] Respondent told the Hearing Board that he stands behind these allegations, although he articulated no motive that would explain Ms. Kelly's alleged behavior.

On January 30, 2015, Respondent supplemented his earlier response.[100] He told the People that he was attaching Ms. Kelly's "little blackmail letter" and indicated that although he offered to settle this matter with her, he decided not to when she asked him to refund his

[94] *See People v. Lopez*, 845 P.2d 1153, 1155 (Colo. 1993) (finding a violation of Colo. RPC 1.6 where an attorney delivered a document containing admissions of a client to the district attorney without first obtaining the client's authorization).
[95] Ex. 8.
[96] Ex. 9 at 000301.
[97] Ex. 9 at 000301.
[98] Ex. 9 at 000302.
[99] Ex. 9 at 000303.
[100] Ex. 12.

$310.00 filing fee, which he viewed "as the last straw."[101] He once again questioned Ms. Kelly's truthfulness.[102]

On January 27, 2016, the People asked the PDJ to order Respondent to undergo an IME based upon his communications with their office. Respondent consented to the IME.

Emails Respondent Sent to Vos

Respondent sent Vos two emails on February 14 and 15, 2016.[103] The first email, sent on February 14, bore the subject line: "Your wife also did creditor work and you don't think this brings up the rule of impropriety?"[104] Respondent made the following statements in the email:

- "I have set my frivolous mental health check with the good doctor. How do you say damages in Latin?"
- "JSYK, St. John's/St. Ben's is a back up school that my sisters' went to because they scored poorly on their SAT. I got a full-ride to Boulder."
- "Or are you going to deny your wife worked for SB? a dirty creditors firm."
- "Just so you know when [Matt] Samuleson attacked me, my wife worked at the Supreme Court, you and I where on the same health insurance, and I probably had more judges at my wedding than you, pretty boy. I litigate in boots like a man. Your $300 Italian loafers make me think you are weak."
- "Look at Linked In and my articles, there might be some press at the next Nance Kelly Hearing. I sent you those $350 transcripts by my birthday and Nance Kelly testified that she is illegally practicing state and federal law. The funny part is you know you have a duty to report and investigate this."
- "Oh this is my report to you. Also, you know that I have my cell phone records to Samuelson, and Cignonni says the call didn't happen and that makes it seem like a FEDERAL ISSUE, buddy."
- "I'm writing a screen play called Bankrupt and the theory is I'm surrounded my liars and thieves and that s just the OARC."[105]

Respondent testified that he sent this "Valentine's Day" email to Vos because he was infuriated with the People's investigation. By then, he said, he had learned that Vos's wife, Matt Samuelson (Chief Deputy Regulation Counsel), and the husband of Lisa Frankel (the People's intake attorney) all had graduated from St. John's College, and Respondent was

[101] Ex. 12 at 000363 (including no "blackmail" letter).
[102] Ex. 12 at 000363.
[103] Respondent included Fielder on those correspondences. *See* Exs. 15 & 17.
[104] Ex. 15 at 000379.
[105] Ex. 15.

alarmed that "everyone went to St. John's." He also found out that Vos's wife had worked for a creditor's firm and thus believed he was denied an "impartial" investigation of his case.

The next morning Respondent sent a second email to Vos.[106] This email included such statements as:

- "Your next move might be to call me anti-Semitic for mentioning Silverman B, a low-rent dog-dirty creditors law firm. Couldn't [your wife] have got a job with a real law firm like M & J, at least?"
- "It's 6am, I'm in great spirits, I am SOBER, and I wanted to say to you that if this is a personal attack, well then you're wife has a gross pie-face and Judge Sabino Romano's niece, my wife, is HOT. Roof roof! :)"
- "Maybe Karen can investigate it, well by investigate, I mean do nothing and collect a statutory salary. I worked at the law library in your building, so KNOW I've got the research on you, amigo."
- "Paddy cake, paddy cake, rich kid. You won't like me when we take off the white gloves off.....and I've sat on my hands for too long."[107]

Respondent told the Hearing Board that he sent Vos the second email because he was angry and could not sleep the night before. He realized that this email was "very aggressive" and apologized at the hearing for sending it. At the time, Respondent was separated from his wife, and he was alone on Valentine's Day. He said that he merely wanted to congratulate Vos on the birth of his child, but then he "overreacted and sent stupid emails." He contended that this email was out of character.

Dr. Stevens's IME Report

On May 2, 2016, Dr. Stevens filed his IME report with the PDJ.[108] We summarize the relevant findings in the following four paragraphs. Dr. Stevens reported that Respondent: 1) initially had great difficulty "staying on task answering questions without becoming highly tangential, often drifting back towards articulating his theory that the [People were] motivated by a retaliatory agenda in pursuing this current complaint";[109] 2) felt that the IME was retaliatory and the People did not give him the respect he deserved;[110] 3) identified various associations within the People's office that he perceived as improper, including that Frankel was married to a creditor's attorney; 4) carried on spontaneously in their second interview about his difficulties with the People and indicated that he felt threatened when

[106] Ex. 16.
[107] Ex. 16.
[108] Ex. 17. Although Respondent insisted that he was not suffering from any personal or emotional problems when he represented the Kellys, he did not object to the admission of Dr. Stevens's IME report. The People offered the report to provide context for Respondent's conduct during this disciplinary proceeding and to support their request that he undergo an IME before he is permitted to practice law again.
[109] Ex. 17 at 000384.
[110] Ex. 17 at 000385

Vos told him he had spoken with Dr. Stevens;[111] and 5) was less able to focus on questions during their third interview and was preoccupied with his anxieties about what he thought the People "might be up to."[112] Dr. Stevens also reported that Respondent's wife had called the Jefferson County police department, concerned that Respondent was at risk for suicide because he had received a lot of guns as payments.[113] In fact, Respondent told Dr. Stevens, "if [I] hit Vos with a Jeep that would kill him as easily as a gun . . . ."[114]

Dr. Stevens determined that Respondent was "burdened with a number of psychological frailties and insecurities," which he explained in detail in his report.[115] Dr. Stevens also opined that Respondent viewed the People's investigation as a "profound existential threat," which contributed to his "excessively catastrophizing in responding to the complaint."[116] He concluded that Respondent, who views himself as helpful, devoutly Catholic, and deeply committed to his clients, was exceedingly insulted and profoundly humiliated by the People's complaint.[117] At the time the People lodged the complaint, Dr. Stevens stated that Respondent doubled his dose of Lexapro, which resulted in his increased agitation and a serious disruption in sleep. Dr. Stevens opined that the "combination of pre-existing agitation and sleep deprivation associated with the doubling of the dosage of Lexapro in conjunction with the stress and humiliation associated with the present complaint led [Respondent] to 'go off the rails' and to organize an understanding of the investigation as being a profound existential threat that challenged, on the most basic level, his sense of who he believed himself to be as well as being experienced as a real and profound threat to his capacity to make a living."[118] In response, Dr. Stevens said, Respondent acted in a maladaptive, non-lawyerly way, unleashing "a series of disturbing, paranoid sounding, aggressive emails within which he sought to humiliate and mock the [People]."[119]

Further, Dr. Stevens concluded that due to Respondent's preoccupation with conspiratorial theories, "the possibility of an underlying delusional disorder of the persecutory type needs to be ruled out," although he believed that Respondent's "conspiratorial theory building" was more associated with the stress caused by his situation and his "psychopharmacologic disregulation."[120] Dr. Stevens concluded, however, that Respondent was competent to fulfill his professional responsibilities as a lawyer.[121]

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[111] Ex. 17 at 000388.
[112] Ex. 17 at 000388.
[113] Ex. 17 at 000389.
[114] Ex. 17 at 000389.
[115] Ex. 17 at 000390.
[116] Ex. 17 at 000391.
[117] Ex. 17 at 000391.
[118] Ex. 17 at 000391.
[119] Ex. 17 at 000391.
[120] Ex. 17 at 000392.
[121] Ex. 17 at 000392-93.

At the disciplinary hearing, Respondent stated that he met with Dr. Stevens in good faith. He explained that when he said he could hit Vos with his Jeep, he was only trying to explain that guns are not inherently dangerous. He apologized if Vos has felt unsafe around him.

## III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[122] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[123] 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*: Respondent acted in dereliction of his duties of diligence, communication, and candor to the Kellys. He did not act in his clients' best interests when he failed to preserve client confidences and to return their file. Respondent also disregarded his duty of candor to the legal system.

*Mental State*: We conclude that Respondent knowingly engaged in misconduct with respect to all the proven violations.

*Injury*: Respondent said the Kellys were not "damaged" when their case was dismissed because their current bankruptcy plan requires a substantially similar monthly payment to the $2,992.00 payment he had initially calculated. He believes the Kellys were "gaming the system" and suffered "no real detriment."

We disagree with this assessment. Respondent's lack of diligence caused the Kellys' case to be delayed and ultimately dismissed. The Kellys incurred additional attorney's fees after hiring new counsel.[124] The Kellys also testified that when they first met with Respondent they were current on their bill payments; once Respondent said he would file their case, however, they stopped making payments. As a result, their credit scores went "down the drain," and their bankruptcy is still unresolved.

The Kellys also suffered emotional harm. Mr. Kelly testified that filing for bankruptcy was not an easy decision, and that they wanted the case to be filed quickly. Ms. Kelly

[122] Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).
[123] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).
[124] Ms. Kelly testified that she paid a third attorney $1,000.00 to review the case Respondent had filed but she did not retain that attorney. She also said that she paid Parnell more than $6,000.00 in fees for the second bankruptcy case because he decided to file under Chapter 7 rather than Chapter 13—as Respondent had done—which necessitated additional litigation fees and costs. Their second case was ultimately converted to a Chapter 13.

testified that Respondent's delay in filing the case and lack of response to the court's missing document notice caused them a great deal of frustration and stress. And she said that Respondent's emails to Moss gave her mild anxiety due in part to their strange nature and in part because she believed Respondent would contact her employer to have her fired. Mr. Kelly stated he was "flabbergasted" by Respondent's unprofessionalism and the accusations he made against them during the People's investigation.

Finally, Respondent harmed the integrity of the legal system when he made misrepresentations to the bankruptcy tribunal and when he revealed client confidences to Moss. He eroded his clients' trust, which is the hallmark of the lawyer-client relationship and fundamental to the functioning of the legal system as a whole.

**ABA *Standards* 4.0-7.0 – Presumptive Sanction**

Suspension is the presumptive sanction for Respondent's misconduct in this case, as set forth in several ABA *Standards*. ABA *Standard* 4.22 calls for suspension when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. Likewise, suspension is warranted under ABA *Standard* 4.42 when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Finally, ABA *Standard* 6.12 provides for suspension when a lawyer knows that false statements or documents are being submitted to the court or that material information is being improperly withheld, yet takes no remedial action, thereby causing injury or potential injury to a party or the legal proceeding or causing an adverse or potentially adverse effect on the legal proceeding.

**ABA *Standard* 9.0 – Aggravating and Mitigating Factors**

Aggravating factors are considerations that may justify an increase in the presumptive discipline to be imposed, while mitigating factors may warrant a reduction in the severity of the sanction.[125] In deciding the appropriate sanction, the Hearing Board applies four aggravating factors—two of which warrant substantial weight—along with three mitigating factors.

*Aggravating Factors*

*Multiple Offenses – 9.22(d)*: Respondent engaged in myriad types of misconduct in this matter, and we thus apply this factor.

*Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Disciplinary Rules or Orders – 9.22(e)*: Though Respondent contended that he fully

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

cooperated with the People throughout this proceeding, we disagree.[126] We find it appropriate to weigh this aggravator heavily based on Respondent's conduct during the People's investigation and the disciplinary proceeding.

The People asked Respondent several times to produce the Kellys' file, but he did not comply. He instead blamed computer problems and an office move on his inability to locate the file. Then he unexpectedly brought to the hearing previously undisclosed documents from the Kellys' file—exhibits S17 and A-C—even though the PDJ had precluded him from offering exhibits. Although he claimed to have found these exhibits in his storage unit in September 2015, he provided no explanation for his failure to give them to the People before the hearing. Respondent then accused the People at the hearing of "stripping" the attachments from the exhibits, even though he had equal opportunity to ensure that these documents were included in the exhibits. He also failed to provide the People with initial disclosures, later admitting that his failure to do so was "childish."[127] Finally, Respondent neglected to comply with the PDJ's order to submit prehearing materials, so the Hearing Board lacked the benefit of a hearing brief and a memorandum of legal authority.

*Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g)*: Although Respondent contends he should receive mitigating credit for his remorse, the Hearing Board finds without hesitation that he has not genuinely recognized the wrongfulness of his misconduct. We accord substantial weight to this factor.[128] For instance, Respondent testified that he would "of course" be remorseful if the Kellys were harmed by his conduct. Yet these claims of remorse ring hollow, as he repeatedly blamed the Kellys for his misconduct, including attempting to expose Ms. Kelly as a dishonest, "vicious" character who hid income and committed bankruptcy fraud,[129] despite a total absence of evidence of fraud on her part. He also claimed that the Kellys' case was dismissed because Ms. Kelly wanted to "tank" her case.

Further, after learning the Kellys had refiled their bankruptcy petition, Respondent reacted to the news by sending emails to Moss and others in which he revealed client confidences, questioned the Kellys' motives in filing a complaint against him, and again accused them of committing bankruptcy fraud.[130] The tone and tenor of those emails evinces a complete unwillingness to accept responsibility for his conduct. As example, Respondent made statements like, "Wasn't there something about Texas in the petition? Wierdo" and "I think Nance Kelly is a liar, well besides lying about being an attorney, and I

[126] For the reasons we describe here, we choose not to apply ABA *Standard* 9.32(e) (full and free disclosure or cooperative attitude toward proceedings) in mitigation, as Respondent proposed.
[127] *See* Prehr'g Conference Order & Order Holding in Abeyance Complainant's Forthwith Mot. for Sanctions (Oct. 27, 2016). Although Respondent stayed at a hospital for three weeks around the time the People filed their motion, he did not allege that his stay there prevented him from complying with his disclosure obligations.
[128] We thus decline to apply ABA *Standard* 9.32(l) in mitigation.
[129] *See* Exs. 9 & 12.
[130] *See* Exs. S15 & S16.

feel her interests are in conflict to her husband."[131] These emails, much like his other communications, were riddled with conspiracy theories and attempts to shift the blame from his conduct, including that attorney Frankel was married to a creditor's attorney yet investigated a complaint against Respondent's former employer. Last, we are very concerned about the aggressive emails Respondent sent to Vos in February 2016. Respondent's threats of violence are not warranted under any circumstance and demonstrate a complete lack of remorse. Accordingly, we weigh this aggravating factor heavily.

*Indifference to Making Restitution – 9.22(j)*: Respondent never refunded the Kellys' $1,000.00 retainer even though his conduct resulted in the dismissal of their case. Though he may have been amenable to issuing them a refund, he became angry when Ms. Kelly asked him to return her $310.00 filing fee. Moreover, he claimed in correspondence with the People and in his testimony here that the Kellys owed him an additional $2,900.00. Thus, we apply this factor in aggravation.

*Mitigating Factors*

*Absence of a Prior Disciplinary Record – 9.32(a)*: We consider in mitigation that Respondent has not been disciplined in his seven years of practice.

*Personal and Emotional Problems – 9.32(c)*: Respondent maintained that he suffered no personal and emotional problems while he was handling the Kellys' case, and Dr. Stevens's IME report does not suggest otherwise.[132] Thus, this factor does not mitigate his misconduct while representing the Kellys.[133]

We do find, however, a causal link between Respondent's personal and emotional problems and the two emails he sent to Moss in which he breached client confidences. In his report, Dr. Stevens opined that Respondent's pre-existing agitation, coupled with his doubled dose of Lexapro and the stress and humiliation associated with the People's complaint, caused him to "'go off the rails' and to organize an understanding of the investigation as being a profound existential threat. . . ."[134] Accordingly, we apply significant weight to this factor, though only to mitigate Respondent's Colo. RPC 1.6 violation. As a whole, then, this mitigator warrants average weight.

*Character or Reputation – 9.32(g)*: Respondent testified that he knows he has a good character because many attorneys refer clients to him and he has excellent online reviews. He also said he frequently exceeds his Continuing Legal Education requirements.

[131] Ex. S15 at 000375.
[132] *See* Ex. 17.
[133] *See In re Cimino*, 3 P.3d 398, 402 (Colo. 2000) (finding that "[t]he presence of personal or emotional problems [was] not a significant factor [where the problems] did not cause or even affect the onset of the misconduct"); *In re Hicks*, 214 P.3d 897, 904 (Wash. 2009) (requiring a connection between any asserted personal or emotional problems and the misconduct).
[134] Ex. 17 at 000391.

Additionally, he testified that he often represents debtors pro bono both in Denver and Grand Junction, where he has helped over sixty-eight people file for bankruptcy.[135] Finally, he said he is a good Irish Catholic who does not drink, smoke, or do drugs. Respondent did not call any character witnesses or introduce supportive documentary evidence, however. Accordingly, we apply relatively little weight to this factor.

**Analysis Under ABA *Standards* and Case Law**

The Hearing Board is mindful of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors.[136] We recognize that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[137] Though prior cases are helpful by way of analogy, the Hearing Board is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

Though Respondent is charged with several offenses, including disclosing client confidences, lack of diligence, and communication failures, the People focus on Respondent's dishonest representations and lack of candor to the tribunal as the gravamen of this matter. We thus target our sanctions analysis toward that misconduct.[138] The People recognize that the Colorado Supreme Court has disbarred attorneys for falsifying signatures in legal proceedings, but they seek only the imposition of a substantial served suspension that would require Respondent to petition for reinstatement under C.R.C.P. 251.29(c) to resume the practice of law. They also ask that his reinstatement be conditioned upon the

[135] *See In re Fischer*, 89 P.3d 817, 821-22 (Colo. 2004) (considering evidence of pro bono work and community service as evidence of good character).

[136] *See In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *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).

[137] *In re Attorney F.*, 285 P.3d at 327 (quoting *People v. Rosen,* 198 P.3d 116, 121 (Colo. 2008)).

[138] Colorado case law holds that a period of suspension is warranted for neglecting a client's matter coupled with a failure to communicate and failure to take steps to protect the client's interests upon termination. *See In re McKee*, 980 P.2d 506, 507 (Colo. 1999) (attorney suspended in reciprocal discipline proceeding for two years, followed by a two-year period of probation, for failing to communicate with five clients over a period of several months, resulting in significant harm to the clients); *People v. Paulson*, 930 P.2d 582, 585 (Colo. 1997) (attorney suspended for one year and one day for misconduct arising in a default proceeding where, among other rule violations, the attorney neglected three client matters, failed to communicate in two matters, and failed to deliver funds or other property to the client and render a full accounting); *People v. Barr*, 818 P.2d 761, 763 (Colo. 1991) (attorney suspended from the practice of law for one year and one day for, among other rule violations, neglecting one client's matter and failing to promptly return property or funds to the client); *People v. Witt*, 200 Colo. 522, 616 P.2d 139, 140 (1980) (attorney suspended for one year for pattern of neglect and delay of legal matters and a total disregard for the necessity of communicating with his clients); 845 P.2d 1153, 1154-56 (Colo. 1993). Public censure was the sanction imposed where an attorney revealed client confidences by giving the district attorney his client's handwritten document outlining his client's version of underlying events without permission. *People v. Lopez*, 845 P.2d 1153, 1154-56 (Colo. 1993).

successful completion of an IME. They point us to *People v. Gerdes*,[139] *People v. Marmon*,[140] and *People v. Goldstein*[141] in support of their request.

In *Gerdes*, a lawyer was disbarred for his misconduct including driving while impaired, neglect of two legal matters, and executing the signature of an insurance agent without the agent's permission. In one case, he was hired to defend a real estate company in a lawsuit filed by the purchaser.[142] An indemnity agreement was prepared for the client's insurer at the request of the codefendants, and the lawyer signed the insurer's agent's name on the agreement without authorization.[143] The Colorado Supreme Court reasoned that the lawyer's conduct not only involved the intent to defraud but also constituted serious criminal conduct.[144] Considering both the seriousness of his misconduct and the absence of prior discipline, the Colorado Supreme Court disbarred the lawyer.[145]

In *Marmon*, a lawyer forged three court documents to conceal his neglect in an adoption case.[146] He first forged the signature of a court clerk on two reports of adoption, which he forwarded to the State of Texas for issuance of a birth certificate for his clients.[147] He then prepared the final adoption degree, falsifying the district judge's signature on the decree by photocopying the judge's signature from another document and transferring it to the fictitious decree.[148] The lawyer was charged with two counts of felony forgery.[149] In light of five aggravating factors and only two mitigators, the Colorado Supreme Court disbarred the lawyer.[150]

In *Goldstein*, a lawyer forged a federal bankruptcy judge's signature, fabricated and forged two legal documents, and knowingly misrepresented material facts to his employer on client matters, knowing that his misrepresentations would be relayed to the client.[151] The Colorado Supreme Court determined his conduct involved a serious crime and indifference to his professional obligations.[152] After applying the aggravating factor of dishonest or selfish motive and considering two mitigating factors, including personal and emotional problems, the Colorado Supreme Court determined that disbarment was appropriate.[153]

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[139] 891 P.2d 995 (Colo. 1995).
[140] 903 P.2d 651 (Colo. 1995).
[141] 887 P.2d 634 (Colo. 1994).
[142] 891 P.2d at 996.
[143] *Id.*
[144] *Id.* at 996-97.
[145] *Id.* at 998.
[146] 903 P.2d at 652.
[147] *Id.* at 653.
[148] *Id.*
[149] *Id.*
[150] *Id.* at 655.
[151] 887 P.2d at 634-35.
[152] *Id.* at 643.
[153] *Id.*

We have already determined that Respondent's misconduct warrants suspension, rather than disbarment under the ABA *Standards* in contrast to *Gerdes*, *Marmon*, and *Goldstein*. We are confident that a period of suspension is warranted here, particularly because the aggravating factors do not warrant an increase in the presumptive sanction and in recognition of Respondent's clean disciplinary record of more than seven years. We also distinguish the Colorado Supreme Court cases discussed above as more aggravated than the present circumstances. Respondent's conduct here—although very serious—is not as egregious as the lawyers' conduct in the cases discussed above, where the conduct constituted a serious crime or violated the forgery or theft statutes. We also have made no finding that Respondent intended to defraud the court or his clients. We agree with the People that Respondent's actions do not rise to the level of disbarment.

We do have concerns—as do the People—about Respondent's ability to competently practice law, however. Our apprehensions arise from Respondent's manner and demeanor on the witness stand and his conduct during the disciplinary process, including his antagonizing emails to Vos, his preoccupation with conspiracy theories, and his allegations that Ms. Kelly was acting in a "vicious" manner. Dr. Stevens's comments that Respondent may have an underlying delusional disorder also causes use concern about Respondent's fitness to practice. We thus require Respondent to undergo an IME before filing a petition to be reinstated to the practice of law.

With these considerations guiding our analysis, we find that Respondent should be suspended for a period of one year and one day. Any petition for reinstatement is conditioned upon Respondent having undergone a successful IME.

## IV. CONCLUSION

Respondent knowingly made misrepresentations to the court and violated the most basic client-centered duties: to be diligent and truthful with his clients about the representation. He also disregarded his duty of confidentiality, a fundamental principle in the lawyer-client relationship. Respondent's failure to observe these duties justifies a one-year-and-one-day suspension, with the requirement that he undergo an IME before petitioning for reinstatement.

## V. ORDER

The Hearing Board therefore **ORDERS:**

1. **THOMAS JOHN BRAHAM**, attorney registration number **41010**, is **SUSPENDED FOR ONE YEAR AND ONE DAY**. The **SUSPENSION SHALL** take effect only upon issuance of an "Order and Notice of Suspension."[154]

[154] In general, an order and notice of sanction will issue thirty-five days after a decision is entered pursuant to 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.

2. If 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. 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 jurisdictions where the attorney is licensed.

4. Should Respondent wish to resume the practice of law, he will be required to file a petition for reinstatement under C.R.C.P. 251.29(c). His reinstatement is subject to the condition precedent that he undergo an IME, as set forth in the following paragraph, within six months of the filing of his petition.

5. Any IME performed as part of a petition filed under C.R.C.P. 251.29(c) is subject to the following provisions:
    a. The IME must address the following issues:
        i. Whether Respondent suffers from a physical, mental, or emotional infirmity or illness (including addiction to drugs or intoxicants).
        ii. Whether Respondent has an underlying delusional disorder.
        iii. The recommended treatment for any infirmity or illness, including the nature, length, and anticipated course of such treatment.
        iv. Whether Respondent is able to competently fulfill his professional responsibilities in light of the infirmity or illness, if any.
    b. Respondent must select a psychologist or psychiatrist who is qualified to perform the IME other than Dr. Stevens.[155]
    c. Respondent must give the medical expert a copy of Dr. Stevens's IME report and this opinion before the first appointment.
    d. Respondent **SHALL** be responsible for paying the cost of any IME.

6. The parties **MUST** file any post-hearing motion or application for stay pending appeal with the Hearing Board **on or before Monday, February 13, 2017**. No extensions of time will be granted. Any response thereto **SHALL** be filed within seven days, unless otherwise ordered by the PDJ.

7. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** submit a statement of costs **on or before Monday, February 6, 2017**. Any response thereto **MUST** be filed within seven days.

[155] If he wishes to do so, Respondent may consult with the People for assistance in identifying a qualified medical expert.

8. Respondent **SHALL** pay restitution of $1,000.00 to Nancy and Shawn Kelly **on or before Monday, February 27, 2017**. A condition precedent to Respondent filing a petition for reinstatement under C.R.C.P. 251.29(c) is his full payment of restitution.

DATED THIS 23rd DAY OF JANUARY, 2017.

*Original Signature on File*
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

*Original Signature on File*
JOHN B. WASSERMAN
HEARING BOARD MEMBER

*Original Signature on File*
HENRY R. REEVE
HEARING BOARD MEMBER

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