People v. Cabral. 10PDJ077. February 3, 2011. Attorney Regulation. The Hearing Board suspended Alfonso S. Cabral (Attorney Registration Number 18328) for three years, effective March 6, 2011. Following at least five prior instances of discipline for similar misconduct, Respondent neglected three client matters, repeatedly failed to communicate with his clients, and engaged in conduct that prejudiced the administration of justice. His misconduct constitutes grounds for the imposition of discipline pursuant to C.R.C.P. 251.5 and violated Colo. RPC 1.3, 1.4, 1.16, and 8.4(d).

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1560 BROADWAY, SUITE 675 DENVER, CO 80202	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** ALFONSO S. CABRAL	Case Number: **10PDJ077**

DECISION AND ORDER IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.19(b)

On December 9, 2010, a Hearing Board composed of Richard P. Holme, a member of the bar, Larry A. Daveline, a citizen Hearing Board member, and William R. Lucero, the Presiding Disciplinary Judge ("the PDJ"), held a hearing pursuant to C.R.C.P. 251.18. Katrin Miller Rothgery appeared on behalf of the Office of Attorney Regulation Counsel ("the People"), and Alfonso S. Cabral ("Respondent") appeared pro se. The Hearing Board now issues the following "Decision and Order Imposing Sanctions Pursuant to C.R.C.P. 251.19(b)."

I. SUMMARY

Following at least five prior instances of discipline for similar misconduct, Respondent neglected three client matters in violation of Colo. RPC 1.3 and 1.16, repeatedly failed to communicate with his clients in violation of Colo. RPC 1.4, and engaged in conduct that prejudiced the administration of justice in violation of Colo. RPC 8.4(d). Given his extensive disciplinary history and the presence of several other aggravating factors, the Hearing Board concludes Respondent should be suspended for three years.

II. PROCEDURAL HISTORY

On July 21, 2010, the People filed a complaint, and Respondent filed an answer on August 6, 2010. An at-issue conference was held on August 24, 2010, and the parties submitted stipulated facts and a stipulated exhibit list on November 23, 2010. At the December 9-10, 2010, hearing, the Hearing Board heard testimony and considered stipulated exhibits 1-9.

III. FINDINGS OF FACT AND RULE VIOLATIONS

The Hearing Board finds the following facts and rule violations have been established by clear and convincing evidence.

Jurisdiction

Respondent took the oath of admission and was admitted to the Bar of the Colorado Supreme Court on April 27, 1989. He is registered upon the official records, Attorney Registration No. 18328, and is thus subject to the jurisdiction of the Hearing Board in these disciplinary proceedings.[1] Respondent's registered business address is 200 South Sheridan Blvd., Suite 220, Denver, CO 80226.

The Alvarez Matter

On June 17, 2008, Emily Pacheco, a bondsperson, filed a lawsuit in Denver District Court against Maria Alvarez[2] in *Pacheco v. Alvarez,* Case No. 2008CV5179. The complaint alleged claims for breach of contract and unjust enrichment based upon Alvarez's apparent default on a February 10, 2007, promissory note for $50,000.00. The promissory note had allegedly become due as a result of Alvarez's son's failure to appear in pending Adams County District Court criminal matters.

On July 2, 2008, Alvarez was served with the complaint, and on July 9, 2008, Alvarez visited Respondent. Respondent and Alvarez agreed that she initially sought his assistance to deal with the armed bounty hunters who came to her home at Pacheco's behest, often in the early hours of the morning. Respondent testified that he called Pacheco while Alvarez was present, and he maintained—though Alvarez disagreed—that his efforts brought an immediate halt to the bounty hunters' nighttime visits. According to Respondent, "that service was free."

At the same meeting, Alvarez also showed Respondent the complaint with which she had been served, asking for his help. Alvarez testified that Respondent told her there was always a way to fix things and agreed to represent her. Respondent, in contrast, remembered telling Alvarez that her agreement with Pacheco was "iron-clad," to which there was no defense, but that he could arrange a settlement of the matter on her behalf. In either event, Alvarez retained Respondent to represent her in the lawsuit, and Respondent provided Alvarez with a receipt for $700.00, noting the payment was for a "civil

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

[2] Alvarez, a housekeeper at St. Joseph's hospital, has been educated through middle school and does not speak English. She testified at the hearing through a certified Spanish-speaking interpreter.

case." The receipt also stated that the balance due was $300.00 plus costs. Respondent's client intake sheet, which provided space to describe the "type of case," was left blank, although Respondent wrote on the intake sheet that the "total fee" was "$1,000 plus costs."[3]

On September 18, 2008, the Denver District Court notified the parties that Pacheco's lawsuit would be dismissed on October 20, 2008, due to Pacheco's failure to prosecute. Respondent provided Alvarez with a copy of the court's notice, and, she says, advised her that "the case was closed" and there was "nothing to worry about." Although Respondent did warn her that there was a chance Pacheco might re-file the case, he also told her that it was "unlikely to happen, or to happen very soon." Based on Respondent's statements, Alvarez considered the case closed and the matter over.

After the Denver District Court dismissed the matter for failure to prosecute, Respondent consented to a change of venue to Arapahoe County District Court on October 17, 2008. The Arapahoe County District Court issued a case management order in the matter on October 29, 2008.

Without alerting Alvarez to these developments, Respondent filed an answer on her behalf on November 6, 2008. The answer generally denied the allegations of the complaint, raised numerous defenses, and argued that any damages suffered by Pacheco were due to Pacheco's own inactions in failing to ensure Alvarez's son appeared in the criminal court matters for which the bond was issued. On December 5, 2008, the court set the matter for a pre-trial conference on February 20, 2009, and for a trial on March 5, 2009. Pacheco, through her attorneys Joseph Murr and Bradley Neiman, filed disclosures on December 22, 2008, and a motion for summary judgment on December 31, 2008.

On January 5, 2009, Respondent sent Alvarez a letter, written in English, which stated:

> We have received a verified motion for summary judgment from the Plaintiff in the above-mentioned case. Our office is required to take action on this matter soon. However, our records indicate that you have not been in contact with our office in some time. In order for us to continue representing you, it is vital that you contact our office via phone or in person as soon as possible. We must speak with you regarding any settlement offers you wish to provide the plaintiff, and regarding any other action you wish us to take. Please respond within ten (10) days of receipt of this letter.

[3] Stipulated exhibit 2 at 000003.

> If by that time you have not been in further contact with us, our office will have no choice but to withdraw as counsel.[4]

Alvarez testified that although she cannot read in English, she went to Respondent's office when she received his letter. She waited for him, but Respondent never appeared. She also placed telephone calls to him, but Respondent failed to return those calls. When Alvarez asked Respondent's receptionist about the meaning of the letter, Alvarez was told that she should bring some additional money to the office. Alvarez was never able to contact Respondent after she received his January 5, 2009, letter.

Respondent disputes Alvarez's assertions, contending that his office staff called Alvarez at least once a week during this time period but could never get in touch with her.[5] He states that without Alvarez's participation he was unable to represent her interests, arguing that "a client has a responsibility, as well, to stay in touch with her lawyer." He also contends that the promissory note Alvarez signed was "iron-clad," so there was no defense he could have raised and the "same judgment would have been reached," whether or not he filed a response. As such, Respondent neither filed a response to Pacheco's summary judgment motion nor sought an extension of time within which to file a response.

During this time, Respondent received numerous telephone calls from Pacheco's attorney, Neiman, who sought to discuss the pending case and to coordinate the filing of a trial management order. Respondent never returned the messages Neiman left for him and, ultimately, Neiman was forced to file a status report in lieu of a trial management order. In that status report, Neiman stated that he had attempted on numerous occasions to contact Respondent, who was "unresponsive,"[6] thereby precluding Neiman from filing a joint trial management order. Neiman also argued that summary judgment was appropriate, given Respondent's failure to respond to the motion for summary judgment.

Accordingly, on February 6, 2009, the court granted summary judgment in favor of Pacheco, awarding her a judgment of $73,435.36 against Alvarez.

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[4] *Id.* at 000039.

[5] The Hearing Board dismisses Respondent's assertions as implausible for a number of reasons. First, we deem Alvarez a credible witness who would have attempted to contact Respondent after receiving a letter from him. Second, Respondent knew how to reach Alvarez during this time period: Alvarez's home address remained the same, and although her telephone number changed she contacted Respondent's office to update his records by providing her new number. As such, Respondent had the means necessary to contact Alvarez and could have done so had he tried. Third, Respondent's file regarding the Alvarez matter—stipulated exhibit 2—reveals no indication of any attempt by Respondent to contact Alvarez, save for his January 5, 2009, letter. We therefore find Respondent never reached out to Alvarez after he sent her the January 2009 letter.

[6] Stipulated exhibit 1 at 000562.

Respondent received a copy of the order granting summary judgment, but he did not notify Alvarez of the court's order. Instead, Alvarez received notice from the court, which she then visited to seek an explanation of the document. She testified, "I received a letter from the court, and [believing the case was over], I thought it was something good for me." Instead, she was notified that she had lost her case and her wages would be garnished to pay the judgment. Alvarez estimates that approximately $300.00 a month will be garnished from her wages for the next thirty years.

The Hearing Board concludes that Respondent violated Colo. RPC 1.3 by failing to act with reasonable diligence and promptness in representing Alvarez. Specifically, Respondent failed to file a response to Pacheco's summary judgment motion and neglected entirely to communicate with opposing counsel. And we reject Respondent's argument that there was no defense he could have raised to Pacheco's claims; that argument is belied by the fact that the answer he filed on Alvarez's behalf denied several factual allegations of the complaint and raised numerous defenses, which he deemed meritorious enough to assert just a few months earlier.

Respondent also violated Colo. RPC 1.4(a), which mandates that attorneys promptly communicate and reasonably consult with clients about the status of their matters. Respondent's failure to inform Alvarez of the transfer of venue, Pacheco's motion for summary judgment, and the district court's decision to grant that motion constitutes a flagrant breach of his duty to communicate with Alvarez. While we reject Respondent's factual assertion that it was Alvarez who bears blame for failing to communicate with him, we also note that even if we found his assertion credible, such a defense would not excuse his behavior. Comment 1 to Colo. RPC 1.3 provides that a lawyer "should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer," and comment 4 to the rule mandates that unless the attorney-client relationship has been terminated, a lawyer "should carry through to conclusion all matters undertaken for a client." Accordingly, Respondent was obligated to represent Alvarez competently until he withdrew from her case, regardless of her efforts to "stay in touch" with him.

Finally, Respondent prejudiced the administration of justice in violation of Colo. RPC 8.4(d) by failing to respond to opposing counsel's repeated calls and by failing to participate in preparing the trial management order for the case.

The Michel Matter

Ernesto Michel was convicted of several crimes in Alamosa County District Court on February 28, 2008, including third-degree assault, resisting arrest, and criminal mischief. Following his conviction, Michel complained to the Alamosa Probation Department that his pre-sentence investigation report was incorrect, since it referred to a New Mexico case that was not related to

him. On July 21, 2008, the probation department wrote to Michel, stating that it would file with the court an addendum to the pre-sentence investigation report, requesting that any reference to the New Mexico case be removed. The probation department also noted that the Alamosa County District Court was aware of the identified discrepancy at the time of Michel's sentencing and that the court did not rely upon the particular New Mexico case when imposing his sentence. The probation department filed the addendum to the pre-sentence investigation report on July 23, 2008, removing the New Mexico case from the report.

Worried that his pre-sentence report may have contained additional errors, Michel retained Respondent to "clear up" the report, paying Respondent $500.00 for his assistance. On August 12, 2008, Respondent entered his appearance in the criminal matter in order to "take a look at [Michel's] file," but sometime between September 15, 2008, and October 1, 2008, Michel terminated Respondent's services. Respondent refunded Michel's $500.00 retainer on October 1, 2008.

Although he returned Michel's retainer, Respondent neglected to file a motion to withdraw during this time period, and he therefore remained as counsel of record for Michel. When Michel later attempted to contact the court clerk, the court clerk refused to communicate with him because court records still listed Respondent as attorney of record for the matter. Michel then contacted Respondent requesting that he withdraw from the case, but Respondent failed to respond to Michel's entreaty. According to the court's file, Respondent never filed a motion to withdraw in Michel's case.[7]

Respondent violated Colo. RPC 1.3 in the Michel matter; he failed to act with reasonable diligence and promptness by neglecting to withdraw as attorney of record in Michel's criminal case, even following Michel's request that he do so. Likewise, Respondent violated Colo. RPC 1.16(a)(3), which provides that a lawyer must promptly withdraw from representation of a client if the lawyer is discharged. The court's file reflects that Respondent failed to withdraw when his representation was terminated or anytime in the more than fifteen months thereafter.

The Loera Matter

On June 25, 2008, Respondent filed in Arapahoe County District Court a petition for allocation of parental responsibility on behalf of his client, Jesus

[7] Respondent argues that he filed two motions to withdraw in the Michel case, neither of which was made part of the register of actions. He claims the first motion was filed in the fall of 2008 and the second was filed on February 24, 2010. He points to his own file in the Michel case—stipulated exhibit 5—as evidence that, at a minimum, the second motion was filed with that court. The Hearing Board rejects Respondent's contentions, however, because it considers the court's register of actions authoritative as to whether such a pleading was filed in the matter.

Loera, in *Hernandez v. Loera*, Case No. 04DR000693. On November 12, 2008, Loera's wife, through counsel of record, filed a verified motion and affidavit for contempt citation, alleging Loera had willfully disobeyed the court's earlier child support order.

On January 5, 2009, a court clerk spoke with Respondent's office to clear a date for the hearing on the petition for allocation, and the matter was set for April 30, 2009, at 3:00 p.m. On February 17, 2009, the court advised Loera of his rights concerning the petition for contempt. The contempt hearing was also set for April 30, 2009, at 10:00 a.m. in Division 11.

But on February 23, 2009, the court issued an order to show cause concerning the petition for allocation, stating:

> It does not appear to the Court, however, as though it has subject matter jurisdiction under the Uniform Child-custody Jurisdiction and Enforcement Act, to determine allocation of parental responsibility and parenting time issues, because Colorado is not the home state of the subject children. See C.R.S. Sec. 14-13-201, which sets forth the criteria establishing when a court of this state may make an initial custody determination. If the court's understanding of the facts in this case are correct, it does not appear to the court as though those jurisdictional criteria are satisfied.[8]

Accordingly, the court required the parties to show cause in writing no later than March 10, 2009, as to why it should not dismiss the motion for allocation of parental responsibility, vacate the April 30, 2009, 3:00 p.m. hearing, and require Loera to instead pursue allocation of parental responsibility orders in the children's home state. The order to show cause was served on Respondent by e-file, and he does not dispute that he received it. After reading the order to show cause, Respondent agreed that the court had no jurisdiction. But instead of withdrawing the petition or filing a response documenting his position, Respondent chose not to respond to the order, since "there was nothing to file. It was good law, and we weren't going to object to it or oppose it."

Rather, on April 13, 2009, Respondent filed a motion to withdraw as counsel, along with a notice of withdrawal of attorney. The motion was not granted, however, and would not have been ripe for ruling until May 1, 2009. The certificate of service attached to Respondent's motion and notice of withdrawal did not list Loera, Respondent's client, as a recipient of the motion.

[8] Stipulated exhibit 6 at 001239-40.

On April 30, 2009, Respondent and Loera were to appear for the contempt hearing at 10:00 a.m. Respondent failed to appear for this hearing, but Loera appeared and told the court that Respondent had promised the night before that he would attend the contempt hearing. The court stated in its minute order that it would not grant Respondent's motion to withdraw at that time.

The hearing to determine allocation of parental responsibility was slated for 3:00 p.m. that same day, but Respondent did not appear, nor did he arrange for a Spanish-English interpreter to be present. Loera appeared for the hearing, however, as did his wife, who traveled from Missouri to attend. Although the court called Respondent's office and cell phone numbers at the beginning of the hearing, Respondent could not be reached. The court determined it could not proceed with the hearing in the absence of counsel of record.

Respondent never filed any written explanation to the court for his absence from the hearing on allocation of parental responsibility or his lack of response regarding the court's February 23, 2009, show cause order. He testified that the court's jurisdictional finding was "sound, so there was no way to respond." Indeed, he characterized any effort on his part to respond as a "redundancy" and claimed that his failure to respond ought to have been interpreted by the court as a response itself, suggesting that the "court should have been able to infer" from the absence of a response that he agreed with its findings.

As regards the contempt hearing, Respondent alleged that he had sent another attorney in his office to attend in his stead but that the attorney was not able to find the correct courtroom in time for the hearing. Ultimately, the contempt hearing was rescheduled for May 18, 2009. Respondent was ordered to appear, which he did, and the parties reached a resolution of the contempt matter.

By refusing to file a response to the order to show cause and by failing to attend the two hearings scheduled for April 30, 2009, Respondent did not act with the requisite diligence and promptness expected of lawyers. Accordingly, he violated Colo. RPC 1.3. Respondent also violated Colo. RPC 8.4(d), which proscribes conduct prejudicial to the administration of justice. His failure to respond to the show cause order and his decision not to attend the two hearings on April 30, 2009, interfered with the ebb and flow of court proceedings and wasted judicial resources.

SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA *Standards*") and Colorado Supreme Court case law

govern the selection and imposition of sanctions for lawyer misconduct. ABA *Standard* 3.0 mandates that, in selecting the appropriate sanction, the Hearing Board must consider the duty breached, Respondent's mental state, the injury or potential injury caused, and the aggravating and mitigating evidence.

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

Duty: Respondent violated a duty to Alvarez and Loera by engaging in a pattern of neglect with respect to the client matters entrusted to him, and he breached his duties of communication and diligence by failing to adequately advise and update Alvarez regarding the status of her case. Respondent also violated his duties to the legal system by engaging in conduct prejudicial to the administration of justice in his representation of Loera. Moreover, Respondent breached a duty he owes as a professional by failing to withdraw as attorney of record from Michel's criminal matter.

Mental State: The Hearing Board concludes Respondent knowingly failed to exercise diligence and communication with respect to the Alvarez and Loera matters. Respondent was certainly aware of his duty to respond to Pacheco's summary judgment motion on Alvarez's behalf, yet he knowingly refused to do so due to what he viewed as Alvarez's failure to remain in sufficiently close contact with his office. Likewise, in the Loera matter, Respondent was fully cognizant of the court's order to show cause but knowingly declined to issue any response or appear for the scheduled hearing concerning the matter, reasoning that his agreement with the court's jurisdictional conclusion obviated the need for his further response. With respect to the Michel matter, the Hearing Board concludes Respondent acted recklessly in failing to withdraw as Michel's attorney of record. Respondent should have known it was his obligation to withdraw from the representation and should have been attentive to this obligation, especially in light of Michel's request that he do so.

Injury: Respondent's misconduct caused actual injury and potential injury to his clients. Respondent's lack of communication and diligence resulted in Alvarez's loss of access to the courts and, concomitantly, her ability to defend against Pacheco's claims, resulting in a monetary judgment against her in excess of $70,000.00. Respondent's conduct has also damaged the reputation of the legal profession: Alvarez testified, "I don't believe in lawyers anymore." Respondent likewise caused Michel actual injury, since his failure to withdraw as attorney of record prevented Michel from obtaining information from the court concerning his legal matter for nearly two years. Finally, Respondent's failures to comply with court orders and deadlines in the Loera matter resulted in potential injury to his client, who could have faced sanctions or otherwise been prejudiced by Respondent's lack of diligence. And Respondent's failure to appear in the Loera hearings resulted in actual injury

to the efficient working of the judicial process insofar as his absence wasted judicial time and resources.

ABA *Standard* 3.0 – Aggravating and Mitigating Factors

Aggravating circumstances are any factors that may justify an increase in the degree of discipline to be imposed. Mitigating circumstances are any factors that may justify a decrease in the degree of discipline to be imposed. The Hearing Board considers evidence of the following aggravating and mitigating circumstances in deciding the appropriate sanction.

Aggravating Factors

Prior Disciplinary Offenses – 9.22(a): The Hearing Board is deeply distressed by the extent and relative similarity of Respondent's past disciplinary history to the matters before us. Respondent has been disciplined on five separate occasions for the following offenses:

- On October 21, 2008, Respondent received a public censure imposed as a result of reciprocal disciplinary proceedings for Respondent's conduct in the Tenth Circuit involving incompetence and lack of diligence.

- On May 10, 2000, Respondent was suspended for ninety days, all stayed upon successful completion of a two-year period of probation, with additional conditions, for conduct that included commingling of funds and neglect of two client matters.

- On January 17, 1995, Respondent received a public censure for neglect and conduct prejudicial to the administration of justice in his handling of two client matters.

- On October 29, 1992, Respondent received a private censure for entering into a contingent fee agreement in a criminal case and for handling a legal matter without adequate legal preparation.

- On December 18, 1991, Respondent received a letter of admonition for neglect and conduct prejudicial to the administration of justice in a client matter and for dishonesty and obstructing the course of disciplinary proceeding.

A Pattern of Misconduct – 9.22(c): Respondent's failure to communicate with his clients and to act diligently and promptly on their behalf in each of the three matters discussed herein constitutes a pattern of misconduct. The Hearing Board also considers as part of Respondent's pattern of misconduct

the circumstances leading to his September 21, 2009, suspension for sixty days, all stayed upon successful completion of a two-year period of probation.[9] In that case, the underlying misconduct involved Respondent's failure to adequately supervise non-lawyer staff in two separate client matters, failure to appear at a court appearance in one client matter, failure to appear for his own contempt hearing, communicating directly with an opposing party represented by counsel without the opposing counsel's consent, incompetence in his interpretation of a particular court order, and bringing a frivolous proceeding based upon his incompetent reading of the above-mentioned court order.

Multiple Offenses – 9.22(d): This disciplinary case involves three separate claims for lack of diligence, one claim related to failure to communicate, two claims for conduct prejudicial to the administration of justice, and one claim related to failure to withdraw when requested.

Refusal to Acknowledge Wrongful Nature of Conduct – 9.22(g): The Hearing Board is troubled by Respondent's casual attitude toward his conduct in these matters. Respondent blames Alvarez for failing to keep in touch with his office despite substantial evidence that Alvarez repeatedly tried to contact him—efforts that he did not reciprocate. Respondent holds Alvarez responsible for having "dumped her papers in our lap and left us with this [case]," notwithstanding that the very essence of his function as a lawyer was to understand, adopt, and assert Alvarez's position in order to resolve the matter in the most advantageous manner to her possible. As regards the Michel matter, Respondent insists that he filed two motions to withdraw, even in the face of overwhelming evidence to the contrary. And Respondent finds no fault in his representation of Loera: he sees no flaw in his interpretation of the court's show cause order, his decision not to respond to the show cause order, or his refusal to appear for the hearing on that order.

Vulnerability of Victim – 9.22(h): As a factor in aggravation, the Hearing Board considers Alvarez a vulnerable client. Alvarez testified that she received schooling only through middle school, and she evidenced little comfort or familiarity with the legal system on the witness stand. Respondent himself complained that his efforts to explain the case to her "didn't sink in." Moreover, Alvarez is not fluent in English and thus could not understand pleadings and correspondence that had not been translated into Spanish. Indeed, the Hearing Board considers it particularly reprehensible that Respondent, who was aware of Alvarez's inability to read English, sent Alvarez his January 2009 correspondence entirely in English. To exhort Alvarez to

[9] Because the conduct underlying the present disciplinary proceeding occurred before the imposition of the sixty-day suspension, we consider that suspension as more appropriately establishing part of a pattern of misconduct, rather than as a prior disciplinary offense. *See People v. Williams*, 845 P.2d 1150, 1153 n.3 (Colo. 1993).

contact him in a language she does not speak, and then blame her for not doing so, strikes the Hearing Board as exceptionally dishonorable.

Substantial Experience in the Practice of Law – 9.22(i): Respondent was admitted to the Bar of Colorado in 1989. As such, we consider in aggravation that Respondent has been licensed as an attorney in this jurisdiction for more than twenty years.

Mitigating Factors[10]

Absence of a Dishonest or Selfish Motive – 9.32(b): The People acknowledge that there is no evidence Respondent acted dishonestly or selfishly in his representation of Alvarez, Michel, or Loera, and Respondent emphasizes that he made very little money in these cases.

Remoteness of Prior Offenses – 9.32(m): We consider Respondent's prior discipline in 1991, 1992, and 1995 to be remote in time from his misconduct in the Alvarez, Michel, and Loera matters. Nonetheless, given the sheer number of Respondent's prior offenses, many of which bear a striking similarity to the misconduct in the instant case, we accord only minimal weight to this mitigating factor.

Sanctions Analysis Under ABA *Standards* and Case Law

Respondent advances as an appropriate sanction for his misconduct a term of probation, while the People suggest the Hearing Board suspend Respondent for a year and a day. After careful consideration of the ABA *Standards* and case law, however, we conclude both proposed sanctions are inadequate. In light of the multiplicity of Respondent's prior disciplinary offenses, his pattern of misconduct, and his refusal to acknowledge the wrongful nature of his conduct, we conclude Respondent should be suspended for three years.

In determining the appropriate sanction here, the Hearing Board looks to ABA *Standards* 4.42 and 6.22. ABA *Standard* 4.42 provides that suspension is appropriate when a lawyer knowingly fails to perform services for a client and thereby causes injury or potential injury. ABA *Standard* 4.42 also encompasses circumstances in which lawyers do not reasonably communicate with their clients. Likewise, ABA *Standard* 6.22 calls for suspension when a lawyer knowingly violates a court order or rule, resulting in injury or potential injury to a client or a party or interference or potential interference with a legal

[10] Respondent urges the Hearing Board to consider in mitigation the fact that at the time of his misconduct he was juggling 600 cases a month. We reject this as an inappropriate basis for mitigation; it is Respondent's responsibility to monitor his caseload and accept only the type and number of cases he can handle competently.

proceeding. We also take heed that in cases of multiple instances of misconduct, such as the one before us, the ABA *Standards* direct that the sanction imposed "should at least be consistent with the sanction for the most serious instance of misconduct . . .; it might well be and generally should be greater than the sanction for the most serious misconduct."[11]

As a general rule, Colorado case law holds that a period of suspension is warranted where an attorney engages in multiple instances of neglect and failure to communicate. The length of the suspension is often determined by the number of clients affected, the degree of injury to the clients, and the number of prior disciplinary offenses. In this case, Respondent's behavior adversely affected, at a minimum, three clients and two court settings. His neglect and lack of communication bordered on abandonment of Alvarez, resulting in a judgment against her of $20,000.00 in excess of her original promissory note. Further, his failure to withdraw from Michel's case prevented Michel from obtaining information about his own legal matter for nearly two years. But we are most influenced by the extent and similarity of Respondent's disciplinary history: Respondent has already been publicly censured and put on probation for lack of diligence, neglect, incompetence, and conduct prejudicial to the administration of justice. Given this prior discipline, we conclude a three-year suspension is appropriately imposed in this case.

In ordering such a lengthy suspension—and one that considerably deviates from the recommendation of the People—we are guided by several cases imposing three-year suspensions in circumstances similar to the one before us.[12] Because Respondent's misconduct falls just short of actual abandonment or an established pattern of neglect, we cannot conclude disbarment is justified.[13] Nevertheless, when considered in conjunction with

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[11] ABA *Standards* § II at 7.

[12] *See, e.g., In re Corbin*, 973 P.2d 1273, 1275-76 (Colo. 1999) (suspending attorney for three years for effectively abandoning one client by failing to record lien release, abandoning another client by failing to serve client's wife with marriage dissolution petition while wife was facing deportation, and failing to communicate with both clients, but finding no prior disciplinary history or serious injury to clients); *People v. Shock*, 970 P.2d 966, 967-68 (Colo. 1999) (imposing three year suspension when attorney neglected to complete filing of patent or trademark applications for five clients and failed to communicate with them, but who had no previous discipline, had been experiencing emotional problems at the time of the misconduct, and had expressed remorse); *People v. Henderson*, 967 P.2d 1038, 1041 (Colo. 1998) (suspending attorney for three years for effectively abandoning four clients, where attorney had no previous discipline, was experiencing personal problems, and exhibited remorse); *People v. Reynolds*, 933 P.2d 1295, 1305 (Colo. 1997) (imposing three-year suspension for pattern of misconduct in light of mitigating factors of no previous discipline and personal and emotional problems at time of misconduct); *People v. Anderson*, 817 P.2d 1035, 1037 (Colo. 1991) (suspending attorney for three years for failure to properly withdraw from cases or file a change of address because such acts were mitigated by absence of significant history of discipline).

[13] ABA *Standard* 4.41 states that disbarment is warranted when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury. We also draw guidance from ABA *Standard*

his disciplinary history, the Hearing Board finds Respondent has exhibited profound neglect that warrants an extended period of suspension.

IV. CONCLUSION

Respondent's conduct in the Alvarez, Michel, and Loera matters is alarming, particularly when viewed through the prism of his disciplinary history. Indeed, Respondent's prior record, coupled with his current refusal to acknowledge the wrongful nature of his conduct, ostends a serious disregard for his ethical obligations as a lawyer, a failure to learn from his earlier disciplinary cases, and an indifference to the disciplinary process in general. As such, it is incumbent on the Hearing Board to impose a sanction that underscores for Respondent such misconduct cannot and will not be tolerated. The Hearing Board therefore concludes Respondent should be suspended from the practice of law for three years.

VI. ORDER

The Hearing Board therefore **ORDERS**:

1. Alfonso S. Cabral, Attorney Registration No. 18328, is hereby **SUSPENDED FOR THREE YEARS**. The suspension **SHALL** become effective thirty-one days from the date of this order upon the issuance of an "Order and Notice of Suspension" by the PDJ and in the absence of a stay pending appeal pursuant to C.R.C.P. 251.27(h).

2. Respondent **SHALL** file any post-hearing motion or application for stay pending appeal with the PDJ **on or before February 23, 2011**. No extension of time will be granted.

3. Respondent **SHALL** pay the costs of these proceedings. The People shall submit a "Statement of Costs" within fifteen (15) days of the date of this order. Respondent shall have ten (10) days within which to respond.

8.0, which suggests that a more severe sanction is warranted when a lawyer engages in further acts of misconduct for which he has already been disciplined and which cause injury or potential injury to a client, the public, the legal system, or the profession.

DATED THIS 3rd DAY OF FEBRUARY, 2011.

_____
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

(*Original Signature on File*)
RICHARD P. HOLME
HEARING BOARD MEMBER

(*Original Signature on File*)
LARRY A. DAVELINE
HEARING BOARD MEMBER

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